

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6780**

**APPROVING THE THIRD AMENDMENT TO THE LETTER OF INTENT WITH THE UNITED STATES POSTAL SERVICE AND THIRD AMENDMENT TO THE ESCROW AGREEMENT WITH THE UNITED STATES POSTAL SERVICE AND CHICAGO TITLE INSURANCE COMPANY, EXTENDING THE EXCLUSIVE NEGOTIATION PERIOD BY 365 DAYS TO MARCH 31, 2011, 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 of Portland (“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 Urban Renewal Area;

**WHEREAS**, after numerous meetings with USPS in Washington DC and here in Portland, USPS entered into a Letter of Intent with the Portland Development Commission (“PDC”) under Resolution No. 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**, in accordance with the Letter of Intent, PDC placed \$2,000,000 into escrow to be governed by an Escrow Agreement wherein certain amounts will be released to USPS on specific events; and \$500,000 of escrow has been released to USPS for exclusive negotiation;

**WHEREAS**, the execution of the Letter of Intent and Escrow Agreement supports the acquisition and ultimate sale and reuse of the largest redevelopment parcel in Portland’s Central Business District; which is anticipated to result in public benefits including 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;

**WHEREAS**, the First Amendment to the Letter of Intent and Escrow Agreement approved by the PDC Board of Commissioners (“Board”) on November 12, 2008 (Resolution No. 6648), extended the timeline by 90 days to March 31, 2009;

**WHEREAS**, the Second Amendment to the Letter of Intent and Escrow Agreement approved by the Board on March 25, 2009 (Resolution No. 6687), extended the timeline by 365 days to March 31, 2010; and

**WHEREAS**, extending the timeline to the Letter of Intent and Escrow Agreement by an additional 365 days is necessary to provide time for both parties to complete due diligence and finalize the negotiation of a Purchase and Sale Agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the PDC Board authorizes the Executive Director to execute the Third Amendment to the Letter of Intent, substantially in the form attached hereto as Exhibit A (the “Letter of Intent Amendment”), and the Third 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 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.

THIRD AMENDMENT TO LETTER OF INTENT

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

Whereas, PDC and USPS jointly entered into a Letter of Intent (“LOI”) effective March 25, 2008. The LOI provides PDC with exclusive negotiating rights to purchase the USPS Property and anticipates structuring a purchase and sale agreement for the USPS Property by December 31, 2008

Whereas, the parties executed a First Amendment to Letter of Intent, which extended the Exclusive Negotiation Termination Date by 90 days to March 31, 2009 and changed the date anticipated for execution of a Purchase and Sale Agreement (“PSA”) to March 31, 2009.

Whereas, the parties executed a Second Amendment to the Letter of Intent, which extended the Exclusive Negotiation Termination Date by 365 days to March 31, 2010 and changed the date anticipated for execution of a Purchase and Sale Agreement (“PSA”) to March 31, 2010. The Letter of Intent, as amended by the First and Second Amendment, is referred to herein as the “Amended LOI.” PDC and USPS have continued negotiation of a purchase price for the USPS Property and for the terms of the PSA.

Whereas, the parties find that it is in their mutual best interest to continue the negotiations described in the Amended LOI in order to extend the time period for negotiations for an additional period beyond March 31, 2010.

Therefore, PDC and USPS hereby agree to:

1. Extend the Exclusive Negotiation Termination Date by 365 days to March 31, 2011;
2. Change the date anticipated for execution of a Purchase and Sale Agreement (“PSA”) to March 31, 2011;
4. All capitalized terms used in this Third Amendment shall have the same meanings as set forth in the LOI;
5. All other dates and time periods, including the 180 day closing period from the date of the execution of the PSA, remain unchanged;
6. Except as modified by this Third Amendment, all terms and conditions of the Amended LOI remain unchanged.

This Third Amendment shall not take effect until approved by PDC’s Board of Commissioners. In the event this Third Amendment has not been fully executed, and approved by PDC’s Board of Commissioners by March 31, 2010, this Third Amendment shall automatically expire and be null and void.

Agreed to and accepted this \_\_\_ day of March 2010

**Seller: United States Postal Service**

\_\_\_\_\_  
By: Stephen C. Roth  
Its: Contracting Officer

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2010

**Purchaser: Portland Development Commission**

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

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2010

**THIRD 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 THIRD AMENDMENT TO ESCROW AGREEMENT** is entered into effective this \_\_\_ day of March, 2010, 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 26, 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 19, 2008.
- B.** On November 13, 2008, the parties executed the *First Amendment to Letter of Intent*, extending the Exclusive Negotiation Termination Date and the date anticipated for execution of the Purchase and Sale Agreement (each as defined in the LOI) to March 31, 2009.
- C.** On March 25, 2009 the parties executed the *Second Amendment to Letter of Intent* extending the Exclusive Negotiation Termination Date and the date anticipated for execution of the Purchase and Sale Agreement (each as defined in the LOI) to March 31, 2010.
- D.** The parties have now executed the *Third Amendment to Letter of Intent*, dated \_\_\_\_\_, 2010 (the LOI as amended by the First, Second, and Third Amendments 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 March 31, 2011.
- E.** 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 Second Amendment to Escrow Agreement, the parties hereby agree as follows.

- 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 March 31, 2011, 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 Second 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 March 31, 2011.”

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

4. Except as modified by this Third 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 Third Amendment to Escrow Agreement as of the date(s) set forth below.

**Seller: United States Postal Service**

\_\_\_\_\_  
By: Steven C. Roth  
Its: Contracting Officer  
March \_\_, 2010

**Purchaser: Portland Development Commission**

\_\_\_\_\_  
By: Bruce A. Warner  
Its: Executive Director  
March \_\_, 2010

**Escrow Agent: Chicago Title Insurance Company**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
March \_\_\_\_\_, 2010

**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 26, 2008, by and among **UNITED STATES POSTAL SERVICE** (“Seller”), the **PORTLAND DEVELOPMENT COMMISSION** (“Purchaser”), and **CHICAGO TITLE INSURANCE COMPANY**, (“Escrow Agent”), as amended through the Third Amendment to Escrow Agreement entered into \_\_\_\_\_, 2010, 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 March 31, 2011 (“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**

**Purchaser:  
Portland Development Commission**

\_\_\_\_\_  
By: Steven C. Roth, Contracting Officer

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