

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7161**

**AUTHORIZING AN OPTION AGREEMENT TO CONVEY 2.01 ACRES OF REAL PROPERTY IN THE NORTH MACADAM URBAN RENEWAL AREA TO BRIDGE NORTHWEST DEVELOPMENT FOR \$11,000,000 AND A SPECIAL AUTHORITY GRANT TO BRIDGE NORTHWEST DEVELOPMENT FOR \$8,960,000**

**WHEREAS**, the Portland Development Commission (“PDC”) is undertaking the North Macadam Urban Renewal Plan, adopted August 11, 1999, and subsequently amended (the “Plan”);

**WHEREAS**, PDC owns a 2.01 acre parcel known as RiverPlace Parcel 3 located in the North Macadam Urban Renewal Area (“URA”) at 2095 SW River Parkway (the “Property”);

**WHEREAS**, PDC acquired the Property in 1985 pursuant to a property exchange agreement with Pacific Power & Light in order to develop the RiverPlace neighborhood;

**WHEREAS**, Portland City Council Resolution No. 37118 adopted April 1, 2015, provides direction to PDC and the Portland Housing Bureau (“PHB”) to achieve affordable housing goals in the North Macadam URA, including a specified unit goal and timeline for development of the Property;

**WHEREAS**, pursuant to City Council action, PDC, in partnership with PHB, issued a Request for Proposals (“RFP”) on April 9, 2015, seeking proposals from qualified development teams to purchase and redevelop the Property to include a minimum of 200 housing units affordable to households with 0 to 60 percent of median family income (“MFI”), and with a minimum of 90 of those units to be affordable to households with 0 to 30 percent MFI;

**WHEREAS**, an Evaluation Committee comprised of community stakeholders, PDC, and PHB staff reviewed three proposals submitted in response to the RFP and recommended that the PDC Executive Director select BRIDGE Northwest Development (“Developer”) based upon Developer’s capabilities and stated intent to redevelop the Property in a single phase with a mixed-use development program that will include approximately 203 residential units affordable to households at 0 to 60 percent MFI, of which 90 will be affordable to households with 0 to 30 percent MFI;

**WHEREAS**, PHB has reserved \$19,000,000 of tax increment financing set aside funds to provide Developer as a cash-flow dependent loan to support the provision of the affordable housing units and has received a tentative commitment for project-based vouchers to support the services and operations associated with the affordable housing component of the Project;

**WHEREAS**, PDC and Developer have negotiated an Option Agreement substantially in the form attached hereto as Exhibit A (the “Option Agreement”) to convey the Property to Developer for a purchase price of ELEVEN MILLION DOLLARS (\$11,000,000); and

**WHEREAS**, PDC and Developer have negotiated a Special Authority Grant Agreement substantially in the form attached hereto as Exhibit B (the “Grant Agreement”) to provide Developer a grant of EIGHT MILLION NINE-HUNDRED SIXTY THOUSAND DOLLARS (\$8,960,000) in order to reduce the net purchase price to THREE MILLION THREE HUNDRED DOLLARS (\$3,300,000), the amount the Property is worth with the requirement to provide the 203 affordable residential units and to reimburse Developer up to ONE MILLION TWO HUNDRED SIXTY THOUSAND DOLLARS (\$1,260,000) for incremental environmental costs associated with developing the Property.

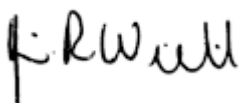
**NOW, THEREFORE, BE IT RESOLVED**, that the PDC Board of Commissioners authorizes the Executive Director to execute an Option Agreement and Grant Agreement, in substantial accord with the terms and conditions reflected in Exhibits A and B;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to the Option Agreement and Grant Agreement terms and conditions, if such changes do not materially increase PDC’s obligations or risks, as determined by the Executive Director in consultation with PDC’s General Counsel;

**BE IT FURTHER RESOLVED**, due to the manner of PDC’s 1985 land acquisition via property exchange, the Executive Director is directed to pay \$3,300,000 to PDC’s Business Management Fund, from the \$11,000,000 payment; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on January 13, 2016



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Gina Wiedrick, Recording Secretary

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7161**

**EXHIBIT A**

**AUTHORIZING AN OPTION AGREEMENT TO CONVEY 2.01 ACRES OF REAL PROPERTY IN THE NORTH MACADAM URBAN RENEWAL AREA TO BRIDGE NORTHWEST DEVELOPMENT FOR \$11,000,000 AND A SPECIAL AUTHORITY GRANT TO BRIDGE NORTHWEST DEVELOPMENT FOR \$8,960,000**

Exhibit A includes this cover page and contains 35 pages:

- Option for Purchase and Sale, Development and Right of Repurchase Agreement between the Portland Development Commission and Bridge Northwest Development
  - Exhibit A: Legal Description of Property
  - Exhibit B: PTR
  - Exhibit C: Deed Form
  - Exhibit D: Memorandum of Right to Repurchase
  - Exhibit E: Escrow Holdback Agreement
  - Exhibit F: Project Description
  - Exhibit G: Business Equity Policy
  - Exhibit H: Workforce Equity Policy
  - Exhibit I: Green Building Policy
  - Exhibit J: Prevailing Wage Compliance Agreement

**OPTION FOR  
PURCHASE AND SALE,  
DEVELOPMENT AND  
RIGHT OF REPURCHASE  
AGREEMENT  
BETWEEN  
THE PORTLAND DEVELOPMENT COMMISSION  
AND  
BRIDGE NORTHWEST DEVELOPMENT  
DATED  
January \_\_, 2016**

**OPTION FOR  
PURCHASE AND SALE, DEVELOPMENT AND RIGHT OF REPURCHASE  
AGREEMENT**

**PARCEL 3, North District, South Waterfront**

**THIS OPTION FOR PURCHASE AND SALE AGREEMENT AND RIGHT OF REPURCHASE** (“Agreement” or “Option”) is entered into as of January \_\_\_, 2016 (the “Effective Date”) between the **PORTLAND DEVELOPMENT COMMISSION**, the urban renewal authority of the City of Portland (“PDC”), and **BRIDGE NORTHWEST DEVELOPMENT**, an Oregon non-profit public benefit corporation or assigns (“Developer”). PDC and Developer are referred to jointly in this Agreement as “Parties” and individually as a “Party”.

**RECITALS**

- A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the North Macadam Urban Renewal Area (“NMURA”).
- B. PDC is the owner of Parcel 3: an approximately 87,632 square foot parcel located in NMURA at the intersection of S.W. River Parkway and S.W. Moody Avenue, Portland, Oregon, as more particularly described in Section 1.1 (the “Property”).
- C. Developer, as a result of a Request for Proposals process, was selected to negotiate for potential acquisition and development of the Property for purposes consistent with the Urban Renewal Plan. Developer’s development of the Property shall be of approximately \_\_\_\_\_ gross square feet consisting of both housing and commercial ground floor space, including a minimum of 200 housing units affordable to households with 0-60 percent of median family income (MFI) and for a minimum of 90 of those units to be affordable to households at 0-30 percent MFI (the “Project”).
- D. The Portland Housing Bureau (“PHB”) intends to provide an approximately \$19 million cash-flow dependent loan to Developer using tax increment finance funds from the NMURA to support the construction, preservation, and maintenance of the affordable housing on the Property (the “PHB Loan”).
- E. PDC and Developer intend to enter into this Option under which Developer may elect to purchase the Property and if Developer does so elect to purchase then PDC will sell the Property under the terms established herein.
- F. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City, and are in accord with the public purposes and provisions of the applicable laws under which the Urban Renewal Plan was adopted.
- G. One of the prerequisites to Developer obtaining certain public financing is the issuance by the U.S. Department of Housing and Urban Development, or its agent (“HUD”) of its final authority to use grant funds for the Project in accordance with 24 CFR Part 58 (the “HUD Determination”).

## AGREEMENT

**NOW, THEREFORE,** for and in consideration of the premises set forth above and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

### 1. GENERAL TERMS

- 1.1. **Description of the Property.** The Property which is subject to this Agreement consists of the following: The land located at 2095 SW River Parkway, Portland, Oregon, commonly known as RiverPlace Parcel 3, as more particularly described in Exhibit A attached hereto (the "Land"), together with (i) all rights, privileges, licenses, and easements appurtenant to the Land owned by PDC, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; (ii) all improvements, equipment, fixtures or other personal property of every kind located on the Land, including, without limitation all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures; and (iii) any and all permits, warranties, intangible property and any other personal property assets owned by PDC with respect to the Land and the improvements thereon (all together collectively referred to herein as the "Property").
- 1.2. **Option.** In exchange for the payment of One Thousand Dollars (\$1,000) Developer is hereby granted an exclusive option to purchase the Property on terms established herein. Developer's obligations to purchase shall not mature unless and until the Developer exercises this Option. Developer is under no obligation to exercise the Option and its exercise of the option is subject to a determination by Developer on the desirability of the Property for its intended development.
- 1.3. **Option Term.** The Option Term shall commence on the Effective Date and shall expire at 5PM PST on a date that is the later of (i) 150 days after the Effective Date or (ii) the date of the HUD Determination, as defined in Section 1.5. In any event, the Option Term shall terminate on a date that is eight (8) months from the Effective Date. PDC shall not unreasonably withhold an additional extension to the Option Term beyond eight months if: 1) Developer provides to PDC evidence satisfactory to PDC that the HUD Determination has been and is being diligently pursued by Developer and 2) evidence is provided to PDC that a favorable HUD determination is a) likely and b) is reasonably imminent.
- 1.4. **Exercise.** If Developer elects to purchase the Property then Developer shall provide written notice to PDC prior to the expiration of the Option Term. Said notice shall include the following: "Notice of Option Exercise to Purchase Parcel 3". Said notice shall not be effective if it contains any conditions or exceptions.
- 1.5. **Earnest Money Deposit.** Within thirty (30) business days of the HUD Determination the Developer shall deposit to Escrow a Payment of One Hundred Sixty-Five Thousand Dollars (\$165,000) ("Earnest Money Payment"). The Earnest Money Payment is applicable to the Purchase Price at Closing. The Earnest Money Payment is refundable to Developer if Developer does not exercise the option and in such a case the Earnest Money Payment shall be released to Developer within ten (10) days of the end of the Option Term.

If Developer Exercises the Option and subsequently fails to Close without breach on PDC's part then the Earnest Money shall be forfeited to PDC.

- 1.6. **Purchase Price.** The Purchase Price for the Property is Eleven Million Dollars (\$11,000,000). PDC believes the Purchase Price is the fair market value of the Land based on an appraisal conducted by Romanaggi Valuation Services, LLC. Subject to any credit for Earnest Money Deposit and Developer's receipt of the Grant (defined in Section 3.1.2.6 below), the Developer shall deposit into Escrow the amount of the Purchase Price.
- 1.7. **AS IS Sale.** Prior to the Closing Date, Developer will have examined and investigated or will have had the opportunity to examine and investigate the Property to its own satisfaction and will have formed its own opinion as to the condition (including environmental condition) and value thereof. Except for express statements contained in Section 2.1 or elsewhere in this Agreement, Developer has not relied on any statements or representations from PDC or any person acting on behalf of PDC concerning any of the following: (i) the size or area of the Property; (ii) the location of corners or boundaries of the Property; (iii) the condition of the Property, including but not limited to, physical or geotechnical properties above or below the surface of the Property or the Environmental Condition adjacent, above or below the surface of the Property (including without limitation releases or threatened releases of hazardous or regulated substances) or compliance with Environmental Laws and other governmental requirements; (iv) the availability of services to the Property; or (v) the ability of Developer to use the Property or any portion thereof for any intended purpose. Except for the express statements contained in Section 2.1, Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Except for breach of any representation or warranty set forth in Section 2.1, Developer waives, releases and forever discharges PDC and PDC's successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property.
- 1.8. **Access, Inspection and Due Diligence Materials**
  - 1.8.1. **Access and Inspection.** PDC agrees that Developer and its authorized agents or representatives shall be entitled to enter upon the Property to make such investigations, studies and tests as Developer deems necessary or advisable, as more specifically set forth in the form of Permit of Entry attached hereto as Exhibit B (the "Permit of Entry").
  - 1.8.2. **Due Diligence Materials.** Developer acknowledges that PDC has previously provided Developer due diligence materials consisting of an ALTA survey, topographic survey, preliminary title report, geotechnical/soils reports, and environmental assessments including a Contaminated Management Plan and Remedial Action Plan (the "Provided Due Diligence Materials") PDC represents only that (i) it has exercised its best effort to provide to Developer the Provided Due Diligence Materials that PDC believes are relevant to the Property; and (ii) that PDC agrees to make additional due diligence materials requested by Developer or discovered by PDC ("Additional Due Diligence Materials") available to Developer and Developer's agents, within a reasonable time of such

discovery or request. Additional Due Diligence Materials may include, if so requested or discovered, copies of studies, reports, site analyses, engineers certificates, existing surveys, existing title insurance policies, contracts, leases, licenses, and permits with respect to the Property that PDC has in its possession, or that it has access to, or control over, including, without limitation: any site analyses with respect to oil, asbestos, underground storage tanks, hazardous materials, lead paint, or lead plaster; or any reports regarding compliance with laws (including, but not limited to, ADA, zoning and all other land use matters).

## 1.9. Due Diligence

1.9.1. **Due Diligence Period.** The “Due Diligence Period” shall commence on the Effective Date and shall expire at 5 P.M. Pacific Time on a day that is the later of (a) HUD’s issuance of the HUD Determination or (b) one hundred and twenty (120) days from the Effective Date. Developer shall provide PDC written notice prior to the expiration of the Due Diligence Period if Developer’s due diligence shall reveal to Developer any matters which are not acceptable to Developer, in Developer’s sole and absolute discretion. Upon PDC’s receipt of such notice from Developer this Agreement shall terminate. The failure of Developer to timely provide notice to PDC Developer’s dissatisfaction prior to the expiration of the Due Diligence Period shall be deemed Developer’s decision to accept the Property without objection, reservation or exception if Developer Exercises the Option.

1.9.2. **Extension to Due Diligence Period.** Upon written notice to PDC and payment to Escrow of Ten Thousand Dollars (\$10,000) prior to the expiration of the Due Diligence Period, the Developer may extend the Due Diligence Period for 30 days. The payment under this section is not refundable but applicable to the Purchase Price upon closing. An extension under this provision shall also extend by the same amount the Closing Date.

1.10. **Title Review.** The title condition is reflected in a First American Title Company of Oregon, Preliminary Title Report Number NCS-716429-OR 1, dated effective February 11, 2015 (the “PTR”) attached hereto as Exhibit B. Developer shall have twenty (20) days after the Effective Date to notify PDC in writing if Developer objects to any item in the PTR. Those items to which Developer does not object shall be deemed the “Permitted Exceptions” to title. If Developer objects to any item, then PDC shall have twenty (20) days after receiving Developer's written objection to notify Developer in writing of its intention to remove or not remove the objectionable item(s) prior to Closing. If PDC does not give its response to Developer’s objections within the twenty (20) day time period or if PDC refuses to remove any of Developer’s objectionable items, Developer shall have twenty (20) days to either waive the objection(s) or provide PDC notice of an unacceptable condition in accord with Section 1.9. If this Agreement is not terminated in accordance with the preceding sentence, the Permitted Exceptions together with the exceptions, if any, that Developer originally objected to and that PDC refused to remove or failed to respond to will be deemed the “Final Permitted Exceptions”. If Developer terminates this Agreement under this Section 1.10, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County, and the Earnest Money Payment shall be refunded to Developer within five (5) days of notice from PDC’s receipt of a termination by Developer.



- 1.10.1. If an updated PTR ordered from First American Title Company reveals any new title exceptions not reflected in an earlier report then Developer may object to any new exception within ten (10) days and PDC may respond in accord with the process established earlier in this section provided that the time periods shall be ten (10) rather than twenty (20) days. Developer's objection to a new title exception appearing in an updated PTR ordered from First American Title Company is not limited to the Due Diligence Period. Any new title exceptions in such an updated PTR revealed within ten (10) days prior to the end of the Due Diligence Period or to Closing shall extend the Due Diligence Period or the Closing Date, as applicable, by the number of days actually required to resolve any notice by Developer of objections to item(s) in the updated PTR in accordance with this Section 1.10.
- 1.10.2. Notwithstanding anything to the contrary set forth in this Section 1.10, PDC shall remove all Monetary Liens from the Property prior to Closing. As used in this Agreement, "Monetary Liens" means, collectively, (a) any and all deeds of trust and mortgages; (b) any judgment liens affecting the Property; (c) any other monetary liens of record against the Real Property other than for (i) local improvement district ("LID") assessments not levied or assessed as of the Effective Date, and (ii) for work performed by or at the direction of Developer.
- 1.11. **Title Insurance.** PDC, at its expense, will provide Developer with a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, and covering the Property when conveyed, and insuring Developer in the amount of the Purchase Price, free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance and PDC agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage. Developer may also elect to obtain a survey at its own expense.
- 1.12. **Escrow.** An escrow account shall be opened by Seller at First American Title Co, at the Portland, Oregon, offices in order to manage Earnest Money Deposits and Closing. The account and its management shall be the "Escrow".
- 1.13. **Escrow Agent.** First American Title Co. shall serve as the "Escrow Agent".

## 2. REPRESENTATIONS AND WARRANTIES

- 2.1. **PDC Representations and Warranties.** PDC's representations and warranties under this Agreement are limited to the following. PDC hereby warrants and represents to Developer as of the Effective Date and as of the Closing Date the following:
  - 2.1.1. PDC has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by PDC in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of creditor, investor, judicial or administrative body, governmental authority, or other party is required.
  - 2.1.2. Within this section the phrase "PDC Representatives" shall mean, collectively, Steve Blank, Eric Jacobson and PDC's General Counsel's office. PDC is not a

“foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

- 2.1.3. To the best knowledge of the PDC Representatives, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or, to the PDC Representatives’ knowledge, threatened, which may affect the Property, or PDC’s ability to perform its obligations under this Agreement.
- 2.1.4. To the best knowledge of the PDC Representatives, and except as otherwise disclosed in writing to Developer before the Effective Date, during PDC’s ownership of the Property, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements, including all environmental laws (collectively, “Laws”).
- 2.1.5. To the best knowledge of the PDC Representatives, PDC has not received any notice stating that the Property is in violation of any applicable Laws other governmental requirements.
- 2.1.6. To the best knowledge of the PDC Representatives, and based upon the current PTR, PDC is the legal and beneficial fee simple titleholder to the Property.
- 2.1.7. To the best knowledge of the PDC Representatives, the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, or judgments, except as disclosed by the PTR.
- 2.1.8. To the best knowledge of the PDC Representatives, there are no leases or service contracts that affect the Property that are not terminable at the Closing, and other than this Agreement, there are no options to purchase the Property or rights of first refusal to purchase the Property.
- 2.1.9. This Agreement and all documents required to be executed by PDC are and shall be valid, legally binding obligations of and enforceable against PDC in accordance with their terms.
- 2.1.10. To the best knowledge of the PDC Representatives, neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which PDC is a party.
- 2.1.11. To the best knowledge of the PDC Representatives, no representation, warranty or statement of PDC in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- 2.1.12. The persons executing this Agreement and the instruments referred to herein on behalf of PDC have the legal power, right, and actual authority to bind PDC to the terms and conditions of this Agreement.

- 2.2. **Developer Representations and Warranties.** Developer's representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to PDC as of the Effective Date and as of the Closing Date the following:
- 2.2.1. Developer is a non-profit public benefit corporation duly formed and existing in the State of Oregon.
  - 2.2.2. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.
  - 2.2.3. This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.
  - 2.2.4. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
  - 2.2.5. No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
  - 2.2.6. The persons executing this Agreement and the instruments referred to herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

The Parties agree that all representations and warranties contained in this Section 2 shall survive the Closing for a period of twelve (12) months.

- 2.3. **PDC Covenants.** PDC hereby covenants and agrees that between the Effective Date and Closing Date, PDC shall: (i) ensure that the Property is maintained in a manner consistent with current practices; (ii) maintain reasonable and customary levels and coverages of insurance; (iii) not create or acquiesce in the creation of liens or other exceptions to title other than the Permitted Exceptions or any modification thereto; (iv) not lease, transfer, option, or convey its interest in the Property or any portion thereof nor any right therein, nor shall PDC enter into or solicit any agreement granting to any person or entity any option to purchase or rights superior to Developer with respect to the Property or any part thereof; (v) not voluntarily take any action to render any of the representations or warranties of PDC set forth in Section 3.1 materially incorrect; or (vi) enter into any maintenance, management, or service agreement that will remain in force and effect after

the Closing Date. Notwithstanding the foregoing clause (iv), PDC may lease, license or transfer its interest in the Property if (a) any such lease, license or transfer expires prior to the Closing Date, or (b) Developer consents in writing, to such lease, license or transfer, which consent shall not be unreasonably withheld, conditioned or delayed.

### 3. CONDITIONS PRECEDENT TO CLOSING

3.1. Developer and PDC are not obligated to Close unless the following conditions are satisfied prior to the Closing Date. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. To the extent the failure of a condition to be satisfied occurs and such failure of the satisfaction of such condition constitutes a default under this Agreement, the non-defaulting party shall have all rights and remedies against the defaulting party that are available to such non-defaulting party under this Agreement.

3.1.1. To the reasonable satisfaction of both PDC and Developer:

No third party litigation is pending that prevents PDC or Developer from performing their respective obligations under this Agreement.

3.1.2. To Developer's reasonable satisfaction:

3.1.2.1. Escrow Agent is prepared to issue to Developer the form of title insurance selected by Developer under Section 1.10, covering the Property in an amount not less than the Purchase Price, subject only to the Final Permitted Exceptions.

3.1.2.2. No material adverse change in the physical or title condition of the Property has occurred since the end of the Due Diligence Period.

3.1.2.3. PDC has provided to Developer a copy of the appraisal conducted by Romanaggi Valuation Services, LLC referenced in Section 1.6.

3.1.2.4. PDC's Board of Commissioners has approved this Agreement and the transactions contemplated herein.

3.1.2.5. PDC is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of PDC under this Agreement.

3.1.2.6. PDC and Developer shall have executed a Special Purpose Grant Agreement ("SPGA") substantially in accord with Exhibit F. PDC shall have deposited the funds contemplated in the SPGA, totaling Eight Million Nine Hundred and Sixty Thousand Dollars (\$8,960,000.00) (the "Grant") in Escrow prior to the Closing Date. The Grant shall effectively generate a discount to the Purchase Price and is necessary to make financially feasible the mixed development of the Property, including significant affordable housing elements. The amount of the Grant includes the Environmental Reserve.

3.1.3. To PDC's reasonable satisfaction:

- 3.1.3.1. Developer is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.
- 3.1.3.2. Developer has obtained all land use approvals for the Project evidencing a Project consisting of no less than 365 residential units including 200 units affordable to households with 0-60 percent of median family income and of those 200 units no less than 90 units shall be affordable to households with 0-30 percent of median family income. In addition, the approvals shall evidence approximately 160 parking spaces and commercial space for local retailing uses.
- 3.1.3.3. All commitments for construction financing are ready to close or reasonable evidence of financing commitments that is satisfactory to PDC have been provided to PDC.
- 3.1.3.4. The Project has been registered for LEED for Homes, Multi-Family midrise.
- 3.1.3.5. Developer has consulted with the PDC Equity Coordinator, Patricia Weekley (503) 823-3057 or her successor, to make arrangements for compliance with the Business Equity Policy and Workforce Equity Policy, as defined in Section \_\_\_.
- 3.1.3.6. Developer has committed to joining the RiverPlace Planned Community Association.

3.2. **Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in this Section 3 is not fulfilled to the reasonable satisfaction of the benefited Party on the date scheduled for Closing, then such benefited Party may elect to:

- 3.2.1. Terminate this Agreement by written notice to the other Party;
- 3.2.2. Waive in writing the benefit of that condition precedent to Closing and proceed in accordance with the terms hereof; or
- 3.2.3. Designate in writing a later date for Closing, to allow additional time for the condition to be fulfilled, if the condition can be fulfilled and the other Party agrees in writing to the later date.

3.3. **Effect of Termination for Failure of Conditions Precedent.** If this Agreement terminates or is terminated for failure of fulfillment of the conditions precedent to Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If this Agreement terminates or is terminated for failure of fulfillment of the conditions precedent to the Closing and Developer is not in default under this Agreement, then PDC shall refund or the Escrow Agent shall disburse to Developer the Escrow Money Payment within five (5) days of such termination. If a Party is in default under this Agreement on the date this Agreement terminates, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

## 4. CLOSING

### 4.1. Manner of Closing.

4.1.1. "Closing" or to "Close" shall mean the conveyance of the Property from PDC to Developer in exchange for Developer's payment of the Purchase Price to PDC together with adjustments for credits, prorations, and costs. The Closing of the purchase and sale of the Property will occur through an escrow to be administered by the Escrow Agent. The contact phone for Escrow Agent is (503) 795-7600.

4.1.2. The Parties agree to provide the Escrow Agent with escrow instructions consistent with the terms of this Agreement.

4.1.3. On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the State of Oregon.

4.2. **Closing Date.** If Developer Exercises the Option then the "Closing Date" shall occur no later than a date that is fifteen (15) months after the Effective Date, unless extended as provided in this Agreement. The Closing Date may be extended by Developer if, no less than 30 days prior to the Closing Date the Developer provides PDC written notice of intent to extend and pays an Extension Payment to PDC of Thirty Three Thousand Dollars (\$33,000). The Extension Payments under this section shall be non-refundable and not applicable to the purchase price. Developer shall have the right to seek a Closing Extension under this section twice but must pay the Extension Payment each time. Each extension shall be for a period of sixty (60) days for a total maximum extension under this section of not more than one hundred and twenty (120) days.

4.3. **Conveyance by Deed.** Upon Developer's payment to PDC of the Purchase Price, at the Closing, PDC will convey the Property to the Developer by a statutory Bargain and Sale Deed, substantially in the form of Exhibit C ("Deed").

4.4. **PDC Deposits to Escrow.** On or before the Closing Date, PDC shall deposit into Escrow all of the following:

- (a) A duly executed and acknowledged Deed.
- (b) An original certificate of non-foreign person in a form reasonably acceptable to Developer duly executed by PDC and notarized.
- (c) A Memorandum of Right to Repurchase in substantially the form attached hereto as Exhibit D, (to be recorded after the Deed).
- (d) Special Purpose Grant Agreement and disbursement of funds thereunder.
- (e) An original Escrow Holdback Agreement, duly executed by PDC.
- (f) If requested by Developer prior to Closing, an assignment of permits, warranties and intangibles in a form reasonably acceptable to both PDC and Developer.
- (g) Such documents as the Escrow Agent may reasonably require to establish the authority of PDC to complete the sale of the Property as contemplated by this Agreement, and to issue title insurance in the form required by Developer.

- (h) Such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

4.5. **Documents and Sums to Be Deposited Into Escrow by Developer.** On or before the Closing Date, Developer shall deposit into Escrow:

- (a) Such funds (by wire transfer) as are necessary to fulfill payment of the Purchase Price in accordance with Section 1.4 of this Agreement and to pay Developer's portion of the prorations and closing costs.
- (b) An original Escrow Holdback Agreement, duly executed by Developer.
- (c) Such documents as the Escrow Agent may reasonably require to complete the sale of the Property as contemplated by this Agreement.

4.6. **Prorations and Costs.**

- (a) **Closing Costs.** The costs for recording a Memorandum of Right to Repurchase shall be paid by PDC. The costs for recording the Deed and any other documents required by Developer to be recorded will be paid by Developer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. All other closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.
- (b) **Prorations of Taxes.** All property taxes attributable to the year in which the Closing occurs, if any, shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). All property taxes attributable to any year prior to the year in which the Closing occurs, if any, shall be paid by PDC.
- (c) **Utilities.** PDC shall cause all meters for electricity, gas, water, sewer or other utility usage at the Property, if any to be read on the Closing Date and PDC shall pay all charges for such utility charges which have accrued on or prior to the Closing Date. If the utility companies are unable to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefor.
- (d) **Other Prorations and Costs.** Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. If PDC has previously paid (by annual or other periodic payment) for any costs or assessments allocable to any period after the date of Closing, such costs shall be pro-rated at Closing. Developer and the PDC shall each pay their own legal and professional fees of other consultants incurred by Developer and PDC, respectively.
- (e) **Environmental Reserve.** From the Purchase Price proceeds, Escrow Agent shall hold in Escrow, post-closing, the sum of One Million Two Hundred Sixty Thousand Dollars \$1,260,000. Said funds shall be the "Environmental Reserve". The Environmental Reserve shall be released by Escrow Agent in accordance with the holdback agreement attached hereto as Exhibit E (the "Escrow Holdback Agreement").

## 5. DEVELOPMENT.

5.1. **Project.** As a material inducement to agreeing to sell the Property, Developer has agreed to develop the Property into a Project consisting of no less than 365 residential units including 200 units affordable to households with 0-60 percent of median family income and of those 200 units no less than 90 units shall be affordable to households with 0-30 percent of median family income. In addition the Project shall include approximately 160 parking spaces, commercial ground floor space for local retailing uses, and potential retail parking. The Project shall be consistent with the description contained in Exhibit F attached hereto. While some elements of the Project may change prior to the commencement of construction, non-material changes in the Project concept, particularly the affordable housing elements of the Project, may be made without the prior written consent of PDC. Prior to recordation of the Type III design review decision for the Project, Developer shall submit to PDC the most current Project plans. If there are material changes in the Project plans from the description contained herein PDC shall have ten (10) business days to approve or reject such changes. PDC's failure to provide written objections to the changes within ten (10) business days shall be deemed PDC's approval of the revised Project plans. In the event that PDC requires that footings be auger casted rather than pile driven, then PDC shall reimburse the Developer for the incremental increase in cost associated with auger casting.

### 5.2. Diligent Commencement of the Project.

5.2.1. **Commence Construction.** Developer covenants that it will commence construction of the Project on or before a date that is no later than September 30, 2017 ("Construction Commencement Deadline"). For the purposes of this Agreement, the term "commence(s) construction" shall mean that the general contractor or its subcontractor has excavated at least 200 cubic yards of material from the site.

5.2.2. **Repurchase Right.** Except to the extent of any periods of Unavoidable Delay as set forth in Section 8.7, if Developer fails to commence construction by the Construction Commencement Deadline, then PDC shall have the right to repurchase the Property (PDC's "Repurchase Right") for the Repurchase Price (defined below). PDC may initiate its potential exercise (but not be committed to exercise) that Repurchase Right by sending written notice to Developer of PDC's intent by the date that is ten (10) business days after the Construction Commencement Deadline. After having timely sent such written notice of PDC's potential intent to exercise its Repurchase Right, PDC shall have one hundred eighty (180) days after the date of its notice to obtain budget and Board approvals to repurchase the Property and, if such approvals are obtained and PDC so elects, PDC shall issue formal written notice to Developer of the actual exercise of the Repurchase Right setting forth a date for closing the repurchase which shall be not more than sixty (60) days from the date of the formal notice. The Repurchase Right shall automatically terminate and be of no further force and effect on the earlier of (a) the date on or prior to the Construction Commencement Deadline that Developer actually commences construction, or (b) on the eleventh (11th) business day after the Construction Commencement Deadline, if PDC has not sent notice of its potential exercise of the Repurchase Right.



- 5.2.3. Developer shall deliver to PDC, within ten (10) business days after PDC's actual exercise of the Repurchase Right, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release; provided, however, that such documents and other materials will be provided to PDC without representation or warranty of any kind. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder.
- 5.2.4. As used in this Agreement, "Repurchase Price" means Three Million Three Hundred Thousand Dollars (\$3,300,000) less any liens then-existing against the Property.
- 5.3. **Compliance with PDC Policies.** The Business Equity Policy, Workforce Equity Policy, and Green Building Policy as defined in this section are referred to collectively in this Agreement as the "PDC Policies."
- 5.3.1. **Business and Workforce Equity.** Prior to the expiration of the Due Diligence Period, Developer shall consult with PDC's Business Equity Department, to ensure Developer is on track for compliance with both (a) the Business Equity Program Specifications in Exhibit G ("Business Equity Spec") and (b) the Workforce Equity Program Specifications in Exhibit H ("Workforce Equity Spec"). Thereafter, Developer shall comply with the provisions of the Business Equity Spec and Workforce Equity Spec. In the event that Developer finds that it would be commercially unreasonable or impossible to comply with the Business or Workforce Equity Policies or associated Specifications because of factors outside of Developer's control, including, but not limited to, the inability to hire sufficient State-registered apprentices to comply with the Workforce Equity Policy then Developer may petition the PDC Board for an exemption in accord with the Specifications. PDC staff shall respond to the petition within 10 business days of receipt and schedule the matter for Board consideration at the next available, regular Board meeting. The next available, regular Board meeting shall not include meetings scheduled within 10 days of receipt of the petition.
- 5.3.2. **Green Building.** Developer shall comply with the Green Building Policy attached as Exhibit I (the "Green Building Policy"), by:
- 5.3.2.1. Providing PDC proof of project registration with Green Building Certification Institute <https://www.usgbc.org/leedonline/> prior to the date on which Developer commences construction, as defined in Section 5.2.1.
- 5.3.2.2. After the date on which Developer commences construction, provide PDC quarterly updates that include a LEED Project Checklist and written description that includes likelihood that requirements will be met or exceeded and any issues or circumstances that may prevent the project from attaining certification.
- 5.3.2.3. Following Project Completion, provide PDC proof of project LEED Gold certification within five (5) business days of receipt. If the project certification was denied, Developer shall immediately contact PDC to

discuss the reason for denial, and whether a waiver of the Green Building Policy by the PDC Board is warranted. If Developer can demonstrate that a good faith effort was made to achieve the LEED Gold certification but the certification was denied then Developer may petition the PDC Board for a waiver or modification of the obligation to comply with the Green Building Policy.

- 5.3.3. **Enforcement of PDC Policies.** PDC is a public entity that directs its resources, in part, to projects that will also advance important social benefits including equitable employment and the construction of buildings that are least impactful to the environment. The parties agree that PDC would suffer actual damages if Developer fails to aid in the advancement of these social benefits by failing to comply with any of the PDC Policies. The parties agree that Developer's failure to comply with any one of the policies shall give rise to liquidated damages in the amount of One Hundred Fifty Thousand dollars (\$150,000) for each policy with which Developer fails to comply. The determination of whether a potential failure to comply with a PDC Policy shall be made not before the time of Satisfaction of Obligations under section 5.3.6 below or while Board consideration of a waiver or modification is pending. This liquidated damages amount is deemed to be the best estimate of the cost that PDC would face to promote equitable employment or to incentivize green building techniques on the Project. Upon receipt, PDC may apply such liquidated damages to other projects in order to achieve its social benefit goals and to compensate for the failure to achieve such goals on the Project.
- 5.3.4. **South Waterfront Project Apprenticeship Agreement.** The Developer shall join the South Waterfront Project Apprenticeship Agreement and shall remain bound to the terms until Project Completion.
- 5.3.5. **Conflicts Between PDC Policies and other Non-PDC Policies.** In the event that Developer's compliance with the PDC Policies conflicts with other obligations of Developer to the City of Portland, the requirements of receiving HUD funding, the South Waterfront Project Apprenticeship Agreement, or any other similar policy, PDC and Developer agree to discuss potential waivers of the PDC Policies as may be appropriate to avoid such conflict(s).
- 5.3.6. **Satisfaction of Obligations.** Within Ninety (90) days of Project Completion the Developer shall submit to PDC all records of compliance with PDC Policies. Within Sixty (60) days of receipt of the records PDC shall provide developer a written notice of compliance or non compliance with the PDC Policies.
- 5.4. **BOLI.** Developer shall pay a prevailing wage and take other actions administered by the Oregon Bureau of Labor and Industry (BOLI) and consistent with ORS 279C.800 et. seq. Developer shall comply with the standards and processes included in PDC's Prevailing Wage Compliance Agreement, Exhibit J. In the event that Developer obtains a determination from BOLI that part of the Project may be eligible for a residential prevailing wage rate then Developer may notify PDC and PDC shall modify the prevailing wage obligation accordingly.
- 5.5. **Safety Matters and Indemnification.** Developer shall:

- 5.5.1. **Safety.** Comply with all safety laws and take all safety measures necessary to protect its employees, and PDC's employees, agents, contractors, subcontractors, licensees and invitees, and the personal property and improvements of each, from injury or damage caused by or resulting from the performance of its construction.
- 5.5.2. **Indemnity from Liens.** Indemnify, defend (at PDC's request) and hold harmless PDC, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project, arising from or related to construction on the Property or the Project and performed by or at the request of Developer or Developer's contractors or agents.
- 5.5.3. **Liens.** If any statutory lien shall be filed after conveyance of the Property to Developer against any portion of the Property or the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Property or the Project and PDC exercises its Repurchase Right under sections 4.3.2 and 7.3.1 then PDC shall be entitled to a reduction in the repurchase price equal to the cost of removing any such liens.
- 5.6. **Compliance with Laws and Use Restrictions.** Developer shall comply with all laws, ordinances, statutes and rules applicable to the Property.
- 5.7. **Project Completion.** As used in this Agreement, "Project Completion" shall mean that the Developer has constructed the Project in accord with the Project description contained herein and as permitted and obtained all occupancy permits. Project Completion shall be attained no later than September 30, 2019.

## 6. ASSIGNMENT AND TRANSFER PROVISIONS

- 6.1. **Restrictions on Transfer of the Property and Assignment of the Agreement.** Because it is a municipal entity, PDC is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. The anti-assignment provisions of this Section 6 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement.
- 6.1.1. Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written consent of PDC. PDC consent under this section shall not be unreasonably withheld if evidence is provided that the Developer will retain a controlling interest in the assignee. In the event that an assignment is intended the Developer shall provide PDC not less than 30 days written notice. PDC shall approve or deny the Developer's request for consent to assign within 10 business days of PDC receipt of all documentation necessary to confirm that Developer retains a controlling interest in the assignee and that the assignee is able to carry out the obligations of this Agreement. No assignment shall relieve Developer of the obligations under this Agreement. The restrictions on transfer or assignment in Section 6.1 shall terminate upon Project Completion.

## 7. SURVIVING PROVISIONS. The following Sections of this Agreement (the "Surviving

Sections”) shall survive Closing and remain in effect for the periods identified in this Agreement or for so long as to take effect or expire:

Section 1.7 (As-Is Sale)  
Section 3 (Representations and Warranties)  
All of Section 5 (Development)  
All of Section 6 (Assignment and Transfer)  
All of Section 8 (Mortgagee)  
Sections 9.1, 9.3, and 9.5-9.7 (Defaults)  
All of Section 10 (Miscellaneous)

## 8. MORTGAGEE PROTECTION PROVISIONS

8.1. **Definitions.** For the purposes of this Section 8:

8.1.1. “Mortgage” means a mortgage, deed of trust, or master lease against the Property (or any portion thereof) to finance the Project that is approved by PDC and recorded in the real property records of Multnomah County, Oregon.

8.1.2. “Mortgagee” means the holder of any Mortgage, including a master lease and trust deed, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage but shall not include (a) any other person or entity who thereafter obtains title to the Property or part of the Property from or through a Mortgagee or (b) any other purchaser at foreclosure sale.

8.2. **Effect of Revesting on Mortgages.** Any right to repurchase the Property in PDC pursuant to this Agreement shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, except as expressly set forth herein, any Mortgage.

8.3. **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of this Agreement, except the covenants set forth in the Deed, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion.

8.4. **Copy of Notice of Default to Mortgagee.** If PDC delivers a notice or demand to Developer with respect to Developer’s breach of this Agreement, PDC shall at the same time send a copy of such notice or demand to each Mortgagee approved by PDC, at the last address of such holder shown in the records of PDC. Failure of PDC to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way PDC’s rights and remedies under this Agreement or create any liability for PDC.

8.5. **Mortgagee’s Options to Cure Defaults.** After Developer’s default of this Agreement and if Developer fails to cure or remedy said default within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Developer’s cure or remedy of the default or longer if the default cannot reasonably be cured within such 30-day period and Mortgagee is diligently pursuing such cure or remedy, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee

does cure or remedy the default, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents. If the default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies PDC in writing of its intention to complete the Project according to the approved Final Construction Drawings and Technical Specifications.

- 8.6. **Amendments Requested by Mortgagee.** PDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of PDC or its interest in the Property.

## 9. DEFAULT AND REMEDIES

### 9.1. Default and Cure.

#### 9.1.1. Default by Developer.

9.1.1.1. Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PDC specifying the breach (the "Developer Breach Cure Period"). If a breach under this Section 9.1.1.1 is not cured within the initial 30-day Developer Breach Cure Period, Developer shall nevertheless not be in default and the Developer Breach Cure Period shall be extended for sixty (60) days or for such period as is reasonably necessary to cure if: (a) Developer commenced the cure of the breach within the initial 30-day Developer Breach Cure Period and (b) Developer thereafter diligently prosecutes to completion such cure.

9.1.1.2. Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.

9.1.2. **Default by PDC.** PDC shall be in default under this Agreement if PDC breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after PDC receives written notice from Developer specifying the breach. (the "PDC Cure Period"). If a breach under this Section 9.2 is not cured within the initial 30-day PDC Cure Period, PDC shall nevertheless not be in default and the PDC Cure Period shall be extended for sixty (60) days or for such period as is reasonably necessary to cure if: (a) PDC commenced the cure of the breach within the initial 30-day PDC Cure Period and (b) PDC thereafter diligently prosecutes to completion such cure.

### 9.2. PDC's Pre-Conveyance Remedies.

9.2.1. If a Developer default (as described in Section 9.1.1) occurs before the Property is conveyed to Developer, PDC, as its sole and exclusive remedy, may terminate

this Agreement by written notice to Developer and retain the Escrow Deposit and any extension payments made. **DEVELOPER AND PDC HEREBY ACKNOWLEDGE AND AGREE THAT PDC'S DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY DEVELOPER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE ESCROW DEPOSIT PLUS ACCRUED INTEREST AND ANY EXTENSION PAYMENTS MADE IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES PDC WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT.** If PDC terminates this Agreement as provided in this Section, then Developer shall deliver to PDC within thirty (30) days after such termination, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release; provided that such documents and other materials will be provided to PDC without representation or warranty of any kind. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. PDC shall pay no compensation to Developer for the foregoing Project documents.

9.3. **PDC's Post-Conveyance Remedies.**

9.3.1. If Developer fails to commence construction on or before the Construction Commencement Date then PDC may elect to exercise the Repurchase Right as described in Section 5.2.2.

9.4. **Developer's Pre-Conveyance Remedies.** If a PDC default (as described in Section 9.1) occurs before PDC conveys the Property to Developer, Developer may, at its option: (a) terminate this Agreement by written notice to PDC and receive a refund of the Earnest Money Payments, accrued interest, and any extension payments made, provided that such refund shall not be a waiver of any cause of action Developer may have against PDC; (b) specifically enforce the obligations of PDC under this Agreement; or (c) seek monetary damages, limited to actual loss, against PDC.

9.5. **Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

9.6. **Tort Claims Limitations.** No action against PDC shall violate the Oregon Tort Claims Act, ORS 30.260 to 30.300.

9.7. **Unavoidable Delay**

- 9.7.1. Neither a Party nor a Party's successor in interest shall, to the extent described in Section 10.8.2 below, be considered in breach of any obligation created hereunder or progress in respect thereto if the delay in performance of such obligation (the "Unavoidable Delay") is due to causes that are unforeseeable, beyond its control, and without its fault or negligence, such as acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, earthquake, explosion, mob violence, riot, invasion, war or malicious mischief.
- 9.7.2. It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of PDC or Developer, as the case may be, shall be extended for the minimum period necessary to cure the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction and, provided further, that in no event shall the time or times for performance of an obligation be extended for more than one hundred eighty (180) days in aggregate.

## 10. MISCELLANEOUS PROVISIONS

- 10.1. **PDC Project Manager.** For the purposes of managing the implementation of the provisions of this Agreement on behalf of PDC, PDC shall designate a Project Manager. At the Effective Date, the Project Manager is Eric Jacobson.
- 10.2. **Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.
- 10.3. **Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered; or (c) if simultaneously delivered by another means allowed hereunder, by e-mail, with receipt of confirmation that such transmission has been received.

In the case of a notice or communication to Developer, addressed as follows:

Bridge Northwest Development  
c/o Bridge Housing Corporation  
Attn: Rebecca Hlebasko  
600 California Street, Suite 900  
San Francisco, CA 94108

with a copy to:

Williams/Dame & Associates, Inc.  
Attn: Dike Dame  
1308 NW Everett Street  
Portland, OR 97209  
Email: dike@wddcorp.com

and to:

Radler White Parks & Alexander LLP  
Attn: Dina Alexander  
111 SW Columbia, Suite 1100  
Portland, OR 97201  
Email: dalexander@radlerwhite.com

In the case of a notice or communication to PDC, addressed as follows:

Portland Development Commission  
Attn: Eric Jacobson  
Real Estate and Lending Department  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209  
Email: jacobsonsone@pdc.us

With copy to:

Portland Development Commission  
General Counsel's Office  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209  
Email: BetconeB@pdc.us

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended. Notices may be given by counsel to a Party.

- 10.4. **Merger.** Intentionally Omitted.
- 10.5. **Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 10.6. **Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PDC or Developer of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.
- 10.7. **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and



expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

- 10.8. **Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
- 10.9. **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday. As used in this Agreement, “business days” means any day that is not a Saturday, Sunday or legal holiday observed by the State of Oregon.
- 10.10. **Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require. As used in this Agreement, “shall” means mandatory and imperative and “including” means including without limitation.
- 10.11. **Legal Purpose.** Developer agrees that it shall use the Project solely for lawful purposes.
- 10.12. **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 10.13. **Entire Agreement.** This Agreement and the exhibits and attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 10.14. **Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the PDC Board of Commissioners, if required. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Board of Commissioners approval. Any modifications to this Agreement made without the approval of the PDC Board of Commissioners must include an acknowledgement by PDC’s General Counsel.
- 10.15. **Successors and Assigns.** Subject to the limitations of Section 5, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.
- 10.16. **Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County.

- 10.17. **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.
- 10.18. **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, PDC is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.
- 10.19. **Time of Essence.** Subject to Sections 9.1 and 9.7, time is of the essence of this Agreement.
- 10.20. **No Third-Party Beneficiary Rights.** 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.
- 10.21. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 10.22. **STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

*(Signatures appear on the following page)*

Executed in multiple counterparts as of the day and year first above written.

**PORTLAND DEVELOPMENT COMMISSION**, the duly designated Urban Renewal Agency in the City of Portland.

By: \_\_\_\_\_  
Executive Director  
Portland Development Commission

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel  
Portland Development Commission

**BRIDGE NORTHWEST DEVELOPMENT**,  
an Oregon public benefit Corporation,

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Table of Exhibits**

- Exhibit A – Legal Description of Property**
- Exhibit B - PTR**
- Exhibit C – Deed Form**
- Exhibit D – Memorandum of Right to Repurchase**
- Exhibit E – Escrow Holdback Agreement**
- Exhibit F – Project Description**
- Exhibit G – Business Equity Policy**
- Exhibit H – Workforce Equity Policy**
- Exhibit I – Green Build Policy**
- Exhibit J – Prevailing Wage Compliance Agreement.**

**EXHIBIT A**

**Legal Description**

Real property in the County of Multnomah, State of Oregon, described as follows:

Lot 3, SOUTH WATERFRONT EXTENSION, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Tri-County Metropolitan District of Oregon by Bargain and Sale Deed recorded March 31, 2014 as Recording No. 2014-029349.

## EXHIBIT B

### **REVOCABLE PERMIT OF ENTRY** **[Private Entity-Pre Acquisition Due Diligence]**

**THIS REVOCABLE PERMIT OF ENTRY**, (this “Permit”) is hereby granted by the City of Portland acting by and through the Portland Development Commission, the duly designated urban renewal agency (the "Commission"), to PERMITTEE NAME (the "Permittee") for the temporary use of certain Commission-owned Property (as hereinafter defined) for the purpose of performing due diligence activities subject to the following terms and conditions:

#### **Section 1. Location, Activities and Maintenance of Property**

- 1.1 Commission hereby grants to Permittee a temporary license to enter upon and use that certain unimproved and real property commonly known as South Waterfront Lot 3 and identified by the following Multnomah County Real Property Roll Description and physical location:

SOUTH WATERFRONT EXTENSION, LOT 3, Multnomah County Real Property Tax ID Number R273073. This unimproved property consists of 87,637 square feet and is located at 2095 SW River Parkway, Portland OR, 97201, in the County of Multnomah, State of Oregon (collectively, the “Property”). The Property and the area of use is depicted on the attached **Exhibit “A”** and identified thereon as the “Permit Area”.

- 1.2 Permittee, its contractors, subcontractors, and consultants may access the Property on an intermittent basis only for the purpose of performing pre-acquisition due diligence activities in furtherance of the obligations set forth in the PSA and for no other reason.
- 1.3 Permittee shall repair any damage to existing improvements, including landscaping and sidewalks, resulting from its use of the Property, excluding the mere discovery of conditions on the Property. Permittee shall not undertake any invasive investigations without first obtaining Commission’s written approval. In the event that Permittee performs invasive investigations, Permittee shall be responsible for removal of any debris and any and all repairs required to restore and maintain the structural integrity of the Property and environmental mitigation of any disturbed materials requiring mitigation solely as a result of such invasive investigations.
- 1.4 Permittee’s use of and entry upon the Property shall be without expense of any kind (direct or indirect) whatsoever to Commission. Permittee shall be solely responsible for all maintenance and operating costs that may result from its use of the Property. Should the Commission incur costs as a result of Permittee's temporary use of the Property, Permittee shall reimburse the Commission promptly upon the presentation of billing and reasonable documentation of such expense.

- 1.5 The Commission, its agents, employees and representatives may at any reasonable time, enter into or upon the Property for the purposes of examining the condition thereof, or for any other lawful purpose.

## **Section 2. Insurance and Indemnification**

- 2.1 Permittee shall obtain, maintain, and keep during the Term (as hereinafter defined) of this Permit comprehensive general liability insurance written on an "occurrence" basis. Such insurance shall be in the amount of not less than \$1,000,000 combined single limit for liability with a \$2,000,000 aggregate insuring bodily and/or personal injury, including death and disease, and property damages. The Permittee's insurance shall be primary insurance and any insurance or self-insurance maintained by the Commission and/or City shall not contribute to it.
- 2.2 Permittee shall prior to its entry on or use of the Property provide to the Commission a Certificate of Insurance evidencing the insurance required in Section 2.1 of this Permit and containing **an endorsement** specifically naming **the City of Portland, the Portland Development Commission, its commissioners, officers, agents and employees as additional insureds**. The certificate shall provide that coverage afforded and shall not be canceled or amended without prior written notice to the Commission. **Endorsement CG 20 10 11 85, or its equivalent, must be attached to certificate.**
- 2.3 Permittee shall indemnify, hold harmless and at the Commission's request, defend the Commission and the City of Portland and each of their respective commissioners, officers, agent and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or in connection with or incidental to Permittee's entry to the Property, or error or omission of Permittee or anyone acting on behalf of Permittee in connection with or incidental to this Permit; provided however, that nothing herein shall be construed to require indemnification of the Commission for liability attributable to the Commission's sole negligence.
- 2.4 Permittee shall agree to keep the Property as secure as possible from the unauthorized entry of other persons while performing its due diligence activities. Furthermore, the Permittee shall assume all liability related to injury, death or disease to invitees, licensees, or trespassers, as a result of Permittee's direct use of the Property, whether resulting from latent or patent Property defects.
- 2.5 Permittee is solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Permittee, or anyone acting on behalf of Permittee in connection with or incidental to this Permit.

### **Section 3. Restrictions on Use and Hazardous Substances**

- 3.1 Permittee shall in its use and entry upon the Property, observe all rules, regulations, and laws now in effect by any municipality, county, state or federal authority having jurisdiction over the Property, as they relate to the use of the Property. Permittee is solely responsible for obtaining any permits or approvals from other agencies or licensing bodies as may be necessary for Permittee's authorized entry upon and use of the Property. Furthermore, Permittee agrees to indemnify the Commission as provided above for any damages caused by the violation thereof of any permits or approvals that may so be required.
- 3.2 Use of explosives or highly flammable material is not permitted without prior written authorization from the Portland Development Commission. **(Insurance limits may be increased dependent upon PDC permission of this use).**
- 3.3 Permittee shall not have the right to use the electricity, gas, water, sewer and other utilities on the Property unless otherwise specified in Section 6 below.
- 3.4 Permittee shall not allow any lien of any kind, type or description to be placed or imposed upon the Property or upon any improvements on the Property (if any).
- 3.5 Permittee shall not cause or permit to occur the use, generation, release, manufacture, handling, processing, storage, disposal or improper use of any Hazardous Substance, pollutant, or contaminant, on, under, or about the Property or the transportation to or from the Property of any Hazardous Substance except as may specifically detailed in Section 6 below. Prohibited Substances are substances regulated under any environmental law or regulation now or hereafter enacted by any governmental federal, state or local authority. Furthermore, Permittee agrees to indemnify the Commission as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.

### **Section 4. Processing Fee, Use Fee and Term**

- 4.1 Permittee shall not be required to pay to the Commission any permit processing fee, use fee, or security deposit.
- 4.2 This Permit will commence on the date of execution of the PSA and will end upon the earlier of the termination of the PSA or closing pursuant thereto ("Term").
- 4.3 Permittee's rights under this Permit shall be personal to Permittee, and may not transferable or assignable to any other party or entity unless otherwise approved in writing by the Commission.

**[the remainder of this page intentionally left blank]**



**Section 5. Termination, Notice and Amendments**

5.2 Notices under this agreement shall be made in writing by U.S. Mail or facsimile to:

<b>PERMITTEE</b> PERMITTEE NAME Attn: Nicole Peterson ADDRESS CITY, STATE, ZIP  Tel: PHONE Email: npeterson@bridgehousing.com	<b>COMMISSION</b> Portland Development Commission Attn: Real Estate Services 222 NW Fifth Avenue Portland, OR 97209  Tel: 503.823.3208 Fax: 503.296.2088 Email: breckenridge@pdc.us
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5.3 The parties agree that any amendments to this Permit shall be made in writing and become effective upon execution by both parties.

**Section 6. Special Conditions**

6.1 Any work Permittee performs pursuant to this Permit shall be for the sole benefit of the Permittee's and shall be without expense to the Commission.

6.2 All work performed by Permittee shall be in compliance with all rules, regulations and laws that pertain to the Property.

6.3 Permittee shall notify current tenant, in advance, of any need to enter work site.

**ALL TERMS AND CONDITIONS OF THIS ENTRY PERMIT ARE HEREBY ACCEPTED:**

<b>PERMITTEE</b> PERMITTEE NAME ADDRESS CITY, STATE, ZIP	<b>COMMISSION</b> Portland Development Commission 222 NW Fifth Avenue Portland, OR 97209
_____ Authorized Signature                      Date	_____ Director Signature                      Date
_____ Written Name                                  Title	_____ Written Name                                  Title

**Exhibit "A"**  
Property Map and Use Limits



**EXHIBIT C**

**Form of Bargain and Sale Deed**

After recording return to and, until a change is requested, all tax statements shall be sent to:

**FORM OF  
BARGAIN AND SALE DEED**

The **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, as the duly designated Urban Renewal Agency of the City of Portland (“PDC”), conveys to \_\_\_\_\_ (“Grantee”), the following described real property (hereinafter the “Property”):

[INSERT LEGAL DESCRIPTION]

The true and actual consideration for this conveyance is \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_).

Grantee is acquiring the Property, both above surface and below surface, in the condition existing at the time of closing, AS IS, with all defects, if any. Grantee waives, releases and forever discharges Grantors of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface environmental condition, or any law, rule or regulation applicable to the Property. These provisions shall be binding on Grantee and Grantee’s successors and assigns.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland

By: \_\_\_\_\_  
Tom Kelly, Chairman

By: \_\_\_\_\_  
Aneshka Dickson, Vice Chairman

STATE OF OREGON

COUNTY OF MULTNOMAH

This instrument was acknowledged before me on August \_\_, 2015 by Tom Kelly as Chairman of the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland.

\_\_\_\_\_  
Notary Public – State of Oregon

STATE OF OREGON

COUNTY OF MULTNOMAH

This instrument was acknowledged before me on August \_\_, 2015 by Aneshka Dickson as Vice Chairman of the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland.

\_\_\_\_\_  
Notary Public – State of Oregon

## EXHIBIT D

### Form of Memorandum of Repurchase Right

After recording return to:

Portland Development Commission  
222 NW Fifth Avenue  
Portland, OR 97209  
Attn: Christine Sale

### FORM OF MEMORANDUM OF RIGHT OF REPURCHASE AND COMPLIANCE WITH PDC POLICIES

**[To be recorded only in accordance with Agreement]**

THIS MEMORANDUM OF RIGHT OF REPURCHASE (“Memorandum”) shall serve as notice to all persons that the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“PDC”), with an address of Portland Development Commission, 222 NW Fifth Avenue, Portland, Oregon 97209-3859 and \_\_\_\_\_ (“Developer”), with an address of \_\_\_\_\_, entered into a Purchase and Sale Agreement dated as of \_\_\_\_\_, 2015 (“Agreement”), relating to the real property located in Multnomah County, Oregon, as more particularly described in **Exhibit A** attached hereto (the “Property”).

Among other things, the Agreement requires Developer to commence construction of certain project improvements on the Property within a certain period of time after the transfer of the Property from the PDC to Developer, all as more particularly set forth in the Agreement.

As a condition subsequent to the Property conveyance, in the event of a default by Developer in its obligation to commence construction of conforming project improvements within the time period set forth in the Agreement, PDC shall have the option to repurchase from Developer the Property on the terms and conditions set forth in the Agreement, which option to repurchase runs with the land. In the event of such repurchase, the Developer and its successors are also obligated to consent to a lot line adjustment as described in the Agreement. If the Developer has commenced construction of conforming improvements as defined in the Agreement within the applicable time period set forth therein, PDC shall thereafter have no further rights or remedies with respect to the Property. Upon request by Developer, PDC shall promptly execute and record a document confirming that PDC’s right to repurchase has terminated.

Irrespective of any such termination of the repurchase right this instrument shall remain notice that the initial development of the Project on the Property through issuance of a certificate of occupancy therefor pursuant to the Agreement shall comply with those certain PDC policies set forth in the Agreement. Any subsequent redevelopment, additions, expansion, remodeling or renovations on the Property shall not be subject to such policies.

PDC and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

*Signature Page Follows*

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland.

By: \_\_\_\_\_  
Name: Patrick Quinton  
Title: Executive Director

\_\_\_\_\_, LLC,  
a \_\_\_\_\_ limited liability company

By: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on August \_\_\_\_, 2015, by Patrick Quinton, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBIT A TO MEMORANDUM OF AGREEMENT**

**Description of Property**

Real property in the County of Multnomah, State of Oregon, described as follows:

Lot 3, SOUTH WATERFRONT EXTENSION, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Tri-County Metropolitan District of Oregon by Bargain and Sale Deed recorded March 31, 2014 as Recording No. 2014-029349.

## ESCROW HOLDBACK AGREEMENT

This ESCROW HOLDBACK AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2015, by and among the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“**PDC**”), \_\_\_\_\_, a \_\_\_\_\_ limited liability company (“**Developer**”), and FIRST AMERICAN TITLE INSURANCE COMPANY (“**Escrow Agent**”).

### Recitals

A. PDC and Developer are parties to that certain Option for Purchase and Sale, Development and Right of Repurchase Agreement made and entered into as of \_\_\_\_\_ (the “**Option Agreement**”) pertaining to the real property and certain other related property commonly known as “RiverPlace Parcel 3” and located at 2095 SW River Parkway in the City of Portland, County of Multnomah, State of Oregon, all as further described in the Option Agreement (the “**Property**”). All capitalized terms used herein and not defined herein shall have the meaning given to such terms in the Option Agreement.

B. PDC and Developer have agreed to withhold One Million Two Hundred Sixty Thousand Dollars (\$1,260,000.00) (with interest earned on such amount, the “**Holdback Amount**”) from the Purchase Price and to deposit the Holdback Amount in an escrow account with Escrow Agent in accordance with the terms of this Agreement.

C. Escrow Agent has agreed to hold the Holdback Amount as provided herein and to perform the functions of Escrow Agent as set forth herein.

NOW, THEREFORE, the parties hereby agree as follows:

1. Appointment of Escrow Agent. PDC and Developer appoint Escrow Agent to serve as escrow agent pursuant to and in accordance with the terms and conditions set forth in this Agreement, and Escrow Agent accepts such appointment. Escrow Agent agrees to hold and disburse the Holdback Amount in accordance with this Agreement.

2. Deposit of Funds. The Holdback Amount shall be deposited by Escrow Agent in an interest-bearing account (the “**Holdback Account**”). All interest earned on the Holdback Amount shall be added to the Holdback Amount. The Holdback Amount shall be distributed pursuant to Sections 3 and 4 below.

3. Purpose of Holdback Agreement. As provided in the Option Agreement, the Property is likely impacted by the presence of hazardous materials and contaminants that will increase development costs. PDC shall authorize the Escrow Agent to disburse funds to Developer for reimbursement of all Incremental Costs, as defined in Section 4 below, associated with the environmental conditions of the Property in an aggregate amount not to exceed the Holdback Amount.



4. Definition of Incremental Costs. “Incremental Costs” shall include all costs that would not otherwise be incurred but for the environmental condition of the Property. For purposes of defining “Incremental Costs,” PDC will reimburse for actual invoiced costs for: soil off-haul and disposal (less normal costs of same); environmental testing of materials (including soil and groundwater); materials and equipment required for handling of contaminated soils including, without limitation, demarcation fabric; regulatory agency required phase II or higher environmental survey(s); worker training; the costs of engineering controls, if required, such as gas collection piping or a specific underslab membrane (less the cost of a typical vapor barrier); and other environmental costs that would otherwise not be part of normal construction such as washing or changing facilities. Reimbursement rates shall not exceed the values reflected in the Schedule of Values, which shall be agreed upon and attached as Exhibit A prior to the closing of the Property sale. Incremental Costs will not include: clothing or cleaning of worker clothing; construction staging materials (e.g. rocking all or a portion of the Property, whether serving as an environmental cap or not); management of soils stockpiling; dust control (except to the extent required because of environmental conditions on the site); track-out control; and general overhead.

5. Soil Removal. Developer shall remove the minimum amount of soils from the Property to facilitate construction of the Project, including associated utilities as approved through the City of Portland Design Review Commission or by other government agencies having jurisdiction over the Property.

6. Developer Cooperation and Obligations. Developer agrees to cooperate fully with PDC, DEQ, OSHA and others regarding all environmental issues. Developer will: (a) allow PDC to monitor the excavation of soils and audit the accounting of incremental environmental costs; (b) assume all obligations under the existing Record of Decision, dated January 29, 2004, and addressed to Robert Van Vickle; and (c) assume all obligations under an updated Contaminated Media Management Plan (“CMMP”); provided, however, that prior to construction but after final plans and specifications are prepared for the Project, PDC and Developer will cooperate to update the Contaminated Media Management Plan, presently dated December 29, 2010, with file number 15683-01. Developer will agree to the terms of a deed restriction on the property if and as required by Oregon Department of Environmental Quality, addressing maintenance of the cap, land use changes, and other necessary engineering or institutional controls, as such controls are required as part of any remedial action plan. Developer will be fully responsible for inspection and maintenance of any required cap of soils following completion of the Project.

7. Distribution of Holdback Amount. Escrow Agent is hereby instructed to disburse funds from the Holdback Account to Developer in accord with the following: Developer may submit requests for reimbursement of Incremental Costs (“Disbursement Requests”) to Escrow Agent no more frequently than monthly. The Disbursement Requests must be in writing, and must be signed by both Developer’s agent (presently, any or all of \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_) and PDC’s agent (presently, Eric Jacobson or his designee). Disbursement Requests shall include a statement of the amount of funds to be disbursed from the Holdback Account and shall include documentation and specific invoices and billings paid evidencing the requested disbursement amount. (PDC shall evaluate the documentation and invoices and Escrow Agent need only rely on the signatures of PDC and Developer to authorize a

disbursement.) Developer shall provide all such Disbursement Requests to PDC no later than the date that is \_\_\_\_\_ (\_\_\_) days following the date on which Developer commences construction (as defined in Section 5.2.1 of the Option Agreement). PDC will not approve reimbursement for any costs for which Developer did not provide timely notice to PDC. All remaining funds in the Holdback Account shall be disbursed to PDC on the \_\_\_<sup>nd</sup> day after commencement of construction. If Escrow Agent releases funds to Developer, such funds shall belong to Developer, and PDC shall have no right to such funds. If the total amount of the Incremental Costs owing is less than the remaining funds in the Holdback Account, then, after all Incremental Costs have been paid in full in accordance with this Section 7, the balance of the Holdback Account, including all interest thereon, shall be released to PDC. When known by PDC and Developer, PDC and Developer shall notify Escrow Agent of the actual date on which construction commenced in order to allow Escrow Agent to calculate dates under this Section 7.

8. Interest Bearing Account. The Holdback Amount shall be deposited into an insured interest-bearing account (the “**Escrow Account**”) selected by Escrow Agent (and reasonably approved by PDC) and interest shall accrue and become part of the Holdback Amount. The Escrow Account shall be created in the name of the PDC in conjunction with PDC’s tax identification number.

9. Escrow Fees. Developer and PDC shall each pay one-half of all fees charged by Escrow Agent to establish and administer the Holdback Account. Such escrow fees charged by Escrow Agent shall not exceed One Thousand Dollars (\$1,000.00).

10. Interpleader. If any dispute exists under the terms of this Agreement, Escrow Agent may, at Escrow Agent’s sole discretion, file an interpleader action to resolve such dispute. Developer and, to the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, PDC, shall each indemnify Escrow Agent for one-half (1/2) of Escrow Agent’s costs, including reasonable attorneys’ fees, in connection with the aforesaid interpleader action; provided, however, that PDC and Developer shall have no obligation to indemnify Escrow Agent if the acts or omissions of Escrow Agent constitute gross negligence or willful misconduct with respect to Escrow Agent’s obligations under this Agreement.

11. Termination of Agreement. This Agreement shall terminate at such time as all of the funds in the Holdback Account have been disbursed pursuant to this Agreement, or pursuant to such further written instructions as PDC and Developer shall jointly deliver to Escrow Agent, or by order of a court of competent jurisdiction. Escrow Agent’s responsibilities shall cease upon such termination, or upon resignation by Escrow Agent by written notice to PDC and Developer. In the event of Escrow Agent’s resignation, PDC and Developer shall appoint a successor escrow agent within ten (10) days of notice of resignation, and Escrow Agent’s responsibilities shall terminate as of the date of appointment of the successor and the delivery of documents and instructions to such successor.

12. Notices. All notices or other communications required or provided to be sent by any party to this Agreement shall be in writing with all applicable postage or delivery charges prepaid and shall be sent by: (a) United States Postal Service, registered or certified mail, return receipt requested; (b) overnight delivery service; (c) courier service or hand delivery; or (d) facsimile or email (with a copy of such transmission being simultaneously distributed by one of

the other methods permitted hereunder). All notices shall be deemed to have been given on the earlier of actual delivery or refusal of a party to accept delivery thereof (including a party ignoring attempted delivery). All notices shall be addressed to the party at the address below.

If to PDC: Portland Development Commission  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209  
Attention: Eric Jacobson  
Facsimile No.: (503) 823-3306  
Email: jacobsons@pdc.us

with a copy to: Portland Development Commission  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209  
Attention: General Counsel  
Facsimile No.: (503) 823-3221  
Email: BetconeB@pdc.us

If to Developer: [Insert BRIDGE Entity Name]  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: Williams/Dame & Associates, Inc.  
1308 NW Everett Street  
Portland, OR 97209  
Attention: Dike Dame / Gary Finicle  
Facsimile No.: (503) 227-7996  
Email: dike@wddcorp.com / gary@wddcorp.com

with a copy to: Radler White Parks & Alexander LLP  
111 SW Columbia, Suite 1100  
Portland, OR 97201  
Attn: Dina Alexander  
Facsimile No.: (971) 634-0222  
Email: dalexander@radlerwhite.com

If to Escrow Agent: First American Title Insurance Company  
200 SW Market Street, Suite 250,  
Portland, OR 97201,  
Attn: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_

Any address or name specified above may be changed by notice given to the above addressees by the party making the change in accordance with this Section 12. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

13. Time is of the Essence. Time is of the essence in this Agreement and all of the provisions hereof.

14. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. To the fullest extent permitted by applicable law, the parties hereto hereby waive trial by jury in any action or proceeding arising out or in connection with this Agreement.

15. Fully-Integrated Agreement. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms so that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement.

16. Amendments. This Agreement may not be altered, changed or amended except by an instrument signed by all parties hereto.

17. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, Escrow Agent may not assign any rights or obligations under this Agreement.

18. Business Days. As used in this Agreement, "business days" means any weekday that is not observed as a holiday by the State of Oregon.

19. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement. The parties may execute and deliver facsimile and/or electronic mail counterparts of this Agreement, and delivery of such executed copies shall be deemed delivery of an original signature.

20. Attorneys' Fees. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

*[Remainder of page intentionally left blank.  
Signature page follows.]*

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

**PDC:** **PORTLAND DEVELOPMENT COMMISSION** as the duly designated Urban Renewal Agency of the City of Portland

By: \_\_\_\_\_  
Patrick Quinton, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Bob Betcone, General Counsel

*[Signatures continued on the following pages.]*

**DEVELOPER:**

**[Signature Block to be Attached.]**

**ESCROW AGENT:**

**FIRST AMERICAN TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Printed Name:

Title:



## **EXHIBIT F**

### **PROJECT DESCRIPTION**

The Project will be a mixed-use residential project that will include approximately 365 residential units, ground floor retail, and associated vehicular parking. The Project will include approximately 203 residential units affordable to households with 0-60% MFI, of which 90 will be affordable to households with 0-30 percent MFI.

## **BUSINESS EQUITY PROGRAM SPECIFICATIONS**

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### **LOAN AGREEMENT/DEVELOPMENT AGREEMENT PROCESS REQUIREMENTS**

#### **1. PURPOSE OF THE PROGRAM**

The Portland Development Commission (“PDC”) has a compelling interest to ensure that PDC projects provide opportunities for State of Oregon Certified firms, i.e. (Minority-Owned, Women-Owned, Disadvantaged and Emerging Small Businesses or M/W/D/ESBs) in order to promote economic growth, to increase capacity and to expand competition in the market. Therefore, PDC has established a 20% utilization goal for PDC-supported projects receiving more than \$300,000 in PDC resources, provided the project’s hard construction costs are greater than \$200,000. **ALSO**, PDC has established a 20% utilization goal for the sale of PDC real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$200,000. **The goal is calculated as 20% of the project’s Hard Construction Costs and 20% of Professional Services Costs, specifically architectural, engineering or technical service provider, if applicable (excluding overhead, administration or taxes).** The Developer/Borrower through their prime contractor *and/or consultant* is expected to meet the 20% utilization goal. **When the Developer/Borrower through their Prime Contractor *and/or Prime Consultant* meets the business equity goal with majority ESB participation, the Developer/Borrower through their Prime Contractor *and/or Prime Consultant* must document that all reasonable and necessary steps have been taken to contract with M/W/DBE firms for each scope of work anticipated to result in a subcontract of \$2,500 or greater. In the event that this goal is not met, the Developer/Borrower will be considered non responsive and the loan rejected.** If the Developer/Borrower is deemed non responsive, they will be provided an opportunity for reconsideration in writing, followed by a personal appearance with the reconsideration official, if desired. As part of the reconsideration process, the Developer/Borrower is required to submit proof showing that all reasonable and necessary steps were taken to contract with Certified subcontractors *and/or subconsultants*. PDC will submit a written decision on reconsideration, explaining, if applicable, the basis for finding that the Developer/Borrower did not meet the goal or make adequate reasonable and necessary steps to do so.

#### **2. EFFORTS REQUIRED REGARDING CERTIFIED FIRMS**

The Developer/Borrower through their Prime Contractor *and/or Prime Consultant* is required to make all reasonable and necessary steps to contract with Certified firms for each scope of work anticipated to result in a subcontract of \$2,500 or greater. Outreach is encouraged for all subcontract, subconsultant and supplier opportunities. Also, the Developer/Borrower is required to submit a plan that addresses proposed methods of implementing the Business Equity Program on large construction or design projects (as determined by PDC).

Prime Contractors who intend to self-perform more than 10% of the trade work to complete a project or an entire Construction Specifications Institute (CSI) Master Format trade division (e.g., excluding superintendence, supervision, mobilization, etc.) will be required to have the written authorization of the Communications and Social Equity Director or their designee, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant criteria. **These requirements are contractual obligations and are included in the development/loan agreement. Failure to comply may result in a finding of breach of contract, disqualification of the Developer/Borrower to receive PDC funds in the future, or a claim for damages.**

**NOTE: Documented outreach is not required for scopes of work anticipated to result in a subcontract of \$2,500 or less under these provisions but is encouraged.**

## Who to contact

For *each* scope of work identified in these documents that will be performed by a subcontractor *and/or* subconsultant, unless a Certified subcontractor *and/or* subconsultant is directly selected for the work, the Prime Contractor *and/or* Prime Consultant **must** contact:

Every Certified firm that attended the pre-bid meeting (if one was held) *or* requested a Request for Proposal (RFP) who specializes in a scope of work that will be subcontracted *and/or* subconsulted.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

**The Metropolitan Contractors' Assistance Program (MCIP)** for assistance with identifying and contacting capable and available Certified firms. MCIP can be reached at: Office: 503-288-1211 · Fax: 503-288-5786 · Email:

[Chris@mcip-pdx.org](mailto:Chris@mcip-pdx.org): [www.mcip-pdx.org](http://www.mcip-pdx.org)

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

In addition to the above, a minimum of five (5) Certified firms from the **Office of Minority, Women and Emerging Small Business Certification Directory** must be contacted in each division of work identified for subcontracting *and/or* subconsulting. If there are less than 5 firms listed for a particular scope of work, *all* of the contractors *or* consultants in that scope must be contacted. [The **Office of Minority, Women and Emerging Small Business** web site:

<http://www4.cbs.state.or.us/ex/dir/omwesb/>]

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

**In the case of architectural, engineering and professional-technical service providers (A/E/PT) subconsulting opportunities, the Developer/Borrower through their Prime Consultant must post the opportunity(s) on the Talentwell website (*EFFECTIVE AFTER FORMAL LAUNCH DATE*) ; and solicit subconsultant fees from Certified firms whose qualifications match the opportunity.** A minimum of three (3) Certified firms must be solicited for each subconsulting opportunity specialty identified. If there are less than three (3) firms available for solicitation, *all* consultants in the opportunity specialty must be solicited.

[Talentwell is an online collaborative network custom designed (and sponsored by PDC) for posting consulting opportunities with the objective of identifying a 'short-list' of Certified firms whose qualifications match the requested service areas. Once Certified consultants are screened and their qualifications and certification status verified, they may post their profiles on the network.]

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

## When to contact

The Developer/Borrower through their Prime Contractor *and/or* Prime Consultant shall make first contact with each Certified subcontractor/subconsultant a minimum of fourteen (14) business days before bids/fees are due. Any changes or amendments to this schedule must be approved in writing by PDC. Any extended time for the preparation of bids/fees allowed to non-Certified subcontractors/subconsultants must also be extended to Certified subcontractors/subconsultants and verified in writing.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

## How to contact

*First Contact:* The Developer/Borrower through their Prime Contractor *and/or* Prime Consultant, shall contact Certified subcontractors *and/or* subconsultants by letter, fax or E-mail to advise them of potential subcontracting *and/or* subconsulting opportunities.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

*Follow-up:* The Developer/Borrower through their Prime Contractor *and/or* Prime Consultant, shall follow up with telephone calls to each Certified firm contacted to determine if a bid/fee will be submitted or if further information is required. A firm need not be contacted if that firm responds to the first contact with a statement that the firm will not bid or submit a fee on this project.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

## Information that must be provided

The Developer/Borrower through their Prime Contractor *and Prime Consultant* must provide project information, including dates and times bids/fees are due, to Certified firms.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

### 3. SUBSTITUTION OR ADDITION OF SUBCONTRACTORS/SUBCONSULTANTS

The Developer/Borrower through their Prime Contractor *and/or Prime Consultant* will not be permitted to substitute a new subcontractor *and/or subconsultant* for a Certified subcontractor/ *and/or subconsultant* without the written consent of PDC.

If any 1<sup>st</sup> tier subcontractor *or subconsultant* is added or replaced after the Subcontractor/ *Subconsultant* and Self Perform Work List (**FORM 1**) has been submitted, the Prime Contractor *and/or Prime Consultant*, shall make all reasonable and necessary efforts to contract with a Certified firm for the work to be performed by that subcontractor *and/or subconsultant*. Documentation of these efforts is required, and must be submitted to PDC. If the Prime Contractor *and/or Prime Consultant* find cause to replace a Certified firm, PDC strongly encourages substitution with either a Certified subcontractor *and/or subconsultant*. The Prime Contractor *and/or Prime Consultant* shall report substitutions to PDC for the purposes of tracking and reporting overall utilization.

**NOTE: For the purposes of the Certified firm Recruitment Guidelines / Process Requirements a first tier subcontractor/subconsultant is any construction contractor *or consultant* who has (or is anticipated to have) a direct contractual relationship to the prime contractor/*prime consultant*, specific to this project.**

### 4. SUBMISSION OF REQUIRED DOCUMENTATION OF SUBCONTRACTOR AND/OR SUBCONSULTANT PARTICIPATION AND BUSINESS EQUITY RECRUITMENT AND PARTICIPATION EFFORTS

#### One (1) Week Prior to Loan Closing and Construction Start:

- Business Equity (FORM 1) Submit a Subcontractor/Subconsultant And Self-Perform Work List on FORM 1 (or equivalent) showing **ALL** first-tier subcontractors *and subconsultants* and first-tier material suppliers to be used on this contract. Suppliers will be calculated as part of the 20% utilization. Certified 2<sup>nd</sup> tier subcontractors *and subconsultants* and 2<sup>nd</sup> tier suppliers may be considered as part of the business equity recruitment and participation efforts if the 20% business equity goal is not attained. Certified 2<sup>nd</sup> tier subcontractors *and subconsultants* and 2<sup>nd</sup> tier suppliers should be listed on Form 1 and Form 4 (monthly report) with a clear indication of which first tier subcontractor *and subconsultant* they are working for on this project. Additionally, the Developer/Borrower through their Prime Contractor *and/or Prime Consultant* shall identify **ALL** divisions of work (DOW) to be self-performed. **If the Developer/Borrower through their Prime Contractor *and/or Prime Consultant* does not account for all DOW, it will result in the Developer/Borrower being non-responsive and the loan rejected.**

#### **PLEASE NOTE. IF PDC APPROVES THE BUSINESS EQUITY PARTICIPATION SUBMITTED ON BUSINESS EQUITY (FORM 1) THE FOLLOWING SUBMITTALS MAY NOT REQUIRED:**

- Log of contacts with 1<sup>st</sup> tier Certified firms (FORM 2) Submit a completed log of contacts with Certified firms on FORM 2 (or equivalent). The Developer/Borrower through their Prime Contractor *and/or Prime Consultant* shall provide **ALL** required information in each column as applicable. **Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**
- Copy of letter, email or fax sent to Certified firms. Submit one copy of the letter, email or fax sent to Certified firms to solicit bids/fees for this project. If more than one form of letter, email or fax was sent, submit a copy of each form sent. The Developer/Borrower through their Prime Contractor *and/or Prime Consultant* shall submit additional information upon request if the PDC believes it needs to clarify their reasonable and necessary steps expended to achieve business equity utilization. **Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**
- List of 1<sup>st</sup> tier Certified Bids/Fees (FORM 3): Submit FORM 3 (or equivalent) providing **ALL** the requested information.

**Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**

- Documentation that **The Metropolitan Contractors' Assistance Program (MCIP)** was contacted for assistance with identifying and contacting capable and available Certified firms. **Failure to comply will result in the Developer/Borrower being non-responsive and the loan rejected.**
- Documentation of the implementation of a PDC approved **Equity Contractor Development Program** or **Mentor-Protégé Program** (the 'Program') may be considered as part of the business equity recruitment and participation efforts if the 20% business equity goal is not attained. PDC approval of the submitted 'Program' must be obtained in writing one (1) week prior to loan closing and construction start. The submitted documentation must verify that the 'Program' implementation preceded the loan closing date by three (3) months. **Failure to meet all the stipulated criteria of the 'Program' documentation will result in the Developer/Borrower being non-responsive and their submittal deemed not eligible as part of the business equity recruitment and participation efforts.**

**NOTE: Outreach documentation can be submitted after the construction/*design* start date for projects with a phased bid *or fee* process. Failure to provide all requested reasonable and necessary steps expended to achieve business equity utilization documentation by the Developer/Borrower may affect the Developer/Borrower's eligibility to participate on future PDC-supported projects.**

**5. DOCUMENTATION TO BE SUBMITTED MONTHLY DURING THE PROJECT: Documentation to be submitted monthly during project:**

- Monthly Subcontractor/ Subconsultant Payment and Utilization Report: (Form 4): The Developer/Borrower through their Prime Contractor *and/or* Prime Consultant shall list the contract amounts and payment amounts on Form 4 to all subcontractors *and/or* subconsultants (including Certified subcontractors *and/or* subconsultants) previously listed on Form 1.
- Report Submission: Monthly reports are due by the 15<sup>th</sup> day of the month for work performed the prior month. The Developer/Borrower through their Prime Contractor *and/or* Prime Consultant, as part of the final disbursement/payment, shall submit a Final Report documenting all subcontracting *and/or* subconsulting. Failure to submit timely Subcontracting *and/or* Subconsulting Payment and Utilizations Reports may result in a delay in processing applications for disbursement/payment.

**6. OPTIONAL REASONABLE AND NECESSARY STEPS EXPENDED TO ACHIEVE BUSINESS EQUITY UTILIZATION**

Prime Contractors/*Prime Consultants* should also consider efforts such as:

- Advertisements in ethnic newspapers and small business trade journals.
- Alternative methods of participation with Certified firms through arrangements such as joint ventures, negotiated subcontract agreements and competitive bids.
- Purchase of construction materials and equipment from Certified suppliers.
- Providing information on subcontracting and *subconsulting* opportunities to PDC for posting on the PDC website and distributing to interested Certified firms.

**PORTLAND DEVELOPMENT COMMISSION  
BUSINESS EQUITY PROGRAM (BEP)  
SUBCONTRACTOR/SUBCONSULTANT AND SELF-PERFORM WORK LIST  
(FORM 1)**

NOTE: IF THE PRIME CONTRACTOR/PRIME CONSULTANT IS NOT USING ANY SUBCONTRACTORS/SUBCONSULTANTS ON THIS PROJECT, THE PRIME CONTRACTOR MAY WRITE "SELF PERFORMING ALL WORK" ON THE FORM

Prime Contractor/Consultant:		Hard Construction Cost/Consultant Fee:	
Project Name:		Date:	

**PRIME CONTRACTOR SELF-PERFORMING:** Identify below, all Divisions of Work (DOW) to be self-performed. The value of the self-performed work exceeding 10% of the total contract value requires PDC approval. Otherwise, all reasonable and necessary steps to subcontract/subconsult are required.

<u>DOW (INCLUDING COST/FEE) PRIME CONTRACTOR/CONSULTANT WILL SELF PERFORM</u>

**PRIME CONTRACTOR/CONSULTANT MUST DISCLOSE AND LIST ALL SUBCONTRACTORS/SUBCONSULTANTS** including those Certified firms that you intend to use on the project

List all subcontractors/subconsultants below. Use correct legal Name of Firm.				DOW (i.e., Architectural, Engineering, Painting, Landscaping, Electrical, Etc.)	DOLLAR AMOUNT OF SUBCONTRACT/ FEE	If Certified Firm, Check box and fill in Cert. #			
Name		Fax				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
Address									
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
						Cert#			
Name		Fax				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
Address									
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
						Cert#			
Name		Fax				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
Address									
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
						Cert#			

Completed form may be faxed *OR* Emailed to Patricia Weekley at 503-823-3368. [weekleyp@pdc.us](mailto:weekleyp@pdc.us)

**PRIME CONTRACTOR/CONSULTANT MUST DISCLOSE AND LIST ALL SUBCONTRACTORS/SUBCONSULTANTS** including

those Certified firms that you intend to use on the project

List all subcontractors/subconsultants below. Use correct legal Name of Firm.				DOW (i.e., Architectural, Engineering, Painting, Landscaping, Electrical, Etc.)	DOLLAR AMOUNT OF SUBCONTRACT/FEE	If Certified Firm, Check box and fill in Cert. #			
<b>Name</b>		<b>Fax</b>				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
<b>Address</b>									
<b>City/St/Zip</b>						<b>Cert#:</b>			
<b>Phone #</b>									
<b>Email</b>									
<b>CCB #</b>									
<b>Fed. ID #</b>									
<b>Name</b>		<b>Fax</b>				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
<b>Address</b>									
<b>City/St/Zip</b>						<b>Cert#:</b>			
<b>Phone #</b>									
<b>Email</b>									
<b>CCB #</b>									
<b>Fed. ID #</b>									
<b>Name</b>		<b>Fax</b>				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
<b>Address</b>									
<b>City/St/Zip</b>						<b>Cert#:</b>			
<b>Phone #</b>									
<b>Email</b>									
<b>CCB #</b>									
<b>Fed. ID #</b>									
<b>Name</b>		<b>Fax</b>				<b>MBE</b>	<b>WBE</b>	<b>DBE</b>	<b>ESB</b>
<b>Address</b>									
<b>City/St/Zip</b>						<b>Cert#:</b>			
<b>Phone #</b>									
<b>Email</b>									
<b>CCB #</b>									
<b>Fed. ID #</b>									
		<b>Fax</b>							
						<b>Cert#:</b>			

Total Hard Construction Costs and/or Consultant Fees	
Total M/W/D/ESB Dollars	
M/W/D/ESB as a % of Hard Construction Costs and/or Consultant Fees (20% goal)	
<b>Completed form may be faxed <i>OR</i> Emailed to Patricia Weekley at 503-823-3368. <a href="mailto:weekleyp@pdc.us">weekleyp@pdc.us</a>.</b>	







**MONTHLY SUBCONTRACTOR/SUBCONSULTANT PAYMENT AND UTILIZATION REPORT (FORM 4)**

Project Name \_\_\_\_\_  
 Prime Contractor/Prime Consultant \_\_\_\_\_

Hard Construction/Professional Service Cost\$ \_\_\_\_\_  
 Report Dates (Beginning & Ending) \_\_\_\_\_

List all First Tier Subcontracts/Fees & First Tier Suppliers*	Original Subcontract/ Subconsultant \$Amount	Amended Subcontract/Subconsultant \$Amount	Payments made this month	Retainage this Month	Payments Made to Date	Retainage to Date

**IT IS HEREBY CERTIFIED THAT THE ABOVE LISTED FIRMS HAVE BEEN UTILIZED BY OUR COMPANY IN THE AMOUNTS REPRESENTED ABOVE AND THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE.**

**Authorized Signature of Contractor/Consultant** \_\_\_\_\_ **Date** \_\_\_\_\_

Completed form may be faxed to: Ay Saechao (503) 823-1090

For additional information contact:  
 Patricia Weekley, Business and Workforce Equity, Portland Development Commission, 222 NW 5<sup>th</sup> Ave., Portland, OR 97209  
 (503) 823-3057 Fax# 503 823-3368 E-mail: [weekleyp@pdcc.us](mailto:weekleyp@pdcc.us)

\*See instructions on next page for 2<sup>nd</sup> tier subcontractors.

## INSTRUCTIONS FOR COMPLETING THE SUBCONTRACTORSUBCONSULTANT PAYMENT AND UTILIZATION REPORT

1. **PROJECT NAME:** Indicate the project name as shown on the contract documents.
2. **PRIME CONTRACTOR/PRIME CONSULTANT:** Indicate the name of the prime contractor.
3. **PRIME CONTRACT AMOUNT:** Indicate the total dollar amount of the prime contract.
4. **REPORT DATES:** Indicate the beginning and ending dates corresponding to the progress payment period or use calendar month.  
Example: 1/1/10 thru 1/31/10. Reports should be sequential and not overlap.
5. **SUBCONTRACTOR/SUBCONSULTANT NAME:** List the names of all first-tier subcontractors and first-tier material suppliers having performed work on this project during the reporting period.
6. **ORIGINAL SUBCONTRACT/FEE AMOUNT:** Indicate the dollar amount for each subcontract at time of award.
7. **AMENDED SUBCONTRACT/FEE AMOUNT:** Indicate the cumulative dollar value of each contract with any changes.
8. **PAYMENTS MADE THIS REPORTING MONTH:** Enter payments made to the subcontractor for the reporting month excluding retainage.
9. **RETAINAGE FOR THIS MONTH:** Enter retainage withheld for reporting month.
10. **PAYMENTS MADE TO DATE:** Cumulative payments made to date including amounts for current report excluding any retainage.
11. **RETAINAGE TO DATE:** Cumulative retainage withheld to date including amounts on current report.
12. **SECOND TIER SUBCONTRACTORS/SUBCONSULTANTS:** Certified 2<sup>nd</sup> tier subcontractors/subconsultants and 2<sup>nd</sup> tier suppliers may be considered as part of the good faith effort requirements if 20% goal is not attained. Certified 2<sup>nd</sup> tier subcontractors/subconsultants and 2<sup>nd</sup> tier suppliers should be listed on Form 1 and Form 4 (monthly report) with a clear indication of which first tier subcontractors/subconsultants they are working for on this project.

The Monthly Subcontractor/Subconsultant Payment and Utilization Reports are due by the 15<sup>th</sup> day of the month for work performed for the prior month. Completed form may be faxed to: Ay Saechao (503) 823-1090

For additional Information:

Patricia Weekley (503) 823-3057  
Portland Development Commission

Fax (503) 823-3368  
E-mail: [weekleyp@pdc.us](mailto:weekleyp@pdc.us)

## Workforce Equity Program Specifications

The PDC Board of Commissioners has directed that all Contractors, Developers and Borrowers conducting work on behalf of the Portland Development Commission (PDC) maximize apprenticeship and employment opportunities for women and people of color in the construction trades. The goal of the Workforce Equity Program (Program) is for the Contractor’s workforce to reflect the diversity of the workforce found in the City of Portland, and that PDC contracting dollars provide fair and equal opportunities to the jurisdictions’ diverse populations. Also, while not required, the Developer/Borrower is encouraged to submit a plan that addresses proposed methods of implementing the Business Equity Program on large construction projects.

This Program applies to PDC-Owned Construction Contracts greater than \$200,000, to the Prime Contractor on PDC-Sponsored projects with Hard Construction Costs of \$1,000,000 or more and to all subcontracts of \$100,000 or more, at any tier level, provided PDC is providing at least \$300,000 towards the project. **Additionally**, this Program applies to the sale of PDC real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$200,000.

### Requirements:

- 1) Projects subject to the Program shall:
    - a) Comply with the Workforce Training & 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 of Oregon registered apprentices, as such requirements are further described therein; and
    - b) Work toward achieving the Workforce goals as outlined in the table below. The percentage of hours set forth, includes both apprenticeship hours and journey level hours. Using the table, the Contractor shall determine the applicable workforce diversity goal, for the project (i.e. if the project will be completed during Fiscal Year 2011/2012, the workforce diversity goals for the project are 9% Women and 27% People of Color). The fiscal year runs from July 1<sup>st</sup> through June 30<sup>th</sup>. A person of Color includes members of either sex who are African-Americans, Hispanic Americans, Asian or Pacific Islanders, Native Americans or Alaskan Native Americans.
- | Fiscal Year     | 08/ 09 | 09/10 | 10/ 11 | 11/12 | 12/ 13 | 13/14 | 14/ 15 | 15/16 | 16/ 17 | 17/18 |
|-----------------|--------|-------|--------|-------|--------|-------|--------|-------|--------|-------|
| 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%   |
- c) 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.
- 2) Contractors subject to the Program are encouraged to employ people with disabilities and veterans.
  - 3) Contractors and subcontractors subject to the Program must be certified by the City of Portland as an Equal Opportunity Employer.

## **Workforce Training & Hiring Program Contractor Checklist**

### Contractor Checklist

The following Workforce Training & Hiring Program (WTHP) requirements are a summary of the key contractual obligations of contractors working on PDC owned construction projects or PDC sponsored projects, including the sale of PDC real property. It is the Contractor's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for the Portland Development Commission (PDC).

#### **CHECKLIST:**

##### **1. Prime Contractor:**

- A. Submit Projected Hiring Needs form (Exhibit 2) to Compliance Agency within 15 calendar days after bid opening or prior to contract award, whichever occurs first.
  
- B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more, and provide them with a copy of the WTHP specifications.

##### **2. Subcontractors, at all tiers, with contracts of \$100,000 or more:**

Submit Projected Hiring Needs form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.

##### **3. Prime Contractor and all subcontractors with contracts of \$100,000 or more must:**

- A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industry (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI at (971) 673-0760 or the City of Portland at (503) 823-6888 for information on how to become a BOLI registered training agent.
  
- B. Throughout the duration of the project:
  - 1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by State-registered apprentices.
  - 2. Strive in good faith to meet the applicable workforce diversity goals of employing people of color and women (including both journey level and apprentice workers).
  - 3. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of diverse workforce through the unions, apprenticeship programs and other community resources, as described herein.
  - 4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
  - 5. When an apprentice is hired, notify the City's Contract Compliance Specialist at (503) 823-6888.
  - 6. Submit the Monthly Employment Record (Exhibit 4) by the 5<sup>th</sup> of each month to the City's Contract Compliance Specialist. This report can be submitted by either hard-copy by mail or via email, [murmer@portlandoregon.gov](mailto:murmer@portlandoregon.gov).

Refer questions or requests for additional information to the City's Contract Compliance Specialist Ay Saechao at (503) 823-1090.

## **WORKFORCE TRAINING AND HIRING PROGRAM SPECIFICATION**

### **I. PURPOSE**

#### **A. General Program Description**

The PDC Board has directed that all Contractors, Developers and Borrowers conducting construction work on behalf of PDC maximize apprenticeship and employment opportunities for minorities and women workers in the construction trades. The goal is for the Contractor's workforce to reflect the diversity of the workforce found in the City of Portland, and that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

### **II. PROGRAM APPLICABILITY**

The Workforce Training & Hiring Program (WTHP) is administered by the City of Portland, Bureau of Internal Business Services, Procurement Services Division (Compliance Agency). The WTHP applies to **PDC-Owned Construction Contracts greater than \$200,000, PDC-Sponsored Projects with hard construction costs of \$1,000,000 or more with \$300,000 or more in PDC resources and to each subcontractor having a subcontract of \$100,000 or more** on the project. Contractors and/or Developers shall make reasonable efforts to ensure that their workforce reflects the diversity of the City of Portland.

The Contractor shall thoroughly read this WTHP specification and commit to perform all requirements described herein. The Contractor shall submit Exhibit 2, Projected Hiring Needs at least fourteen (14) calendar days prior to starting work on the project. The Exhibit shall provide complete information. The Projected Hiring Needs must demonstrate how the workforce on this project will fulfill all program requirements, including utilization of apprentices and workforce diversity goals.

### **III. DEFINITIONS**

For purposes of the WTHP, the following definitions shall apply:

Compliance Agency – City of Portland, Bureau of Internal Business Services, Procurement Division

Contract – The Contract awarded as a result of these bid specifications

Contractor – The Prime Contractor to whom a Contract is awarded and any subcontractors with subcontracts of \$100,000 or more

Hard Construction Costs – 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, shall not be considered a part of the Hard Construction Costs.

Owner – The government agency that awarded the Contract or leveraged public involvement in the project through a loan or development agreement

Project – Includes all work performed pursuant to the Contract

#### IV. ACTIONS NECESSARY TO SATISFY PROGRAM REQUIREMENTS

The Contractor and its subcontractors with subcontracts of \$100,000 or more, at any tier level, shall strive to achieve the applicable workforce diversity goal of employing women and people of color (including both journey level and apprentice workers) on the project.

To the extent allowed by law, Contractors and Subcontractors are encouraged to hire apprentices and journey level workers with consideration of gender and ethnicity.

##### A. Ensure Compliance by Subcontractors

1. The Contractor shall ensure that each subcontractor having a subcontract of \$100,000 or more, at all tiers, shall comply with all of the provisions of the WTHP specifications. Contractors shall include in their bid all costs associated with this requirement. No change order will be executed in order for the contractor to comply with this section.
2. The Contractor shall provide a copy of this WTHP specification to all subcontractors with contracts of \$100,000 or more executed for the project.

##### B. Register as a Training Agent

The Contractor shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of \$100,000 or more are registered as Training Agents. However, registration as a Training Agent in a specific trade is not required if there are no training opportunities in that trade on the project, based on the maximum ratio allowed by BOLI.

1. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under the Workforce Specifications.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations are exempt from the training requirements.
3. Exemptions to the training requirements must be approved by the Compliance Agency in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Compliance Agency during the course of the project, only for extreme circumstances, and must also be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Compliance Agency (14) days before any work on the project begins. Requests for exemptions should be directed to the City Contract Compliance Specialist.

##### C. Submit Documentation

The contractor shall submit documentation regarding the following subjects to the Compliance Agency. The Compliance Agency's failure to object to documentation submitted by the Contractor or subcontractor shall not relieve them of the requirements of this section.

##### 1. Training Agent Status

The Contractor and all required subcontractors must submit proof to the Compliance Agency that they are registered Training Agents with BOLI prior to beginning any work on the project.



Failure to sign up as a Training Agent prior to beginning work may subject the contractor to liquidated damages.

## 2. Subcontractor Workforce Information

Exhibit 2, Projected Hiring Needs, must also be submitted for each subcontractor required to register as a Training Agent prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. Work by a subcontractor shall not begin prior to submission of such documentation. Failure to sign up as a Training Agent prior to beginning work may subject the contractor to liquidated damages.

## 3. Contractor and Subcontractor Reports After Work Begins.

The Monthly Employment Report (Exhibit 4) must be submitted by the prime Contractor and any subcontractor having a subcontract of \$100,000 or more to the Workforce Equity Program by the 5th day of each month. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen, and superintendents, shall be reported on Exhibit 4.

4. A copy of certified payroll reports may be requested by the Compliance Agency to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the contractor receives the request for the payroll.

## D. Use of Apprentices

The Contractor shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the prime contractor, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. Contractors and subcontractors shall fulfill the 20% apprenticeship hours requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.
2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
4. Notify the Compliance Agency when an apprentice is hired for this project.
5. Count apprentice hours as follows:
  - (a) Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the Contractor is unable to fulfill its 20% requirement, then the Contractor may also use methods (b) and (c) below;
  - (b) Hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the project, but only if the apprentice is rehired by the same employer after completion of training; and
  - (c) Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

#### E. Use Apprenticeship Programs for Referrals

Contractors must follow all of these steps in seeking apprentice referrals:

1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. Request female or minority apprentices from the union or open shop apprenticeship program if such an action will help remedy historical underutilization in the Contractor's workforce; and
3. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and
4. Make reasonable and necessary efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice and if the program is open for applications or allows direct entry from community resources.

NOTE: Contractors may contact the Contract Compliance Specialist for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request for Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available. Instructions are on the last page of this section of the specifications.

#### F. Utilize Unions and Community Organizations When Recruiting For Any Positions on this Project

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor shall:

1. Make reasonable and necessary efforts to employ a diverse workforce. Such actions should include requests for minority and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph G.2 below, may not constitute a reasonable effort.
2. Document its employment efforts. Documentation should be sufficient to establish the Contractor's efforts, and should include:
  - a) Requests to union halls for signatory contractors;
  - b) Requests to union or open shop apprenticeship programs;
  - c) Requests to community resources who assist contractors with recruitment and referral of workers.

Documentation will be requested by the Compliance Agency from Contractors that are not meeting the workforce diversity goals if it appears that the Contractor has not made reasonable and necessary efforts to acquire a diverse workforce. When requested, the Contractor shall provide that documentation to the Workforce Equity Program within 7 calendar days.

### **IV. CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE REQUIREMENTS**

The Owner's commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner's efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree

that failure to meet the requirements of this section of the specifications, including but not limited to the submission of required documentation, constitutes a material breach of contract.

In the event of a breach of this section of the contract, the Compliance Agency may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments.

If a subcontractor(s) is responsible for noncompliance with the WTHP requirements, the Compliance Agency may choose to withhold only their portion of the progress payment.

B. Retain sums as damages for failure to comply with Workforce Equity Program Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Compliance Agency for the Contractor's failure to comply with the Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Compliance Agency when workforce opportunities are not provided.

Therefore, if the Contractor fails to comply with the workforce provisions of this contract, the Contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the prime and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided to the Compliance Agency at a rate of \$250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine number of days of undelivered training. ( $50/8 = 6.25 \times \$250 = \$1,562.5$ ).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in Section III, subsections F.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce Training & Hiring Program provisions of the contract.

C. Notification of Possible Debarment

By executing this contract, the contractor agrees that it has been notified that failure to comply with the requirements of this portion of the contract may lead to the Contractor's disqualification from bidding on and receiving other Compliance Agency contracts for a minimum of two years and a maximum of three years based on the violation.

E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Compliance Agency in the event that the Contractor fails to meet the requirements of the Workforce Specifications.

## V. REVIEW OF RECORDS

In the event that the Compliance Agency reasonably believes that a violation of the requirements of this section has occurred, the Compliance Agency is entitled to review the books and records of the Contractor and any subcontractors employed on the project to whom the requirements of this section are applicable to determine whether such a violation has or has not occurred.

In the event that the Contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

## VI. APPRENTICESHIP RATIO DATA

The BOLI ratios of apprentices to journey level workers on the jobsite shall apply. For information regarding the ratios for the various trades, view the BOLI website link below. The information can be found under the Active Approved Standards tab on for each trade and is usually under section VI, "Ratio of Apprentice to Journey Level Workers." The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor and Industries at (971) 673-0760 or your apprenticeship committee

[http://www.oregon.gov/BOLI/ATD/A\\_AG\\_Standards\\_8000-8999.shtml](http://www.oregon.gov/BOLI/ATD/A_AG_Standards_8000-8999.shtml)

### **ATTACHMENTS:**

Exhibit 1: Recommended Recruitment & Retention Practices

Exhibit 2: Projected Hiring Needs

Exhibit 3: Request For Apprentice form

Exhibit 4: Sample Monthly Employment/will be sent electronically

Exhibit 5: Ratios

### **Questions Regarding Apprenticeship:**

Bureau of Labor & Industries

Apprenticeship & Training Division

800 N.E. Oregon St. # 32

Portland, OR 97232

(971) 673-0760

### **Questions Regarding Portland Development Commission**

#### **Workforce Equity Program or Workforce Training & Hiring Program:**

Ay Saechao

City of Portland/Bureau of Internal Business Service, Procurement Services

1120 S.W. Fifth Ave., Room 750

Portland, OR 97204

(503) 823-1090

[Ay.Saechao@portlandoregon.gov](mailto:Ay.Saechao@portlandoregon.gov)

Patricia Weekley

Portland Development Commission

222 NW Fifth Avenue

Portland, OR 97209-3859

(503) 823-3057

[Weeklyp@pdc.us](mailto:Weeklyp@pdc.us)

## EXHIBIT 1

### RECOMMENDED GOOD FAITH RECRUITMENT & RETENTION PRACTICES

#### A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the PDC Workforce Equity Program including the Workforce Training & Hiring Program, and Equal Employment Opportunity Programs. These efforts may assist the Contractor in achieving an "A" level EEO certification and may assist the Contractor in reaching the workforce diversity goals. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with Contractor's Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the Contractor's JATC by giving all apprentices referred to the Contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

#### B. Retention Efforts

The Contractor shall endeavor to retain minorities, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company's policies if they need to report a harassment problem.
3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
5. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.

**EXHIBIT 2**

**PROJECTED HIRING NEEDS**

**This form must be completed by the prime and each subcontractor with a subcontract of \$100,000 or more.** Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Training & Hiring & Workforce Equity Program requirements, including utilization of apprentices. Refer to Exhibit 5 for apprenticeship ratio data. **Complete all columns, with project-specific information.**

BID# \_\_\_\_\_ CONTRACT AMOUNT \$ \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_

COMPANY NAME \_\_\_\_\_

Federal ID # \_\_\_\_\_  Prime Contractor  Subcontractor

List all Trades to be used on this Project	Total # of Journey Workers	Total # of Apprentices	Total # of Female Workers	Total # of Minority Workers	# and Level of New Positions (i.e. 1A or 1J)	Anticipate d Start Date	Estimated Total Hours (all workers in each trade)

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Compliance Agency must approve all apprentices on the project.

Name of Apprentice	Trade	Race	Gender	Date of Hire	STAFF USE ONLY

If no current apprentices, indicate when and how they will be hired:

Person in your company who does hiring: \_\_\_\_\_

COMPANY: \_\_\_\_\_ CCB# \_\_\_\_\_ PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail address for submitting Monthly Employment Reports via e-mail: \_\_\_\_\_

Are you a registered Training Agent?  Yes  No Are you a  Union  Open Shop contractor?

With which JATCs are you registered to train apprentices? \_\_\_\_\_

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_ (sign and print) DATE: \_\_\_\_\_

Prime contractor must complete and submit to as designated to Compliance Agency:

**Workforce Training & Hiring Program**  
**1120 S.W. Fifth Avenue #750, Portland, OR 97204**  
**Phone (503) 823-6850 or FAX (503) 823-5539**

**EXHIBIT 3**

**Request for Apprenticeship**

The contractor may use this form to document efforts when recruiting apprentices.

**FAX To:** \_\_\_\_\_ / \_\_\_\_\_  
(Apprenticeship Committee) (Contact/ Dispatcher)

Fax Number : \_\_\_\_\_ Number of Pages \_\_\_\_\_

**Request From:**

Company Name \_\_\_\_\_ / \_\_\_\_\_  
(Registered Training Agent) (Contact Person)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Apprentice Request:**

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please refer ethnic minorities and women for my consideration. If I am unable to receive a referral from my apprenticeship program within a reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources.

Apprentice referral is needed by this date: \_\_\_\_\_ Work Starts: \_\_\_\_\_

Job Site Location: \_\_\_\_\_ Expected Length of Employment: \_\_\_\_\_

Project \_\_\_\_\_ Compliance Agency (City of Portland) \_\_\_\_\_

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Number of Apprentices: \_\_\_\_\_ Trade/Occupation: \_\_\_\_\_

Minimum qualifications (if different from apprenticeship standards): \_\_\_\_\_

Safety needs: \_\_\_ Hard hat \_\_\_ Gloves \_\_\_ Hard-toed boots Other? \_\_\_\_\_

**Please fax this Request for Apprenticeship form to your apprenticeship committee.**

To document your good faith efforts, copies may also be sent to:

City Workforce Training & Hiring  
1120 SW 5th Ave. Rm 750  
Portland, OR 97204  
Phone: (503) 823-6850  
FAX: (503) 823-5539

*(a) For Apprenticeship Program Only*

*Please check the appropriate box and fax to City Workforce Equity Program:*  
[ ] I was able to dispatch an apprentice to the project listed above.  
Name of Apprentice \_\_\_\_\_ Race \_\_\_\_\_ Gender \_\_\_\_\_ Term \_\_\_\_\_  
[ ] I was unable to dispatch an apprentice to the project listed above because \_\_\_\_\_  
\_\_\_\_\_  
Fax this form with dispatch information to 823-5539. Thank you.

**EXHIBIT 4**

**MONTHLY EMPLOYMENT REPORT**

**MONTHLY EMPLOYMENT REPORT**

COMPANY NAME	FEDERAL TAX ID	MONTH ENDING	BIDNO	PRIME?	FINAL REPORT?

The Monthly Employment/Training Report must be completed by the prime contractor and all subcontractors with contracts of \$100,000 or more. The prime contractor shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the prime contractor to assure that all subcontractors submit Monthly Employment/Training Reports in a timely manner.

Complete the form on the worksheet titled MER (third tab), filling in all categories for each employee working on the project during the reporting period.

Email the completed worksheet as an Excel attachment to [mur-mer@portlandoregon.gov](mailto:mur-mer@portlandoregon.gov) no later than the 5th of each month for work performed during the previous month. The emailed worksheet must be titled **mer.xls**. Please do not change the worksheet's layout or contents.

Please direct questions about electronic data submission to the same email address.

REVISED 3.11.11

FEDID	MONTHENDING	BIDNO	LASTNAME	FIRSTNAME	ZIP	SSN	JOBCLASS	LEVEL	RACE	GENDER	HOURS	PRIME?
123456789	8/31/2002	100758	DOE	JANE	97214	9874	1010	A	C	F	32	NO
123456789	8/31/2002	100758	DOE	JOHN	97204	7489	1018	J	C	M	154	NO



**EXHIBIT 5**

# Ratios

The following data may be used to determine the ratio of apprentices on a jobsite in proportion to journey-level workers on the jobsite. The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor & Industries, or your apprenticeship committee.

\*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council. For the purposes of this contract, the ratios approved by BOLI on the date the bid is advertised shall prevail.

Trade	1 <sup>st</sup> Apprentice	2 <sup>nd</sup> Apprentice	Max
Asbestos/Insulation Workers	1:1	1:4	
Brick/Marble/Terrazzo/Tile Finisher	1:1	1:3	
Bricklayer/Masonry	1:1	1:5	
Carpenter	1:1	1:1 (1:5 union)	1:1 for 1 <sup>st</sup> 3; Additional apprentices authorized at 1:5
Carpet Installers/Floorlayers	1:1	1:3	
Cement Masons	1:2	1:3	
Drywall Applicator (Ext/Int. Specialist)	1:3	1:5	
Drywall Finisher (Taper)	1:1	1:3	
Electricians			
Inside	1:1	1:2 (1:3 union)	
Outside	1:6	1:6	
Ltd. Energy/Ltd. Residential	1:1	1:2 (1:1 union)	
Construction Lineman	1:1	1:1	
Ltd. Maintenance	1:1	1:2	
Stationary Engineer	1:1	1:3	
Elevator Contractor	1:1	1:1	1:2 thereafter
Environmental Control (HVAC)	1:1	1:1	
Glazier	1:1	1:3	
Hod Carrier/Mason Tender	1:1	1:3 (1:5 union)	
Ironworker	1:1	1:6	
Laborer (Construction)	1:1	1:3 (1:5 union)	
Maintenance Mechanic	1:1	1:3	
Millwright	1:3 (1:5 union)	1:3 (1:5 union)	
Operating Engineer	1:1 (1:1-4 union)	1:1	
Painter	1:1	1:3	
Pile Driver	1:3	1:5	
Pipe Fitter/Steam Fitter	1:1	1:3	
Plasterer	1:1	1:3	
Plumber	1:1	1:1	1:3 thereafter
Roofer	1:1	1:1	
Sheet Metal Worker	1:1	1:1	1:3 thereafter
Sprinkler Fitter	1:1	1:1	
Structural Fabricator	1:1	1:3	
Terrazzo Worker	1:1	1:3	
Marble Setter	1:1	1:3	
Truck Driver (Heavy)	1:1	1:1	

# **PDC Green Building Policy**

Approved by the PDC Board of Commissioners on May 13, 2015

*PDC creates economic growth and opportunity for Portland.*

## **1.0 OBJECTIVES OF THE PDC GREEN BUILDING POLICY**

The objective of the PDC Green Building Policy (this “Green Building Policy” or “this policy”) is to ensure that PDC’s strategic goals in development and construction advance environmental, social, and economic conditions by:

- Promoting Green Building practices that protect human health and the quality of air, water, and other natural resources and maintaining consistency with the City of Portland’s Climate Action Plan;
- Maximizing public benefits via new construction and redevelopment projects receiving PDC Financial Assistance as well as in PDC’s own real property portfolio to increase return on investment, attract and retain tenants, and create equitable access to well-performing and healthy buildings for Portlanders;
- Leveraging economic development opportunities to grow Portland’s global reputation of deep industry expertise in sustainable design, development, and construction; and
- Providing flexibility for borrowers and other partners to incorporate Green Building practices in all projects to the maximum extent practical.

*Note: Capitalized terms in this policy are defined in Section 7 below.*

## **2.0 APPLICABILITY**

This policy applies to all PDC projects that include both a Transaction Type in Section 2.1 and a Project Type in Section 2.2:

### **2.1 TRANSACTION TYPES**

- A project receiving PDC Financial Assistance greater than or equal to two hundred thousand dollars (\$200,000);
- All real property dispositions; and
- PDC owned and leased real property at time of lease agreement or planned improvement.

### **2.2 PROJECT TYPES**

- New construction and Major Renovations of commercial and mixed-use buildings;
- Tenant Improvements; and
- New or renovated stand-alone parking structures that are not a part of a broader Green Building project scope.

Once PDC has confirmed that one of the above transaction types has triggered this policy, PDC and/or the borrower will use Section 2.2 to determine which building requirements are necessary to comply with this policy.

### 3.0 POLICY REQUIREMENTS

#### 3.1 NEW CONSTRUCTION AND MAJOR RENOVATIONS OF COMMERCIAL AND MIXED-USE BUILDINGS

- Commercial / Mixed-Use Buildings greater than or equal to fifty thousand (≥50,000) square feet or greater than or equal to thirty (30) residential units must register and certify for the **U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) at the Gold level.**
- Commercial / Mixed-Use Buildings less than fifty thousand (<50,000) square feet or less than thirty (30) residential units must register and certify for either **LEED at the Gold level** or **Earth Advantage at the Gold level.**

#### 3.2 TENANT IMPROVEMENTS

- Commercial / Mixed-Use Buildings greater than or equal to five thousand (≥5,000) square feet with major modifications to the building's mechanical, electrical, and plumbing systems must register and certify for **LEED at the Silver level.**
- Commercial / Mixed-Use Buildings less than five thousand (<5,000) square feet or minor tenant improvement modifications must use [Creating a High Performance Workplace: Portland's Green Tenant Improvement Guide](#). (This is a guiding document only and does not require registration or certification of the project.)

#### 3.3 PARKING STRUCTURES

- New or renovated standalone parking structures that are not a part of a new construction or renovation project must register and certify for the **Green Parking Council's Green Garage Certification at the Gold level.**

### 4.0 GOOD FAITH DEPOSIT

Borrowers will be required to provide PDC with a good faith deposit to enforce compliance with the requirements of this policy.

### 5.0 EXEMPTIONS

Only the PDC Board of Commissioners may exempt PDC projects from this policy.

### 6.0 IMPLEMENTATION

The Executive Director is hereby authorized to (a) administer the policy; (b) create and periodically update administrative policies or procedures to guide policy implementation; and (c) resolve any dispute arising from the application, administration, or enforcement of the policy.

### 7.0 DEFINITIONS

Capitalized terms in this policy have the following meanings:

*Green Building:* Green building is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life-cycle from siting to design, construction, operation, maintenance, renovation and deconstruction.<sup>1</sup>

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<sup>1</sup> U.S. Environmental Protection Agency, <http://www.epa.gov/greenbuilding/pubs/about.htm>

*Financial Assistance:*

(A) A direct loan or grant of funds by PDC to a borrower, or (B) an indirect financial benefit resulting from PDC's write-down on the value of land in a real estate transaction

*Major Renovation:*

Construction work that is extensive enough such that normal building operations cannot be performed while the work is in progress, and/or a new certificate of occupancy is required.<sup>2</sup>

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<sup>2</sup> Source: U.S. Green Building Council <http://www.usgbc.org/Docs/Archive/General/Docs5546.pdf>

## **COMPLIANCE AGREEMENT (State Prevailing Wage)**

This COMPLIANCE AGREEMENT (this “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 200\_, by the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission (“PDC”), and \_\_\_\_\_ (“Developer”)/ (“Borrower”). PDC and [Developer]/[Borrower] may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

### **Recitals**

Developer has or will receive \$750,000 or more in funds of a public agency for redevelopment of certain real property located at \_\_\_\_\_ (the “Project”). Accordingly, the Project is a “public work” for purposes of Oregon’s prevailing wage rate law, ORS 279C.800 to 279C.870 (the “PWRL”), administered by the Bureau of Labor and Industries (“BOLI”). This Agreement satisfies the legal requirement that certain terms of the PWRL be included in a contract between PDC and Developer.

### **Agreement**

**1. Prevailing Wage Rate.** This Project is a public work as defined by ORS 279C.800(6), and the Parties agree that Developer will comply with and require the general contractor for the Project (the “General Contractor”) and all subcontractors to comply with all provisions in ORS 279C.800 through 279C.870 with respect to the Project. Developer may not select as the General Contractor, a person or entity on the BOLI list of ineligible. Each worker in each trade or occupation employed in the performance of the work on the Project, whether by the General Contractor, subcontractor or other person, must be paid not less than the applicable rate of wage, and Developer shall include this requirement in its contract with the General Contractor for the Project and ensure that this requirement is included in all subcontracts. Developer shall include in the contract specifications for the Project, the prevailing wage rates identified in Section 1(I) below, a provision stating that a fee is required to be paid to the BOLI Commissioner as provided in ORS 279C.825(1), and a provision stating that the General Contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt. Developer shall ensure that all required weekly certified payroll for the Project is submitted to the attention of PDC’s designated representative by the 5<sup>th</sup> working day of the following month, and all other required documentation prior to the General Contractor or a subcontractor commencing work on the site. PDC, Developer, and General Contractor shall withhold payment as prescribed by ORS 279C.845(7) through 279C.845(8) if certified payroll statements are not filed in the time and manner prescribed under ORS 279C.800 through 279C.870. Developer also agrees to ensure

compliance and to include the following provisions in the contract with the General Contractor for the Project:

**A. Certified Payroll.** General Contractor shall submit all required weekly certified payroll for work on the Project to both the Developer's designated representative and PDC's designated representative by the 5<sup>th</sup> business day of the following month. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to submit all required weekly certified payroll for work on the Project to the attention of the General Contractor's representative by the 5<sup>th</sup> business day of the following month and (b) to include this provision in all of its subcontracts.

**B. BOLI Fee.** PDC is required to pay a fee to BOLI as provided in ORS 279C.825(1) and pursuant to the administrative rule of the Commissioner. The total hard construction costs of the Project shall be used for the purpose of calculating the fee.

**C. Public Works Bond.** General Contractor and all subcontractors, prior to starting any work on this Project, are required to file with the Construction Contractors Board a "public works bond" in the amount of \$30,000 with a corporate surety authorized to do business in the state of Oregon, unless exempt under the provisions of ORS 279C.836. General Contractor shall file with the Construction Contractors Board a public works bond satisfying the foregoing requirements before commencement of work on the Project, unless otherwise exempt. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to have a public works bond satisfying the foregoing requirements filed with the Construction Contractors Board before commencement of work on the Project, unless otherwise exempt and (b) to include this provision in all of its subcontracts. General Contractor shall verify that all subcontractors have filed the public works bond prior to commencement of work on the Project.

**D. Contractor Eligibility.** General Contractor may not award a subcontract to any person or entity on the BOLI list of ineligible. General Contractor shall include in each subcontract a provision (a) prohibiting the subcontractor from awarding a subcontract to a person or entity on the BOLI list of ineligible and (b) requiring the subcontractor to include this provision in all of its subcontracts. General Contractor shall verify that none of the subcontractors are on the BOLI list of ineligible.

**E. Work Day/Work Week.** No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, the employee shall be paid at least time and a half pay the regular rate of pay for: (1) all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday, and on any legal holiday specified in ORS 279C.540.

**F. Employee Notice.** General Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

**G. Prompt Payment for Medical Services.** General Contractor shall promptly make payment, as due, to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of General Contractor, of all sums which General Contractor agrees to pay for such services and all moneys and sums which General Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service per ORS 279C.530. General Contractor shall also comply with ORS 656.017.

**H. General Contractor's Failure to Make Prompt Payment.** If, upon reasonable concern by Developer that General Contractor has failed, neglected or refused to make prompt payment of any claim for labor, equipment, services or materials furnished to General Contractor or a subcontractor by any person, or the assignee of the person, in connection with the Project as such claim becomes due, Developer may pay such claim to the person furnishing the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due General Contractor under the contract. Developer reserves the right to make payments directly or by multiple-payee check and General Contractor hereby consents to such direct and multiple-payee check payments. Upon Developer's request, General Contractor shall furnish to Developer the information required to facilitate such payments with each application for payment, including: (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons per ORS 279C.315.

**I. Wage Rates:** The prevailing wage rates for public works contracts in Oregon effective [January 1, 200\_] [January 1, 200\_ with Amendments effective as of April 1, 2000\_] [July 1, 200\_] [July 1, 200\_ with Amendments effective as of October 1, 200\_] are incorporated into this Agreement by reference. All workers shall be paid the applicable prevailing wage rate as set forth in these documents, for work performed on the Project. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to pay the prevailing wage rates identified in this Section and (b) to include this provision in all of its subcontracts. A copy of the applicable prevailing wage rates are available from BOLI or its website:

[http://www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml)

**2. Notice.** Any notice required or permitted under this Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail return receipt requested and addressed as follows:

To Developer:

Copy to:

To Commission: Portland Development Commission  
Nathan Mosley, Construction Services Supervisor  
222 NW 5<sup>th</sup> Avenue  
Portland, Oregon 97209-3859

Copy to: Portland Development Commission  
General Counsel  
222 NW 5<sup>th</sup> Avenue  
Portland, Oregon 97209-3859

or to such other address as may be specified from time to time by any of the Parties in writing.

### **3. Miscellaneous.**

**A. Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the Parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

**B. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

**C. Governing Law.** This Agreement shall be governed by and construed under Oregon law.

**D. Assignment.** No Party may assign this Agreement without the prior written consent of the other Parties.

**E. Modification; Prior Agreements; Headings.** This Agreement may not be modified or amended except by an instrument in writing signed by all Parties. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for



the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

**F. Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

**G. Time of Essence.** Time is of the essence of this Agreement.

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

\_\_\_\_\_

By: \_\_\_\_\_

**CITY OF PORTLAND acting by and  
through the PORTLAND DEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_  
Patrick Quinton, Executive Director

Approved as to Form:

By: \_\_\_\_\_  
PDC Legal Counsel

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7161**

**EXHIBIT B**

**AUTHORIZING AN OPTION AGREEMENT TO CONVEY 2.01 ACRES OF REAL PROPERTY IN THE NORTH MACADAM URBAN RENEWAL AREA TO BRIDGE NORTHWEST DEVELOPMENT FOR \$11,000,000 AND A SPECIAL AUTHORITY GRANT TO BRIDGE NORTHWEST DEVELOPMENT FOR \$8,960,000**

Exhibit A includes this cover page and contains four pages:

- Special Purpose Grant Agreement – RiverPlace Parcel 3

**SPECIAL PURPOSE GRANT AGREEMENT  
RIVERPLACE PARCEL 3**

Grant Number: \_\_\_\_\_

This Special Purpose Grant Agreement (this “Grant Agreement”) is by and between the Portland Development Commission, the duly designated urban renewal agency of the City of Portland (“PDC”) and \_\_\_\_\_, a \_\_\_\_\_ company (“Grantee”), and is dated \_\_\_\_\_ (the “Effective Date”). This Grant Agreement sets forth the terms and conditions under which PDC has agreed to provide Grantee a grant in the North Macadam Urban Renewal Area.

**CONTEXT**

- A. Contemporaneously with the execution of this instrument, PDC and Grantee are entering into an Option for Purchase and Sale Development and Right of Repurchase (the “Parcel 3 Agreement”). Through the Parcel 3 Agreement, Grantee intends to acquire and develop a project on: an approximate 87,632 square foot parcel located at the intersection of S.W. River Parkway and S.W. Moody Avenue, Portland, Oregon, as further defined in the Parcel 3 Agreement and commonly referred to as “Parcel 3 of RiverPlace” (the “Property”). Terms used but not defined in this Grant Agreement shall have the meaning ascribed to them in the Parcel 3 Agreement.
- B. PDC has conditioned the sale of the Property on the construction of a mixed use building of no less than 365 residential units including at least 200 units affordable to households with 0-60 percent of median family income and of those 200 units no less than 90 units shall be affordable to households with 0-30 percent of median family income. In addition, the Project shall include approximately 160 parking spaces and commercial ground floor space for local retailing uses. Together, the mixed housing, commercial, and parking elements constitute the “Project”.
- C. The Portland Housing Bureau (“PHB”) intends to make a loan to Grantee and such loan and associated agreements shall be conditioned upon the construction, preservation, and maintenance of the affordable housing units.
- D. A pro forma provided by the Grantee and reviewed by PDC indicates that adoption of the affordable housing elements of the Project will not make financially feasible a land purchase price greater than Three Million Three Hundred Thousand Dollars (\$3,300,000) (the “Affordable Housing Value”). PDC has commissioned an appraisal of the property and that appraisal indicates a market value (unencumbered by affordable housing) of Eleven Million Dollars (\$11,000,000) (the “Appraised Market Value”).

- E. The property is impacted by environmental contamination and excavation of the site for purposes of advancing the Project will generate incremental environmental costs anticipated to not exceed One Million Two Hundred Sixty Thousand Dollars (\$1,260,000).

## **TERMS**

1. Grant Amount: The “Grant Amount” is Eight Million Nine Hundred Sixty Thousand Dollars (\$8,960,000).
2. Grant Purpose: This Grant Amount is intended to:
  - 2.1. provide an incentive for Grantee to construct the Project with a significant affordable housing element by providing a discount to the purchase price of the Property under the Parcel 3 Agreement in an amount that reflects the difference between the Appraised Market Value and the Affordable Housing Value, or Seven Million Seven Hundred Thousand Dollars (\$7,700,000) (the “Purchase Price Discount”); and
  - 2.2. provide funds to pay for the incremental environmental costs associated with the construction of the Project, to a maximum of One Million Twenty Six Thousand Dollars (\$1,260,000)(the “Incremental Environmental Costs”).
3. Deposits and Disbursements:
  - 3.1. PDC shall deposit into Escrow an amount equal to the Purchase Price Discount before the Closing Date. Grantee may instruct Escrow to apply the Purchase Price Discount to the Purchase Price at closing.
  - 3.2. PDC shall deposit into Escrow the Incremental Environmental Costs before the Closing Date. The Incremental Environmental Costs shall be held by Escrow and released in accordance with the terms of the Escrow Holdback Agreement.
4. Conditions of Disbursement:
  - 4.1. On the Closing Date, Grantee shall be in compliance with (a) the terms of the Parcel 3 Agreement, including compliance with the PDC Policies, and (b) the terms of the PHB Loan.
  - 4.2. This Grant Agreement shall terminate on the Closing Date if the conditions for disbursement in Section 4.1 are unfulfilled.
5. Public Record: Grantee acknowledges and agrees that all documents submitted to PDC are subject to the Oregon Public Records Law.

{00466316;3}

6. No Partnership; No Third-Party Contract: This Grant Agreement does not create and shall not be construed to create a contract of employment, joint venture, or partnership between PDC and Grantee. This Agreement does not create and shall not be construed to create a contract between PDC and any contractor, subcontractor, laborer, or material supplier employed by Grantee; nor shall the terms herein be construed to create any obligation by PDC to pay any portion of the Grant Amount directly to any contractor, subcontractor, laborer, or material supplier employed by Grantee.
  
7. Audit: PDC retains the right to access and review all Project records relevant to the rights and obligations of Grantee under this Grant Agreement, including evidence of compliance with PDC's policies, upon reasonable prior notice to Grantee.

**Please indicate acceptance of this Grant Agreement and its terms by signing below and initialing each page. Retain one copy for your files and return the other to the Portland Development Commission.**

**APPROVED BY:**

\_\_\_\_\_  
Patrick Quinton  
Portland Development Commission  
Executive Director

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
PDC Legal Counsel

\_\_\_\_\_  
Date

**ACCEPTED BY:**

\_\_\_\_\_  
Date

**RESOLUTION NO. 7161**

**RESOLUTION TITLE:**

AUTHORIZING AN OPTION AGREEMENT TO CONVEY 2.01 ACRES OF REAL PROPERTY IN THE NORTH MACADAM URBAN RENEWAL AREA TO BRIDGE NORTHWEST DEVELOPMENT FOR \$11,000,000 AND A SPECIAL AUTHORITY GRANT TO BRIDGE NORTHWEST DEVELOPMENT FOR \$8,960,000

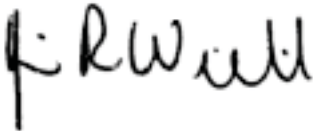
Adopted by the Portland Development Commission on January 13, 2016

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Tom Kelly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Gustavo Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Mark Edlen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

**CERTIFICATION**

**The undersigned hereby certifies that:**

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.*

	<b>Date:</b>  January 15, 2016
<b>Gina Wiedrick, Recording Secretary</b>	