

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7146

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PURCHASE AND SALE AGREEMENT TO CONVEY 0.39 ACRES OF REAL PROPERTY IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA TO GEZA DEVELOPMENT, LLC, FOR \$415,000

WHEREAS, the Portland Development Commission (“PDC”) is undertaking the Interstate Corridor Urban Renewal Plan, adopted August 2000, and subsequently amended;

WHEREAS, PDC is the owner of a 0.39-acre parcel (“C&M Motors site”) located at 6931 NE Martin Luther King, Jr. Boulevard;

WHEREAS, PDC acquired the C&M Motors site in January 2011, as part of a deed in lieu of foreclosure process;

WHEREAS, PDC and Geza Development, LLC (“Buyer”), have negotiated a Purchase and Sale Agreement (“PSA”) to convey the C&M Motors site to Buyer for a purchase price of Four Hundred Fifteen Thousand Dollars (\$415,000); and

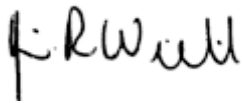
WHEREAS, the negotiated Purchase Price exceeds the appraised value of the Property, after accounting for development restrictions;

NOW, THEREFORE, BE IT RESOLVED, that the PDC Board of Commissioners authorizes the Executive Director to execute a PSA, in substantially the form set forth in Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the PSA, 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; and

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

Adopted by the Portland Development Commission on October 14, 2015

A handwritten signature in black ink, appearing to read "Gina Wiedrick". The signature is written in a cursive, somewhat stylized font.

Gina Wiedrick, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7146

EXHIBIT A

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PURCHASE AND SALE AGREEMENT TO CONVEY 0.39 ACRES OF REAL PROPERTY IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA TO GEZA DEVELOPMENT, LLC, FOR \$415,000

Exhibit A includes this cover page and contains 52 pages:

- C & M Motors Purchase and Sale Agreement between the Portland Development Commission and Geza Development, LLC
 - Exhibit A: Description of Property
 - Exhibit B: Form of Permit of Entry
 - Exhibit C: Form of Bargain and Sale Deed
 - Exhibit D: reserved
 - Exhibit E: reserved
 - Exhibit F: reserved
 - Exhibit G: PDC Business Equity Program
 - Exhibit H: PDC Workforce Equity Program
 - 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
 - Exhibit I: PDC Green Building Policy

C & M MOTORS

PURCHASE AND SALE

AGREEMENT

BETWEEN

THE PORTLAND DEVELOPMENT COMMISSION

AND

GEZA DEVELOPMENT LLC

DATED

**PURCHASE AND SALE
AGREEMENT**

C & M MOTORS

THIS PURCHASE AND SALE AGREEMENT AND RIGHT OF REPURCHASE (“Agreement”) is entered into as of _____, 2015 (“the Effective Date”) between the **PORTLAND DEVELOPMENT COMMISSION**, the urban renewal authority of the City of Portland (“PDC”), and **GEZA DEVELOPMENT, LLC**, an Oregon limited liability company (“Buyer”). PDC and Buyer 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.
- B. PDC is the owner of the C & M Motors site: an approximate 16,837 square foot parcel located at 6931 NE MLK Boulevard, Portland, Oregon.
- C. Buyer desires to acquire the site.
- D. PDC and Buyer intend to enter into this Agreement under which PDC will sell, and Buyer will purchase the Property.

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 OF CONVEYANCE OF PROPERTY

- 1.1. **Agreement for Disposition.** PDC agrees to sell and convey to Buyer, and Buyer agrees to purchase from PDC the Property upon the terms and conditions set forth in this Agreement.
- 1.2. **Description of the Property.** The Property which is subject to this Agreement consists of the following: The land described in Exhibit A attached hereto, together with all improvements thereupon, rights, privileges and easements appurtenant to the land owned by PDC, including, without limitation, any of-record easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the land (which collectively referred to herein as the “Property”).
- 1.3. **Earnest Money Deposit.**

Within ten (10) business days of the Effective Date the Buyer shall deposit to Escrow a Payment of Five Thousand Dollars (\$5000) (Earnest Money Payment). The Earnest Money Payment is

applicable to the Purchase Price at Closing. The Earnest Money Payment is refundable to Buyer only if Buyer elects to terminate this Agreement prior to the expiration of the Due Diligence Period and in such a case the Earnest Money Payment shall be released to Buyer within ten (10) days of such Termination Notice. Otherwise the Earnest Money Payment is not refundable to Buyer and may be released to PDC at Closing or upon termination of this Agreement.

1.4. **Purchase Price.** The Purchase Price for the Property is FOUR HUNDRED FIFTEEN THOUSAND DOLLARS (\$415,000).

1.4.1. **Satisfaction of the Purchase Price.**

1.4.1.1. Subject to any credit for Earnest Money Deposit, the Buyer shall deposit to Escrow the amount of the Purchase Price in cash.

1.5. **AS IS Sale.** Prior to the Closing Date, Buyer 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. Buyer 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 Buyer to use the Property or any portion thereof for any intended purpose. Buyer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Buyer 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.

The Property is improved with several buildings. The condition of the buildings is poor and any use of the buildings will likely require significant investment and review and approval from other authority within the City of Portland before occupation and use are considered safe. The Buyer understands the condition of the improvements and will take all appropriate measures to ensure that any occupancy and use thereof is preceded by all appropriate upgrading, inspection, permitting and approval.

1.6. **Access, Inspection and Due Diligence Materials**

1.6.1. **Access and Inspection.** PDC agrees that Buyer and its authorized agents or representatives shall be entitled to enter upon the Property to make such investigations, studies and tests as Buyer 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").

1.6.2. **Due Diligence Materials.** Buyer acknowledges that PDC has provided Buyer Due Diligence Materials consisting of: NGI Soil Cleanup Project 2802.2.1, G2 Hazardous Materials Survey Project 1097-22, and Preliminary Title Report No. 45141506992. PDC represents only that it has exercised its best effort to provide to Buyer the Due Diligence Materials that PDC believes are relevant to the Property. PDC makes no representation or warranty associated with the Due Diligence materials and Buyer understands that the

full burden of conducting any additional inspection, review and study of the Property for any use is completely the Buyer's responsibility.

- 1.1. **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 THIRTY (30) days from the Effective Date. Buyer shall provide PDC written notice prior to the expiration of the Due Diligence Period if Buyer's due diligence shall reveal to Buyer any matters which are not acceptable to Buyer. Upon PDC's receipt of such notice from Buyer this Agreement shall terminate and Earnest Money Payment shall be refunded to Buyer. The failure of Buyer to timely provide notice to PDC of Buyer's dissatisfaction prior to the expiration of the Due Diligence Period shall be deemed Buyer's decision to accept the Property, relinquish any right to repayment of the Earnest Money and to proceed to Closing.
- 1.2. **Title Review.** The title condition is reflected in Fidelity National Title Preliminary Title Report No. 45141506992, dated effective May 22, 2015 (The PTR) attached hereto as Exhibit E. The items noted within the PTR shall be deemed the "Final Permitted Exceptions". If the PTR is updated prior to Closing and reveals any new title exceptions not previously disclosed then Buyer may object to any new exception within Five (5) days of receipt of the updated PTR.
- 1.3. **Title Insurance.** If obtainable, PDC, at its expense, shall provide Buyer with a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, and covering the Property when conveyed, and insuring Buyer in the amount of the Purchase Price, free and clear of encumbrances, except Final Permitted Exceptions. Buyer, 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 Buyer to obtain such coverage. Buyer may also elect to obtain a survey at its own expense.

2. CONDITIONS PRECEDENT TO CLOSING

- 2.1. Buyer and PDC are not obligated to Close unless the following conditions are satisfied prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.
 - 2.1.1. To the Satisfaction of Buyer:
 - 2.1.1.1. Escrow Agent is prepared to issue to Buyer the form of Title Insurance selected by Buyer under Section 1.9, covering the Property in an amount not less than the Purchase Price, subject only to the Final Permitted Exceptions; and
 - 2.1.1.2. No material adverse change in the physical or title condition of the Property has occurred since the end of the Due Diligence Period.
 - 2.1.1.3. Financing in an amount of not less than 80% of the purchase price has been approved.
 - 2.1.2. To the Satisfaction of PDC:
 - 2.1.2.1. Buyer is not in default under this Agreement.

- 2.2. **Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 2 is not fulfilled to the satisfaction of the benefited Party on the date scheduled for Closing, then such benefited Party may elect to:
- (a) Terminate this Agreement by written notice to the other Party;
 - (b) Waive in writing the benefit of that condition precedent to Closing and proceed in accordance with the terms hereof; or
 - (c) 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
- 2.3. **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. 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.

3. CLOSING

3.1. Manner of Closing.

- (a) "Closing" shall be the conveyance of the Property from Seller to Buyer in exchange for Buyer's payment of the Purchase Price to Seller together with adjustments for credits, prorations and costs. _____ shall be the ("Escrow Agent"). The Closing of the purchase and sale of the Property will occur through an escrow to be administered by the Escrow Agent. The Closing location shall be _____. The contact name and phone for Escrow Agent are _____.
- (b) The Parties agree to provide the Escrow Agent with escrow instructions consistent with the terms of this Agreement.
- (c) 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.

3.2. **Closing Date.** The Closing Date shall be no later than a date that is SIXTY (60) days after the Effective Date.

3.3. **Conveyance by Deed.** Upon Buyer's payment to PDC of the Purchase Price, at the Closing PDC will convey the Property to the Buyer by a statutory Bargain and Sale Deed, substantially in the form of Exhibit C ("Deed"). The Deed reflects a restriction on the development of market-rate housing on the Property for a period of FIVE (5) years from the date of Closing.

3.4. **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 duly executed by PDC and notarized.
- (c) 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.

3.5. **Documents and Sums to Be Deposited Into Escrow by Buyer.** On or before the Closing Date, Buyer shall deposit into Escrow 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 Buyer's portion of the prorations and closing costs. Buyer shall also deposit into Escrow such documents as the Escrow Agent may reasonably require to complete the sale of the Property as contemplated by this Agreement.

3.6. **Prorations and Costs.**

- (a) **Closing Costs.** The costs for recording the Deed and any other documents required by Buyer to be recorded will be paid by Buyer. 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).
- (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 therefore.
- (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. Buyer and the PDC shall each pay their own legal and professional fees of other consultants incurred by Buyer and PDC, respectively.

4. **DEVELOPMENT**

4.1. **Section Reserved**

5. **ASSIGNMENT AND TRANSFER PROVISIONS**

5.1. **Section Reserved**

6. **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:

6.1. **Prohibition of Market Rate Housing.** For a period of five (5) years following conveyance of the Property to Buyer no development of market rate housing shall take place on the Property.

6.2. Compliance with PDC Policies.

- 6.2.1. **Business and Workforce Equity.** Prior to hiring a prime contractor or commencing any bidding for construction of the Project, Buyer shall consult with PDC's Business Equity Department, to insure compliance with both PDC's Business Equity Workforce Training Policies. Buyer shall comply with the provisions of the Business Equity program specifications made a part hereof in Exhibit G hereto. Buyer shall comply with the provisions of the Workforce Equity Program specifications made a part hereof in Exhibit H hereto.
- 6.2.2. **Green Building.** Prior to hiring a prime contractor or commencing any bidding for construction of the Project, Buyer shall consult with PDC to ensure compliance with PDC's Green Building Policy. Buyer shall comply with the provision of the Green Building Policy specifications made a part hereof in Exhibit I hereto.
- 6.2.3. **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 Buyer fails to aid in the advancement of these social benefits by failing to comply with the Business Equity, Workforce Equity or Green Building Policies. The parties agree that Buyer's failure to comply with any one of the policies shall give rise to liquidated damages in the amount of Fifty Thousand Dollars (\$50,000) for each policy with which Buyer fails to comply. This liquidated damages amount is deemed to be the best estimate of cost that PDC would face to promote equitable employment or to incentivize green building techniques on the Project. Upon receipt, PDC shall 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. PDC may also bring an action to enjoin Buyer from taking any further action on the Project until Buyer complies with the PDC Business Equity, Workforce Equity and Green Building policies. If the Project is complete or substantially commenced then PDC's remedy is limited to liquidated damages as an injunctive order could not adequately correct for noncompliance at that time.
- 6.2.4. **Release of PDC Policy compliance Obligations.** Within 60 days of the time Buyer provides evidence that PDC deems sufficient to support a determination of compliance with PDC policies, PDC shall prepare and execute instruments to release from title any further obligation to comply.

7. DEFAULT AND REMEDIES

7.1. Default and Cure.

10.1.1. **Default by Buyer.** Buyer shall be in default under this Agreement if Buyer breaches any material provision of this Agreement,

10.1.2. **Default by PDC.** PDC shall be in default under this Agreement if PDC breaches any material provision of this Agreement,

7.2. **PDC's Pre-Conveyance Remedies.** If a Buyer default occurs before the Property is conveyed to Buyer, PDC may, at its option: (i) terminate this Agreement by written notice to Buyer and retain the Earnest Money Deposit made and any interest earned thereon as liquidated damages, without waiving any cause of action for monetary damages PDC may have against Buyer, or (ii) specifically enforce the obligations of Buyer under this Agreement.

- 7.3. **Buyer's Pre-Conveyance Remedies.** If a PDC default occurs before PDC conveys the Property to Buyer, Buyer may, as its only remedy, terminate this Agreement by written notice to PDC and receive a refund of the Earnest Money Payments made without waiving any cause of action Buyer may have against PDC. Buyer shall not seek consequential damages from PDC in connection with PDC's default.
- 7.4. **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.
- 7.5. **Tort Claims Limitations.** No action against PDC shall exceed the limits or violate the procedures imposed under the Oregon Tort Claims Act.
- 7.6. **Unavoidable Delay**
- 7.6.1. 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.
- 7.6.2. 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 Buyer, 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 ninety (90) days in aggregate.

8. MISCELLANEOUS PROVISIONS

- 8.1. **Discrimination.** Buyer, for itself and its successor and assigns, agrees that, during the construction of the Project, Buyer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.
- 8.2. **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, or (b) when received if personally delivered, and:

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

with a copy to:

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

Portland Development Commission
Attn: _____
222 NW 5th Ave.
Portland, OR 97209

With copy to:

Portland Development Commission
General Counsel's Office
222 NW 5th Ave.
Portland, OR 97209

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.

- 8.3. **Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from PDC to Buyer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.
- 8.4. **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.
- 8.5. **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 Buyer 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.
- 8.6. **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 party shall be entitled to recover from the losing 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.

- 8.7. **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.
- 8.8. **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.
- 8.9. **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.
- 8.10. **Legal Purpose.** Buyer agrees that it shall use the Project solely for lawful purposes.
- 8.11. **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.
- 8.12. **Entire Agreement.** This Agreement and the 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 made by either Party, implied or express, other than those contained in this Agreement.
- 8.13. **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.
- 8.14. **Successors and Assigns.** 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.
- 8.15. **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.
- 8.16. **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.
- 8.17. **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.

- 8.18. **Time of Essence.** Time is of the essence of this Agreement.
- 8.19. **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.
- 8.20. **STATUTORY WARNING.**

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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SIGNATURE PAGE TO FOLLOW

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

CITY OF PORTLAND, a municipal corporation in 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: _____
Executive Director
Portland Development Commission

APPROVED AS TO FORM:

Legal Counsel
Portland Development Commission

GEZA DEVELOPMENT, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

Lots 1, 2, 3, and 4, Block 1, PIEDMONT PARK, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion of Lot 1, lying within Bryant Street.

EXHIBIT B

Form of Permit of Entry

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 _____ (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:

Lots 1, 2, 3, and 4, Block 1, PIEDMONT PARK, in the City of Portland, County of Multnomah and State of Oregon. EXCEPTING THEREFROM that portion of Lot 1, lying within Bryant Street. Multnomah County Real Property Tax ID Number R243872. This unimproved property consists of 16,837 square feet and is located at 6931 NE MLK JR BLVD, Portland OR, 97211, 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.

Section 5. Termination, Notice and Amendments

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

PERMITTEE _____ Attn: _____ _____ _____	COMMISSION Portland Development Commission Attn: Real Estate Services 222 NW Fifth Avenue Portland, OR 97209
Tel: _____	Tel: 503.823.3208

Email: _____	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:

<p>PERMITTEE</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>COMMISSION</p> <p>Portland Development Commission 222 NW Fifth Avenue Portland, OR 97209</p>
<p>_____ Authorized Signature Date</p>	<p>_____ Director Signature Date</p>
<p>_____ Written Name Title</p>	<p>_____ Written Name Title</p>

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:

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.

Development Obligations:

No market-rate residential housing shall be developed upon the Property for a period of five (5) years following the date of recording of this instrument. “Market-rate” for purposes of this section shall mean residential housing that is rented to tenants for a rate that is within 10% of the highest rent charged by comparable properties in the market area.

Improvements to the Property shall comply with PDC’s Business Equity Policy, Workforce Equity Policy and Green Building Policy in accord with the covenants contained in section 6 of that Purchase and Sale Agreement between PDC and Geza Development LLC dated effective _____ (PSA). Failure to comply with PDC’s Policies shall subject the Property owner to the liquidated damages provision of section 6.1.3 of the PSA.

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

Reserved

EXHIBIT E

[attached following this page]

EXHIBIT F
Reserved

EXHIBIT G
Business Equity Program



BUSINESS EQUITY PROGRAM SPECIFICATIONS

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. **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. MICP can be reached at: Office: 503-288-1211 · Fax: 503-288-5786 · Email:

Chris@mcip-pdx.org · 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 Lateral Agile Partnerships (LAPs) website; 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.

[LAPs 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 1st 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 2nd tier subcontractors *and subconsultants* and 2nd 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 2nd tier subcontractors *and subconsultants* and 2nd 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 1st 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 1st tier Certified Bids/Feas (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 15th 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 must be 10% or less of the total contract value. Otherwise, all reasonable and necessary steps to subcontract/subconsult are required.

<u>DOW 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				<u>MBE</u>	<u>WBE</u>	<u>DBE</u>	<u>ESB</u>
Address									
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
						Cert#			
Name		Fax				<u>MBE</u>	<u>WBE</u>	<u>DBE</u>	<u>ESB</u>
Address									
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
						Cert#			
Name		Fax				<u>MBE</u>	<u>WBE</u>	<u>DBE</u>	<u>ESB</u>
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

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				MBE	WBE	DBE	ESB
Address						Cert#:			
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
Name		Fax				MBE	WBE	DBE	ESB
Address						Cert#:			
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
Name		Fax				MBE	WBE	DBE	ESB
Address						Cert#:			
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									
Name		Fax				MBE	WBE	DBE	ESB
Address						Cert#:			
City/St/Zip									
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CCB #									
Fed. ID #									
Name		Fax				MBE	WBE	DBE	ESB
Address						Cert#:			
City/St/Zip									
Phone #									
Email									
CCB #									
Fed. ID #									

Completed form may be faxed OR Emailed to Patricia Weekley at 503-823-3368. weekleyp@pdc.us

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

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 Representative _____ **Date** _____

Completed form may be faxed to: Paula Wendorf (503) 823-1090

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

***See instructions on next page for 2nd tier subcontractors. INSTRUCTIONS FOR COMPLETING THE SUBCONTRACTORSUBCONSULTANT PAYMENT AND UTILIZATION REPORT**

- PROJECT NAME:** Indicate the project name as shown on the contract documents.
- PRIME CONTRACTOR/PRIME CONSULTANT:** Indicate the name of the prime contractor.
- PRIME CONTRACT AMOUNT:** Indicate the total dollar amount of the prime contract.
- 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 2nd tier subcontractors/subconsultants and 2nd tier suppliers may be considered as part of the good faith effort requirements if 20% goal is not attained. Certified 2nd tier subcontractors/subconsultants and 2nd 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 15th day of the month for work performed for the prior month. Completed form may be faxed to: Paula Wendorf (503) 823-1090

For additional Information:

Patricia Weekley (503) 823-3057
Portland Development Commission

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

EXHIBIT H

Workforce Equity Program



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. 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 1st through June 30th. 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. 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 5th of each month to the City's Contract Compliance Specialist. This report can be submitted by either hard-copy by mail or via email, mer@portlandoregon.gov.

Refer questions or requests for additional information to the City's Contract Compliance Specialist Paula Wendorf 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.

V. 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.

D. 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.

VI. 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.

VII. APPRENTICESHIP RATIO DATA

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:

Paula Wendorf
City of Portland/Bureau of Internal Business Service, Procurement Services
1120 S.W. Fifth Ave., Room 750
Portland, OR 97204
(503) 823-1090
paula.wendorf@portlandoregon.gov

Patricia Weekley
Portland Development Commission
222 NW Fifth Avenue Portland, OR 97209-3859
(503) 823-3057
Weeklyp@portlandoregon.gov

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 Apprentice

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 Apprentice 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

<p><i>Please check the appropriate box and fax to City Workforce Equity Program:</i></p> <p><input type="checkbox"/> I was able to dispatch an apprentice to the project listed above. Name of Apprentice _____ Race _____ Gender _____ Term _____</p> <p><input type="checkbox"/> I was unable to dispatch an apprentice to the project listed above because _____</p> <p>_____</p> <p>Fax this form with dispatch information to 823-5539. Thank you.</p>

MONTHLY EMPLOYMENT REPORT

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	FEDID	MONTHENDING	BIDNO	LASTNAME	FIRSTNAME	ZIP	SSN	JOBCLASS	LEVEL	RACE	GENDER	HOURS	PRIME?
2	123456789	8/31/2002	100758	DOE	JANE	97214	9874	1010	A	C	F	32	NO
3	123456789	8/31/2002	100758	DOE	JOHN	97204	7489	1018	J	C	M	154	NO
4													
5													
6													

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	1st Apprentice	2nd 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 1st 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
Rofer	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	

EXHIBIT I

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.¹

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.²

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

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

RESOLUTION NO. 7146

RESOLUTION TITLE:

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PURCHASE AND SALE AGREEMENT TO CONVEY 0.39 ACRES OF REAL PROPERTY IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA TO GEZA DEVELOPMENT, LLC, FOR \$415,000

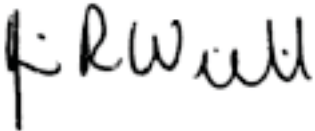
Adopted by the Portland Development Commission on October 14, 2015

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 type="checkbox"/>	Commissioner Mark Edlen	<input 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.

	Date: October 16, 2015
Gina Wiedrick, Recording Secretary	