

**AGREEMENT FOR PURCHASE AND SALE OF DISCOUNTED SERVICE
ACRE-YEAR CREDITS AND ESCROW INSTRUCTIONS
(Alder Creek – City of Portland)**

This Agreement for Purchase and Sale of Discounted Service Acre-Year Credits and Escrow Instructions ("**Agreement**"), dated for reference purposes only as November __, 2014, is entered into by and between **PORTLAND HARBOR HOLDINGS II, LLC**, a Delaware limited liability company ("**PHH**"), and the **CITY OF PORTLAND** (the "**City**"). PHH and the City are sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties.**"

Recitals

A. City. The City has been notified by the United States Environmental Protection Agency, the Natural Resource Damages Assessment Trustees ("**NRDA Trustees**") and the Oregon Department of Environmental Quality of its potential liabilities related to the Portland Harbor Superfund Site.

B. PHH's Business. PHH and its affiliates are the operators of mitigation projects, mitigation banks, conservation banks and restoration projects for impacts to wetlands, protected species and protected habitat, and are in the business of locating properties suitable for mitigating such impacts (each, a "**Restoration Site**").

C. Alder Creek Restoration Site. PHH is the owner of a Restoration Site located on the southernmost tip of Sauvie Island at the confluence of Multnomah Channel and the Willamette River in Multnomah County, Oregon, commonly known as "Alder Creek" (the "**Alder Creek Restoration Site**"). A map of the Alder Creek Restoration Site is attached hereto as Exhibit A and incorporated herein by this reference.

D. Habitat Restoration Activities. PHH has undertaken substantial activities towards determining the feasibility of the development and restoration of the habitat values at the Alder Creek Restoration Site, including, without limitation, performing wildlife surveys and resource mapping, soils reconnaissance to explore habitat restoration potential, cultural resources evaluations and other activities. Based upon the feasibility activities conducted to date, PHH intends to construct a restoration project at the Alder Creek Restoration Site, which will restore and create intertidal channels, marsh/mudflat and riparian habitat (the "**Alder Creek Restoration Project**").

E. Approval of Restoration Project. The NRDA Trustees have approved the Alder Creek Restoration Project.

F. Release of DSAY Credits. Pursuant to the terms of the Alder Creek Restoration Plan that was approved by the NRDA Trustees, the Discounted Service Acre-Year Credits ("**DSAY Credits**") will be released in accordance with the schedule set forth on Exhibit B attached hereto and incorporated herein by this reference. Each increment of DSAY Credits that is released by the NRDA Trustees is referred to herein as a "**DSAY Credit Release.**" PHH anticipates that the first DSAY Credit Release, which is expected to consist of 112.45 DSAY Credits (the "**First Release**"), will occur prior to December 31, 2014. PHH anticipates that the second DSAY

Credit Release, which is expected to consist of approximately 262.4 DSAY Credits (the “**Second Release**”), will occur sometime during the last quarter of 2015.

G. DSAY Credits. The City desires to purchase thirty-five (35) DSAY Credits from the First Release and to have an option to purchase additional DSAY Credits from the Second Release.

H. Purpose. The purpose of this Agreement is to provide for the City’s purchase and PHH’s sale of DSAY Credits from the Alder Creek Restoration Site. The City’s purchase price is based on good faith negotiations between the Parties and the recognition of the City of Portland as a uniquely situated entity at the Portland Harbor Superfund Site.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the Parties agree as follows:

Agreement

1. Effective Date. For the purposes of this Agreement, the date on which the last Party executes this Agreement and delivers it to the other Party shall hereinafter be referred to as the “**Effective Date**.”

2. Allocation of DSAY Credits. Pursuant to the terms and conditions of this Agreement, PHH agrees to sell to the City and set aside for the exclusive use of the City, and the City agrees to purchase from PHH, thirty-five (35) DSAY Credits from the First Release, provided that the First Release occurs prior to the Closing (as hereinafter defined).

(a) Release of DSAY Credits. City understands and acknowledges that, as of the Effective Date of this Agreement, the First Release has not occurred. PHH makes no representation or warranty concerning the timing for the First Release. In no event shall PHH be deemed in default of this Agreement if the First Release has not occurred by the Closing.

3. Purchase Price. The purchase price (“**Purchase Price**”) for the DSAY Credits shall be Two Million Six Hundred Twenty-Five Thousand and No/100ths Dollars (\$2,625,000.00), which was calculated by multiplying Seventy-Five Thousand and No/100ths Dollars (\$75,000.00) by thirty-five (35) DSAY Credits.

4. Payment of Purchase Price. The Purchase Price shall be paid by the City to PHH as follows:

(a) Deposit. Within eight (8) Business Days (as hereinafter defined) after the Effective Date, the City shall deposit with Escrow Holder (as hereinafter defined) the amount of Two Hundred Sixty-Two Thousand Five Hundred and No/100ths Dollars (\$262,500.00), which constitutes ten percent (10%) of the Purchase Price (the “**Deposit**”), in immediately available funds, and shall instruct the Escrow Holder to immediately release the Deposit to PHH. The Deposit shall be nonrefundable upon the City’s material default under this Agreement. The Deposit shall be credited to the Purchase Price upon Closing (as hereinafter defined).

(b) Balance of Purchase Price. On or before Closing, the City shall deposit with Escrow Holder the balance of the Purchase Price, in immediately available funds, and such amount shall be disbursed to PHH upon Closing.

5. Escrow and Closing.

(a) Opening of Escrow. Within eight (8) Business Days after the Effective Date, the City shall open an escrow ("**Escrow**") with Chicago Title Insurance Company, 1211 SW Fifth Avenue, Suite 2130, Portland, Oregon, Attention: Malcolm D. Newkirk, ("**Escrow Holder**"). This Agreement constitutes escrow instructions to Escrow Holder. Any supplemental instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control, unless otherwise agreed in writing by the City and PHH.

(b) Closing. For purposes of this Agreement, "**Closing**" shall be defined as the date on which the Bill of Sale (as hereinafter defined) is delivered to the City. The Closing shall occur on or before March 18, 2015, and in no case later than April 30, 2015, provided that the First Release has occurred. If the First Release has not occurred by the Closing, this Agreement shall automatically terminate unless the Parties mutually agree, in writing, to extend the time for Closing. In the event that this Agreement terminates pursuant to the foregoing provision, the Deposit shall be promptly refunded to the City and the Parties shall have no further rights, duties or obligations under this Agreement.

(i) No City Council Approval; Termination. If the City Council Approval is not finalized by December 31, 2014, either Party shall have the right to terminate this Agreement, in which event the Deposit shall be promptly refunded to the City, and the Parties shall have no further rights, duties or obligations under this Agreement.

6. Closing Documents.

(a) Deposits By PHH. Prior to the Closing, PHH shall deposit with Escrow Holder the following documents:

(i) Bill of Sale. A Bill of Sale ("**Bill of Sale**"), executed by PHH, evidencing the sale of the DSAY Credits to the City. The Bill of Sale shall be in the form attached hereto as Exhibit C and incorporated herein by this reference.

(ii) Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or the City in order to close Escrow in accordance with the terms of this Agreement.

(b) Deposits By the City. Prior to the Closing, the City shall deposit with Escrow Holder the following documents and funds:

(i) Purchase Price. The balance of the Purchase Price, in immediately available funds.

(ii) Escrow Fees. The City's share of any escrow fees.

(iii) Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or PHH in order to close Escrow in accordance with the terms of this Agreement.

7. Costs and Expenses. All Escrow fees and costs shall be divided equally between the City and PHH. The City and PHH shall each pay all legal and professional fees and fees of other consultants incurred by the City and PHH, respectively.

8. Limitation of Obligations and Rights of the City.

(a) Limitation of Obligations. The City shall have no obligation whatsoever by reason of the use of the Alder Creek Restoration Site for the DSAY Credits to support, pay for, monitor, report on, sustain, continue in perpetuity or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Alder Creek Restoration Site. PHH shall be fully and completely responsible therefore and for satisfying any and all conditions placed on the Alder Creek Restoration Site by the NRDA Trustees.

(b) Limitation of Rights to Restoration Sites. Nothing in this Agreement shall result in the City having any right, title or interest in the Alder Creek Restoration Site greater than that specifically granted by this Agreement. The City's sole right shall be to have the DSAY Credits that are being transferred and sold to the City under this Agreement applied towards the City's NRDA obligations and provided that the City satisfies all of its obligations under this Agreement.

(c) Joint Use. Upon the Closing and the City's delivery of the Purchase Price to PHH, PHH shall deliver to the City a Bill of Sale evidencing the transfer and sale of the DSAY Credits to the City pursuant to Section 5(b) above. Subject to the terms of any option granted by PHH to the City, nothing contained in this Agreement shall restrain PHH from selling to others the remaining DSAY Credits at the Alder Creek Restoration Site, so long as the aggregate number of DSAY Credits sold to all parties, including the City, from the Alder Creek Restoration Site, does not exceed the aggregate number of DSAY Credits available at the Alder Creek Restoration Site.

(d) No Representations. PHH has made and makes no representation, warranty or guaranty that the DSAY Credits will be applied by the NRDA Trustees to satisfy the City's NRDA obligations. PHH shall reasonably cooperate with the City's efforts to obtain the NRDA Trustees' approval of the use of the DSAY Credits by the City in satisfaction of its NRDA obligations.

9. Option to Purchase Additional DSAY Credits. PHH agrees to grant the City an option to purchase additional DSAY Credits from the Second Release on terms and conditions that are mutually agreed upon by PHH and the City, in their sole and absolute discretion. Such terms and conditions, which shall be set forth in an amendment to this Agreement, *may* include, without limitation, the following:

(a) Option Term. The term of the Option shall commence on the Effective Date, and shall expire at 5:00 p.m. on the date that is ninety (90) days following Closing (the "**Option Term**").

(b) Exercise of Option. The City shall have the right to exercise the Option at any time during the Option Term by delivering to PHH a written notice ("**Exercise Notice**") stating that the City is exercising the Option. The Exercise Notice shall specify the number of additional DSAY Credits that the City desires to purchase from the Second Release (the "**Additional DSAY Credits**").

(c) Purchase and Sale Upon Exercise of Option. Upon timely exercise of the Option, PHH agrees to sell and convey to the City, and the City agrees to purchase from PHH, the Additional DSAY Credits on all of the same terms and conditions that apply to the initial thirty-five (35) DSAY Credits described in Section 2 above, including, without limitation, for a purchase price equal to Seventy-Five Thousand and No/100ths Dollars (\$75,000.00) multiplied by the number of Additional DSAY Credits. The Closing for the Additional DSAY Credits shall occur after the date on which the Second Release occurs, but in no event later than February 29, 2016. PHH's obligation to sell and convey such Additional DSAY Credits to the City is conditioned upon the NRDA Trustees' release of such Additional DSAY Credits. PHH makes no representation or warranty concerning the timing for such release or whether the release will occur at all. In no event shall PHH be deemed in default of this Agreement if the NRDA Trustees fail to release the Additional DSAY Credits. In no event shall the Closing for the City's purchase of the Additional DSAY Credits occur prior to the Closing for the City's purchase of the initial thirty-five (35) DSAY Credits. In the event that the Closing for the purchase and sale of the initial thirty-five (35) DSAY Credits does not occur for any reason whatsoever, the City's Option to purchase the additional DSAY Credits shall automatically terminate, regardless of whether the City has delivered the Exercise Notice.

(d) Failure to Exercise. If the City fails to exercise its Option prior to the expiration of the Option Term, PHH may thereafter transfer the DSAY Credits (except for the initial thirty-five (35) DSAY Credits described in Section 2 above) to a third party, and the City shall have no right, title or interest in such DSAY Credits.

10. Termination Rights.

(a) PHH's Termination Rights. PHH's right to terminate this Agreement shall be limited to the following circumstances:

(i) First Release Not Obtained. In the event that the First Release is not obtained by the Closing, PHH shall have the right to terminate this Agreement, in which event the entire Deposit shall be promptly refunded to the City, and the Parties shall have no further rights, duties or obligations under this Agreement from and after such termination.

(ii) Default. PHH shall have the right to terminate this Agreement by written notice to the City at any time after the date on which a default by the City has occurred under this Agreement, provided that the City fails to cure such default within thirty (30) days, or a reasonable period of time agreed upon in writing by the parties, after it has received written notice stating the nature of the default. In the event that this Agreement is terminated pursuant to the provisions of this subsection (ii), the provisions of Sections 11 and 12 below shall apply.

(b) The City's Termination Rights. The City's right to terminate this Agreement shall be limited to the following circumstances:

(i) Termination Within Initial Thirty (30)-Day Period. The City shall have the right, in its sole and absolute discretion, to terminate this Agreement for any reason whatsoever within thirty (30) calendar days after the Effective Date of this Agreement (the "**Termination Date**") by providing written notice of such termination to PHH by 5:00 p.m. PST on the Termination Date. In the event that the City timely exercises its termination rights under this subsection (i), PHH shall promptly refund the Deposit, and the Parties shall have no further rights, duties or obligations under this Agreement from and after such termination.

(ii) Closing Conditions Not Satisfied. In the event that the First Release has not occurred by the Closing, the City shall have the right to terminate this Agreement, in which event the entire Deposit and any other sums paid to PHH by the City shall be promptly refunded to the City and the Parties shall have no further rights, duties or obligations under this Agreement from and after such termination.

(iii) Default. The City shall have the right to terminate this Agreement by written notice to PHH at any time after the date on which a default by PHH has occurred under this Agreement, provided that PHH fails to cure such default within thirty (30) days, or a reasonable period of time agreed upon in writing by the parties, after the City's delivery of written notice to PHH stating the nature of the default. In the event that this Agreement is terminated pursuant to the provisions of this subsection (iii), the entire Deposit and any other sums paid to PHH by the City shall be refunded and the City shall have the remedies set forth in Section 12 below, which are the City's sole and exclusive remedies.

11. Default by the City; Liquidated Damages. THE CITY RECOGNIZES THAT THE MITIGATION VALUES WILL BE REMOVED BY PHH FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT, AND THAT IF THE CLOSING DOES NOT OCCUR BECAUSE OF THE CITY'S DEFAULT WHICH CONTINUES AFTER ANY APPLICABLE NOTICE AND CURE PERIOD, IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF THE DETRIMENT TO PHH. THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY PHH AS A RESULT OF ANY SUCH DEFAULT IS DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT AND THAT DEPOSIT IS A REASONABLE ESTIMATE OF THE AMOUNT OF SUCH DAMAGES. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE CLOSING DOES NOT OCCUR BECAUSE OF THE CITY'S DEFAULT, WHICH CONTINUES AFTER ANY APPLICABLE NOTICE AND CURE PERIOD, THE DEPOSIT SHALL BE FORFEITED TO PHH AS LIQUIDATED DAMAGES. UPON ANY SUCH UNCURED BREACH OR DEFAULT BY THE CITY HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR (A) THE RIGHT OF PHH TO RETAIN SUCH LIQUIDATED DAMAGES, AND (B) PHH'S OBLIGATIONS TO TRANSFER THE DEFAULT DSAY CREDITS (AS HEREINAFTER DEFINED) TO THE CITY PURSUANT TO SECTION 12 BELOW. DELIVERY TO

AND RETENTION OF THE DEPOSIT SHALL BE PHH'S SOLE AND EXCLUSIVE REMEDY AGAINST THE CITY IN THE EVENT OF A MATERIAL UNCURED DEFAULT OR BREACH BY THE CITY RESULTING IN THE FAILURE OF CLOSING, AND PHH WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST THE CITY FOR SUCH MATERIAL UNCURED DEFAULT, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE.

PHH _____

THE CITY _____

12. Transfer of DSAY Credits After Default by City. In the event that this Agreement is terminated as a result of the City's default which continues after any applicable notice and cure period, then, notwithstanding such default and termination, PHH shall set aside for the exclusive use of the City 2.1 DSAY Credits, provided that the First Release has occurred. For purposes of this Section 12 only, the Parties agree that the DSAY Credits shall be valued at One Hundred Twenty-Five Thousand and No/100ths Dollars (\$125,000.00) per DSAY Credit. PHH shall have no obligation to set aside or transfer the balance of the DSAY Credits to the City.

13. Default by PHH; City's Remedies. In the event that Closing does not occur because of a material default by PHH under this Agreement that is not cured by PHH pursuant to Section 10(b)(iii) above, the City, as its sole and exclusive remedy, shall be entitled to an immediate return of the entire Deposit including all interest that accrues during the time held in Escrow and any other sums paid to PHH by the City, and PHH shall reimburse the City for the actual, reasonable out-of-pocket expenses incurred by the City and paid to the City's attorneys in connection with the negotiation of this Agreement and to unrelated and unaffiliated third-party consultants in connection with the City's due diligence investigation of the DSAY Credits.

14. No Broker. Each of the Parties hereto represents to the other that it has dealt with no real estate salesperson, broker or finder in connection with this transaction, and insofar as they know, no salesperson, broker or other person is entitled to any commission, finder's fee or other compensation in connection with this transaction. If any claims for any brokers' or finders' fees for the consummation of this Agreement arise, then PHH hereby agrees to indemnify, hold harmless and defend the City from and against such claims if they shall be based upon any statement, representation or agreement by PHH, and the City hereby agrees to indemnify, hold harmless and defend PHH if such claims shall be based upon any statement, representation or agreement made by the City.

15. Limitations on Assignment; Transfer. Should the City either determine that the DSAY Credits exceed the City's NRDA obligations or the City otherwise declines to use the DSAY Credits (with such resulting in available DSAY Credits referred to herein as the "Excess DSAY Credits"), the City shall have the right to sell, assign or transfer such Excess DSAY Credits to third parties, subject to the following provisions:

(a) Sale Within First Ninety (90) Days. In the event that the City wishes to sell or transfer the Excess DSAY Credits within ninety (90) days from the Closing, then PHH shall have the exclusive and preemptory right to repurchase the Excess DSAY Credits, in its sole and absolute discretion, in accordance with the following terms:

(i) The City shall give PHH written notice ("**Excess DSAY Credits Notice**") of the amount of Excess DSAY Credits.

(ii) The purchase price for the Excess DSAY Credits (the "**Repurchase Price**") shall be determined by multiplying Seventy-Five Thousand and No/100ths Dollars (\$75,000.00) by the number of Excess DSAY Credits.

(iii) PHH shall have thirty (30) days from its receipt of the Excess DSAY Credits Notice to exercise its right to repurchase the Excess DSAY Credits by giving the City written notice ("**Excess DSAY Credits Exercise Notice**") that PHH has elected to exercise its right to repurchase the Excess DSAY Credits. PHH shall pay the Repurchase Price in full within sixty (60) days after the date on which PHH delivers the Excess DSAY Credits Exercise Notice to the City.

(iv) If PHH declines to exercise its right to repurchase the Excess DSAY Credits, then the City shall be free to sell such Excess DSAY Credits to a third party, subject to the provisions of subsection (b) below.

(b) Sale After the First Ninety (90) Days. Subject to the provisions in subsection (a) above, in the event that the City wishes to sell or transfer the Excess DSAY Credits at any time after the ninetieth (90th) day following the Closing for a price less than Eighty-Five Thousand and No/100ths Dollars (\$85,000.00) per DSAY Credit, then PHH shall have the exclusive and preemptory right to repurchase the Excess DSAY Credits, in its sole and absolute discretion, in accordance with the following terms:

(i) The City shall deliver the Excess DSAY Credits Notice to PHH.

(ii) The Repurchase Price shall be determined by multiplying Seventy-Five Thousand and No/100ths Dollars (\$75,000.00) by the number of Excess DSAY Credits.

(iii) PHH shall have thirty (30) days from its receipt of the Excess DSAY Credits Notice to exercise its right to repurchase the Excess DSAY Credits by delivering an Excess DSAY Credits Exercise Notice to the City. PHH shall pay the Repurchase Price in full within sixty (60) days after the date on which PHH delivers the Excess DSAY Credits Exercise Notice to the City.

(iv) If PHH declines to exercise its right to repurchase the Excess DSAY Credits, then the City shall be free to sell such Excess DSAY Credits to a third party.

16. Survival. The provisions of paragraphs 8, 9, 10, 12, 13, 15, 16 and 17 shall survive Closing.

17. Miscellaneous Provisions.

(a) Ownership of Documents.

(i) PHH Documents. All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by PHH in

connection with its performance of services hereunder shall be, and shall remain after termination of this Agreement, the property of PHH, and may be used by PHH for any purpose whatsoever. The City shall be permitted to use any such documents for any lawful purpose, including, but not limited to, disclosure pursuant to the Oregon Public Records Law, disclosure in response to a subpoena, correspondence with the NRDA Trustees, and public education and outreach.

(ii) City Documents. All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced or prepared by the City shall be, and shall remain after termination of this Agreement, the property of the City. PHH agrees to return to the City upon termination of this Agreement all such documents and materials received from the City and used by PHH in the performance of its services hereunder. PHH shall not be permitted to use any such documents or materials prepared by the City for any purpose following termination of this Agreement.

(b) Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (i) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address or subsequent confirmation by electronic mail that the notice has been received); (ii) upon receipt when sent by facsimile prior to 5:00 p.m. Pacific Standard Time of a given Business Day (otherwise such receipt is deemed as of the following Business Day) to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending Party's machine provides written confirmation of successful delivery thereof); (iii) upon the day of delivery if the notice has been deposited in a authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (iv) one (1) Business Day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

To PHH: Portland Harbor Holdings II, LLC
 c/o PHH
 3855 Atherton Road
 Rocklin, California 95765
 Attention: Sherrie R. Aland, Corporate Counsel
 Telephone: (916) 435-3555
 Facsimile: (916) 435-3556
 Electronic Mail: saland@wildlandsinc.com

To the City: City of Portland
 Office of City Attorney
 1221 SW Fourth Ave., Room 430
 Portland, Oregon 97204
 Attention: Jan V.V. Betz
 Telephone: (503) 823-4047
 Facsimile: (503) 823-3089
 Electronic Mail: Jan.Betz@portlandoregon.gov

To Escrow Holder: Chicago Title Insurance Company
 1211 SW Fifth Avenue, Suite 2130
 Portland, Oregon 97204
 Attention: Malcolm D. Newkirk,
 Vice President, Commercial Management Division
 Telephone: (503) 973-7412 (Direct)
 Facsimile: (503) 248-0324
 Electronic Mail: newkirkm@ctt.com

Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

(c) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

(d) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving Party, which shall be extended by a period of time equal to the period of the delay.

(e) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

(f) Attorneys' Fees. In the event any of the Parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, each party shall assume its own attorneys' fees incurred in the prosecution or defense of such legal proceedings. This paragraph does not limit or otherwise restrict the City's rights to attorneys' fees under paragraph (13) of this Agreement.

(g) Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto and lawful assignees.

(h) Time of Essence. PHH and the City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision under this Agreement and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non curable (but waivable) default under this Agreement by the Party so failing to perform.

(i) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of principal and agent, a partnership, joint venture or any other association between the City and PHH, except as provided in this Agreement.

(j) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(k) Recitals/Exhibits. The Recitals set forth in this Agreement and the exhibits referenced herein are incorporated herein by this reference.

(l) Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Multnomah, Oregon.

(m) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(n) Days of Week. A "**Business Day**," as used herein, shall mean any day other than a Saturday, Sunday or federal holiday. If any date for performance herein falls on a day other than a Business Day, the time for such performance shall be extended to 5:00 p.m. on the next Business Day.

(o) Electronic Transmittals. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

(p) Representation by Counsel. Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either the City or PHH based upon authorship of any of the provisions hereof. The City and PHH each hereby warrant, represent and certify to the other as follows: (i) that the contents of this Agreement have been completely and carefully read by the representing Party and counsel for the representing Party; (ii) that the representing Party has been separately represented by counsel and the representing Party is satisfied with such representation; (iii) that the representing Party's counsel has advised the representing Party of, and the representing Party fully understands, the legal consequences of this Agreement; and (iv) that no other person (whether a Party to this Agreement or not) has made any threats, promises or representations of any kind whatsoever to induce the execution hereof, other than the performance of the terms and provisions hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

**PORTLAND HARBOR HOLDINGS, II,
LLC, a Delaware limited liability company**

CITY OF PORTLAND

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

LIST OF EXHIBITS

- Exhibit A - Alder Creek Restoration Site
- Exhibit B - Credit Table and Release Schedule
- Exhibit C - Bill of Sale

Exhibit A
Alder Creek Restoration Site

Exhibit B

CREDIT TABLE AND RELEASE SCHEDULE¹

Release Schedule for Restored and Enhanced Habitat		Credits/DSAYs Released²
1	15% release upon recordation of the deed restriction and establishment of the Construction Security, and Interim Management and Contingency Security (IMCS).	112.45
2	35% release upon approval of the as-built drawings.	262.40
3	30% release upon achievement of year 2 performance standards. ³	224.91
4	10% release upon achievement of year 5 performance standards. ³	74.97
5	10% release upon achievement of year 10 performance standards, recording of the permanent conservation easement, approval of the long-term stewardship plan, and full funding of the endowment fund.	74.97
Total Credits		749.7 DSAYs⁴
<p>Notes:</p> <p>1.) Although credits may be sold, they will only be recognized for purposes of settlement following negotiation of individual settlement agreements, public review and comment, and court approval or when credits are purchased by the Trustee Council or its members using cash-out settlement funds.</p> <p>2.) The number of Credits/DSAYs has been based on preliminary calculations. The final number of potential Credits/ DSAYs shall be based on the final acreage of habitat as shown in the final as-built drawings.</p> <p>3.) If beaver herbivory is causing more than 10% mortality resulting in the native woody plant minimum density performance standards not being met, the standard may be considered met for the purposes of credit release if the situation meets the requirements set forth in Section 5 of Exhibit B-1, Habitat Development Plan.</p> <p>4.) Any mitigation requirement specified as an acreage requirement shall be deducted from the available Conservation Credits/DSAYs at a ratio of 1 acre = 14.34 Credits/DSAYs.</p>		

Exhibit C**BILL OF SALE**

In consideration of Two Million Six Hundred Twenty-Five Thousand and No/100ths Dollars (\$2,625,000.00), receipt of which is hereby acknowledged, **PORTLAND HARBOR HOLDINGS II, LLC**, a Delaware limited liability company ("**PHH**"), does hereby bargain, sell and transfer to the **CITY OF PORTLAND** (the "**City**") thirty-five (35) Discounted Service Acre-Year credits (the "**DSAY Credits**") from the Alder Creek Restoration Site.

PHH represents and warrants that it has good title to the DSAY Credits, has good right to sell the same, and they are free and clear of all claims, liens, or encumbrances.

PHH covenants and agrees with the City to warrant and defend the sale of the DSAY Credits against all and every person and persons whomsoever lawfully claiming or to claim the same.

PORTLAND HARBOR HOLDINGS, II, LLC,
a Delaware limited liability company

By: _____

Its: _____

Date: _____