

Montgomery Park Public Benefits Agreement

Preliminary Draft Term Sheet

Introduction

The City of Portland has developed a land use and transportation plan that will create a new mixed-use district in Northwest Portland, focused on the area west of Highway 30 between NW Vaughn and NW Nicolai streets. The plan will change current zoning to allow greater development intensities and a greater mix of uses on properties currently zoned for industrial and employment uses in an area served by extension of an existing streetcar line. This plan builds on the City's previous action which removed the Industrial Comprehensive Plan designation on the former ESCO site and replaced it with the Mixed Employment Comprehensive Plan designation. The plan would create the opportunity for several thousand new housing units, and hundreds of new regulated affordable units. A 1.6-mile extension of the Portland Streetcar (.80 miles each way) would serve the new development. Two large sites in the area are in development transition: the Montgomery Park office complex and the former ESCO Steel manufacturing site.

The vision of the project is to transform the area from a largely low intensity industrial area to a mixed-use neighborhood that includes employment, housing, and other community-serving land uses. Increased density and transit-oriented development support the City's goals to reduce carbon emissions and create additional capacity for housing and jobs. The plan would also create additional land value through city actions, including land use regulation changes and transportation investments – and these city actions must address City policies that call for equitable development. In this instance, the public benefits of the project must address the loss of industrial land and the middle-wage jobs that might have been supported by industrial development and must contribute to solving Portland's acute need for housing, including affordable units.

The terms summarized below seek to address these public needs, even as they recognize that the land in question is privately owned – and thus these benefits can only be realized through the opportunity created by future development.

The requirements listed here are intended to outline the means to direct some of the value created from the change in land use regulations and transportation investments toward providing broader public benefits. These benefits include middle-wage jobs, affordable rental housing, wealth building opportunities, and a new publicly accessible open space or park.

As part of this agreement, the City and the property owners acknowledge that these benefits rely in part on future development, and the proposal is intended to enable that development. The proposed agreement seeks to strike a balance between private value created and benefits to the larger community – while recognizing the area's previous industrial character and uses.

Because there is no housing currently developed on either the former ESCO site or the Montgomery Park site, this plan presents no risk of housing displacement on those sites. Instead, with the opportunity for an increase in middle wage job growth and additional affordable housing, there is an opportunity for future developments with a more equitable distribution of benefits to be realized from city and private investment.

This project has the potential to provide meaningful community benefits. It presents an opportunity to help address Portland’s housing crisis by increasing housing choices and affordable housing supply in an opportunity-rich and low-carbon neighborhood. The transit-oriented nature of this new community means that new residents can meet their daily needs without a personal vehicle. Increased density in an area with improved access to high quality, low-cost, and low-carbon transportation options that connect people to both nearby and regional destinations and job centers can reduce development pressure on Portland’s edges. This, in turn, lowers city development expenditures, helps preserve open spaces and farmland in a growing region, and supports more equitable and sustainable urban living.

Proposed Public Benefit Package Summary

1. Middle Wage Jobs. A target of 800 middle wage jobs to be provided on site. If the job goal is not met within 10 years from the effective date of this agreement, a proportionate per-job payment will be required, which will be used to fund workforce development and training programs, up to a maximum payment of \$4 million;
2. Small Business Job Creation. Incentives for below-market-rate, for-sale and for-rent commercial spaces; and
3. Minimum Affordable Rental Housing Units. Construction of 200 units affordable to households making 60% of Area Median Income (AMI) prior to or concurrent with any market rate units and within seven (7) years of the effective date of this agreement or each housing project must include 15% of its dwelling units at 60% of AMI;
4. Public Open Space. Provision of a single, contiguous, publicly accessible open space that is a minimum of 40,000-square-foot in size and is centrally located within Subdistricts B, C and D of the Vaughn-Nicolai Plan District;
5. Commemoration of York. Commemoration of York through public art and placemaking in a significant publicly accessible location within the development.
6. Transportation. Commitment of private property owners to fund a portion of the public Portland Streetcar extension project through formation of a Local Improvement District;

Proposed Public Benefits Package Components and Considerations

1. **Middle Wage Jobs.** The middle-wage jobs benefits package is intended to help offset the loss of prime industrial land and to continue to support middle wage jobs in this area. Prior to closure of the ESCO foundry the 16-acre campus had 800 jobs. This equates to 871 building square feet per lost industrial job. This calculation is confirmed by two sources: the US Energy Information Administration Survey of space utilization averages for specific building types which lists 1,500 square feet per industrial job and the landowner’s own current job density statistics for operating factories which ranges from 890 square feet to 2,500 square feet per employee. Thus, the actual job loss from the rezoning of industrial land is estimated at 800 jobs. Net new job production in Subdistricts B, C and D must therefore be equal to or greater than 800 new middle-wage jobs on site. If these job targets are not realized within 10 years from the effective date of this agreement, the property owners will make a proportionate payment of \$5,000 for each job under 800 not yet created, up to a total possible payment of \$4,000,000. Payment shall

be made into the Middle Wage Jobs Fund (MWJF) to support business development and/or jobs programs associated with the following programs: The Oregon Manufacturing Extension Program (OMEP) and Oregon Manufacturing Innovation Center (OMIC) or similar.

- a. A middle-wage job is defined as:
 - i. A job where the starting annual salary is a minimum of \$57,000 or greater than 50% of area median income (AMI) for a family of four, as published by the Federal Department of Housing and Urban Development, for the year in which the evaluation is taking place; and
 - ii. Does not require a four-year college degree or more to qualify; and
 - ii. Is within five priority industry clusters (Athletic & Outdoor, Green Cities, Food & Beverage Manufacturing, Metals & Machinery, and Software & Media), other traded sector industry, or otherwise meets criteria i. and ii.

- b. Small Business Job Creation - Middle Wage Job Requirement Reduction: Commercial condominiums sold at a cost that is 15% below market value to buyers from priority communities or affordable commercial space leased to priority communities at 20% below market rents would qualify for a reduction in middle wages jobs. The allowable reduction in middle wage jobs is one (1) employee for every 200 square feet of non-residential floor area sold or leased at below market value. For-rent, affordable non-residential spaces shall be leased at below-market rents for a period of no less than 10 years. A reduction in middle wage jobs in exchange for affordable for-rent or for-sale commercial space shall not exceed 20% of the required middle wage jobs.
 - i. Eligible renters or buyers shall initially be identified by contacting one or more Qualified Culturally Specific Organizations (QCSO). The developer/property owners shall make all reasonable efforts in this regard. The definition for a QCSO is the same as that used by Oregon Housing and Community Services (OHCS)]:

- c. Reporting, Monitoring, and Enforcement of Middle Wage jobs.
 - i. At intervals of 5, 7 and 10 years after the effective date of this agreement, the property owners will provide reports on how many net new total jobs and middle wage jobs have been created onsite since the effective date of the agreement.
 - ii. Progress toward the middle wage job requirements will be measured at the three reporting intervals: 5, 7 and 10 years after the effective date of this agreement. Independent verification of the property owners middle wage jobs production performance is required. To accomplish this, the property owners will pay to Prosper Portland \$25,000 at the beginning of the fiscal year in which each of the three reporting intervals occurs. Prosper Portland will use these funds to verify and enforce compliance with the middle wage jobs requirements and affordable commercial offsets. The funds will be used to hire and/or contract with an independent third party that will be tasked with verifying compliance with middle wage job requirement performance and for reimbursement of any associated staff

costs. The report produced by the third party will help form the basis for enforcement actions, if any. Additional fees, up to a maximum of an additional \$25,000 and not to exceed \$50,000 for each year in which reporting is required, may be assessed if necessary to offset the cost of verifying and enforcing compliance with middle wage jobs requirements and affordable commercial offsets. In its program administration and compliance monitoring role in this project area, Prosper Portland will use existing programs to market the area to target industry cluster employers and businesses to help achieve middle wage job targets within the first five years.

- iii. Reporting, monitoring and enforcement provisions of this agreement including those pertaining to middle wage job creations will be contained in a legally binding agreement that runs with the land.
- iv. Enforcement of non-compliance with the middle wage jobs production requirements will occur through payment of liquidated damages to the MWJF in the amount equal to \$5,000/job in the first year of this agreement, which shall increase annually at a constant rate of 3%.
- v. At each reporting milestone, property owners will either demonstrate job creation equivalent to the job target for that milestone or will be required to make a payment in an amount equivalent to any shortfall in the number of jobs required to meet the job target for that milestone, as outlined below:
 - 1. Year 5: 50% of job target or 400 jobs
 - 2. Year 7: 70% of job target for a total of 560 jobs or an additional 160 jobs from Year 5
 - 3. Year 10: 100% of the job target for a total of 800 jobs or an additional 240 jobs from Year 7

For example, if only 200 middle wage jobs are created by Year 5, then property owners shall make a payment of \$1.12 M to the MWJF at the time of the Year 5 reporting milestone. The payment amount includes the 3% annual escalation.

- 4. Reductions may be permitted through the lease or sale of commercial space at below -market rates consistent with applicable provisions of this agreement (see Small Business Job Creation).
- vi. The MWJF will be administered by Prosper Portland (or its successor) which will use the 5-, 7- and 10-year performance reports and any other tools of its choosing to assist in administration. Prosper Portland may use the MWJF to fund any of its then extant jobs-related programs at its sole discretion. Prosper Portland will be entitled to retain an administrative fee not to exceed 10% of the value of MWJF.

- 2. **Affordable Rental Housing.** The affordable rental housing benefits package is intended to address the acute need for affordable housing in the near-term and to gain regulated affordable rental housing units in this high opportunity area to achieve a mixed income community.
 - a. The first housing units to be built in Subdistricts B, C D and F shall contain a minimum of 200 units of rental or ownership housing units, which may be provided in one or more buildings, and will be characterized by, at minimum:

- i. All units will be affordable at 60% of Area Median Income (AMI); and
- ii. Rents and other requirements will be regulated by the Portland Housing Bureau (PHB), or its successor in accordance with the Inclusionary Housing program rules and requirements extant on the date the Agreement is executed; and
- iii. The building will be deemed a Consolidated Building for purposes of Inclusionary Housing compliance for future development up to a maximum of 2,000 market rate units and will comply with all laws, rules, regulations, and ordinances that exist on the date the initial land use application is submitted for the Consolidated Building, consistent with PCC 33.700.080.A;
- iv. To qualify the building must be located within a parcel or site bounded by NW Wardway to the west, NW Vaughn Street to the south, NW 24th Ave. to the east and NW York St. Extension to the north. The area defined above consists of roughly Subdistricts B, C, D and F in the proposed Vaughn-Nicolai Plan District; and
- v. Reasonable Equivalency: The parties recognize that the goal of this agreement is to incentivize the early construction of affordable housing and to allow those affordable units to serve as a bank for the inclusionary housing requirement of future market-rate development. The parties also recognize that the banked affordable housing must be equal or superior to the average size and quality of a unit found in the market.

The unit size, bedroom mix and quality of finishes will be determined by a market analysis of comparable developments in the Census Tracts that comprise the broader Northwest Study Area, as defined in the Montgomery Park to Hollywood Equitable Development Report. The market analysis shall be completed by the property owner/developer and shall be submitted to the city at the time of or prior to submittal of a land use application for the Consolidated Building. The market analysis shall have been completed no longer than six months prior to the submittal of the land use application. The Consolidated Building shall be constructed with a unit size, bedroom mix and quality of finishes that is equal or superior to recent comparable developments in the area, as determined by the market analysis. Implementation details will be further described in the public benefit agreement.

- vi. The Consolidated Building may not request or receive any city-controlled subsidy of any kind, with the exception of system development charge and real estate tax exemptions.
- b. Enforcement Options:
 - i. No other residential building permits may be issued until the city issues a building permit for the Consolidated Building, all necessary financing has closed, and the property owner/developer has issued a notice to proceed to its general contractor, or
 - ii. If the Consolidated Building does not meet the requirements of Section 2 a or a market rate building elects to build its own Inclusionary Housing units, all housing developments up to 2,000 units will be subject to a requirement to provide 15% Inclusionary Housing units at 60% AMI, or

- iii. Alternatively, property owners may comply with the requirement to provide 15% IH units at 60% AMI by paying the applicable Inclusionary Housing Fee In Lieu in the amount equivalent to the IH unit requirement, in accordance with the city's inclusionary housing regulations.
3. **New Park/Open Space.** The New Park/Open Space benefits package is intended to provide at least one quality publicly accessible parks or open space in this new mixed use area, which is expected to accommodate thousands of new jobs and housing units.
- a. Park Obligation. The property owners will be required to create at least one park on their current property, totaling a minimum of 40,000 square feet and having at least two public street or public easement frontages of a minimum of 100 linear feet. The park design will be determined through a public process, working with Portland Parks & Recreation (PP&R), but generally should be oriented to passive recreational uses and be characterized by significant vegetation and tree canopy and should include facilities for children and children's play.
 - b. Park Ownership. PP&R agrees that the land upon which the park is built may be owned by the property owners and/or their successors only if the property owners agree to maintain public access to the park in perpetuity and will record an easement or similar legal document(s) to that effect, benefiting the city of Portland by and through PP&R or its successor.
 - c. Park Maintenance. PP&R will provide basic maintenance for the park in keeping with the current level of service as defined by PP&R. Maintenance over and above PP&R's basic standard will be provided by the property owners and/or their successors, exclusively at their cost. PP&R and the property owners agree to collaborate on creation of a park maintenance agreement detailing levels of service, roles and responsibilities and payment of capital and ongoing costs. The park's operation and maintenance will be further detailed in coordination with PP&R.
 - d. Key Park Features. Consistent with park function and character described above, key features of the park shall include:
 - i. The park will be open to the public for free;
 - ii. The park hours of operation will be at 5 a.m. to midnight every day of the year and will be open and accessible to the public during those hours. The hours of operation could be less, if determined by the current director of PP&R to be consistent with typical hours of operation in the current park system.
 - iii. The park must be free of physical barriers to entry and surveillance equipment within the park, and it must also comply with the American Disabilities Act
 - iv. The park will include at minimum the following amenities:
 - 1) Provide primarily green vegetated infrastructure with appropriate public accessways through it;
 - 2) Minimum of 20% canopy cover.
 - 3) Increase the urban tree canopy using a mix of tree species and sizes adapted to our changing climate and urban context (favoring large form canopy trees);
 - 4) Permanent seating areas with access walkways

5) Water feature or other urban park amenities

- e. Park Location. The open space shall be centrally located (between NW 24th and NW Wardway Avenues and, between NW Vaughn and a future NW York Street) in Subdistricts B, C and D or among the subdistricts.
 - f. Upon issuance of a building permit for the first market rate residential project on Subdistrict B, C or D, a site plan shall be provided that identifies the location of the required 40,000 square foot park. The site plan detailing this location, once approved by the city, shall be considered an addendum to this agreement.
 - g. Build out of the 40,000 square foot park shall be required at the time of the completion of construction of the 1,000th dwelling unit or within ten years of the effective date of this agreement, whichever comes first.
 - h. The property owners will be eligible for a reduction in Parks systems development charges (SDCs) equivalent to the value of the agreed upon improvements, which will be determined in coordination with the PP&R. Any other properties in the plan area that contribute to the development of open space may also be eligible for SDC credits. [to be determined]
 - i. The property owners and/or their developers will pay all SDCs due until such time as PP&R, or its successor, has issued a confirmation letter that a Park has been created that meets the requirement herein.
 - j. The property owners are considering one or more parks or recreation facilities in addition to the required park outlined above. In particular, enhanced connections or parking access to nearby Forest Park have been discussed. Such park or facilities are not required as part of this agreement, however, should the property owners and PP&R agree to such park or facility, PP&R may consider providing additional SDC exemptions or credits, above and beyond the SDC reduction provided for the required 40,000 square foot park, as part of a negotiation with the property owners.
 - k. Commemoration of York is outlined in Section 4 below. The property owners and PP&R will consider whether to include such commemoration in the required park outlined above. Location within the required park is optional, not required.
 - l. A maximum of 12 fee-for-entry events are permitted annually in the park; to the extent feasible, a portion of the park should remain accessible for free to the general public throughout the duration of the fee-for-entry events.
4. **Commemoration of York.** The Commemoration of York public benefit is intended to celebrate the contributions of York, an enslaved member of the Lewis and Clark Expedition and the first documented person of African descent to visit what would become Portland, Oregon, and for whom NW York Street, which exists in the area, is named.
- a. The developers/owners must demonstrate a partnership between them and the Regional Arts and Culture Council (RACC) or its successor, as determined by the City of Portland, that will result in the funding and installation of one or more features memorializing York at the intersection of NW York Street in the area between NW 24th and NW 26th avenues. The owner/developer may propose any other bona fide organization or organizations in place of RACC and must consult with representatives of interested community groups.

- b. All required contributions to the 2% for Art program by the city or Portland Streetcar Inc. will be made to a Montgomery Park Area Plan fund established by RACC or its successor. All funds must be spent on memorializing York or contributions of other Black/African American people to the district, city, region or state of Oregon and otherwise generally commemorate the history of the area.
5. **Transportation.** Broadly, transportation improvements in the project area can be broken into two categories: 1) those where costs will be shared by the City and the property owners; and 2) those where costs will be borne exclusively by the property owners.
- a. Shared Transportation Costs. Shared-cost transportation improvements will apply to the following streets:
 - i. NW Roosevelt Street between NW 24th and NW 26th avenues
 - ii. NW Wilson Street between NW 24th and NW 26th avenues
 - iii. NW 23rd Avenue between NW Lovejoy and NW Roosevelt streets, by virtue of participation in the district-wide Local Improvement District
 - iv. In addition:
 - 1) These streets are/will be part of the new Streetcar track alignment.
 - 2) Where these streets are on or cross the property owners' property, right-of-way dedications to the city will be required.
 - 3) The City, in partnership with Portland Streetcar Inc., will design and contract for construction of all improvements.
 - 4) Payment for design and improvements is anticipated to come from:
 - i. Federal Transportation Administration (FTA) match, which the City will diligently pursue and maximize to the greatest extent possible.
 - ii. City of Portland funds
 - iii. A Local Improvement District (LID) in which the property owners will be significant contributors. The LID formation will require a separate public process in which property owners will actively participate. Participation and contribution to the LID will be based upon formal assessment and legal requirements, as such that costs borne by property owners are relational to their assessed benefit resulting from the improvements.
 - iv. Property owner contribution outside the LID, if necessary.
 - v. Dedication of rights-of-way for above streets
 - b. Property owner streets. Property owners will be required to comply with the Montgomery Park Area Transportation Plan, as well as City Design Standards for Public Streets. The Montgomery Park Area Transportation Plan includes the following streets, at minimum:
 - i. NW 25th Avenue from NW Wilson Street to NW Roosevelt Street.
 - ii. Extensions of the street grid as required through development review to meet street spacing and connectivity standards.
 - iii. In addition:
 - 1) In keeping with standard practice, it is expected that the property owners will pay for all costs for these streets; this includes the right of way dedications and associated infrastructure, per City codes.

- 2) Design of the streets will comply with the City’s design standards and will be consistent with the Montgomery Park Area Transportation, which can be found at a conceptual level in the Montgomery Park Area Plan and which will be finalized through development review.
 - 3) Contracting and management of construction of streets to be constructed as part of the streetcar project will be negotiated between the city and the property owners prior to and during design.
- c. Commitments made by the City of Portland.
- i. The City shall demonstrate significant progress toward the design, funding and construction of the extension of Portland Streetcar within a reasonable time frame following adoption of the related land use plan and associated Comprehensive Plan and zone changes. Demonstration of progress includes but is not limited to seeking adoption of a Locally Preferred Alternative (LPA) from Portland City Council, TriMet and Metro before December 31, 2024; an application to enter project development with the Federal Transit Administration before June 30, 2025; and a commitment to form a local improvement district to assist in funding streets and streetcar related investments, prior to any building permits are issued for private development projects in the project area.
 - ii. The City shall make every effort to fund and build the extension of Portland Streetcar as agreed upon in this document and to do so in a timely and cost-effective manner; however, there is no legal nexus between the land use decisions, zoning changes, and development agreements and the construction of streetcar.

6. **Infrastructure Planning.** The area, which consists of large unsubdivided parcels, will require new transportation, water, sanitary sewer and stormwater infrastructure to support future higher intensity, mixed use development. The property owners/developers agree to work with the public works bureaus to develop a comprehensive plan for the public infrastructure to ensure it will be appropriately phased, sited, and sized and that their connections to existing infrastructure will make effective use of existing system capacity. The intent is to provide greater certainty for both the city and property owners/developers in order to simplify later permit processes. Implementation details, including the timing of such plans, will be further described in the public benefit agreement.

7. Other Agreement Terms and Obligations

- a. Agreement Term: 10 years
- b. Upon issuance of a Temporary Certificate of Occupancy for a residential unit total of 2,000 or more and if there are no additional unmet obligations, all requirements of this agreement shall be deemed complete and the developers/owners shall have no further obligations under this agreement.
- c. Racial equity in construction subcontracting firm and workforce participation. Property owners shall make best efforts to engage and involve as many as possible of the

culturally-specific construction-related technical service providers in each development project. As of the date of this agreement, those include the National Association for Minority Contractors (NAMC), Professional Business Development Group (PBDG), LatinoBuilt and the Oregon Association for Minority Entrepreneurs (OAME).

- d. The property owners/developers will first market all the regulated affordable units in all housing development projects to culturally specific organizations through PHB's network of CDCs.
 - e. Creation of a homeownership down payment assistance fund for priority communities, up to a maximum of \$5 million, if equivalent financial offsets through reductions in other fees and charges can be identified, to the satisfaction of the parties to this agreement.
8. Any agreement between the City and the Developers/Property Owners will recognize the right to extend the period for performance of obligations for unforeseeable causes beyond the control of either or both of the parties without fault or negligence.