

## AGREEMENT FOR THE TRANSFER OF REAL PROPERTY (the “Agreement”)

EFFECTIVE DATE: \_\_\_\_\_ (see Section 9.G.B. for provisions governing the Effective Date)

### PARTIES

- THE CITY OF SEATTLE, a Washington municipal corporation (the “City”) acting by and through its Department of Finance and Administrative Services; and
- PHINNEY NEIGHBORHOOD ASSOCIATION, a Washington nonprofit corporation (the “PNA”).

### RECITALS

- A. The City owns that certain real property having a street address of 525 North 85<sup>th</sup> Street, Seattle, WA 98103, and legally described as follows:

The north half of Lot 2; and the east 60 feet of Lot 3; Block 19, Osner’s Second Addition to Seattle, according to the plat thereof recorded in Volume 12 of Plats, page 3, in King County, Washington, EXCEPT the south 110 feet of said portion of Lot 3.

Situate in the City of Seattle, County of King, State of Washington,

which real property, including appurtenant improvements, is referred to in this Agreement as the “Real Property.”

- B. Effective January 1, 1987, the City, as landlord, and the Greenwood Senior Center, a Washington non-profit corporation, as tenant, entered into that certain *Mutual and Offsetting Benefit Lease Agreement*, whereby the City leased the Real Property to the Greenwood Senior Center (the “Lease”).
- C. The PNA is the successor-in-interest to the Greenwood Senior Center under the Lease. The initial term of the Lease expired and as of the Effective Date, PNA occupies the Real Property on a month-to-month basis on the terms and conditions of the Lease for the purposes of operating a senior center.
- D. The City acquired the Real Property, in part, using funds provided through the 1972 social and health services bond issuance of the State of Washington (“Ref. 29 Bonds”).
- E. Under RCW 43.83.410, public bodies are authorized to transfer real property acquired or improved through Ref. 29 Bonds to nonprofit corporations organized to provide individuals with social and health services subject to certain promises and covenants.

- F. In addition to funding provided under Ref. 29 Bonds, City’s acquisition of the Real Property was funded, in part, by a United States Community Development Block Grant, and as a result City’s transfer of the Real Property is subject to certain federal requirements.
- G. Pursuant to City of Seattle Resolution 31856 and that certain 2019 *Memorandum of Agreement/Implementing Criteria for Initiating Transfer of Mutually Offsetting Facilities to Tenants* by and amongst various City of Seattle departments and offices, an interdepartmental team within the City of Seattle has determined that the PNA in all material respects meets the transfer criteria established by the City for transferring property to tenants who have been operating properties under mutually and offsetting benefit lease agreements.
- H. Consistent with the intent of Resolution 31856, the City and PNA mutually desire to enter into a binding agreement for the City’s transfer and conveyance of the Real Property to PNA.

## **AGREEMENT**

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and PNA agree as follows:

1. The **RECITALS** are made a part of this Agreement.
2. **TRANSFER OF THE PROPERTY.** Subject to the terms and conditions of this Agreement, the City shall transfer and convey to PNA, and PNA agrees to accept from the City, the Real Property together with any and all personal property owned by the City and located within or used in connection with the Real Property, including any and all furniture, furnishings, fixtures, appliances, heating, air conditioning and cooling units or systems, sign and boilers. Such personal property, together with the Real Property, is collectively referred to in this Agreement as the “**Property**”.
3. **CONSIDERATION.** Consideration for the City’s transfer and conveyance of the Property to PNA shall be as provided in this Section 3.
  - A. **Covenants.** PNA shall promise and covenant, for and on behalf of itself and its successors and heirs, as follows:
    - i. PNA shall use the Property to continuously provide and operate social services to the public with a focus on meeting the social, physical, and mental health and welfare needs of seniors. Additionally, if PNA redevelops the Property or otherwise expands or constructs additional improvements on the Property, the improvements shall be dedicated to providing social services, which may be combined with affordable housing.

- ii. PNA shall assume all environmental risk associated with the property and shall indemnify the City from all environmental liabilities arising from the Property. In the event ownership of the Property reverts to the City, PNA’s obligation shall not apply to the extent any environmental liability that results from any release, contamination or occurrence that occurs after the date of any reversion if the release or contamination is through no fault or action of PNA or its employees, agents, contractors, licensees, tenants, or invitees.
- iii. Title shall automatically revert to the City if (i) the Subrecipient Agreement (defined below) is terminated for material default under its terms, or (ii) if the Property is not used to meet a national objective set forth in 24 CFR section 570.208 for the recapture period required under the Subrecipient Agreement, or (iii) if the Property reverts under the terms of RCW 43.83.410.
- iv. PNA’s covenants and promises shall be included in the Deed (defined in Section 8) and shall run with the land and shall bind future owners of the Property. PNA shall not sell the Property except as permitted under the Deed.

**B. Subrecipient Agreement.** On or before Closing, PNA shall execute a Subrecipient Agreement in the form attached as **Exhibit A** (“**Subrecipient Agreement**”).

**4. “AS-IS”; CITY DISCLOSURE STATEMENT; PNA ACKNOWLEDGEMENT OF CERTAIN CONDITIONS.**

**A. AS-IS Condition.** PNA is in possession of the Property, is familiar with the Property and understands its limitations and defects. Therefore, except as expressly set forth in this Agreement:

- i. PNA acknowledges that City is transferring and conveying the Property “**AS-IS**” with all faults, and that City makes no representations or warranties regarding the Property or its suitability for PNA’s intended use, and that City will convey the Property and PNA will accept the Property subject to any defects, including but not limited to easements, encroachments or claims for adverse possession, whether known or unknown, matters of public record, and off-record liens, if any.
- ii. Neither City nor any agent, employee, officer, director, attorney, broker, contractor, representative or property manager of City has made, and City specifically disclaims, any warranties, representations or guaranties of any kind or character, express or implied, statutory, oral or written, past, present or future, with respect to the Property.
- iii. PNA acknowledges that it has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of City (except those provided for in this Agreement) or any of its respective agents, employees,

officers, directors, attorneys, brokers, contractors, representatives or property managers and acknowledges that no such representations have been made.

- iv. The Property is conveyed subject to all existing easements, covenants, restrictions, conditions, reservations, exceptions, and agreements, recorded and unrecorded, and the City makes no warranties of any kind as to the title of the Property.

**B.** City will furnish a Seller disclosure statement, as required pursuant to RCW CH. 64.06.

**C.** PNA acknowledges receipt of the following: (i) GeoEngineers' Greenwood Senior Center Property Phase I Environmental Site Assessment dated September 11, 2013, and (ii) the SoundEarth Letter Report dated February 20, 2015.

## **5. REPRESENTATIONS AND WARRANTIES**

**A. City's Representations and Warranties.** For purposes of the representations and warranties in subsections 5.a.i.-v., "the City Representative" is Karen Gruen. City represents and warrants to PNA as of the Effective Date, as follows:

- i. Seller is a municipal corporation duly organized and validly existing under the laws of the state of Washington.
- ii. City has the authority to enter into this Agreement and, as of Closing, to complete the transaction contemplated by this Agreement.
- iii. Entering into this Agreement does not conflict with any other contract or legal obligation of Seller.
- iv. To the best of City Representative's knowledge, there are no actions, suits or other legal proceedings pending or threatened against City with respect to the Property.
- v. The City Representative has not received written notice that City is in default under any covenants, easements, deeds, regulations, laws, rules, ordinances, orders, or restrictions affecting or encumbering the Property.

**B. PNA's Representations and Warranties.** PNA hereby represents and warrants to City that as of the Effective Date:

- i. PNA is a duly organized and validly existing entity under the laws of the State of Washington.

- ii. PNA has obtained all necessary approvals to enter into this Agreement, and, as of Closing, to complete the transaction contemplated by this Agreement.
- iii. Entering into the Agreement does not conflict with any other contract or legal obligation of PNA.
- iv. PNA is in possession of the Property and PNA has not granted any other party, affiliate, subtenant, or licensee a right to use and possession of the Property in a manner that conflicts with the use under the Deed or the Subrecipient Agreement.
- v. PNA (a) has not filed a petition in bankruptcy, (b) is not the subject of a petition in bankruptcy, (c) does not have a trustee or receiver appointed with respect to PNA's assets, (d) has not assigned assets for the benefit of creditors, (e) has not received notice of default, trustee's sale, foreclosure or forfeiture.

**6. ACCESS AND DUE DILIGENCE.** As of the Effective Date, the PNA is in possession of the Property pursuant to the Lease and has sufficient access to the Property and information regarding the Property to enable PNA to complete due diligence prior to entering into this Agreement without need of an additional due diligence period.

**7. ESCROW.** The Parties appoint Chicago Title Company, 701 Fifth Avenue, Suite 2700, Seattle WA 98104 as the Escrow Agent (referred to elsewhere in this Agreement as the "Escrow Agent") for the transfer and conveyance of the Property.

**8. FORM OF DEED.** At Closing, City shall convey the Property to PNA by quitclaim deed in the form attached as **Exhibit B** (the "**Deed**").

## **9. CONDITIONS TO CITY'S AND PNA'S PERFORMANCE**

**A. City's Closing Conditions.** The obligation of the City to close the transaction contemplated by this Agreement is subject to the following closing conditions, any of which the City may waive, in whole or in part:

- i. PNA shall have delivered to Escrow Agent all funds, documents and instruments required to be delivered by PNA hereunder.
- ii. PNA shall have performed in all material respects all covenants and obligations required by this Agreement to be performed by PNA on or prior to Closing.
- iii. PNA's representations and warranties in Section 5 of this Agreement are true and correct as of the Closing date.

**B. PNA's Closing Conditions.** PNA's obligation to close the transaction contemplated by this Agreement is subject to the following closing conditions, any of which PNA may waive in whole or in part:

- i. Ratification of this Agreement by the PNA’s board of directors.
- ii. City shall have delivered to Escrow Agent all documents and instruments required to be delivered by City hereunder.
- iii. City shall have performed in all material respects all covenants and obligations required to be performed by City on or prior to Closing.
- iv. City’s representations and warranties in Section 5 of this Agreement are true and correct as of the Closing date.

**10. CLOSING; CLOSING DELIVERABLES; CLOSING COSTS/PRORATIONS;  
OBLIGATION FOR LEASEHOLD EXCISE TAX**

**A. Closing.**

- i. The Closing Date will be a mutually agreed-upon date following the effective date of a Seattle City Council ordinance authorizing the transfer of the Property; ; provided that, City may extend the Closing Date for up to ninety (90) days if needed to secure the necessary authorizing legislation.
- ii. “**Closing**” will be deemed to have been completed when the Deed is recorded by the King County Recorder’s Office.

**B. City’s Closing Deliverables.** On or before the Closing Date, City shall deposit with Escrow Agent the following:

- i. The Deed, executed by the City;
- ii. The City’s executed counterpart of the Subrecipient Agreement;
- iii. Certification that City’s representations and warranties are true and correct;
- iv. Real Estate Excise Tax Affidavit in form required by law;
- v. Seller’s certification of Non-Foreign Status under Foreign Investment in Real Property Tax Act (26 U.S.C. 1445); and
- vi. Any mutually agreed-upon assignment of services contracts.

**C. PNA’s Closing Deliverables.** On or before the Closing Date, PNA shall deposit with the Escrow Agent the following:

- i. Certification that PNA’s representations and warranties are true and correct as of Closing;
- ii. Executed Subrecipient Agreement;
- iii. Executed Real Estate Excise Tax Affidavit in form required by law; and
- iv. PNA’s executed acceptance of Deed.

**D. Closing Costs/Prorations.**

- i. PNA and the City shall share equally all costs associated with the transfer and conveyance of the Property, including recording fees and real estate excise tax (if any). PNA shall be responsible for the cost of an owner’s policy of title insurance (whether it provides standard coverage or extended coverage).
- ii. Real and personal property taxes, assessments, and charges payable in the year of Closing will be pro-rated as of Closing Date. PNA acknowledges that pursuant to RCW 84.36.010 the Real Property is not currently subject to property tax because City is a public entity, and that the Real Property will become subject to taxation when PNA acquires it. City calls PNA’s attention to the fact that the Real Property is subject to miscellaneous charges (e.g., a charge for surface water), even though Property is exempt from taxation pursuant to RCW 84.36.010(1). Such miscellaneous charges will be pro-rated at Closing.
- iii. **Leasehold Excise Tax.** In the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the PNA’s occupation of the Property under the Lease (including possession of the Property by the PNA’s predecessors-in-interest under the Lease) or withholds funds due to the City to enforce collection of leasehold excise taxes, the PNA shall, at its sole expense, defend and indemnify the City from all such demands, and if necessary repay City for all sums expended by the City, or withheld by the State from the City, in connection with such taxation; provided that this shall not prevent PNA from contesting such action, at PNA’s sole cost. The obligations of this Section shall survive Closing.

**E. RELEASE AND INDEMNITY.** City’s willingness to enter into this Agreement is conditioned, in part, on PNA’s agreement to take the Property AS-IS and PNA’s covenant to release and indemnify City from environmental liabilities arising from the Property as provided under the terms and conditions of the environmental covenant in the Deed.

## **F. BROKERS**

The City represents and warrants that, in the context of the transaction contemplated by this Agreement, it is not represented by a real estate broker. Similarly, PNA represents and warrants that in the context of the transaction contemplated by this Agreement, it is not represented by a real estate broker. If any person or entity makes a claim for a brokerage commission or finder's fee of any kind, then the party through whom or on whose behalf such services are claimed shall defend and indemnify the other party from any claims, costs or fees for unpaid broker's fees or commissions.

## **G. MISCELLANEOUS**

- A. Notices.** Any notice required or permitted to be delivered under this Agreement must be in writing and will be deemed given on the earlier of actual receipt or (i) when delivered, if delivered by hand during regular business hours, (ii) three (3) days after being sent by United States Postal Service, registered or certified mail, postage prepaid, return receipt requested and first class mail, postage prepaid, or (iii) the next business day if sent by a reputable national overnight express mail service that provides tracing and proof of receipt or refusal of items mailed. Notices to City and/or PNA shall be delivered as follows:

If to City:       THE CITY OF SEATTLE  
Department of Finance and Administrative  
Services  
Attn: Karen Gruen, Director Real Estate Services  
700 Fifth Avenue, Suite 5200  
P.O. Box 94689  
Seattle, WA 98124-4689  
Telephone: 206-733-9238

With Copy sent via email to:  
Rebecca Keith  
Seattle City Attorney's Office  
Rebecca.Keith@seattle.gov

Note: If delivering notice to City by hand pursuant to subsection (i) above, notice must be delivered to the City's street address; if sending notice by U.S. Mail pursuant to subsection (ii) above, notice must be sent to the City's P.O. Box; and if sending notice by overnight express mail service pursuant to subsection (iii) above, notice must be delivered to the City's street address.

If to PNA: PHINNEY NEIGHBORHOOD ASSOCIATION  
Attention: Christi Beckley, Executive Director  
6532 Phinney Avenue North  
Seattle, WA 98103  
Telephone: 206-783-2244

- B. Effective Date.** The “**Effective Date**” of this Agreement is the date the last party to execute this Agreement executes it, as represented by the date appearing below each party’s signature. Each party authorizes the endorsement of such date for administrative reference in the space provided in the Agreement’s heading.
- C. Entire Agreement.** This Agreement, including exhibits, constitutes the entire agreement of the City and PNA with respect to the Property and supersedes all written or oral agreements or undertakings. This Agreement may be modified only pursuant to a writing signed by both parties.
- D. Negotiated Agreement.** This Agreement has been negotiated by the parties and each party has had the opportunity to review it with legal counsel and to participate in the drafting. It shall be construed according to the fair intent of the language as a whole, and not for or against either party as the drafting party.
- E. No Assignment.** PNA may not assign its interest in this Agreement to any other party, without the City’s prior written consent, which the City may withhold in its sole and absolute discretion.
- F. No Third-Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party, nor shall any provision give any third-party any right of subrogation or action against any party to this Agreement.
- G. Attorney Fees.** In the case of any legal action or dispute arising under this Agreement, each party will bear its own attorney fees and costs.
- H. Further Acts.** City and PNA will each execute and deliver such additional documents and instruments and take such further actions as may be reasonably necessary to carry out the Agreement’s terms and conditions.
- I. Time** is of the essence.
- J. Subject to the Approval of the Seattle City Council.** Final decisions regarding the disposal of the City’s real property require authorization by the Seattle City Council.

**K. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Washington. Jurisdiction and venue shall be in the Superior Court for the State of Washington – King County.

**L. Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement. This Agreement may be executed pursuant to original or facsimile copies of signatures, with the same effect as if the parties had signed the document pursuant to original signature.

**CITY:**

THE CITY OF SEATTLE  
Department of Finance and Administrative  
Services

By: \_\_\_\_\_  
Michelle Reed

Title: Chief Operating Officer

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

**PNA:**

PHINNEY NEIGHBORHOOD  
ASSOCIATION, a Washington nonprofit  
corporation

By: \_\_\_\_\_

Printed Name: Christi Beckley

Title: Executive Director

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