

**EXHIBIT A**  
**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE**  
**NATURAL RESOURCES DEFENSE COUNCIL, INC.**  
**AND THE**  
**CITY OF PORTLAND**

**I. PURPOSE**

This Memorandum of Understanding ("MOU") establishes the terms and conditions for the working agreement ("Agreement") between the Natural Resources Defense Council, Inc. ("NRDC") and the City of Portland (the "City"), in support of the American Cities Climate Challenge ("ACCC" or "Challenge"). NRDC together with the City are also referred to as the "parties."

**II. BACKGROUND**

The ACCC is a national initiative to create healthier and more prosperous American cities by supporting a critical mass of the most populous cities in meeting or exceeding their city's equivalent of the U.S. emission reduction targets under the Paris Climate Agreement. By participating in the ACCC, cities will support bold solutions that can be replicated by other municipalities nationwide and around the world to advance local economic prosperity and reduce pollution. Bloomberg Philanthropies has provided NRDC with funding for the Challenge.

On June 1, 2018, Bloomberg Philanthropies announced the ACCC and opened up a competitive application process to the 100 most populous cities in the United States to participate in the Challenge. The first round of applications was opened on June 19, 2018 and closed July 18, 2018. Fifty-one cities responded to the open call and submitted applications to the Challenge. In August 2018, 37 of those cities were selected through a competitive process based on the applications to participate in site visits by Challenge staff to learn more about each city's impact goals. Those cities each submitted detailed work plans (the City's specific work plan is attached as Exhibit B) to Challenge staff outlining their own initiatives. In October 2018, 25 cities' initiatives were selected through a competitive process by Challenge staff to participate in the Challenge and receive support.

NRDC is a 501(c)(3) public charity established in 1970 with the mission to safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends. NRDC has the experience and ability to support a participating City's execution of buildings and transportation initiatives, which will enhance the City's ability to achieve the long-term success of those initiatives and benefit other communities seeking to implement similar initiatives.

**III. AGREEMENT TO PARTICIPATE**

The City will participate in the ACCC and agrees to pursue the successful execution of all such initiatives, measures and other actions and goals to which it has committed in the work plan it submitted to the Challenge and the City Strategy Overview (as defined in Section V) that was prepared based on the work plan, both of which are attached to this Agreement. For the

avoidance of doubt, in the event of any conflict between the work plan and City Strategy Overview, the terms of the latter shall prevail. NRDC will support the City in the achievement of all such initiatives, measures and other actions and goals to which it has committed, for the duration of the City's participation in the ACCC, as more specifically set forth in this MOU.

#### **IV. COMMITMENTS BY NRDC**

NRDC, for the duration of the City's participation in the ACCC and at no expense to the City, will use commercially reasonable efforts to provide the support, resources and opportunities to assist the City in achieving the goals contained in its City Strategy Overview as described in the Support Package (as defined in Section V) including the following undertakings:

1. Provide, at no expense to the City, one NRDC employee reporting to the ACCC City Lead (as defined in Section V), Michele Crim, who shall be available at all times for input and general direction on work schedule, tasks and assignments for the purpose of advancing the City Strategy Overview (such NRDC employee, the "Climate Advisor"). For the avoidance of doubt, the parties agree that the Climate Advisor shall not be an employee of the City. The parties agree that the Climate Advisor shall be considered an employee of NRDC, and NRDC shall be considered a City contractor.
2. Share best practices and expertise on all aspects of initiative design and implementation including regular access to staff at NRDC and Third Parties (as defined below) as appropriate;
3. As determined by NRDC in its sole discretion, provide additional discretionary resources to support local organization involvement in ACCC, stakeholder engagement, compliance with programs, and enhanced technical, analytical, and communications capabilities of the City, where applicable;
4. As needed, and as determined by NRDC in its sole discretion, identify and assist the City in securing additional resources to achieve the goals in its City Strategy Overview and its resource commitment requirements;
5. Assist the City in peer-to-peer networking with other cities, including hosting in-person forums involving other cities and partners participating in the ACCC; and
6. Designate an NRDC employee, other than the Climate Advisor, to direct NRDC's work with the City on the Challenge and to serve as City's primary NRDC contact (the "NRDC City Strategist"). NRDC shall designate an additional employee ("NRDC Director of Strategy and City Engagement") to manage the NRDC City Strategist.

NRDC reserves the right to direct its affiliate NRDC Action Fund Inc. to provide the support, resources and opportunities listed in this Section IV.

NRDC also reserves the right to direct independent contractors retained by NRDC or an affiliate to provide the support, resources and opportunities listed in this Section IV.

"Third Parties" refers to parties not affiliated with, or under contract with, NRDC and are referenced in this Section IV and in Section V below. Such Third Parties are associated with the ACCC and will provide support, resources and opportunities to Cities other than those listed in this Section IV. NRDC is not responsible for Third Parties' ultimate delivery of support, resources and opportunities to Cities, and Third Parties' failure to provide the resources listed in

the Support Package (as further described in Section V) shall not be a basis to terminate this MOU under the provisions of Section XV.3.

## **V. COMMITMENTS BY THE CITY**

The City commits to pursue, to the best of its ability and in a manner that complies with applicable laws, ordinances, rules and policies and that facilitates collaboration among the City and its major stakeholders, the implementation of the following initiatives, as set forth in the City's work plan, by December 31, 2020, to reduce net emissions of the City:

1. Deep energy efficiency retrofits and retro-commissioning (RCx) of municipal facilities;
2. Community solar projects or other local renewable energy initiatives at scale;
3. Improved public transit speed, reliability and user experience;
4. High priority segments in the walking and bicycling network to be safe and inviting to all, including for those using transit;
5. Commuter incentives; and
6. Congestion pricing / Go Zones.

In support of the implementation of these initiatives, the City commits to undertake the following actions:

1. Develop a multi-year plan (the "City Strategy Overview"), the initial version of which is attached as Exhibit C, describing the City's goals and the initiatives and key actions the City intends to undertake to achieve such goals. The City Strategy Overview was jointly developed by the City, NRDC and Third Parties and shall be updated by the City and NRDC no less frequently than every six months after the initial City Strategy Overview to reflect any changes. The City Strategy Overview shall include, but need not be limited to, the following items:
  - a. Emissions reductions targets for the City's initiatives;
  - b. Descriptions of the key elements of each initiative and the actions undertaken to achieve those initiatives;
  - c. Year 2020 goals of key actions and key indicators that will be used to measure progress toward those goals;
  - d. City-based and non-City based resources and support needed by the City to achieve each action;
  - e. Estimated amount of time that key staff employed by the City can commit to the design, adoption and implementation of the actions; and
  - f. An employee of the City designated to serve as the ACCC lead (the "City ACCC Lead") and who shall bear overall responsibility for the City's execution of its City Strategy Overview.
2. Work with NRDC and Third Parties to develop a support package that will outline resources that will come from NRDC and Third Parties (the "Support Package", attached as Exhibit D). NRDC reserves the right to unilaterally modify the Support Package provided that no resources made available to the City are decreased as compared to those listed on the Support Package as of the date this MOU was first executed.
3. Review and provide input to NRDC and Third Parties on the detailed activities and deliverables for the milestones that will occur during the project (the "Delivery Plan").



The Delivery Plan shall be updated by the City, NRDC and Third Parties no less frequently than every three months after the initial Delivery Plan to reflect any changes.

4. Provide NRDC and Third Parties with all information allowed by City laws, ordinances, rules, and policies to enable them to successfully assist the City as set forth in this MOU, including information related to emission metrics.
5. Participate in the ACCC network of peer cities to share best practices with NRDC and other cities participating in the ACCC, including work products and materials, programmatic concepts and successful processes.
6. Make the City ACCC Lead available to meet with designees of NRDC at least once every three months (at a time and place to be mutually agreed by the parties acting reasonably) for the duration of the City's involvement with the ACCC.
7. Provide the Climate Advisor, at City expense:
  - a. A work space, including use of a desk, chair, and file cabinet, with the exact location of the work space to be determined by the City, which may only be used for general office purposes and accessed during normal business hours, unless the Climate Advisor receives permission from the City ACCC Lead to access the work space outside normal business hours;
  - b. A telephone, computer, monitor, mouse, keyboard and internet access;
  - c. Access to and use of a printer, copier, scanner and fax machine;
  - d. Cleaning, recycling and maintenance of the work space at the same level of service as other City employees in the facility; and
  - e. Access to City information and materials only as necessary for the Climate Advisor to perform his or her duties, as allowed by City laws (including the Oregon Public Records Act), ordinances, rules and policies; provided that, the City shall provide NRDC (i) with all ordinances, rules and policies, including all documents relevant and necessary for compliance and (ii) notice of any changes to such ordinances, rules and policies; however, the Climate Advisor will be specifically screened from all City records relating to NRDC's September 27, 2018, Public Records Request to the City provided that such screening shall not impede the Climate Advisor's ability to (i) perform his or her duties under this Section IV and (ii) discuss the challenge with NRDC employees, subject to the confidentiality obligations under this Section XVII.
8. Ensure that the Mayor will be available to participate in no fewer than three meetings per year with senior officials of the Challenge team to discuss the City's progress on the initiatives described in its City Strategy Overview.
9. Use reasonable efforts to prioritize staffing in operations departments, such as the City Attorney's Office, to support the ACCC work.
10. Use reasonable efforts to take all necessary and appropriate actions to complete the work stated in City Strategy Overview in accordance with the timeline and other provisions set forth therein.
11. Use reasonable efforts to coordinate with NRDC and third parties as further set forth in Exhibit A, whether or not they are parties to this Agreement.
12. Use reasonable efforts to provide information that will facilitate coordination between NRDC and Third Parties and other entities also involved in the Challenge, including cooperating with and supporting NRDC's compliance with all requirements of funding

provided to NRDC for use on ACCC expenses by adhering to the requirements set forth in Exhibit A hereto (the "Funding Requirements").

13. Ensure that the City ACCC Lead and other necessary City staff are available for one-hour conference calls with representatives of NRDC and Third Parties (at a time to be mutually agreed by the parties acting reasonably, and occurring no less frequently than on a quarterly basis) to discuss the status of the ACCC work.

#### **VI. SELECTION AND MANAGEMENT OF THE CLIMATE ADVISOR**

NRDC shall determine and lead the hiring and retention process for the Climate Advisor, including the development of a position description and the advertisement of the position. NRDC will coordinate the hiring process with the City and solicit feedback on the selection of potential candidates for the Climate Advisor, but NRDC shall have exclusive hiring authority. NRDC shall conduct periodic reviews, but not less than one review annually, to evaluate the work-related performance of the Climate Advisor. NRDC shall coordinate such reviews with the City and solicit feedback from the City ACCC Lead. The City ACCC Lead shall report any work-related issues with the Climate Advisor to the manager of the ACCC program at NRDC.

The City reserves the right to refuse the selection of any Climate Advisor candidate.

#### **VII. PARTICIPATION IN NRDC ACTIVITIES**

NRDC may require or invite the Climate Advisor to participate in NRDC's employee events and meetings or attend conferences or other offsite meetings or events. NRDC shall bear the employee-related expenses for any such travel, meetings and events (provided that such expenses are in accordance with NRDC's expense reimbursement policies, as they exist from time to time). NRDC shall coordinate with the City in all such cases requiring or inviting participation, which may include the following:

1. Weekly or bi-weekly NRDC staff meetings;
2. Quarterly in-person meetings; and
3. Conferences, meetings and other events designed to further the Climate Advisor's professional development and/or where the Climate Advisor's participation is designed to further NRDC's mission.

#### **VIII. NOT AN EMPLOYEE OF THE CITY**

The Climate Advisor shall not in any way be considered an employee of the City. NRDC and the City affirm that NRDC, and not the City, shall be responsible for any and all compensation and benefits to be provided to the Climate Advisor and that the Climate Advisor shall not be entitled to receive (a) any form of compensation, including but not limited to wages, salary, bonuses, workers' compensation or any other form of remuneration from the City; (b) any retirement or health care benefits available to City employees, including but not limited to participation in any state, local or municipal pension or retirement or health care plans; or (c) any fringe benefits, reimbursement of expenses, or any other employment benefits available to City employees.

The City also affirms the work to be performed by the Climate Advisor is not bargaining unit work and that the City shall not request that the Climate Advisor perform any work that



reasonably could be considered to be bargaining unit work or violate the terms of a collective bargaining agreement.

The City also affirms (a) the Climate Advisor shall not be a participant in any career or civil service systems and shall not be protected by any career or civil service laws, ordinances, rules or regulations and (b) the Climate Advisor shall not have or acquire any rights under any such systems, laws, ordinances, rules or regulations, including but not limited to the right to notice or a hearing.

The City also affirms (a) the work to be performed by the Climate Advisor shall not be considered to be lobbying and shall not be subject to or limited by of any state, local or municipal laws, ordinances, codes, rules or regulations that prohibit or regulate the ability of City officials or employees to engage in activities related to lobbying and (b) the City shall not request that the Climate Advisor perform any work that violates or causes the Climate Advisor or NRDC to become subject to any such laws, ordinances, codes, rules or regulations.

The City also affirms the Climate Advisor shall not be deemed to be a City official or employee for purposes of any state, local or municipal ethics laws, ordinances, codes, rules or regulations that apply to City officials and employees, including but not limited to such laws, ordinances, rules, or regulations that impose ethics disclosure or reporting requirements, restrict use of municipal equipment or property or prevent or regulate secondary employment. For the avoidance of doubt, the Climate Advisor is permitted to use computers, email, network, printers, phones and other equipment provided by the City for work related to performance of the Climate Advisor's duties under the MOU or to the Climate Advisor's employment with NRDC, but shall not be permitted to use such equipment for unrelated purposes.

#### **IX. COMPLIANCE WITH RULES**

The Climate Advisor shall comply with policies, rules, regulations and procedures of the City relating to the use of equipment, office space and common areas at the City, provided that NRDC and the Climate Advisor shall have been provided in advance with written copies of such policies, rules, regulations and procedures. The Climate Advisor shall also comply with all the City's Critical Work Rules (as defined in Exhibit E, which includes Human Resources Administrative Rule 2.02 prohibiting workplace harassment, discrimination and retaliation); provided that, the City shall provide NRDC (i) with all relevant rules and regulations, including all documents relevant and necessary for compliance, (ii) notice of any changes to such rules and regulations and (iii) access to a designee from the City able to answer questions regarding such compliance. The Climate Advisor shall maintain the work space in a clean, orderly and neat fashion and shall not create or contribute to the creation of a nuisance and shall not engage in or permit any action that will disturb the quiet enjoyment of any occupants of the building.

The City has the authority to request the withdrawal of the Climate Advisor if the City reasonably believes the Climate Advisor (i) has failed to comply with Critical Work Rules or (ii) is materially deficient in his or her performance. NRDC shall only be obligated to remove the Climate Advisor as provided in the previous sentence if the City first provides NRDC with written notice describing the rationale for requesting the withdrawal, and provides NRDC with reasonable time to: (i) meet and confer with the City to understand the failure of the Climate Advisor to comply with Critical Work Rules and/or the deficiencies in the Climate Advisor's

performance, (ii) consider placing the Climate Advisor on probation and allowing reasonable time for the Climate Advisor's failure to comply with Critical Work Rules and/or performance deficiencies to be communicated to Climate Advisor and for compliance with Critical Work Rules and/or material improvement in performance to occur, and (iii) meet and confer with the City to ascertain whether the Climate Advisor is compliant with Critical Work Rules and/or Climate Advisor's performance has materially improved or is now serving the best interests of the City.

The City may immediately remove the Climate Advisor from assignment for reasonable cause including, without limitation, threats to public health or safety (however, for the avoidance of doubt, such reasonable cause shall not include failure to comply with Critical Work Rules or deficient performance, which are addressed in the previous paragraph) with or without notice to, or the consent of, NRDC. The City may also remove the Climate Advisor from City premises if in the City's reasonable judgment the Climate Advisor has endangered their own health and safety or that of other City employees.

NRDC reserves the right to terminate the Climate Advisor for any reason or no reason and, in the event of such termination, NRDC shall as promptly as practicable provide a replacement Climate Advisor to the City. If the Climate Advisor is removed pursuant to this Section, the City and NRDC shall meet and confer in good faith to discuss reinstatement of the Climate Advisor or provision of a replacement Climate Advisor if practicable.

The City ACCC Lead and NRDC City Strategist shall meet and confer prior to assignment of the Climate Advisor in order to ensure the Climate Advisor is able to comply with NRDC's and the City's document retention policies; provided that, the City shall provide NRDC (i) with all relevant rules and regulations, including all documents relevant and necessary for compliance, (ii) notice of any changes to such rules and regulations and (iii) access to a designee from the City able to answer questions regarding such compliance. A copy of NRDC's document retention policies shall be provided to City upon request.

The City represents and warrants that it is permitted under all applicable laws, ordinances, rules, and policies, including those concerning government ethics, to participate in the ACCC under the terms and conditions of this MOU and to accept resources from NRDC for these purposes. The City also represents and warrants that it has obtained all approvals from State and/or City attorneys, ethics bodies, and other authorities necessary to participate in the ACCC under the terms and conditions of this MOU and to accept resources from NRDC for these purposes.

#### **X. TERM**

This MOU shall be for a term commencing on January 1, 2019 and shall expire on December 31, 2020, unless earlier terminated in accordance with the provisions herein.

#### **XI. STATUS MEETINGS**

The parties agree to meet as set forth in Section V above to exchange information related to the status of the ACCC. The City will provide information related to the implementation of the ACCC in their specific jurisdiction. NRDC will provide to the City information related to the



implementation of the ACCC in other jurisdictions, supplying any additional information requested by the City.

## **XII. AFFILIATION WITH THE ACCC**

NRDC supports the integration of all initiatives that are undertaken by the City with support from the ACCC into the City's own long-term vision for sustainability, including any applicable sustainability or climate action plans. NRDC may use the City's name and describe the activities the City undertakes in conjunction with the ACCC, including in web and print materials produced for public consumption, subject to the terms and conditions in Section XVII of this MOU; however, NRDC or Third Parties may use the City's copyrighted logo in any of its materials with prior consent of the City and such consent shall not be unreasonably withheld. Furthermore, NRDC may promote the involvement of the City in the ACCC through case studies, reports, and other media, subject to the conditions in Sections XIII and XVII of this MOU.

## **XIII. OTHER PUBLIC COMMUNICATIONS**

The City agrees to include a quote from the City's Mayor in the announcement of the launch of the ACCC, which must be mutually approved in advance by the City and NRDC. The City and NRDC agree to not promote the City's participation in ACCC publicly until after the formal launch announcement. The City will be available to work with NRDC on future communication needs from high-level City officials during the duration of the ACCC.

The City agrees to coordinate with NRDC on public communications by or on behalf of the City that refer to the ACCC, and any such public communications must be mutually approved in advance by the City and NRDC. Any joint communications or materials will require the prior written approval of both the City and NRDC.

## **XIV. MODIFICATION OF THE CITY STRATEGY OVERVIEW**

Any one of the parties to this MOU may propose modifications to the City Strategy Overview based upon internal or external circumstances that affect the City's ability to achieve the milestones and goals outlined in the plan or NRDC's ability to provide the support set forth in the Support Package. All substantive modifications, such as to the programs the City will pursue or to the ACCC timeline, must be agreed upon by the City ACCC Lead and the NRDC Director of Strategy and City Engagement, who bear primary responsibility for day-to-day management and execution of the ACCC and are also accountable for the overarching structure and strategy of the ACCC. The NRDC Director of Strategy and City Engagement shall not unreasonably withhold approval. If the City ACCC Lead and the NRDC Director of Strategy and City Engagement cannot reach an agreement about the terms of any such proposed modification, NRDC shall have the right to terminate this MOU in accordance with Section XV.

## **XV. TERMINATION OF MOU**

This MOU may be terminated by the parties according to the following conditions:

1. Failure by the City to Update a City Strategy Overview: NRDC may terminate this MOU if the City fails to update the City Strategy Overview with any changes every six months



after the date hereof, assuming no reasonable communications have been made between the City and NRDC that explain the delay in submission.

2. Failure by the City to Achieve Milestones: NRDC may terminate this MOU if, more than one year after the execution of this MOU, it determines that the City is substantially unable to achieve the milestones and goals outlined in its City Strategy Overview, or that the City has demonstrated an inability to dedicate the required resources to the achievement of the milestones and goals in its City Strategy Overview. Prior to terminating this MOU as provided in this Section XV.2, NRDC shall initiate a process under Section XIV to propose modifications to the City Strategy Overview and clearly communicate these proposed modifications to the City.
3. For Cause: Either the City or NRDC may terminate this MOU if the other party is in material breach of its obligations under this MOU, and such breach has not been corrected to the non-breaching party's reasonable satisfaction in a timely manner after written notice of such breach has been provided to the breaching party.
4. Notice: Unless otherwise specified herein, written notice of termination pursuant to this Section XV shall be given by the party terminating this MOU to the other not less than 30 calendar days prior to the effective date of termination.

#### **XVI. RELATIONSHIP**

This MOU shall not be construed as a joint venture or so as to make any one of the parties an agent of any of the other parties. Each of the parties hereto expressly disclaims any intention to enter into any such agency or joint venture and agrees to conduct itself so as not to act or purport to act on behalf of the other. This MOU does not authorize any party to act as the agent or legal representative of any other party for any purpose whatsoever and no party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other party, or to bind any other party in any manner or thing whatsoever.

To aid in the advancement of the City Strategy Overview, the Climate Advisor will be advising the City regarding governmental decisions. As such, the Climate Advisor may present himself or herself to outside stakeholder groups or City bureaus as working with the City to further the goals of the City Strategy Overview in spoken and written communications. The Climate Advisor will be provided a City phone number and email addresses, which must contain a signature block indicating that the Climate Advisor is not a City employee but is working in concert with the City, or some similar clarification. Any individual who inquires about the Climate Advisor's status of employment or role within the City will be provided with information that confirms the Climate Advisor is an employee of NRDC who is advising the City pursuant to this Agreement.

#### **XVII. CONFIDENTIALITY OF INFORMATION AND PROTECTION OF INTELLECTUAL PROPERTY**

Each party recognizes that it may have access to information of a proprietary, private or confidential nature owned by another party (a "Disclosing Party"). Each party acknowledges that any proprietary, private and confidential information it shares with any other party under this MOU must be identified as "Confidential Information" at the time of communication. As such, each party that receives or has access to information that has been so identified (a "Receiving Party") agrees to keep such information in strictest confidence and protect it from

disclosure; provided that the parties may disclose such information as required by any applicable ordinances, regulations and laws that govern the Receiving Party. The provisions of this Section XVII shall not apply to (a) information that is publicly known or publicly available, other than as a result of breach of this Section XVII, (b) information obtained by a Receiving Party from a source other than a Disclosing Party, which the Receiving Party knows is not under an obligation of confidentiality to the Disclosing Party, (c) information that is independently developed by a Receiving Party without access to a Disclosing Party's confidential information, (d) information already in the possession of Receiving Party, provided that such information is not known by Receiving Party to be subject to any legal or contractual obligation of confidentiality owed to Disclosing Party and (e) information that cannot be treated as proprietary, private, or confidential pursuant to applicable law.

Each party hereby waives any and all right, title and interest in and to such information of the other and agrees to return all physical copies, and destroy all electronic copies, of such information, except as otherwise agreed, at the expense of the party returning or destroying the information, upon request at the expiration or termination of this MOU. NRDC retains the right to aggregate otherwise confidential information for use in publications or other materials intended for public consumption, providing that individual confidentiality is maintained.

All rights and intellectual property rights (including copyrights), in any work, including, without limitation, all plans, research results, publications, developments, reports, processes, programs, analyses, website content, and other materials created or developed by or on behalf of the City and/or by a Climate Advisor ("Works") will be licensed to NRDC on a royalty-free basis to facilitate best practice sharing among participating cities in the Challenge and other interested cities.

#### **XVIII. DISPUTE RESOLUTION**

Any dispute or misunderstanding that may arise under this MOU shall first be addressed through negotiations, if possible, between the parties. If the official representatives of the parties do not reach a resolution within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including (but not limited to) alternate dispute resolution processes, with mediation to be the first such process pursued by the parties.

#### **XIX. LIMITATION OF LIABILITY**

No party shall be liable to any other party for any incidental, indirect, special or consequential damages of any kind arising out of this MOU or the relationship between the City and NRDC. The provisions of this Section XIX will survive the expiration or earlier termination of this MOU.

#### **XX. NOTICES**

All notices and other communications pursuant to this MOU must be in writing, addressed to the parties at the applicable address set forth on the signature page hereof (or such other address as a party may from time to time specifically designate in writing), must be sent by a nationally recognized overnight courier and will be deemed given on the date delivery is first accepted or refused.

**XXI. INDEMNIFICATION**

Subject to the conditions and limitations of the Oregon Constitution and Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend and hold harmless NRDC from and against all liability, loss and costs arising out of or resulting from the acts of the City, its officers, employees and agents in the performance of this agreement. In addition, NRDC shall indemnify, defend and hold harmless the City from and against all liability, loss and costs arising out of or resulting from the acts of NRDC, its officers, employees and agents in performance of this agreement. The City or NRDC's obligations to indemnify the other party (as applicable) shall be reduced to the extent the other party's misconduct or negligence acts or omissions are responsible for the harm.

**XXII. MISCELLANEOUS PROVISIONS**

Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by any party, by operation of law or otherwise, without the express prior written approval of the other parties. This MOU cannot be modified orally, and none of the terms hereof will be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. This MOU contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter.

**XXIII. NON-DISCRIMINATION**

In carrying out activities under this agreement, neither party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status or national origin. Either party shall take affirmative actions to ensure that applicants for employment are employed and that employees are treated during employment, without regard to the race, color, religion, sex, age, handicap, familial status or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**XXIV. INSURANCE**

NRDC shall use commercially reasonable efforts to obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below to the extent such coverage is available at commercially reasonable rates. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Agreement.

1. Workers' Compensation Insurance. NRDC shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, NRDC shall maintain coverage for all subject workers for the duration of this Agreement.

In the event worker's compensation insurance coverage is due to expire during the term of this Agreement for any employers working under this



agreement, NRDC agrees to require timely renewal of that insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and NRDC agrees to provide the City such further certification of worker's compensation insurance as renewals of said insurance occur.

2. Commercial General Liability Insurance:

NRDC shall maintain commercial general liability and property damage insurance that protects NRDC and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from NRDC's work under this Grant Agreement. The insurance shall provide coverage for not less than \$2,000,000 per occurrence.

3. Automobile Liability Insurance: NRDC shall have automobile liability insurance with coverage of not less than \$2,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the NRDC's or its contractor's activities to be performed or services to be provided. Grantee shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

5. Continuous Coverage; Notice of Cancellation: NRDC shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancelation, material change, potential exhaustion of aggregate limits, or non-renewal of coverage without thirty (30) days written notice from NRDC to the City. If the insurance is canceled or terminated prior to termination of the Agreement, NRDC shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material

breach of the Agreement and shall be grounds for immediate termination of this Agreement.

6. Certificate(s) of Insurance: NRDC shall provide proof of insurance through acceptable certificates of insurance and a CG 2026 additional insured endorsement form (or an equivalent blanket additional insured form) to the City on or before execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of grant funds. The certificate (s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to The City. NRDC shall pay for all deductibles and premium from its non-grant funds. The City reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required. In lieu of filing the certificate of insurance required herein, if NRDC is a public body, NRDC may furnish a declaration that NRDC is self-insured for public liability and property damage for a minimum of the amounts set forth in the Oregon Tort Claims Act (ORS 30.260 to 30.300).

#### **XXV. OREGON LAW AND FORUM**

This Agreement shall be construed according to the laws of the State of Oregon without regard to its provisions regarding conflicts of law. Any litigation between the City and NRDC arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

#### **XXVI. SEVERABILITY**

The City and NRDC agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

#### **XXVII. COMPLIANCE WITH APPLICABLE LAW**

NRDC, NRDC employees and employees of entities under contract with NRDC to perform work related to ACCC shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. If NRDC is a 501(c)(3) organization, NRDC shall maintain its nonprofit and tax-exempt status during this Agreement.

#### **XXVIII. FORCE MAJURE**

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all

reasonable efforts to remove or eliminates such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**XXIX. NO THIRD PARTY BENEFICIARY**

There are no third-party beneficiaries to this Agreement and may only be enforced by the Parties.

**XXX. MERGER CLAUSE**

This Agreement contains the entire agreement between the City and NRDC and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Agreement that are not contained herein.

*[Signature page follows]*



IN WITNESS WHEREOF, the parties to this MOU have affixed their signatures:

\_\_\_\_\_  
Ted Wheeler  
Mayor, City of Portland  
[Address 1]  
[Address 2]

Date: \_\_\_\_\_

\_\_\_\_\_  
Michele Crim  
City ACCC Lead  
[Address 1]  
[Address 2]

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
[Title]  
Natural Resources Defense Council, Inc.  
40 West 20<sup>th</sup> Street  
New York, NY 10011

Date: \_\_\_\_\_

## EXHIBIT A – FUNDING REQUIREMENTS

The City shall use its best efforts to assist NRDC in:

- Complying with applicable laws, including by ensuring that resources provided to the City by NRDC are not used: (i) in support of, or to promote, violence, terrorist activity or related training, whether directly through its own activities and programs, or indirectly through its support of, or cooperation with, other persons and organizations known to support terrorism or that are involved in money laundering activities; (ii) for purposes of, or in connection with, bribery or in contravention of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or other applicable anti-bribery law; and (iii) in compliance with all applicable government ethics and transparency laws;
- Ensuring that resources provided to the City by NRDC are used only to advance the official purposes of the City and are not used for lobbying (without the express advance written consent of NRDC), for political contributions, to support political campaigns, or to benefit any particular City official personally;
- Maintaining accurate and updated books and records related to the ACCC, including by making such City's books and records related to the ACCC available for inspection at reasonable times by NRDC;
- Providing information regarding the progress of the ACCC, including by: (i) assisting NRDC in drafting a narrative account of the progress of the ACCC and what was accomplished with the resources provided by NRDC to the City and (ii) providing NRDC with copies of any media coverage of the ACCC and two copies of any publication, audio or video program, film or other media project produced by the City related to the ACCC for archival, research or presentation purposes;
- Preparing and submitting any additional information required by NRDC's funding sources, including unscheduled reports requested by the funding sources;
- Drafting and submitting updates about the ACCC's status, contacts and other requested topics to the extent requested by the funding sources;
- Documenting the ACCC, including by assisting with any efforts by NRDC to facilitate or produce publications, audio or video programming, film or other media regarding the ACCC;
- Complying with any restrictions on, or requirements for the prior approval of, any Media Release (as defined below) which references the funding or the funding sources of the ACCC, by providing such Media Release to NRDC prior to distribution and complying with any requirements relayed by NRDC with respect to the content, timing and means of distribution of any such Media Release. For the purposes of this Agreement, "Media Release" shall mean any publication, advertising, speech, lecture, interview, press release, internet web page or other media venue of any kind;

- Making reasonable use of the City Mayor's time, who shall participate in no fewer than three meetings per year with senior officials of the Challenge team to discuss the City's progress on the initiatives described in its City Strategy Overview; and
- Causing the City ACCC Lead and other relevant City staff to be available for one-hour conference calls with representatives of NRDC and Third Parties (at a time to be mutually agreed by the parties acting reasonably, and occurring no less frequently than on a quarterly basis) to discuss the status of the ACCC work.



**EXHIBIT B – WORK PLAN**

[See Attached]

**EXHIBIT C – CITY STRATEGY OVERVIEW**

[See Attached]

**EXHIBIT D – SUPPORT PACKAGE**

[See Attached]



**EXHIBIT E – CRITICAL WORK RULES**Critical Work Rules

- HR 2.02 Prohibition Against Workplace Harassment, Discrimination and Retaliation
- HR 4.01 Drug and Alcohol Use Prohibited
- HR 4.08 Information Technologies (4.08A Social Media)
- HR 4.09 Use of City Resources:
- HR 4.12 Workplace Violence Prohibited
- HR 11.01 Statement of Ethical Conduct
- HR 11.02 Prohibited Conduct, however
- HR 11.04 Protection of Restricted and Confidential Information

The Parties hereby agree and understand that:

- All references in the Critical Work Rules to “supervisor”, “manager” or any reasonably equivalent term shall refer to the City ACCC Lead.
- The Climate Advisor’s use of NRDC’s social media platforms does not violate HR 4.08 or HR 4.08A.
- The Climate Advisor’s use of an NRDC-owned computer and NRDC-owned wireless hotspot while on City premises for activities other than work for the City does not violate HR 4.09 provided that the activities are done in the Climate Advisor’s capacity as an NRDC employee.
- Discussions between the Climate Advisor, NRDC staff and/or ACCC partners working on other aspects of the ACCC project from the Climate Advisor’s City workspace does not violate HR 4.09.
- The Climate Advisor’s attendance of NRDC or ACC meetings do not violate HR 11.01 or 11.02 so long as the Climate Advisor does so in their capacity as an NRDC employee and note as a representative of the City.
- In the event of conflict between the MOU and HR 11.04, the MOU shall prevail.