

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6648

APPROVE THE FIRST AMENDMENT TO THE LETTER OF INTENT AND ESCROW AGREEMENT WITH THE UNITED STATES POSTAL SERVICE, EXTENDING THE EXCLUSIVE NEGOTIATION PERIOD BY 90 DAYS TO MARCH 31, 2009 AND CHANGING THE DATE ANTICIPATED FOR EXECUTION OF A PURCHASE AND SALE AGREEMENT TO MARCH 31, 2009 FOR THE PROPERTY LOCATED AT 715 NW HOYT STREET, PORTLAND, OREGON, IN THE RIVER DISTRICT URBAN RENEWAL AREA.

WHEREAS, relocation and acquisition of the United States Postal Service (“USPS”) Processing and Distribution Center (“P&DC”) at 715 NW Hoyt Street in the River District Urban Renewal Area has long been envisioned by the general public, elected officials, and adopted land use and development plans;

WHEREAS, in May 1995, former Mayor Vera Katz wrote a letter to the USPS requesting that it engage in negotiations to relocate the P&DC to another location freeing up the site for redevelopment, and work cooperatively with the City to realize the vision of the River District;

WHEREAS, the 1988 Central City Plan and the 2001 Pearl District Development Plan approved by City Council, state that the City should reestablish a partnership with the USPS to redevelop and re-use portions of the site, especially the parking areas along NW Ninth Avenue and over the long term, encourage the relocation of the regional distribution facility, while retaining a postal facility to serve the River District;

WHEREAS, the Portland Development Commission (“PDC”) and the Port of Portland have been working together to encourage USPS to relocate their P&DC from the River District to the Port of Portland’s Portland International Center at the Portland Airport;

WHEREAS, after numerous meetings with USPS in Washington DC and here in Portland, USPS entered into a Letter of Intent with PDC under Resolution 6565 on March 28, 2008, that PDC and USPS anticipate will lead to a definitive and binding agreement to purchase the USPS P&DC;

WHEREAS, the Letter of Intent required PDC to place \$2,000,000 into escrow to be governed by an Escrow Agreement where certain amounts will be released to USPS on specific events, this expenditure is included within the adopted 2007-2008 Fiscal Year budget;

WHEREAS, PDC has disbursed \$500,000 of escrow to USPS for exclusive negotiation;

WHEREAS, the action of approving the terms of the Letter of Intent and Escrow Agreement supports the acquisition of the largest redevelopment parcel in Portland’s Central Business District supporting substantial public benefits;

WHEREAS, the potential public benefits from the sale and ultimately the reuse of the property include substantial economic development opportunities, the generation of millions of dollars of tax revenue, and the opportunity to integrate this large site into the fabric of the City; and

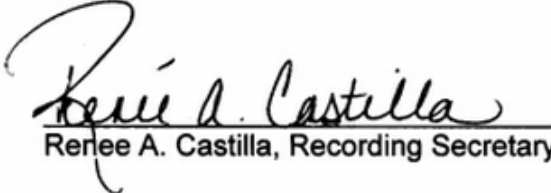
WHEREAS, extending the timeline for the Letter of Intent and Escrow Agreement by 90 days to March 31, 2009 provides additional time for both parties to complete due diligence and to set a Purchase Price for the USPS property.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board approves the First Amendment to the Letter of Intent, substantially in the form attached hereto as Exhibit A (the "Letter of Intent Amendment"), and the First Amendment to Escrow Agreement with the USPS and Chicago Title Insurance Company, substantially in the form attached hereto as Exhibit B (the "Escrow Agreement Amendment");

BE IT FURTHER RESOLVED that the Executive Director is authorized to execute and transmit the Letter of Intent Amendment to the USPS and to execute and deliver the Escrow Agreement Amendment;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the Letter of Intent Amendment and Escrow Agreement Amendment prior to and subsequent to execution, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change PDC's obligations or risks; and

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


Renee A. Castilla, Recording Secretary

FIRST AMENDMENT TO LETTER OF INTENT

This First Amendment to Letter of Intent ("First Amendment") is entered into by and between the United States Postal Service ("USPS") and the Portland Development Commission ("PDC")

PDC and USPS jointly entered into a Letter of Intent ("LOI") effective March 25, 2008. All capitalized terms used in this First Amendment shall have the same meanings as set forth in the LOI. The LOI provides PDC with exclusive negotiating rights to purchase the USPS Property and 2) anticipates structuring a purchase and sale agreement for the USPS Property by December 31, 2008 (Reference Paragraph 7 and 8 above of the LOI). PDC and USPS agreed to certain terms to set a Purchase Price for the USPS Property which require USPS Property appraisals, environmental studies and demolition reports.

Based on the findings of the above referenced appraisal reports, environmental studies, and demolition reports, PDC and USPS hereby agree to:

1. Extend the Exclusive Negotiation Termination Date by 90 days to March 31, 2009; and
2. Change the date anticipated for execution of a Purchase and Sale Agreement ("PSA") to March 31, 2009.


All other dates and time periods, including the 180 day closing period from the date of the execution of the PSA, remain unchanged.

Except as modified by this First Amendment, all terms and conditions of the LOI remain unchanged.

This First Amendment shall not take effect until approved by PDC's Board of Commissioners. In the event this First Amendment has not been fully executed, and approved by PDC's Board of Commissioners by November 13, 2008, this First Amendment shall automatically expire and be null and void.

Agreed to and accepted this 14th day of October, 2008

Seller: United State Postal Service


By: Stephen C. Roth
Its: Contracting Officer

Agreed to and accepted this _____ day of _____, 2008

Purchaser: Portland Development Commission

By: Bruce A. Warner
Its: Executive Director

Agreed to and accepted this _____ day of _____, 2008

FIRST AMENDMENT TO ESCROW AGREEMENT

**UNITED STATES POSTAL SERVICE AND
THE PORTLAND DEVELOPMENT COMMISSION
FOR NEGOTIATION OF PURCHASE AND SALE OF
715 N.W. HOYT STREET, PORTLAND, OREGON**

THIS FIRST AMENDMENT TO ESCROW AGREEMENT is entered into effective this ___ day of November, 2008, by and among the UNITED STATES POSTAL SERVICE (“**Seller**”), the PORTLAND DEVELOPMENT COMMISSION, the duly authorized and acting urban renewal agency of the City of Portland, Oregon (“**Purchaser**”), and CHICAGO TITLE INSURANCE COMPANY (“**Escrow Agent**”). Seller, Purchaser and Escrow Agent are each a “party” to this Escrow Agreement, and may be referred to collectively as the “parties.”

RECITALS

- A. On March 25, 2008, the parties executed the *Escrow Agreement, United States Postal Service And The Portland Development Commission For Negotiation Of Purchase And Sale Of 715 N.W. Hoyt Street, Portland, Oregon*, (“Escrow Agreement”) pursuant to the *Letter of Intent Regarding the United States Postal Service Processing and Distribution Center, Portland, Oregon* (“LOI”), dated March 25, 2008.
- B. The parties have now executed the *First Amendment to Letter of Intent*, dated November __, 2008 (the LOI as amended by the first Amendment is referred to herein as the “Amended LOI”). The Amended LOI extends the Exclusive Negotiation Termination Date and the date anticipated for execution of the Purchase and Sale Agreement (each as defined in the LOI) to June 30, 2009.
- C. The parties desire to change certain terms of the Escrow Agreement to be consistent with the Amended LOI.

AGREEMENT

In consideration of the mutual benefits to be realized by the parties for performance of this First Amendment to Escrow Agreement, the parties hereby agree as follows. Deleted text is stricken; added text is underlined.

1. **Paragraph 4** of the Escrow Agreement is revised to read as follows:

“4. DISPOSITION OF UNDISBURSED EARNEST MONEY

- a. Upon receipt of written, dated, separate escrow instructions signed by both the Seller and the Purchaser notifying the Escrow Agent that a party has terminated the LOI, the Escrow Agent will disburse any Earnest Money remaining in the escrow account, together with any accrued interest, to the Purchaser.
- b. If Earnest Money remains in the escrow account on June 30, 2009 ~~December 31, 2008~~, the Escrow Agent will disburse the remaining funds, together with accrued interest, to the Purchaser. To implement this provision, Seller and Purchaser will execute Attachment 2, and Purchaser shall deliver Attachment 2 to the Escrow Agent immediately after the First Amendment to Escrow Agreement is delivered to the Escrow Agent.”

2. **Paragraph 5.i** of the Escrow Agreement is revised to read as follows:

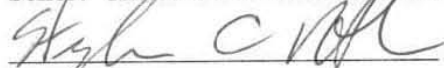
“i. Time of the Essence. Time is of the essence in this Escrow Agreement with respect to disbursement, in accordance with Section 4(b) hereof, of any Earnest Money and accrued interest remaining in the Escrow Account on June 30, 2009 ~~December 31, 2008~~.

3. **Attachment 2** to the Escrow Agreement is deleted. Attachment 2 to this First Amendment to Escrow Agreement is substituted in its place.

4. Except as modified by this First Amendment to Escrow Agreement, all terms and conditions of the Escrow Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Escrow Agreement as of the date(s) set forth below.

Seller: United States Postal Service



By: Steven C. Roth
Its: Contracting Officer
October 27, 2008

Purchaser: Portland Development Commission

By: Bruce A. Warner
Its: Executive Director
October __, 2008

Escrow Agent: Chicago Title Insurance Company

By: _____
Its: _____
October __, 2008

ATTACHMENT 2

AGREEMENT FOR DISPOSITION OF REMAINING ESCROW FUNDS

Date: _____

Escrow Agent: **Chicago Title Insurance Company**

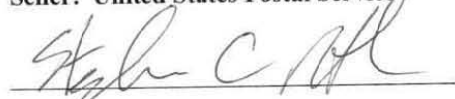
Escrow No: 454437

In fulfillment of the conditions of that certain Escrow Agreement entered into on March 25, 2008 by and among **UNITED STATES POSTAL SERVICE** ("Seller"), the **PORTLAND DEVELOPMENT COMMISSION** ("Purchaser"), and **CHICAGO TITLE INSURANCE COMPANY**, ("Escrow Agent"), as amended by the First Amendment to Escrow Agreement entered into November __, 2008, and in consideration of the premises thereof, Purchaser and Seller hereby agree that if Escrow Agent finds that it is holding funds in the above-numbered escrow account after June 30, 2009 ("Remaining Funds"), the Escrow Agent shall distribute the Remaining Funds, together with accrued interest, to the Purchaser, in such manner and to such accounts as the Purchaser shall designate to Escrow Agent in Purchaser's sole discretion.

Seller acknowledges that pursuant to the Escrow Agreement, the Remaining Funds are the property of the Purchaser, and Purchaser has the sole right to direct disposition of the Remaining Funds. Seller hereby expressly releases all claims to the Remaining Funds, whether anticipated or unanticipated at the time of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement for Disposition of Remaining Funds effective as of the date set forth above.

Seller: United States Postal Service



By: Steven C. Roth, Contracting Officer

Purchaser:

Portland Development Commission



By: Bruce A. Warner, Executive Director

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6648

Title: APPROVE THE FIRST AMENDMENT TO THE LETTER OF INTENT AND ESCROW AGREEMENT WITH THE UNITED STATES POSTAL SERVICE, EXTENDING THE EXCLUSIVE NEGOTIATION PERIOD BY 90 DAYS TO MARCH 31, 2009 AND CHANGING THE DATE ANTICIPATED FOR EXECUTION OF A PURCHASE AND SALE AGREEMENT TO MARCH 31, 2009 FOR THE PROPERTY LOCATED AT 715 NW HOYT STREET, PORTLAND, OREGON, IN THE RIVER DISTRICT URBAN RENEWAL AREA.

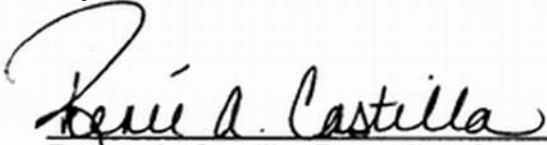
Adopted by the Portland Development Commission on November 12, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input 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.


Renee A. Castilla, Recording Secretary

Date: December 10, 2008