

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6671

AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO AN OPTION TO PRESENT A DEVELOPMENT PROPOSAL WITH THE HOUSING AUTHORITY OF PORTLAND CONCERNING CERTAIN PDC-OWNED PROPERTY KNOWN AS THE EASTERN PORTION OF BLOCK U AND LOCATED AT THE INTERSECTION OF NW IRVING AND NW 6TH IN THE RIVER DISTRICT URBAN RENEWAL AREA

WHEREAS, PDC found it necessary and in the public interest to implement the Urban Renewal Plan for the River District Urban Renewal Area by acquiring certain real property known as “Block U” located at the northeast corner of NW Broadway Street and NW Hoyt Street in the River District Urban Renewal Area for redevelopment to serve as a catalyst for further redevelopment;

WHEREAS, PDC is seeking a lot line adjustment on Block U from The City of Portland Bureau of Development Services that would create two (2) separate parcels on Block U. After the lot line adjustment, the western portion of Block U shall be comprised of lots numbered 7, 6, 3, 2 with a combined area of 22,500 square feet and the eastern portion of Block U shall be comprised of lots numbered 8, 5, 4, 1 with a combined area of 17, 500 square feet (collectively, the “Property”);

WHEREAS, of even date herewith, PDC and HAP (collectively, the “Parties”) have entered into a disposition and development agreement which, subject to certain conditions precedent set forth therein, obligates PDC, among other things, to convey the Resource Access Center Property and HAP to develop improvements on the Resource Access Center Property including a resource access center (which shall include an internal queuing area for clients) and an auxiliary men’s shelter with ninety (90) beds, which shall be components of a larger development that shall include, among other things, permanent supportive housing, and off-street parking (collectively, the Resource Access Center Project”);

WHEREAS, PDC desires that the Property be redeveloped as a mixed use project complementary to the Resource Access Center Project so the Property can serve as a catalyst for area investment and improvement (the “Project”). In furtherance of that objective, the Parties wish to enter into an Option to Present a Development Proposal (the “Agreement”) which provides HAP with the exclusive opportunity to develop a proposal for the Project on the Property for a period of thirty-six (36) months; and

WHEREAS, any obligations that PDC may have under the Agreement shall be contingent upon PDC’s determination, in its sole and absolute discretion, that it has the necessary legal power and authority to perform any obligations that it may have under the Agreement; and

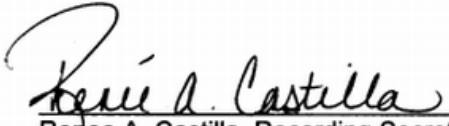
WHEREAS, nothing in the Agreement may be construed as creating an interest, legal or equitable, in the Property.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to enter into the Agreement, subject to the Contingencies, substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that this Executive Director may approve changes to the Agreement if such modifications do not materially change PDC's obligations or risks thereunder; and

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

Adopted by the Portland Development Commission on January 29, 2009.



Rereee A. Castilla, Recording Secretary

OPTION TO PRESENT DEVELOPMENT PROPOSAL

DATED: January __, 2009 (the “Effective Date”)

BETWEEN: PORTLAND DEVELOPMENT COMMISSION
222 NW Fifth Avenue
Portland, OR 97209-3859 (“PDC”)

AND: HOUSING AUTHORITY OF PORTLAND
135 SW Ash Street, Suite 500
Portland, OR 97204 (“HAP”)

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the River District Urban Renewal Area, which was approved by the City Council of the City on October 21, 1998 by Ordinance No. 172808 (as amended from time to time, the “Plan”);

B. PDC found it necessary and in the public interest to implement the Plan by acquiring certain real property located at the northeast corner of NW Broadway Street and NW Hoyt Street (“Block U”) in the River District Urban Renewal Area;

C. As part of a broader assessment of urban renewal in downtown Portland, the boundaries of the Downtown Waterfront Urban Renewal Area were amended, among other things, to remove Block U from the Downtown Waterfront Urban Renewal Area and the boundaries of the River District Urban Renewal Area (the “River District URA”) were amended, among other things, to include Block U in an expanded River District URA with an increased maximum indebtedness (the “Amended River District”). In the interim, the Amended River District has been appealed to the State of Oregon Land Use Board of Appeals (LUBA Case Nos. 2008-116 and 2008-117, including any related actions or appeals in the Oregon Court of Appeals or the Oregon Supreme Court, collectively, the “Appeal”);

D. PDC is seeking a lot line adjustment on Block U from The City of Portland Bureau of Development Services that would effectively create two (2) separate development sites on Block U. After the lot line adjustment, the western portion of Block U shall be comprised of lots numbered 7, 6, 3, 2 with a combined area of 22,500 square feet (collectively, the “Resource Access Center Property”) and the eastern portion of Block U shall be comprised of lots numbered 8, 5, 4, 1 with a combined area of 17, 500 square feet (collectively, the “Property”)

E. Of even date herewith, PDC and HAP (collectively, the “Parties”) have entered into a disposition and development agreement which, subject to certain conditions precedent set forth therein, obligates PDC, among other things, to convey the Resource Access Center Property and HAP to develop improvements on the Resource Access Center Property including a resource access center (which shall include an internal queuing area for clients) and an auxiliary men’s shelter with ninety (90) beds, which shall be components of a larger development that

shall include, among other things, permanent supportive housing, and off-street parking (collectively, the Resource Access Center Project”);

F. HAP and PDC acknowledge PDC is implementing an environmental remediation plan for Block U, and that this plan is expected to result in a No Further Action letter from the Oregon Department of Environmental Quality by July 2009.

G. PDC desires that the Property be redeveloped as a mixed use project complementary to the Resource Access Center Project so the Property can serve as a catalyst for area investment and improvement (the “Project”). In furtherance of that objective, PDC agrees to provide HAP with the exclusive opportunity to develop a proposal for the Project on the Property (the “Proposal”) for a period of thirty-six (36) months (the “Term”).

H. Any obligations that PDC may have under this Option to Present Proposal (this “Agreement”) shall be contingent upon PDC’s determination, in its sole and absolute discretion, that it has the necessary legal power and authority to perform any obligations that it may have under this Agreement;

I. This Agreement summarizes the present understandings, expectations and intents of the Parties that will apply during the Option Term.

NOW, THEREFORE, the Parties state as follows:

AGREEMENT

SECTION 1 BINDING EFFECT OF AGREEMENT

This Agreement is a statement of the current intent of the Parties and is a binding legal agreement. This Agreement may not be relied upon as a basis for contract by estoppel or serve as the basis for a claim based on detrimental reliance or any other theory and nothing in this Agreement shall be construed to create an interest, legal or equitable, in the Property. The Parties should seek their own legal counsel as may be needed before signing this Agreement.

SECTION 2 TERM

The term of this Agreement shall commence on the Effective Date and will expire on the earlier of: (i) the third anniversary of the Effective Date; or (ii) on the date that PDC accepts the Proposal from HAP and indicates, in writing, that it intends to commence negotiation of a DDA

(as hereinafter defined) (collectively, the “Term”). Upon expiration of the Term, this Agreement shall automatically terminate (the “Termination Date”).

SECTION 3 NEGOTIATION OF A DDA

In the event that HAP produces a Proposal that, in PDC’s sole good faith discretion, to be exercised timely after receipt of a Proposal, is financially feasible and meets the objectives of the Plan, as evidenced by the written notice contemplated by Section 2 above, PDC and HAP will enter into negotiations towards successful negotiation of a binding disposition and development agreement (the “DDA”). In those negotiations, each party shall be free, in their respective good faith discretion, to agree or not agree on the proposed terms of the DDA, provided, however, that in the event that PDC accepts HAP’s Proposal, the price payable for the Property shall be zero dollars . The Parties understand that despite the Parties’ good faith intentions reflected in this Agreement, there is a possibility that they would not reach a binding agreement.

SECTION 4 HAP’S COMMITMENTS DURING THE TERM

4.1 In General

As part of its good faith efforts in developing a Proposal during the Term, in the event that HAP elects to exercise its option to present the Proposal, HAP commits to perform the tasks set forth below and understands that it does so at its sole cost and expense. .

4.2 HAP’s Specific Tasks

4.2.1 Title Review

HAP will work with PDC to obtain a preliminary title report for the Property. HAP agrees to analyze the title condition of the Property and to inform PDC of any title exceptions HAP believes must be removed as a pre-condition to redevelopment. The identification by HAP of exceptions to which it objects does not create an obligation on the part of PDC to remove such exceptions if PDC is not reasonably able to do so.

4.2.2 Due Diligence Reports

HAP will review any environmental, soil, or building materials reports pertaining to the Project (collectively, the “Due Diligence Materials”) that PDC makes available to HAP. HAP understands that PDC makes no representation or warranty of the accuracy of any Due Diligence Materials. HAP will analyze the Due Diligence Materials and advise PDC of any

environmental, site, or building conditions at the Property that HAP believes must be remediated or corrected in order to develop the Project. HAP may elect to conduct additional due diligence of the Property at its sole cost and expense. HAP will obtain reasonable access to portions of the Property through permits of entry from PDC so that HAP may conduct its own due diligence. HAP understands that a permit of entry requires a permittee to repair any damage to the Property and to indemnify PDC from third-party liability that results from the permit of entry onto the Property. The identification by HAP of environmental, site or building conditions that it believes must be remediated or corrected does not create an obligation upon PDC to correct or remediate such conditions if PDC, in its sole discretion, reasonably determines it is not feasible to do so.

4.2.3 Development of Project Concept and Scope

Based upon the Due Diligence Materials, HAP agrees to develop the Proposal which shall include at least the following: a site plan which shows the location of structures, streets, parking areas and open spaces; a Project concept and scope; a program for the Project which shows the proposed uses, the location of such uses, the quantities of such uses expressed in approximate square footages, and the affordability of the residential uses, if any; and proposed building envelopes that will show the approximate scale and massing of the proposed buildings.

4.2.4 Development of Project Funding

The Proposal shall also include a development budget and operating proforma.

SECTION 5 PDC'S COMMITMENTS DURING THE TERM

PDC agrees to provide HAP with the exclusive opportunity to develop the Proposal for the Property and HAP will retain the exclusive right to negotiate a DDA with PDC in the event that PDC accepts such Proposal. PDC shall be bound to refrain from negotiating with other parties regarding the Property during the Term. PDC agrees to cooperate with HAP, where applicable, in the performance by HAP of the provisions of Section 4.2 above.

SECTION 6 GENERAL PROVISIONS

6.1 Negotiations, Processes, Principles, and Protocols

HAP understands that PDC is a public entity subject to the Oregon Public Records Law, government audit requirements, and public review and oversight. Records of PDC may be required to be disclosed publicly unless exempted. Where HAP desires confidential treatment of written materials during the course of negotiations, it may: (1) make copies available for PDC's inspection only, but not copying; or (2) enclose such materials in an envelope sealed and marked "Confidential" and deliver it to the PDC Office of the General Counsel. PDC does not guarantee confidentiality. In the event that PDC may be required to share information considered by HAP to be confidential, PDC will notify HAP prior to making such information available.

6.2 Addresses for Contact

The Parties understand that the following addresses may be used for communication and continuing negotiation:

For PDC: Barbara Shaw

Portland Development Commission
222 NW Fifth Avenue
Portland, Oregon 97209-3859

For HAP: Michael Andrews, Director
Development and Community Revitalization
Housing Authority of Portland
135 SW Ash Street, Suite 500
Portland, OR 97204

6.3 Termination

Unless terminated earlier in accordance with this Agreement, or extended by mutual agreement by the Parties, this Agreement shall automatically terminate, without any further action by either party, on the Termination Date.

6.4 DISCLAIMER OF CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

On the Effective Date, the Parties execute this Agreement and state that it reflects the Parties' present understanding and intentions for the Property.

HAP: HOUSING AUTHORITY OF PORTLAND

By: _____
Its: _____

PDC: PORTLAND DEVELOPMENT COMMISSION

By: Bruce A. Warner
Its: Executive Director

Approved as to form:

By: Lisa Gramp
PDC Legal Counsel

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6671

Title:

AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO AN OPTION TO PRESENT A DEVELOPMENT PROPOSAL WITH THE HOUSING AUTHORITY OF PORTLAND CONCERNING CERTAIN PDC-OWNED PROPERTY KNOWN AS THE EASTERN PORTION OF BLOCK U AND LOCATED AT THE INTERSECTION OF NW IRVING AND NW 6TH IN THE RIVER DISTRICT URBAN RENEWAL AREA


Adopted by the Portland Development Commission on January 29, 2009.

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 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.


Renee A. Castilla, Recording Secretary

Date: February 20, 2009

