

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6906

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND OFFICE OF MANAGEMENT AND FINANCE FOR THE LAND DISPOSITION AND DEVELOPMENT OF THE OREGON SUSTAINABILITY CENTER, LOCATED AT SW 4TH AVENUE AND SW MONTGOMERY STREET IN THE SOUTH PARK BLOCKS URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$10,450,000

WHEREAS, on July 24, 1985, the Portland City Council (“Council”) adopted Ordinance No. 157635 for the *South Park Blocks Urban Renewal Plan*, which calls for maintaining Portland's role as the major regional employment, population, cultural center by encouraging expanded opportunities for jobs;

WHEREAS, on April 12, 1995, through Ordinance No. 168702, the Council adopted the *University District Plan* amendment to the *Central City Plan*, which calls for the University District to be a vital, multi-cultural, and international crossroads with an environment which stimulates lifelong learning and collaboration between business and government;

WHEREAS, on September 1, 1999, through Resolution No. 35817, the Council directed the development of a *Green Building Action Plan* based on recommendations from the Sustainable Portland Commission's *Green Building Options Study*;

WHEREAS, in January 2001, through Resolution No. 35956, the Council directed City bureaus to adopt and implement *Portland LEED™ Green Building Rating System* and other approaches identified in the City's *Green Building Policy* pertaining to design and construction of new City facilities or City-funded projects;

WHEREAS, on April 27, 2005, through Resolution No. 36310, the Council amended the City's *Green Building Policy* as binding policy and directed all City bureaus and the Portland Development Commission (“PDC”) to require certain sustainable and green standards in construction, operation, and maintenance of City buildings;

WHEREAS, on July 2, 2009, through Resolution No. 36714, the Council adopted the *City of Portland Economic Development Strategy – A Five Year Plan for Promoting Job Creation and Economic Growth*, setting the objective for continuing Portland's leadership in green building by creating the next generation built environment, through the establishment of the Oregon Sustainability Center (the “Center”) to foster the next wave of innovation in sustainable building and living, and directed coordination with PDC regarding implementation of the actions identified in the Strategy;

WHEREAS, on October 23, 2009, through Resolution No. 36748, the Council adopted the *Climate Action Plan*, setting the goal for reducing carbon emissions by 80% by 2050, and established interim building and energy objectives to achieve zero net greenhouse gas emissions in all new buildings and homes and to ensure that new buildings can adapt to the changing climate;

WHEREAS, the City of Portland is in the process of developing the *Portland Plan*, a strategic and comprehensive plan for the future growth and development of the city over the next 30 years, which will strongly influence the region's ability to prosper without relying on carbon based energy;

WHEREAS, in March 2009, PDC as the City's urban renewal and redevelopment agency selected Gerding Edlen Development to prepare a feasibility analysis for the Center, where the feasibility study prepared would determine whether the world's first high-density, multi-use, net zero energy, water, and wastewater building that meets the requirements of the Cascadia Region Green Building Council's Living Building Challenge could be constructed;

WHEREAS, on August 4, 2010, the Council approved Resolution No. 36808 making a commitment to pursue a mutually agreeable partnership with the Oregon University System ("OUS") for the Center, directing the Bureau of Planning and Sustainability and PDC staff to initiate schematic design for the Center, and directing further analysis of the proposed development by BPS, PDC, and the Office of Management and Finance ("OMF");

WHEREAS, on August 27, 2010, the PDC Board of Commissioners approved Resolution 6818, which authorized the Executive Director to enter into an Intergovernmental Agreement ("IGA") with OUS in an amount not to exceed \$500,000 for payment of half of the schematic design costs for the Center;

WHEREAS, in May 2011, the design and development team completed schematic design on the Center;

WHEREAS, PDC, OMF, and OUS have received contingent tenant commitments for approximately 100,000 square feet (SF) of the planned 130,000 SF Center, and anticipate receiving tenant commitments from for-profit companies for the remainder of the space prior to initiating construction;

WHEREAS, on September 21, 2011, the Council approved Resolution No. 36880 committing the City of Portland to negotiate a Disposition and Development Agreement (Development Agreement) concerning joint ownership, financing and project management with OUS pursuant to the terms set forth in the Resolution; approved Ordinance No. 184919 authorizing the City of Portland to enter into this Intergovernmental Agreement with PDC for disposition of the property; and approved Ordinance No. 184920 authorizing the City of Portland to enter into an Intergovernmental Agreement with OUS for further design and construction expenditures;

WHEREAS, on September 23, 2011, the State's Interim Joint Ways and Means Committee accepted OUS's response to the Committee's 2011-2013 budget note request;

WHEREAS, the City, and OUS wish to jointly develop and own the Center, to be located on certain PDC-owned property on the Portland State University ("PSU") campus at the intersection of SW Fourth Avenue and SW Montgomery Street;

WHEREAS, PDC, the City, and OUS desire that the Center would be able to deepen Oregon's green building expertise, to support the local green building industry, to create local jobs, and to expand the understanding of the integral relationship between people and the buildings they occupy and operate;

WHEREAS, PDC, the City, and OUS desire that the Center would be the home to a consortium of sustainability-focused non-profit and for-profit businesses and contain space for classrooms and research, making the Center a hub for the region's economic competitiveness in sustainability and forging connections to Oregon's sustainable businesses by showcasing green building features and innovations;

WHEREAS, PDC, the City, and Center partners are committed to growing green businesses and a green economy that provides new employment opportunities to disadvantaged communities, and have developed a Construction Equity Agreement that ensures women, people of color, and

other historically disadvantaged or underrepresented groups have opportunities and equal access to working on the Center and future sustainability-related projects;

WHEREAS, in spring 2012, the City is expected to pursue Council authorization of a Development Agreement with OUS and City bond authorization in spring 2012; and

WHEREAS, in February 2012, OUS will seek full reauthorization of \$37 million in XI-F revenue bonds which are fully funded from tenant lease payments.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute an Intergovernmental Agreement with the City of Portland Office of Management and Finance substantially in the form as Exhibit A attached hereto, for the property disposition and development of the Center, including the PDC-owned property valued at \$3.85 million; amounts not to exceed \$4.1 million in TIF financing for the design and construction of the Center; and amounts not to exceed \$2.5 million in program revenue anticipated to be received in the South Park Blocks Urban Renewal Area over the next 15 years;

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to enter into a Construction Equity Agreement substantially in the form attached as Exhibit D to the IGA encompassing PDC's Business and Workforce Equity and Workforce Training and Hiring policies and providing equitable opportunities for local businesses enterprises to participate as designers, contractors, suppliers and laborers in the Center;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the aforementioned agreements if such modifications do not materially increase PDC's obligations or risks, as determined by the Executive Director in consultation with the PDC General Counsel, from those contained in the attached hereto; and

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

Adopted by the Portland Development Commission October 26, 2011.



Recording Secretary

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6906

Title:

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND OFFICE OF MANAGEMENT AND FINANCE FOR THE LAND DISPOSITION AND DEVELOPMENT OF THE OREGON SUSTAINABILITY CENTER, LOCATED AT SW 4TH AVENUE AND SW MONTGOMERY STREET IN THE SOUTH PARK BLOCKS URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$10,450,000

Adopted by the Portland Development Commission on October 26, 2011.

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 Aneshka Dickson	<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 type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<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 duly recorded in the official minutes of the meeting.



 Recording Secretary

Date: October 26, 2011

DRAFT

INTERGOVERNMENTAL AGREEMENT FOR

PROPERTY DISPOSITION AND DEVELOPMENT

OF THE

OREGON SUSTAINABILITY CENTER

This INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered this ___ day of September 2011 (the “Effective Date”), by and between the CITY OF PORTLAND by and through the OFFICE OF MANAGEMENT AND FINANCE (the “City”) and the PORTLAND DEVELOPMENT COMMISSION (“PDC”). The City and PDC may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A. PDC, as the duly designated Urban Renewal agency of the City of Portland (the “City”), is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects, including administering the South Park Blocks Urban Renewal Plan, adopted by the Portland City Council (“Council”) on July 24, 1985 through Ordinance No.157635 (as amended from time to time, the “Plan”), which, in part, encourages efforts to develop a University District pursuant to the Plan.
- B. Council has adopted a five-year economic development strategy, with the objective of continuing Portland's leadership in green building by fostering next-wave innovations in sustainable building through the next generation of built environment, identifying the Oregon Sustainability Center (the “OSC”) as such improvement.
- C. The Parties contemplate that the OSC will serve as a research and commercialization hub for local companies, universities, and students and will house Oregon University System (“OUS”) and Portland State University (“PSU”) offices, classrooms, conference room space and related research and educational facilities and the City’s Bureau of Planning and Sustainability (“BPS”) and is also expected to include spaces for green businesses, a group of sustainability focused non-profit organizations known as the Oregon Living Building Initiative (“OLBI”), and retailers. The approximately 130,000 gross square foot OSC will be comprised of approximately 48,500 square feet of classroom, research, and office space for OUS and PSU; 43,000 square feet of office space for non-profit and for-profit organizations; 5,000 square feet of retail space; 33,500 square feet of office space for the City; and a 4,000 square foot conference center. In addition, the OSC will accommodate the realignment of the Portland Streetcar (the “Streetcar”) diagonally through the Property (as hereinafter defined).
- D. The OSC will be designed to meet the International Living Future Institute’s Living Building Challenge and the U. S. Green Building Council’s LEED Platinum designation.
- E. The Parties have been collaborating with OUS, the administrative body of the Oregon State Board of Higher Education, which manages Oregon’s seven public universities, including PSU. OUS determined that it would advance OUS goals and Oregon’s leadership in sustainable building and technologies to invest in the OSC through construction and funding its development, and partnering with the City in jointly owning the OSC.

- F. In January 2009, with support from then Governor Ted Kulongoski, Mayor Sam Adams and the entire Oregon federal delegation, PDC and OUS collaborated in the issuance of a Request for Proposals by PDC for feasibility study exploring the design, engineering and financing of the development and construction of the OSC.
- G. The feasibility study produced by Gerding Edlen Development Company, LLC, (“GED”) which partnered with SERA Architects, GBD Architects, Interface Engineering, Green Building Services, Hoffman Construction, KPFF Engineering, among others (collectively the “Development Team”), determined that the development of the OSC as a high density urban mixed-use “living building” was possible.
- H. In August 2010, Council approved Resolution No. 36808 making a contingent commitment for the potential of joint development and ownership of the OSC by the City and OUS, subject to the City and OUS reaching agreement on deal points identified in the Resolution, and directed PDC, the City’s Office of Management and Finance (“OMF”), and BPS to evaluate the potential creation of the OSC through schematic design.
- I. In August 2010, the PDC Board of Commissioners (the “Board”) approved Resolution No. 6818 authorizing PDC to enter into an Intergovernmental Agreement with OUS for the payment of OSC schematic design;
- J. In November 2010, PDC and OUS entered into an Intergovernmental Agreement for the funding of schematic design for the OSC, with OUS leading the development program and design of the contemplated OSC, tenant discussion and agreements, and preparation of budget and pro forma for the construction of the OSC.
- K. In November 2010, OUS signed an agreement with GED to serve as the developer in the schematic design of the OSC.
- L. In May 2011, GED and the design team completed the OSC schematic design;
- M. In September 2011, OUS is anticipated to present a project report on the OSC to the State’s Interim Ways and Means Subcommittee on Capital Construction, seeking support from the subcommittee to commit to one-half of additional design and construction document costs which is anticipated to cost approximately \$2,500,000;
- N. In early 2012, the City and OUS are anticipated to enter into a development agreement (the “Development Agreement”) pertaining to the development, financing, ownership, and construction of the OSC and seek City bond authorization.
- O. In February 2012, OUS is anticipated to seek final state bond authorization.
- P. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the South Park Blocks Urban Renewal Area (“SPBURA”) was adopted.
- Q. The Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will convey the Property for development of the OSC, and the transfer of TIF funds and other revenues towards the City’s financial contribution in the OSC.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

1. CONVEYANCE OF THE PROPERTY

- 1.1. **Agreement for Disposition and Development.** The City shall use the Property and all PDC Funding (as hereinafter defined) in accordance with this Agreement as part of the City's financial contribution to the OSC, and agrees to work with OUS to develop the OSC in accordance with the Development Agreement. The City agrees to keep PDC informed of its progress with respect to the OSC.
- 1.2. **Description of the Property.** The real property which is the subject of this Agreement includes two PDC-owned parcels of land located at 401 SW Harrison Street, Portland, Oregon, (the "Jasmine Tree Lot") and SW 5th Avenue/4th Avenue/Montgomery Street, Portland, Oregon (the "PSU Carpool Lot") within the University District and South Park Blocks Urban Renewal Area ("SPBURA") each as more particularly described in Exhibit A attached hereto (collectively, the "Land"). The Land, together with (i) all rights, privileges and easements appurtenant to the Land owned by PDC, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land, and excepting the reservation of mineral rights pertaining to the PSU Carpool Lot reserved to the State of Oregon; and (ii) all improvements and fixtures located on the Land, including, without limitation all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures, is collectively referred to herein as the "Property".
- 1.3. **Property Consideration.** No monetary consideration shall be required from the City for the conveyance of the Property. As consideration for conveyance, the City shall develop the Property for the OSC.
- 1.4. **Fees and Costs.** The costs for recording a Memorandum of this Agreement (as hereinafter defined) shall be paid by PDC. The costs for recording the Deeds (as hereinafter defined) and any other documents required by the City to be recorded will be paid by the City. Each Party shall pay one-half (1/2) of any escrow fees charged by _____ Title Company (the "Escrow Agent"). All other Property Closing (as hereinafter defined) costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.
- 1.5. **Property Expenses and Claims.** In connection the Property Closing, PDC will arrange for the transfer of responsibility of utility services to the City, including, but not limited to, electricity, water, gas, and shall provide documentations related to these utility services. Any outstanding contracts for goods or services for the Property shall be terminated as of the Property Closing Date unless the City elects to assume and continue the identified contract. PDC shall be liable for and satisfy all Property expenses including but not limited to utility charges (e.g., electricity, gas, water, sewer or telecommunication), property taxes if any, liens and assessments, goods/services contracts and other trade debts, property liability claims including but not limited to personal or property injury and/or liability for environmental contamination and nuisances, which arise from prior to the Property Closing Date. The City shall be responsible for all such

property expenses and claims incurring on and after the Property Closing Date and as further detailed in Sections 1.6.3 and 1.6.4 below. Until PDC issues the PDC Certificate of Completion (as hereinafter defined), the City (or a subsequent transferee) shall not cause or create any lien or encumbrance on the Property except such encumbrances that may be necessary in connection with the Streetcar.

1.6. Due Diligence, Title and Environmental Matters.

1.6.1. Due Diligence Reports. Within ten (10) days of the Effective Date, PDC shall provide the City all documents pertaining to the Property, including but not limited to title reports, inspection reports and environmental assessments (including the Phase I Environmental Site Assessment described in this Section 1.6), appraisals (whether third party or internal), surveys, nuisance notices, and abatement records, and any other records, associated with PDC's acquisition, valuation, ownership and maintenance of the Property, a list of which is attached hereto as Exhibit B (the "Due Diligence Reports"). The City acknowledges that it has not relied on any verbal representations made by PDC as to the condition of the Property.

1.6.2. Phase I Environmental Site Assessment. Within 180 days prior to the Property Closing Date, PDC shall cause completion of a Phase I Environmental Site Assessment of the Property in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). PDC shall provide a copy of the Phase I Environmental Site Assessment to the City promptly after PDC's receipt thereof.

1.6.3. Recognized Environmental Conditions. To the extent that the Due Diligence Reports shall reveal a Recognized Environmental Condition on the Property, PDC shall enter into any necessary Oregon Department of Environmental Quality ("DEQ") Letter Agreement to complete the remediation and abatement, as applicable, of all Recognized Environmental Conditions on the Property in accordance with DEQ requirements and in a manner necessary to obtain a NFA Letter from DEQ. PDC's costs related to the Recognized Environmental Conditions on the Property shall be limited to an amount not to exceed \$500,000 and shall be deducted from the available PDC Funding for the OSC as defined in Section 3.5. As used herein, "Recognized Environmental Conditions" means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing release, a past release, or a material threat of a release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. As used herein, "Hazardous Substances" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq., or any other environmental law.

1.6.4. Unforeseen Environmental Conditions. If the City encounters, after the Property Closing Date and prior to issuance of the PDC Certificate of Completion, an Unforeseen Environmental Condition on the Property that was not otherwise identified as a Recognized

Environmental Condition in the Due Diligence Reports, that substantially differs as to the nature and extent from a Recognized Environmental Condition in the Due Diligence Reports, or that was not caused directly or indirectly by the City or its transferee, the City shall suspend or cause the suspension of, all related construction activity pending PDC's investigation of such Unforeseen Environmental Condition. Promptly after PDC's completion of its investigation, the Parties shall meet to agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which shall then be completed as part of the OSC, as a condition to issuance of the PDC Certificate of Completion and in a manner necessary to obtain a NFA Letter. PDC's costs related to any Unforeseen Environmental Condition shall be limited to any remaining amount of the PDC Funding available for the OSC. As used herein, "Unforeseen Environmental Conditions" means the presence of a Hazardous Substance on the Property that is not identified in the Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to environmental laws, will require remediation or abatement using means and methods that are prescribed by DEQ.

- 1.7. **Continuing Covenants.** The Parties acknowledge and agree that the following term shall be continuing covenant in the Deeds that survives the termination of this Agreement.

The Property will be used only for the OSC.

- 1.8. **Preliminary Title Report.** The City shall have until thirty (30) days following its receipt of the Preliminary Title Report to give notice to PDC of any objection(s) to title or to any liens, encumbrances or the exceptions affecting title to the Property ("Title Objections"). In the event that the City fails to raise any such Title Objections within thirty (30) days following its receipt of the Preliminary Title Report, all conditions and exceptions to title set forth in the Preliminary Title Report shall be deemed "Permitted Exceptions." In the event that the City presents Title Objections to an exception to title within the thirty (30) days following its receipt of the Preliminary Title Report, PDC shall be obligated to notify Buyer within ten (10) business days after receipt of notice of the City's Title Objections whether PDC is willing and able to remove such Title Objection(s). If PDC is willing and able to remove such Title Objection(s), PDC shall do so at or prior to the Property Closing Date, and all remaining exceptions set forth in the Preliminary Title Report and not objected to by the City shall be deemed "Permitted Exceptions." In all events, PDC shall be obligated to remove all monetary liens, monetary encumbrances and assessments, and other monetary obligations affecting the Property at or prior to the Property Closing. If PDC is not willing or able to remove the Title Objection(s), the City may: (i) terminate this Agreement; (ii) elect to acquire the Property subject to such Title Objection(s); or (iii) proceed to the Property Closing with a reduction in the Purchase Price satisfactory to the Parties for any Title Objections uncured by PDC in which case such Title Objection(s) and all remaining exceptions set forth in the Preliminary Title Report and not removed or agreed to be removed pursuant to this Section 1.8 shall be "Permitted Exceptions."
- 1.9. **Title and Escrow Agent.** On the Property Closing Date, PDC shall convey by Bargain and Sale Deeds, substantially in the form attached hereto as Exhibit C (the "Deeds") to the City fee simple title to the Property. Fee simple title to the Property shall be good and marketable and shall be insured by an Owner's Standard Form of Title Policy issued by Escrow Agent, in the full amount of the \$3,825,000 insuring fee simple title vested in the City (the "Title Policy"). The cost of the Title Policy shall be at PDC's expense. Title insurance shall be subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions. The City shall have the right, if the City so elects, to cause the Title Policy to be issued as an ALTA

extended coverage policy, provided that the City pays the additional premiums and survey costs associated therewith.

2. PROPERTY CLOSING.

2.1. **Conditions Precedent to the Property Closing.** The City and PDC are not obligated to close on the conveyance of the Property (the "Property Closing") unless the following conditions are satisfied to their reasonable satisfaction. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

A. To the Satisfaction of Both PDC and the City:

- 1) The City and OUS have executed the Development Agreement, including full OSC financial agreements and received formal authorization for the OSC bond funding;
- 2) The Parties have agreed to the final form of the Deeds and any documents necessary for the Property Closing;
- 3) PDC's Board and Council have authorized the consummation of the transactions contemplated by this Agreement;
- 4) The City receiving, ten (10) days prior to the Property Closing, a pro forma Title Policy insuring good, clear, marketable and fee simple title to the Property subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions; and
- 5) The Lease between PDC and PSU concerning the PSU Carpool Lot (the "Carpool Lot Lease") has been assigned to the City.

B. To the Satisfaction of PDC:

- 1) The City has committed to meet both the International Living Future Institute's Living Building Challenge and the U.S. Green Building Council's LEED Platinum designation for the OSC and such commitment is confirmed in the Development Agreement;
- 2) PDC is satisfied that the development and construction of the OSC will be subject to the Construction Equity Agreement substantially in the form attached hereto as Exhibit D (the "Construction Equity Agreement") which is consistent with PDC's Business and Workforce Equity Agreement;
- 3) The terms and conditions of the Development Agreement are consistent with this Agreement; and
- 4) PDC shall have amended the SPBURA to allow funding the OSC as a public building.

C. To the Satisfaction of the City:

- 1) PDC has contributed the Construction Document Funding.

- 2.2. **Property Closing Date.** PDC will convey the Property to the City on the earlier of: (i) the date that is no later than ten (10) days after the satisfaction of the Conditions Precedent to the Property Closing set forth in Section 2.1 hereof; or (ii) March 31, 2013, the earlier of which is the "Property Closing Date".
- 2.3. **Reconveyance.** In the event that the City does not proceed with the OSC as contemplated by the Development Agreement or that commencement of construction of the OSC has not begun on or before March 31, 2013, PDC, at its election, may demand that the City reconvey the Property to PDC by Quit Claim Deed, in the form attached hereto as Exhibit E. The provisions of this Section 2.3 shall survive any termination of this Agreement.
- 2.3.1. **Condition of the Property at Reconveyance.** In the event that PDC requires the City to reconvey the Property to PDC as described in Section 2.3, the City shall return the Property to PDC in substantially the same condition as it was on the Property Closing Date and shall reassign the Carpool Lot Lease to PSU.
- 2.3.2. **Return of PDC Funding.** In the event that PDC requires the City to reconvey the Property to PDC as described in Section 2.3, the City shall return any unused PDC Funding (as hereinafter defined) to PDC within 30 days of request by PDC or mutually agreed upon timeline.
- 2.4. **Subsequent Transfer of the Property.** As may be necessary to ensure development of the OSC, the Development Agreement may provide that the City may subsequently transfer the Property to OUS, subject to the limitations of this Agreement including Section 1.5. The Development Agreement shall provide that in the event that the OSC does not proceed or if there is a default under the Development Agreement, that the Property be reconveyed to PDC by the then owner of the Property in accordance with the reconveyance terms of this Agreement set forth in Section 2.3.

3. PDC FUNDING.

- 3.1. Provided that: (i) the Construction Equity Agreement has been fully executed; and (ii) OUS has executed an agreement, satisfactory to PDC, to provide an amount equal to the Construction Document Funding (as hereinafter defined) for completion of the construction documents for the OSC, PDC shall, after the Effective Date of this Agreement and upon written request from the City, disburse up to \$1,500,000 of the Total PDC Contribution (as hereinafter defined) (the "Construction Document Funding") to the City for completion of the construction documents for the OSC which reflects approximately one-half of the costs associated with completing such construction documents.
- 3.2. **TIF Funds for the OSC Financing.** PDC has identified \$4,900,000 ("PDC's Total Contribution") in Tax Increment financing ("TIF") funds for the OSC. Of that amount, approximately \$739,500 has already been spent or committed for predevelopment and schematic design of the OSC. PDC will transfer the Construction Document Funding to the City, subject to Section 3.1. The balance of PDC's Total Contribution, less any additional expenses incurred by PDC and mutually agreed upon by PDC and the City, will be disbursed to the City upon satisfaction of the Conditions Precedent to PDC Funding set forth in this Section 3. The full amount of PDC's Total Contribution shall be used by the City in calculating the City's financial contribution to the OSC.

- 3.3. **Valuation of Property.** An August 2011 appraisal valued the Property at \$3,850,000, of which no more than \$1,800,000 is deemed as part of the City's financial contribution to the OSC.
- 3.4. **SPBURA Revenue Funds.** The SPBURA issued its last remaining bonded indebtedness July 2008. PDC anticipates that there will be revenues associated with the indebtedness that will be received after closeout of the SPBURA. To the extent permitted by law and that the Property remains in the SPBURA, in addition to PDC's Total Contribution, PDC intends to transfer to the City the SPBURA cash revenue, net administrative costs, , ("SPBURA Revenues") to pay down the City's construction bonds for the OSC subsequent to the completion of the OSC. PDC shall provide the City a ten-year revenue forecast for the SPBURA, with an initial forecast to reflect revenue data as of the Effective Date and subsequently updated at least once annually together with the budget process.
- 3.5. **Other SPBURA TIF Funds.** To the extent that there are costs for environmental remediation of the Property pursuant to Sections 1.6.3 and 1.6.4 hereof, PDC shall, after Board approval, transfer to the City SPBURA TIF funds ("Other SPBURA Funds") PDC's Total Contribution, SPBURA Revenues and Other SPBURA Funds are collectively referred to herein as "PDC Funding".
- 3.6. **TIF-Eligible Uses.** PDC Funding shall only be expended on TIF eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements, including paying down construction bonds after the completion of construction. Costs for operations, maintenance, and moving transit stock are not typically eligible uses of TIF.
- 3.7. **Budget Appropriation.** The full amount of the PDC Funding is not authorized in PDC's current fiscal year's budget. PDC will encumber the funds as the funds are approved through budget appropriation. The PDC Funding is subject to budget appropriation. If the full amount of the PDC Funding is not authorized in the current fiscal year's budget, it is acknowledged that PDC Funding amounts identified for expenditure in future fiscal years have not been appropriated in the current year's budget. If funding has been identified in the Portland Development Commission Five-Year Budget Forecast, PDC staff agree to recommend to the PDC Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- 3.8. **Records Retention.** The City shall retain all records, receipts and invoices related to the OSC in accordance with Oregon's law regarding public records retention and shall make the same available for PDC inspection so it may verify eligible use of PDC Funding. The City shall retain all records, receipts and invoices related to the SPBURA Revenue Funds for a period of 10 years from the Effective Date of this Agreement and shall make the same available for PDC inspection so it may verify eligible use of said funds.
- 3.9. **Conditions Precedent to PDC Funding.** PDC is not obligated to provide the balance of PDC's Total Contribution or any other PDC Funding unless and until the following conditions are satisfied to PDC's reasonable satisfaction which shall not be unreasonably withheld, conditioned, or delayed:
 - 1) PDC shall have conveyed the Property to the City in accordance with this Agreement;

- 2) PDC has received documentation indicating that the City of Portland Bureau of Development Services is ready to issue the building permits that are required to construct the OSC;
 - 3) PDC has confirmed that the Final Project Budget set forth in the Development Agreement is adequate to construct the OSC and the City has demonstrated financial feasibility for the OSC, consistent with such Final Project Budget;
 - 4) Both the Design Development Drawings and Final Construction Plans and Specifications (as defined in the Development Agreement) have been approved by all required governmental entities and/or agencies, including PDC's design review pursuant to Section 4 below;
 - 5) All land use approvals and permits for the OSC required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal was filed, it shall have been finally resolved;
 - 6) The City shall have entered into a Development Agreement with OUS concerning compliance with the Oregon Prevailing Wage Law (ORS 279C.800 to 279C.870); and
 - 7) PDC shall have received confirmation from the City that the Construction Document Funding was expended on the final construction documents for the OSC.
- 3.10. **Funding Closing Date.** PDC will disburse the balance of PDC's Total Contribution to the City on the earlier of: (i) the date that is no later than ten (10) days after the satisfaction of the Conditions Precedent to PDC Funding in Section 3.6 hereof; or (ii) March 31, 2013, the earlier of which is the "Funding Closing Date".

4. NON-SATISFACTION OF CONDITIONS

- 4.1. **Elections upon Non-Satisfaction of Conditions.** If any of the conditions in Section 2.1 or 3.8 are not fulfilled to the satisfaction of the benefited Party or Parties as of each respective closing date (or such later date, if any, designated pursuant to Section 4.1 **Error! Reference source not found.** below or determined in accordance with Section 4.2, then such benefited Party or Parties may elect as follows; provided, however, to the extent the failure of a condition to be satisfied occurs and such failure of the satisfaction of such condition constitutes a default under this Agreement, the non-defaulting party shall have all rights and remedies against the defaulting party that are available to such non-defaulting party under this Agreement:
- (a) Terminate this Agreement by and effective upon written notice to the other Party;
or
 - (b) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or
 - (c) Designate in writing a later date for the respective closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

- 4.2. **Termination Date for Non-Satisfaction of Conditions.** If all of the conditions precedent to each respective closing date have not been satisfied or waived by the later of (a) the respective closing date or (b) such later date, if any, designated pursuant to Section 4.1(c), then this Agreement shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and Closing shall have occurred within such 60-day period.
- 4.3. **Effect of Termination for Non-Satisfaction of Conditions.** If this Agreement terminates or is terminated for non-satisfaction of any conditions precedent and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County.

5. PLANS, DRAWINGS AND PDC DESIGN REVIEW AND APPROVAL.

- 5.1.1. **PDC Design Review and Approval, in General.** The Development Team has prepared Preliminary Design Documents for the Project that are the basis for entering into this Agreement for the OSC. The City shall submit the Development Team's Design Development Drawings and Construction Drawings and Technical Specifications to PDC for review and approval as discussed. All plans and specifications referred to in this Section are referred to herein as the "Drawings." In connection with the review of any Drawings, the approval or rejection of such Drawings by PDC, in its sole discretion, shall not be unreasonably withheld, conditioned or delayed. Capitalized terms used in this Section 4 shall have the meaning ascribed to them in the Development Agreement.
- 5.1.2. **Limitations on Review of Design.** PDC's review and approval of the Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:
- (a) **Draft Design Development Drawings (50% DD).** Elements, including Green Building elements, draft Design Review Application and Narrative, draft Development Drawings (50%) material and color samples, and draft Design Development Drawings (50%) cost estimate, depicted in the draft Design Development Drawings (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Preliminary Design Documents;
 - (b) **Final Design Development Drawings (100% DD).** Elements, including Green Building elements, Final Design Review Application and Narrative, final Design Development Drawings material and color samples, and final Design Development Drawings cost estimate, depicted in the final Design Development Drawings that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Design Development Drawings (50%);
 - (c) **Draft Construction Drawings and Technical Specifications (50% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (50%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications

(50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Design Drawings;

- (d) **Final Construction Drawings and Technical Specifications (100% CD).** Elements, including Green Building elements, final Construction Drawings and Technical Specifications cost estimate, and material and color samples, depicted in the final Construction Drawings and Technical Specifications that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Construction Drawings and Technical Specifications (90%);
- (e) **Construction Shop Drawings and Product Submittals.** Elements including design build, shop drawings and product submittals that were not approved, that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved final Construction Drawings and Technical Specifications.

5.1.3. **Changes in Approved Drawings.** The City shall submit to PDC for review any substantial changes to any previously approved Drawings. A substantial change shall mean any change that would have a material impact on the function, appearance or cost of the OSC.

5.1.4. **Work Product.** Any PDC rights, rights and interest, that PDC acquires or may acquire in the schematic design and pre-construction phase for the OSC shall be shared with the City, including but not limited to any intellectual property rights and work product (e.g., copyright, license, trademark, trade names, service marks, registered business names), in any materials produced in connection with the OSC.

6. PDC CERTIFICATE OF COMPLETION.

6.1.1. **When the City is Entitled to PDC Certificate of Completion.** Upon substantial completion of the OSC as described in this Section 5, PDC will furnish the City with a PDC Certificate of Completion for the OSC. The OSC will be deemed to be substantially complete when:

- i. PDC determines that the OSC is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the OSC for the purposes intended under this Agreement and the Development Agreement;
- ii. The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the OSC; and
- iii. The City and OUS have submitted all materials to the United States Green Building Council necessary to obtain LEED Platinum certification and a plan to meet the International Living Future Institute's Living Building Challenge with respect to the OSC.

6.1.2. **Form and Effect of the Certificate of Completion.** A PDC Certificate of Completion shall be substantially in the form of Exhibit F and in a form that can be recorded in the real property records of Multnomah County. The PDC Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of PDC as expressly provided for in the PDC Certificate of Completion.

7. GENERAL PROVISIONS

- 7.1. **Recitals.** The Recitals stated above are incorporated into this Agreement.
- 7.2. **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, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

City of Portland
OMF - Bureau of Internal Business Services
1120 SW 5th Avenue, Rm 1204
Portland, Oregon 97204
Attn: Jeff Baer, Director
Phone: 503-823-6852
Fax: 503-823-6924
Jeffrey.baer@portlandoregon.gov

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

Portland Development Commission
222 NW 5th Ave.
Portland, OR 97209
Attn: Lisa Abuaf
Phone: 503-823-7380
Fax:
Abuaf@pdc.us

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended. The Parties shall provide updated contact information as needed.

- 7.3. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 7.4. **Dispute Resolution.** If a dispute arises regarding this Agreement, the Parties agree to exercise good faith in expeditiously resolving any conflict. All conflicts should first be discussed and resolved if at all possible by the persons identified in the Notice Section. Any conflicts not resolved by the contact person shall be elevated to the designee of the governing board of the Parties, specifically the Mayor for the City and the Executive Director for PDC, for discussion and resolution.
- 7.5. **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.

- 7.6. **Further Assurances.** The Parties will sign other documents and take other actions reasonably necessary to further effect and evidence the transactions contemplated in this Agreement.
- 7.7. **Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 7.8. **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 that such approval is not necessary. The City's Chief Administrative Officer ("CAO") may approve and execute amendments and modifications to this Agreement as may be necessary for the OSC upon City Attorney approval to form. The CAO may delegate some or all responsibilities for this Agreement to the Director of the Bureau of Internal Business Services.
- 7.9. **Time of Essence.** Time is of the essence of this Agreement.
- 7.10. **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.
- 7.11. **Recording of Memorandum of Agreement.** PDC shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit G F to this Agreement. When PDC issues to the City a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.
- 7.12. **Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.
- 7.13. **STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL,

TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO
INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY,
UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11,
CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855,
OREGON LAWS 2009.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**PORTLAND DEVELOPMENT
COMMISSION**

CITY OF PORTLAND

By: _____
Patrick Quinton, Executive Director

By: _____
Jack D. Graham, Chief Administrative
Officer
Office of Management and Finance

Approved as to Form

Approved as to Form

Lisa Gramp, Assistant General Counsel

City Attorney

EXHIBIT A

401 SW Harrison Street, Portland, Oregon, (the “Jasmine Tree Lot”) and more particularly described as Lot 4 and the Southerly 15 feet of Lot 3, Block 153, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon,

R246228

SW 5th Avenue/4th Avenue/Montgomery Street, Portland, Oregon (the “PSU Carpool Lot”) and more particularly described as Lots 1 and 2, and the north 35 feet of Lots 3 and 6, and Lots 7 and 8, BLOCK 153, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon

R246229

EXHIBIT B

DUE DILIGENCE REPORTS

PSU Carpool Site (R246228)

- Phase II Environmental Site Assessment (ESA) prepared by PBS Engineering and Environmental, October 25, 2002
- UST Closure Report prepared by Varchan Environmental, December 20, 2002
- DEQ Underground Storage Tank Decommissioning letter dated January 9, 2003.
- Memo to DEQ Correction on HOT Closure #6782 dated February 10, 2011

Jasmine Tree Site (R246229)

- Design Level Regulated Building Materials Survey, prepared by AMEC Earth & Environmental, Inc., March 2004 (no longer applicable as building was demolished in 2006)
- Phase I Environmental Site Assessment, prepared by Parametrix, March 3, 2004
- Phase II Environmental Site Assessment, prepared by Parametrix, April 2004
- Underground Storage Tank Closure Report, prepared by Anderson Environmental Contracting, LLC, August 2007
- Post Demolition Soil Sampling Report, prepared by PDC, November 1, 2007
- DEQ Underground Storage Tank Decommissioning letter dated June 3, 2008

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:

CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE
ATTN: PROPERTY MANAGEMENT
1120 SW 5TH AVENUE, RM 1204
PORTLAND, OREGON 97204

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 (which, together with any successor public agency designated by or pursuant to law, is herein called "Grantor" or "PDC"), conveys to the **CITY OF PORTLAND**, a municipal corporation, by and through the Office of Management and Finance ("City"), the following described real property (herein called the "Property"):

401 SW Harrison Street, Portland, Oregon, as more particularly described as: Lot 4 and the Southerly 15 feet of Lot 3, Block 153, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon, and,

432 SW Harrison Street, Portland, Oregon as more particularly described as: Lots 1 and 2, and the north 35 feet of Lots 3 and 6, and Lots 7 and 8, BLOCK 153, CIT OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon

The conveyance is made pursuant to that certain Intergovernmental Agreement between City and PDC, dated _____ 20__, a Memorandum of which was recorded on _____, 20__ as Document No. _____, Records of Multnomah County, Oregon (the "Agreement"). Any capitalized terms in this Deed shall have the meanings set forth in the Agreement, unless otherwise defined herein. Other property or value was either part or the whole consideration.

The conveyance is subject to the following:

1. A covenant running with the land restricting the use of the Property to development and construction of the OSC.

This Deed is made by PDC pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457, and Chapter XV of the Charter of the City of Portland, and for the purpose of carrying out an urban renewal plan for the South Park Blocks Urban Renewal Area approved by the City Council of the City on _____, as amended.

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. 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.

Dated this _____ day of _____, 2011.

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: _____
Chairman

By: _____
Secretary

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 2011, by _____ as Chairman of the City of Portland Development Commission, on its behalf.

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 2011, by _____ as Secretary of the City of Portland Development Commission, on its behalf.

Notary Public for
My commission expires: _____

Accepted this _____ day of _____, 2011.

CITY OF PORTLAND, a municipal corporation, by and through the Office of Management and Finance

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2011,
by _____, as _____ of the City of Portland,
by and through its Office of Management and Finance, on its behalf.

Notary Public for
My commission expires: _____

EXHIBIT D

FORM OF CONSTRUCTION EQUITY AGREEMENT for Contracting, Workforce Training and Professional Services for the Oregon Sustainability Center

Project overview

The Portland Development Commission (PDC), in partnership with the Oregon University System (OUS), City of Portland (City), and a coalition of sustainability-related nonprofits known as the Oregon Living Building Initiative (OLBI) are working together to develop the Oregon Sustainability Center (OSC).

OSC is striving to be the world's first high-density, multi-use, net zero energy, water, and wastewater building. Importantly, it will seek to expand the role of social equity in sustainability by contributing to a strategy for providing environmental and economic opportunities for low-income people and people of color.

The OSC has been designed and will be constructed to meet the International Living Future Institute's Living Building Challenge and the U.S. Green Building Council's LEED Platinum designation, the "most advanced measure of sustainability in the built environment" available today. By meeting the Challenge's imperatives, OSC will serve as a replicable model for creating new industries, spawning green jobs and protecting the environment.

The building will be located on the eastern edge of Portland State University campus in downtown Portland, Oregon. It will form the nucleus of the Portland State University EcoDistrict, a neighborhood strategy to develop and integrate smart buildings, infrastructure, transportation, and community connectivity along sustainable lines.

The OSC will generate approximately 780 direct and indirect jobs in diverse sectors. More importantly, these workers will gain first-hand experience working on an innovative prototype building that includes cutting-edge energy, water and waste-saving systems.

Goals of the Construction Equity Agreement

This project will provide many opportunities for local businesses enterprises to participate as designers, contractors, suppliers and laborers. The City and PDC assembled a group of stakeholders to create this Construction Equity Agreement (CEA) that clarifies business and workforce equity goals, metrics and monitoring processes.

The purpose of this Agreement is to:

- Make public the project team's commitment to meeting or exceeding the goals set forth in the agreement for construction firms that are certified by the State of Oregon as Minority, Women and Emerging Small Business (M/W/ESB).
- Create, market and promote new opportunities for women and minority-owned professional service providers and women and minority professional services workers.
- Ensure that women, people of color, and other historically disadvantaged or underrepresented groups have equal access to working on the project.
- Offer opportunities and access to information that helps M/W/ESB firms earn work on this and future sustainability related projects.
- Involve stakeholders and community members in developing and enacting policies and processes.

The Agreement

Whereas, the Oregon Sustainability Center will be among the most sustainable buildings ever designed and constructed, and

Whereas, the Oregon Sustainability Center has been designed and will be constructed to meet the International Living Future Institute's Living Building Challenge and the U.S. Green Building Council's LEED Platinum designation, and

Whereas, the Oregon Sustainability Center aims to celebrate and nurture the values and strengths of Oregon's leadership on climate change, land use planning, smart growth, green building, environmental stewardship, civic engagement and social justice, and

Whereas, the Portland metro area is committed to growing green businesses and a green economy that puts people back to work and provides new employment opportunities to disadvantaged communities, as reflected in the 5-year Economic Development Strategy, and

Whereas, the Coalition for a Livable Future's Regional Equity Atlas demonstrates the need for ongoing advancement of equity for people living in poverty, people of color, and women as a key component of the region's development, and

Whereas, the development of the Oregon Sustainability Center has been marked by an impressive degree of collaboration among and contributions from public, private, nonprofit, and community institutions,

Now, therefore, it is the recommendation of the undersigned parties that the following goals are aspirational and shall not be construed to limit any additional efforts those private firms involved in this project should pursue. These goals shall be incorporated into the design and construction phases of the Oregon Sustainability Center.

I. Project Requirements

The City, the PDC, Gerding Edlen Development, Skanska USA, GBD Architects, SERA Architects and the Community for Equity shall work closely together to achieve the following goals in the design and construction of the OSC.

II. Construction Subcontracting

For all subcontracted work the project shall strive to achieve an overall 25% utilization of State of Oregon certified M/W/ESB firms. The percentage will be based on 25% of hard construction costs as calculated by an analysis of availability and capacity of certified firms and specific divisions of construction for the project and includes the removal of non-hard costs such as permits, bonding and insurance from the percentage; the identification of divisions of construction such as elevators and others for which there is no small business capacity; and the analysis of availability of divisions of construction and the availability of certified firms shall be based on current PDC procedures and contracting plan templates.

III. Workforce Training, Hiring and Benefits

For subcontracts over \$100,000, contractors must:

- A. Require a minimum of 20% of labor hours in each apprenticeable trade performed by the contractor and subcontractor are worked by state-registered apprentices. (Note: All trades are considered apprenticeable in this Agreement.)
- B. Be a Bureau of Labor and Industry (BOLI) registered Training Agent who is registered with a Joint Apprenticeship and Training Committee (JATC) that has been in existence for a minimum of five (5) consecutive years and has produced graduates.
- C. Give preference to State of Oregon certified M/W/ESB firms which are prequalified and categorized by capability.

- D. Employer contributions towards an employee benefit allocation shall be equal to or greater than the amount established under the prevailing wage fringe rate for that craft.
- E. Submit a detailed plan that describes how the contractor will meet the workforce diversity goals and information about the healthcare coverage provided to workers in bid documents.
- F. If an employer offers either employer-paid or employee-paid health insurance coverage to the spouses of its employees, in order to provide equal benefits, the employer must also offer health insurance coverage to the domestic partners of its employees. Where health insurance coverage is available for the children of employees' spouses (such as step children), such benefits must be extended to the children of employees' domestic partners.
- G. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the city of Portland that:
 - Women should work not less than 9% of total project hours (percentage includes both apprenticeship hours and journey level hours)
 - People of color should work not less than 27% of total project hours (percentages include both apprenticeship hours and journey level hours).

IV. Professional Services

For architectural, design and engineering services, the goals are to: Maximize the number of State of Oregon certified minority-owned, and women-owned firms working on the project and build these firms' capacity to participate in future sustainability-driven professional service opportunities. Since policy guidelines do not currently exist for MBE and WBE utilization on professional services contracts, success will be measured by:

- A. Providing a one-time report to the Evaluation and Implementation Committee on the existing design firms' workforce diversity characteristics by race and gender. Each firm will include the number of minorities and women within the current workforce broken out by ethnicity, positions held, and project work hours performed.
- B. Reporting to the Evaluation and Implementation Committee how the existing design firms provide advancement opportunities for women and minorities within the firm and ways it mentors, trains and builds the capacity of minorities and women that are entering the field.
- C. Identify and increase opportunities for minority-owned and women-owned firms to be involved in the project by subcontracting scopes of work for acoustical, signage, audio/visual, façade, hardware, tenant fit-out, space planning including identifying furniture and workstation options as required. Other opportunities will be identified as the project progresses.
- D. Performing focused outreach to ensure minorities and women are aware of the project's remaining contracting opportunities, including pre-bid, one-on-one and networking meetings involving PDC, the existing design firms, and MBE and WBE contractors.
- E. Providing recommendations as requested by the City and PDC for future policy development based on workgroup findings.
- F. Creating mentorship opportunities related to the project for minorities and women who are graduating high-school and/or freshman/sophomore year college students.

For the purpose of the Professional Services section, "minority" is defined as racial and ethnic groups identified in the federal regulations in Oregon Administrative Rule 445-050-0005. Only firms that are State of Oregon certified as Minority-owned or Women-owned Businesses will be included in calculating related utilization rates, but the workforce diversity characteristics of all firms will be reported to the Evaluation and Implementation Committee.

V. Accountability, Reporting and Monitoring

Representatives from the signatory parties and the CEA workgroup will form an Evaluation and Implementation Committee to help set accountability strategies to enforce compliance with required elements of the agreement, as well as recognition of excellence in complying with or going beyond standards; and to take actions to improve progress toward standards and community benefits and to enforce within the parameters of approved City and PDC policies.. This Committee will establish tracking

mechanisms for the business utilization and workforce requirements. The Evaluation and Implementation Committee will convene monthly to review submissions by the professional services teams and workforce and M/W/ESB utilization reports generated by the City of Portland. The City generate reports will provide prime and sub trade hours by project, list minority and female apprentice hours worked and track percentage utilization of M/W/ESB firms. These reports will be made available to members of the public upon submission of a public records request. At the end of the project, the Evaluation and Implementation Committee will produce a report quantifying the results of the hiring practices and a narrative about successes and lessons learned.

VI. Roles and Expectations of Signing Organizations

Signing organizations are expected to contribute to the successful outcome of this Agreement. The City of Portland will pass a Resolution endorsing this Construction Equity Agreement. The Resolution will establish the Evaluation and Implementation Committee and direct the Portland Development Commission to provide outreach to targeted contractors and the City of Portland Procurement Services to provide needed data and information to the Evaluation and Implementation Committee.

VII. Authority and Effective Date

Each of the individuals signing below represents that he or she is properly authorized by the party for whom the individual is signing to execute this Construction Equity Agreement which is effective as of September 21, 2011.

City of Portland
Portland Development Commission
Gerding Edlen Development
Skanska
GBD Architects
SERA Architects
Community for Equity

EXHIBIT E

FORM OF QUITCLAIM DEED

After recording return to and,
until a change is requested,
all tax statements shall be sent to:
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209
Attn: General Counsel

QUITCLAIM DEED

CITY OF PORTLAND, a municipal corporation, by and through the Office of Management and Finance (“City”), (“Grantor”), releases and quitclaims to the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated Urban Renewal Agency of the City of Portland (together with any successor public agency designated by or pursuant to law, “Grantee”), all right, title and interest in and to the following described real property:

401 SW Harrison Street, Portland, Oregon, as more particularly described as: Lot 4 and the Southerly 15 feet of Lot 3, Block 153, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon, and,

432 SW Harrison Street, Portland, Oregon, as more particularly described as Lots 1 and 2, and the north 35 feet of Lots 3 and 6, and Lots 7 and 8, BLOCK 153, CIT OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon

Other property or value was either part or the whole consideration.

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. 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.

Dated this ___ day of _____, 2011.

CITY OF PORTLAND, a municipal corporation, by and through the Office of Management and Finance

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2011,
by _____, as _____ of the City of Portland,
by and through its Office of Management and Finance, on its behalf.

Notary Public for
My commission expires: _____

Accepted this ___ day of _____, 2011.

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

By: _____
Name: _____
Title: Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
_____, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly
designated urban renewal agency of the City of Portland, on its behalf.

Notary Public for
My commission expires: _____

EXHIBIT F

FORM OF PDC CERTIFICATE OF COMPLETION

After recording return to:

PDC CERTIFICATE OF COMPLETION

The CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("PDC") hereby determines that _____, a _____ ("Developer"), has substantially completed construction of the Project as described in the Agreement for Disposition and Development of Property (_____), dated _____, 20__ (the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____ on _____, 20__. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section **Error! Reference source not found.** of the DDA, PDC hereby determines that:

- (i) the Project is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project,
- (iii) Developer has submitted all materials to the United States Green Building Council necessary to obtain the applicable level of LEED certification required by the Green Building Policy, and

This PDC Certificate of Completion constitutes a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations shall automatically cease and become of no further effect, except as otherwise provided in this PDC Certificate of Completion. This PDC Certificate of Completion represents and determines the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, and
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this PDC Certificate of Completion

(“Surviving Sections”): Section **Error! Reference source not found.** (INDEMNITY FROM LIABILITY CLAIMS), Section **Error! Reference source not found.** (INDEMNITY FROM LIENS), Section 8 (COVENANTS RUNNING WITH THE LAND), Section **Error! Reference source not found.** (INDEMNIFICATION)

Other than its right to enforce the Surviving Sections, PDC shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, or as a result of a breach of any provisions of the DDA relating to construction by the Developer, or by any successors in interest or assigns of Developer. Without limitation, PDC confirms that PDC no longer has any right of entry to the Property or power to terminate Developer’s title to the Property and revest such title in PDC.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this ____ day of _____, 20__.

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

By: _____
Name: _____
Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by _____, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland, on its behalf.

Notary Public for Oregon
My commission expires: _____

EXHIBIT G
FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

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

Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (“Memorandum”) shall serve as notice to all persons that the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“PDC”), with an address of Portland Development Commission, 222 NW Fifth Avenue, Portland, Oregon 97209-3859 and _____, a _____ (“Developer”), with an address of _____, entered into an Agreement for Disposition and Development of Property in the _____ Urban Renewal Area, (_____) dated as of _____, 20__ (“Agreement”) relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit A attached hereto (the “Property”).

Among other things, the Agreement requires PDC to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement.

The Agreement also imposes several covenants running with the land. Developer covenants and agrees to use the Property only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications and that prior to the issuance of the PDC Certificate of Completion, the Design Review provisions of Section _ of this Agreement will survive any foreclosure of transfer of the Property by a deed in lieu of foreclosure or any other transfer of the Property. PDC and Developer also declare and agree that these covenants described in this paragraph are covenants running with the land and shall pass to and be binding on Developer’s successors in title, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property.

As a condition subsequent to the Property conveyance, in the event of a default by Developer before PDC issues a PDC Certificate of Completion, PDC shall have the option, upon 30 days written notice (“Notice of Termination”) to Developer and Escrow Agent, to declare a termination in favor of the PDC of all the title, rights and interests of Developer in the Property. After delivery of such Notice of Termination and in the event Developer fails to remedy, end or abrogate such default within the 30-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to PDC by

quitclaim deed, pursuant to the escrow instructions in Exhibit I attached to the Agreement. After a PDC Certificate of Completion is recorded as to the Project, PDC shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the PDC Certificate of Completion. PDC shall thereafter have no further right of entry to the Property or power to terminate the title, rights and interests of Developer in the Property as described above.

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

EXHIBIT A TO MEMORANDUM OF AGREEMENT

Description of Property