

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6772**

**AUTHORIZING PUBLIC IMPROVEMENT CONTRACT WITH J.E. DUNN CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$800,000 AND PERMIT OF ENTRY FOR CONSTRUCTION OF A BIOSCIENCE WET LAB AT 2828 SW CORBETT AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA**

**WHEREAS**, on behalf of the City of Portland, the Portland Development Commission ("PDC") has created plans to partner with the Oregon Health & Science University ("OHSU") to develop infrastructure, housing, bioscience-related industry, and related service industries in the North Macadam Urban Renewal Area ("URA");

**WHEREAS**, the bioscience industry encompasses any business involved in the technological application of knowledge in the areas of medicine, health, food science, and agriculture;

**WHEREAS**, the URA Plan goals include creating appropriate infrastructure, amenities, services, and development opportunities to bring new jobs to the URA, as well as encouraging opportunities for potential capture of spin-off activities from OHSU's bioscience/health technologies research and development;

**WHEREAS**, PDC, OHSU, and certain other entities are parties to the South Waterfront Central District Development Agreement dated August 14, 2003 (as amended, the "Central District DA"), and this agreement provides among other things for the development of the bioscience industry in the URA;

**WHEREAS**, OHSU and PDC entered into an Intergovernmental Agreement on April 4, 2007 (the "IGA"), to work cooperatively and collaboratively on the recruitment of private sector companies to locate in and near the URA, so as to further the URA Plan and Central District DA goals;

**WHEREAS**, the IGA sets forth PDC's financial commitment for bioscience industry development in the URA as agreed by PDC and OHSU;

**WHEREAS**, the Economic Development Strategy was adopted by the Portland City Council in July of 2009, and the Strategy called out a connection to Higher Education and technology transfer opportunities;

**WHEREAS**, PDC and OHSU have identified certain real property in the URA (the "Building") owned by 2828 Corbett, Inc., an Oregon nonprofit corporation ("Grantor") and leased to the State of Oregon acting by and through the State Board of Higher Education on behalf of Portland State University ("PSU");

**WHEREAS**, Grantor and PSU desire that PDC access the Building for the purpose of constructing certain tenant improvements in a portion of the Building (the "Wet Lab Suite")

pursuant to the Permit of Entry and Assignment and Release Agreement substantially in the form attached hereto as Exhibit A (the "Permit of Entry");

**WHEREAS**, through a competitive public solicitation process for construction services, PDC has identified J.E. Dunn Construction as the lowest responsive and responsible bidder in the amount of \$689,000 to construct the Wet Lab Suite; and

**WHEREAS**, OHSU and PDC recommend establishing a construction contingency in the amount of \$111,000 prudent to cover any unforeseen issues that may arise during construction of the Wet Lab Suite.


**NOW, THEREFORE, BE IT RESOLVED** that the PDC Board of Commissioners hereby authorizes the Executive Director to enter into a contract with J.E. Dunn Construction, in an amount not to exceed \$800,000 for construction of the Wet Lab Suite;

**BE IT FURTHER RESOLVED** that the Executive Director is hereby authorized to enter into the Permit of Entry;

**BE IT FURTHER RESOLVED** that the construction of the Wet Lab Suite will be considered Grantor's asset; and

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

**Adopted by the Portland Development Commission on February 10, 2010.**

  
\_\_\_\_\_  
Renee A. Castilla, Recording Secretary

**PERMIT OF ENTRY AND  
ASSIGNMENT AND RELEASE  
AGREEMENT**

THIS PERMIT OF ENTRY AND ASSIGNMENT AND RELEASE AGREEMENT (this “Agreement”) is entered into on the \_\_\_ day of February, 2010 (the “Effective Date”) by and between 2828 Corbett, Inc., an Oregon nonprofit corporation (“Grantor”), the Portland Development Commission, the duly designated urban renewal agency of the City of Portland (“PDC”) and the State of Oregon acting by and through the State Board of Higher Education on behalf of Portland State University (“PSU”). Grantor, PSU and PDC may be referred to collectively in this Agreement as the “Parties” or individually as a “Party”.

**RECITALS**

- A. Grantor holds fee title to certain real property located in the North Macadam Urban Renewal Area (the “URA”) at 2828 SW Corbett Avenue in Portland, Oregon (the “Land”). Located on the Land is that certain office building containing approximately 38,525 square feet of rentable office space (the “Building”).
- B. PSU is the tenant of the Building pursuant to that certain Commercial Lease dated December 20, 2004 and amended and extended by that certain Lease Extension Agreement and Lease Amendment dated October 30, 2009 (collectively, the “Lease”) with Grantor as landlord.
- C. Grantor and PSU desire that PDC access the Building and the Land for the purpose of constructing certain tenant improvements in a portion of the Building as more particularly described on Exhibit A attached hereto (the “Wet Lab Suite”). The Land, the Building and the Wet Lab Suite are collectively referred to herein as the “Property”.
- D. Grantor and PSU desire that such tenant improvements be designed and constructed by PDC on the Property as further described on Exhibit B attached hereto (collectively, the “Work”).
- E. The Work is being undertaken by PDC in connection with that certain Intergovernmental Agreement by and between PDC and Oregon Health & Science University, a public corporation of the State of Oregon (“OHSU”) dated April 4, 2007 to, among other things, develop the bioscience industry in the URA broadly as agreed by PDC and OHSU. PDC and OHSU have agreed that the construction of the Work on the Property will create valuable wet lab space to attract bioscience industry tenants to the Building and the URA.
- F. The Lease provides that PSU will sublease the Wet Lab Suite to bioscience industry tenants for a period of five (5) years, if available, otherwise to be used as lab space

for PSU students, faculty and staff until an appropriate bioscience industry tenant can be found.

- G. Grantor, PDC, PSU and OHSU have reviewed and approved the plans for constructing the Work.

## **AGREEMENT**

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

### **1. PERMIT OF ENTRY**

#### **A. Grant of Permit of Entry**

Grantor, as Owner, and PSU, as Tenant, hereby grant to PDC and its employees, contractors and agents, during the Term (as hereinafter defined), the right to enter upon the Property to perform the Work.

#### **B. Permits; Damage to Property**

PDC will obtain and pay for all required governmental permits and inspections to perform the Work and will perform the Work at PDC's sole expense to the extent that the cost for the Work, including a reasonable reserve for construction contingency, permits and inspections does not exceed One Million One Hundred Thousand Dollars (\$1,100,000.00) ("PDC's Budget"). Any damage to the Property that is caused by PDC or its employees, contractors or agents, including, but not limited to, the Contractor (as hereinafter defined), and the cost for all resultant repairs for such damage, will be the sole responsibility of PDC to the extent that such damage was caused by PDC or its employees, contractors or agents, including, but not limited to, the Contractor.

#### **C. Damage to Persons or Property**

Subject to the limitations of Oregon law with respect to the liability of public bodies applicable to PDC, PDC shall indemnify Grantor and Tenant from and against any and all liability, claims, damages, losses and expenses, including but not limited to litigation costs and attorney fees, relating to, arising out of or in connection with PDC's use of the Property and performance of the Work, except to the extent caused by Grantor's or PSU's negligence

#### **D. Insurance**

PDC shall cause the Contractor, to maintain in force during the term of the Work insurance coverage of the types and in the amounts as set forth below. Such

insurance shall be with companies acceptable to Grantor in its sole discretion and licensed to issue such insurance policies in Oregon. Grantor, Portland State University Foundation, an Oregon nonprofit corporation, and PSU shall be listed as named or additional insureds on all such policies.

Prior to commencement of the Work, the Contractor shall provide proof of insurance to Grantor.

1. Builders Risk/Property Damage Insurance with coverage limits in the amount of no less than the lesser of 1.5 x the base bid contract amount for the Work or \$1.0 million.
2. Commercial General Liability Insurance with coverage limits in the amount of no less than \$2.0 million general annual aggregate, with a \$1.0 million minimum limit per occurrence.
3. Automobile Liability Insurance with coverage limits no less than the minimum amounts required by law.
4. Workers' Compensation Insurance with coverage limits in an amount no less than the minimum amounts required by law.

## **2. ASSIGNMENT AND RELEASE**

### **A. Contracts for Architectural/Engineering and Construction**

#### **1. Architectural and Engineering Contract**

PDC has retained Hennebery Eddy Architects (the "A/E Firm") to perform all necessary design and engineering services in connection with the Work. PDC shall enter into a contract for the design and engineering work with the A/E Firm (the "A/E Contract"). The A/E Contract shall stipulate that the A/E Firm shall, upon completion of the Work to include closeout of all permits and issuance of a Certificate of Occupancy, PDC shall assign to Grantor any and all rights, indemnities, and warranties owed to PDC under the A/E Contract and shall release PDC from any and all obligations under the A/E Contract, and shall look exclusively to Grantor for any remedy in connection with the Work, except with respect to payment to the extent that PDC's Budget has not been exhausted. The A/E Contract shall further stipulate that the A/E Firm shall not seek payment from Grantor and shall release and hold Grantor harmless from any such claim or liability. The Parties agree that PSU shall, subject to the limitations of Oregon law with respect to the liability of public bodies applicable to PSU, bear all reasonably necessary costs in connection with the Work that exceed PDC's Budget and that Grantor and PDC shall have no liability therefor. Except in emergency circumstances, Grantor agrees to consult with and obtain approval from PSU prior to incurring costs in connection with the Work that exceed the PDC's Budget.

## **2. Construction Contract**

PDC intends to bid and award a public improvement construction contract (the "Contract") to the lowest responsive and responsible bidder who will perform the construction of the Work (the "Contractor") with oversight by the A/E Firm and PSU acting for itself and as the Owner's Representative (as defined below) for purposes of the Contract, with construction management services provided by PDC in coordination with PSU. The Contract shall stipulate that the Contractor shall, upon final payment for the Work from PDC, acceptance of the Work by Grantor and PSU, and the issuance of the Certificate of Occupancy for the Wet Lab Suite, assign to Grantor any and all rights, indemnities and warranties owed to PDC under the Contract including any obligation to maintain or repair the Work and shall release PDC from any and all obligations under the Contract, and shall look exclusively to Grantor for any remedy in connection with the Work except with respect to payment to the extent that PDC's Budget has not been exhausted. PDC shall have no further obligations with respect to the Work, including no obligation to maintain or repair the Work. The Contract shall further stipulate that the Contractor shall not seek payment from Grantor and shall release and hold Grantor harmless from any such claims or liability. The Parties agree that PSU shall, subject to the limitations of Oregon law with respect to the liability of public bodies applicable to PSU, bear all reasonable costs in connection with the Work that exceed PDC's Budget including contingency and that Grantor shall have no liability therefor. Except in emergency circumstances, Grantor agrees to consult with and obtain approval from PSU prior to incurring costs in connection with the Work that exceed PDC's Budget. A form of Contractor's consent to such assignment and release is attached hereto as Exhibit C (the "Consent"). This Section 2.A.2 shall survive the Term of this Agreement.

## **3. Other Construction Requirements**

### **A. Contractor Requirements**

During the Term of the Contract, PDC shall require that the Contractor: (1) maintain the areas where the Work is being performed in a clean and safe condition; (2) perform outside of normal business hours any work that would cause a disruption to other tenants of the Building due to level of noise, presence of strong or noxious odors, or substantial interference with access to other suites in the Building; and (3) keep the Property free and clear of all liens and encumbrances, including, without limitation, statutory construction liens.

### **B. Grantor/PSU Requirements**

During the Term of the Contract, Grantor and PSU agree to provide: (1) a reasonable area for staging and loading materials into the Property (2) payment for any and all utilities used by the Contractor in connection with the Work; and (3) payment for any tenant relocation that may be required by the Work. PSU

agrees it shall be responsible to cover any and all costs incurred in relation to performance of the obligations of PSU and Grantor under this section.

### **C. PSU Requirements**

During the Term of the Contract, PSU agrees to serve as Grantor's representative (the "Owner's Representative"). The Owner's Representative shall, among other things: (1) provide general construction management services on Grantor's behalf; (2) provide liaison and oversight services between Grantor, PDC, OHSU, the A/E Firm and the Contractor; and (3) consult with Grantor and keep Grantor informed of all aspects of the Work, including but not limited to (i) the progress of the Work; (ii) the status of the PDC Budget in relation to the Work completed and to be completed; (iii) any delays or other problems relating to the Work; and (iv) any decisions relating to the Work requiring Grantor's input.

### **D. Completion of the Work**

The Parties acknowledge and agree that they have reviewed and approved the final drawings completed by the A/E Firm dated July 17, 2009 for the Work (the "Plans") which are incorporated herein by reference. Subject to PDC's contracting requirements, the Parties agree to review and approve the selection of the Contractor. Upon reaching substantial completion of Work, the Parties shall all participate in the punch-list walk through and shall all sign-off as to the completion or not of such identified punch-list items. Upon issuance of Certificate of Occupancy and final payment to the Contractor by PDC, Grantor and PSU shall provide written confirmation of their respective unqualified acceptance of the Work, provided, however, that Grantor and PSU shall have the right to have the Work reviewed by an independent inspector prior to acceptance. The Parties acknowledge and agree that time is of the essence for completing the Work; provided, however, that PDC shall have no responsibility for any costs incurred as a result of delays in the Work that exceed PDC's Budget and shall have no responsibility for consequential damages as a result of such delays. Grantor may, in its discretion post a Notice of Nonresponsibility pursuant to ORS 87.030.

### **E. Acceptance of the Work/Assignment**

Upon receipt of written confirmation of its acceptance of the Work from Grantor and PSU, PDC shall execute documents appropriate to accomplish the assignment and release described in Section 2.A, including but not limited to the Consent and shall deliver the Consent to Grantor.

### **F. Contractor Indemnification Obligation**

The Contract shall provide that the Contractor, shall indemnify, defend and hold harmless Grantor, Portland State University Foundation, and PSU (and their

respective officers, directors, members, employees and agents) from any and all damages, losses, costs, expenses (including attorney fees), claims and liabilities relating to or pertaining to the Work performed by Contractor or its agents, employees or subcontractors in relation to the Property.

### **3. MISCELLANEOUS**

#### **A. Term of Agreement**

Except as otherwise expressly stated herein, the duration of this Agreement shall commence on the Effective Date and shall expire on September 15, 2010 (collectively, the "Term"). Grantor may terminate this Agreement only if PDC is in breach of any term or condition of the Agreement and by giving PDC at least ten (10) days' prior written notice specifying the breach and the date and time of termination. PDC shall have a reasonable time to cure the specified breach. If PDC materially cures the specified breach, this Agreement shall not terminate on the date and time specified in the notice and will remain in full force and effect.

#### **B. Notices**

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

#### **Grantor:**

Rebecca A. Hein, President  
2828 Corbett, Inc.  
PO Box 243  
Portland, OR 97207  
Facsimile (503) 725-5876

With a copy to:

Richard Baroway  
Garvey Schubert Barer  
121 SW Morrison Street, 11<sup>th</sup> Floor  
Portland, OR 97204  
Facsimile (503) 226-0259

#### **PSU:**

Portland State University  
Office of Finance & Administration  
PO Box 751 – MCD: FADM  
Portland, OR 97207-0751



**PDC:**

Portland Development Commission  
Attn: Gerald Baugh  
222 NW Fifth Avenue  
Portland, OR 97209  
Facsimile:

With a copy to:

Portland Development Commission  
Office of General Counsel  
222 NW Fifth Avenue  
Portland, OR 97209

Grantor shall address all questions related to the Work to the Construction Services Manager, Dave Obern, telephone number (503) 823-3737 or cell (503) 823-6206.

**C. Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon. Further, the Parties stipulate that this Agreement is deemed to have been made and entered into by them in the State of Oregon.

**D. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties.

**E. Severability**

The provisions of this Agreement are severable, and if one or more provisions are determined to be unenforceable, in full or in part, by a court of competent jurisdiction, the validity of the remaining provisions, including any partially unenforceable provisions, to the extent enforceable, shall not be affected in any respect whatsoever.

**F. Counterparts/Facsimiles**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding all of the Parties hereto, notwithstanding that all such parties are not signatories to the same

counterpart. Original signatures delivered via facsimile shall be deemed originals. The Party providing facsimile signatures shall, within a reasonable time thereafter, deliver the document with the original signatures to the other Party.

**G. Amendments and Modifications**

Any modifications to this Agreement shall be made in writing and executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the Effective Date.

GRANTOR

2828 Corbett, Inc.

By: \_\_\_\_\_  
Rebecca A. Hein, President

PSU

The State of Oregon, acting by and through  
The State Board of Higher Education on behalf of  
Portland State University

By: \_\_\_\_\_  
Denise I. Wendler, Associate VP for Finance and Controller

PDC

**Portland Development Commission**

By: \_\_\_\_\_  
Bruce A. Warner, Executive Director

APPROVED AS TO FORM:

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

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6772

Title:

AUTHORIZING PUBLIC IMPROVEMENT CONTRACT WITH J.E. DUNN CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$800,000 AND PERMIT OF ENTRY FOR CONSTRUCTION OF A BIOSCIENCE WET LAB AT 2828 SW CORBETT AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA

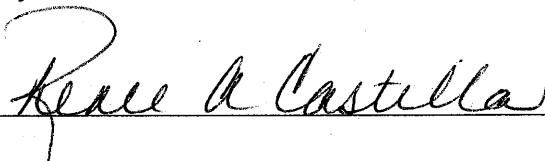
Adopted by the Portland Development Commission on February 10, 2010.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Charles Wilhoite	<input 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 duly recorded in the official minutes of the meeting.*



Date: March 8, 2010

Renee A. Castilla, Recording Secretary