

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 2

**AUTHORIZE EXECUTIVE DIRECTOR TO EXECUTE A
SETTLEMENT AGREEMENT WITH PORTLAND FIRE AND
RESCUE TO TERMINATE EXISTING DISPOSITION AND
DEVELOPMENT AGREEMENT REGARDING RELOCATION OF
FIRE STATION #1**

WHEREAS, the Portland Development Commission (PDC) entered into a Disposition and Development Agreement (DDA) with Portland Fire and Rescue (PF&R) to move Fire Station #1 to Block 8 (the PDC-owned block bound by Davis & Couch between Naito Parkway and 1st Avenue) following a recommendation from the Downtown Waterfront Development Opportunities Project (2003); and

WHEREAS, for the past three years PDC staff explored numerous options to build a new Fire Station #1 on a portion of Block 8 at a reasonable cost; and

WHEREAS, the City of Portland and PDC agreed to terminate efforts to relocate Fire Station #1 from its current location due to cost escalation; and

WHEREAS, PDC and PF&R now desire to enter into a Settlement Agreement to terminate the DDA, release all claims between the parties thereunder, provide for PDC's payment of \$3,900,000 to PF&R for renovation of the existing fire station, and provide for PF&R's reconveyance to PDC of the portion of Block 8 now held by PF&R under the DDA; now, therefore, be it

RESOLVED that the Executive Director of PDC is hereby authorized to enter into the Settlement Agreement substantially in the form attached hereto as Exhibit A; and be it

FURTHER RESOLVED that the Executive Director may approve changes to the Settlement Agreement if such modifications do not materially change PDC's obligations or risks from those contained in the form of agreement attached hereto; and be it

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

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Agreement”) is made as of _____, 2007, by and between the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, on behalf of its Bureau of Fire and Rescue (“PF&R”) and the City, acting by and through the PORTLAND DEVELOPMENT COMMISSION (“PDC”), as the duly designated urban renewal agency of the City of Portland.

RECITALS

A. PF&R and PDC entered into that certain Agreement for Acquisition, Disposition and Development of a Relocation Property for Fire Station #1 on July 23, 2004 (the “DDA”) with the City’s Office and Management and Finance (“OMF”) as the Project Manager.

B. The DDA contemplated the relocation of the existing Fire Station #1 from its current location on Lots 1 through 8, Block 34 in the City of Portland, County of Multnomah, State of Oregon (the “Current Property”) to a facility to be newly constructed by PF&R (“Project.”) on approximately 29,500 square feet on Block 8, which is legally described as Lots 1, 4, 5, 6, 7 and 8, Block 8 of Couch’s Addition, in the City of Portland, County of Multnomah, State of Oregon (the “Relocation Property”). The Project was to be managed by OMF on behalf of PF&R with PDC as a funding partner.

C. In accordance with the DDA and as part of the implementation of the Project, PDC conveyed the Relocation Property to PF&R by Special Warranty Deed recorded on February 15, 2005.

D. On July 17, 2006, PDC and PF&R decided not to proceed with the Project because of escalating costs. The decision not to proceed with the Project raises certain questions regarding the rights and obligations of PDC and PF&R under the DDA, including but not limited to, the existence and extent of PDC’s obligation to pay to PF&R an inflation reimbursement to cover PF&R’s increased costs to renovate the existing Fire Station #1 located on the Current Property, the existence and extent of PDC’s obligation to reimburse PF&R for Project costs incurred by PF&R’s General Obligation Bond Fund, and PF&R’s obligation to reconvey the Relocation Property to PDC.

E. PDC and PF&R desire to resolve all claims, disputes and questions regarding their rights and obligations under the DDA by means of and on the terms and conditions of this Agreement and the attachments hereto.

F. PDC and PF&R acknowledge and agree that time is of the essence in the parties’ performance of their obligations under this Agreement.

NOW, THEREFORE, in consideration of the Recitals, which are hereby incorporated into and shall be deemed a part of this Agreement, and in consideration of the agreements and covenants hereafter set forth, and all other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by PDC and PF&R, it is agreed by and between the parties as follows:

AGREEMENT

1. Termination of DDA and Mutual Release

1.1. Termination of DDA. PDC and PF&R hereby terminate the DDA and all rights and obligations of PDC and PF&R thereunder.

1.2. Mutual Release.

1.2.1 Except as set forth in Section 1.4 below, PF&R, on behalf of itself and its officers, employees, agents, affiliates, successors and assigns, hereby releases and forever discharges PDC, and its commissioners, officers, employees, agents, affiliates, successors and assigns, from all claims, demands, damages, actions and causes of action, whether known or unknown, suspected or unsuspected, now existing or hereafter accruing, that arise from or are related to the DDA or the Project, including but not limited to, any obligation or liability of PDC to cover costs incurred by OMF, any liability or obligation of PDC to cover costs incurred for goods or services provided by Thomas Hacker Architects, and any obligation or liability of PDC to cover the cost of a traffic signal at SW Naito Parkway and Davis.

1.2.2 Except as set forth in Section 1.4 below, PDC, on behalf of itself and its commissioners, officers, employees, agents, affiliates, successors and assigns, hereby releases and forever discharges PF&R, and its officers, employees, agents, affiliates, successors and assigns, from all claims, demands, damages, actions and causes of action, whether known or known, suspected or unsuspected, now existing or hereafter accruing, that arise from or relate to the DDA or the Project.

1.3. Recordation of Certificate of Termination. On the date that this Agreement is signed by PF&R and PDC (“Effective Date”), PDC and PF&R shall execute a Certificate of Termination, substantially in the form attached hereto as Exhibit A and incorporated herein by this reference, and promptly thereafter, but before recordation of the Deed (described in Section 2 below), PDC shall cause the Certificate of Termination to be recorded in the real property records of Multnomah County.

1.4. Settlement Agreement Enforceable. The mutual releases set forth in Section 1.2 hereof do not apply to any claim, demand, damage, action or cause of action arising from or related to the rights and obligations conferred or imposed by this Agreement.

2. Reconveyance of Relocation Property.

2.1. Upon receipt by PF&R of full payment from PDC of the Settlement Amount, as outlined in Section 3 of this Agreement, PF&R shall convey the Relocation Property, including all buildings and improvements thereon and appurtenances thereto, to PDC through execution and delivery to PDC of a Special Warranty Deed, substantially in the form attached hereto as Exhibit B and incorporated herein by this reference and subject only to the exceptions set forth in Exhibit 1 to Exhibit B (the “Deed”).

2.2. Upon receipt of the Deed, PDC shall cause the Deed to be recorded in the real property records of Multnomah County, and shall provide a copy of the recorded Deed to PF&R for its records.

3. Consideration and Use of Settlement Amount. In consideration of the termination of the DDA in accordance with Section 1.1 above, the releases set forth in Section 1.2.1 above, and the conveyance of the Relocation Property to PDC pursuant to Section 2 above, and subject to the conditions precedent set forth below in this Section 3, PDC shall pay Three Million Nine Hundred Thousand Dollars (\$3,900,000) (“the Settlement Amount”) to PF&R on the Effective Date. PF&R shall disburse the funds as follows:

(a) to OMF Forty Thousand Nine Hundred Ninety Nine Dollars (\$40,999); and

(b) to the Fire Bond Fund Three Million Eight Hundred Fifty Nine Thousand and One Dollars (\$3,859,001), a portion of these funds to be used for any negotiated costs associated with services provided by Thomas Hacker Architects as described in PF&R Station 1 and Administrative Offices – Architectural & Engineering Services Contract # 36151, dated August 12, 2005, and to cover the amount billed to the Bond Fund for the traffic signal at SW Naito Parkway and Davis with the remainder used solely for the renovation and seismic upgrade of the existing Fire Station #1 located on the Current Property, as further described in Exhibit C, attached hereto and incorporated herein by this reference (the “Renovation Project”)

PDC’s obligation to pay and actually provide receipt of the full Settlement Amount to PF&R is conditioned on PF&R’s execution and delivery to PDC, concurrently with PDC’s payment and actual provision to PF&R of the full Settlement Amount, of the Deed and the Certificate of Termination and on PDC’s receipt of a letter from OMF, signed by an authorized official of OMF and in form and substance satisfactory to PDC, confirming that, upon OMF’s receipt of the \$40,999 referenced above, all OMF claims under the DDA will have been satisfied and that no outstanding claims remain.

4. Representations and Warranties

4.1. PF&R’s Representations and Warranties. PF&R represents and warrants the following to PDC and PF&R acknowledges that the execution of this Agreement by PDC has been made in material reliance on such representations and warranties:

4.1.1. PF&R is duly authorized, qualified and licensed to do all things required of it under or in connection with this Agreement. This Agreement and all related documents are valid, binding and enforceable upon PF&R.

4.1.2. PF&R is entering into this Agreement and executing the documents to which it is a party voluntarily, in good faith, without duress or undue influence of PDC. PF&R has been represented by legal counsel regarding the meaning, interpretation and effect of this Agreement.

4.1.3. PF&R has had no materials delivered to the Relocation Property and has had no labor performed on the Relocation Property for ninety (90) days prior to the Effective Date, except as has been disclosed by PF&R or OMF to PDC, in writing.

222 NW Fifth Avenue
Portland, OR 97209-3859

with a copy to: Portland Development Commission
Attn: General Counsel
222 NW Fifth Avenue
Portland, OR 97209-3859

If to PF&R: City of Portland
Bureau of Fire and Rescue
Attn: Jack Graham
55 SW Ash St.
Portland, Oregon 97204

with a copy to City of Portland
Bureau of Fire and Rescue
Attn: John Klum
55 SW Ash St.
Portland, Oregon 97204

with a copy to City of Portland
Office of City Attorney
Attn: Ruth Spetter
1221 SW 4th Avenue, Rm 430
Portland, OR 97204

6. No Obligation of PDC to Third Parties

PF&R acknowledges and agrees that acceptance by PDC of title to the Relocation Property pursuant to the terms of this Agreement shall not create any obligations on the part of PDC to third parties which have claims of any kind whatsoever against PF&R or OMF with respect to the Relocation Property and PDC does not assume or agree to discharge any liabilities pertaining to the Relocation Property which were incurred by PF&R or OMF except as otherwise expressly provided in this Agreement. Notwithstanding the foregoing sentence, PDC expressly acknowledges that during the period of time when the Relocation Property was transferred to PF&R, PDC, on its own, chose to perform, or have performed for it or at its request, certain activities upon the Relocation Property and that PDC has total and complete obligation for any claims, third party or otherwise, arising from those activities, regardless of the fact that PF&R held title, and that PDC assumes liability and responsibility for any claims so arising and that neither PF&R nor OMF shall have any responsibility for the same. In addition, PDC agrees and acknowledges (a) that the Relocation Property may be subject to assessment because it lies within the boundaries of the City of Portland Street Local Improvement District and (b) that PF&R has no obligation to pay, or liability for, any such assessment against the Relocation Property.

7. Absolute Conveyance and Survival

PF&R and PDC agree that the execution and delivery of the Deed to PDC by PF&R according to the terms of this Agreement is an absolute conveyance of all of PF&R's right, title and interest in and to the Relocation Property in fact as well as form and was not and is not now intended as a mortgage, trust conveyance, deed of trust or security instrument of any kind, and that the consideration for such conveyance is exactly as recited herein and that PF&R has no further interest, including rights of redemption, or claims in and to the Relocation Property or to the proceeds and profits which may be derived thereof, of any kind whatsoever. All provisions of this Agreement shall survive conveyance of the Relocation Property to PDC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

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: _____

Bruce Warner, Executive Director

Date: _____

CITY OF PORTLAND, a municipal corporation
of the State of Oregon, on behalf of its BUREAU
OF FIRE AND RESCUE

By: _____

Eric Sten, City Commissioner

Date: _____

TABLE OF EXHIBITS

Exhibit A	Certificate of Termination
Exhibit B	Form of Deed
Exhibit C	Description of Renovation Project

EXHIBIT A

FORM OF CERTIFICATE OF TERMINATION

After Recording Return to:
Portland Development Commission
Attn: Real Estate Manager
222 NW Fifth Avenue
Portland, OR 97209

CERTIFICATE OF TERMINATION

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 (“PDC”) and the CITY OF PORTLAND, on behalf of its BUREAU OF FIRE AND RESCUE (“PF&R”), entered into that certain Agreement for Acquisition, Disposition and Development of a Relocation Property for Fire Station #1 dated July 23, 2004 (the “DDA”), a memorandum of which was recorded on _____ in the real property records of Multnomah County as document no. _____. By means of a Settlement Agreement among PDC and PF&R dated _____, 2007, PDC and PF&R terminated the DDA and PDC and PF&R hereby mutually certify that all rights and obligations of the parties under the DDA have been terminated and that the DDA has no further force or effect.

IN WITNESS WHEREOF, PDC and PF&R have caused this instrument to be executed this ____ day of _____, 2007.

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: _____
Bruce Warner, Executive Director

CITY OF PORTLAND, a municipal corporation
of the State of Oregon, on behalf of its BUREAU
OF FIRE AND RESCUE

By: _____

Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2007, by
_____, Executive Director of the PORTLAND
DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of
Portland.

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2007, by
_____ as _____ of the BUREAU OF FIRE AND RESCUE of the City of
Portland.

Notary Public for
My commission expires: _____

EXHIBIT B

FORM OF SPECIAL WARRANTY DEED

After Recording Return to and
Tax Statements to be Sent to:
Portland Development Commission
Attn: Real Estate Manager
222 NW Fifth Avenue
Portland, OR 97209

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through its **BUREAU OF FIRE AND RESCUE** (“PF&R”) does hereby grant, convey and specially warrant unto the **CITY OF PORTLAND**, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, as the duly designated Urban Renewal Agency of the City of Portland (“Portland Development Commission”), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the “Relocation Property”), situated in the County of Multnomah and State of Oregon, free and clear of all encumbrances except as specifically set forth herein:

Lots 1, 4, 5, 6, 7 and 8, Block 8, COUCH’S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

EXCEPTING THEREFROM the Westerly 5 feet of Lots 2 and 3, lying within the boundaries of NW First Avenue, formerly North First Street.

Other property or value was either part or the whole consideration for this conveyance.

The conveyance is subject to the easements, covenants, restrictions, conditions and encumbrances of record, as set out in Exhibit “1” attached hereto and incorporated herein.

TO HAVE AND TO HOLD the same unto the said City of Portland, acting by and through its Portland Development Commission, and unto its successors and assigns forever.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 197.352. 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 APPROVED USES, 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 197.352.

IN WITNESS WHEREOF, the City of Portland, a municipal corporation of the State of Oregon, acting by and through its Bureau of Fire and Rescue, has caused this Deed to be executed this _____ day of _____, 2007.

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through its BUREAU OF FIRE AND RESCUE.

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, as _____ of the City of Portland, Bureau of Fire and Rescue, on its behalf.

Notary Public for
My commission expires: _____

EXHIBIT 1 to SPECIAL WARRANTY DEED

Permitted Exceptions

Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

Discrepancies, conflicts in boundary lines, shortage in area, encroachments or other facts which a correct survey would disclose.

Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

The assessment roll and the tax roll disclose that the premises herein described have been specially assessed as Historic Property. If the land becomes disqualified for the special assessment under the statute, an additional tax may be levied for the last fifteen (15) or lesser number of years in which the historic property assessment was in effect for the land and in addition thereto a penalty may be levied if notice of disqualification is not time given.

Map No.: 1N1E34DB
Tax Lot No's.: 200 and 300

Also set forth of Record in City of Portland Ordinance No. 140593, including the terms and provisions thereof;

Recorded: September 16, 1975
Book: 1061
Page: 1640

City of Portland File No. VZ 200-66, including the terms and provisions thereof;

Recorded: December 14, 1966
Book: 538
Page: 1550

City of Portland Conditional Use Permit No. CU 80-86, including the terms and provisions thereof;

Recorded: November 25, 1986
Book: 1958
Page: 447

City of Portland Design Review File No. HLDZ 15-87, including the terms and provisions thereof;

Recorded: April 28, 1987
Book: 1999
Page: 1907

City of Portland Design Review File No. 96-00656 PR, including the terms and provisions thereof;

Recorded: October 31, 1996
Recorder's Fee No.: 96165116

EXHIBIT C

Description of Renovation Project

Except as otherwise set forth in Section 3 of the Agreement, PF&R shall use the Settlement Amount solely for the following work on the existing Fire Station #1 / Administration Building located at the Current Property:

1. Seismic upgrade of structure to essential facilities status.
2. ADA accessibility.
3. Tenant Improvements to Fire station to accommodate gender.
4. Tenant Improvements to improve fire station efficiency and livability.
5. Tenant Improvements to improve administrative efficiency.