



# Task 2: New Site Development Real Estate and Finance Tools

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## Introduction

Two of the most intractable employment land site readiness challenges are employment areas with multiple ownership (the “land assembly” challenge) and employment areas lacking necessary infrastructure. Employment lands that require assembly in order to be buildable are challenging because jurisdictions cannot legally compel landowners to cooperate or sell and must rely on other factors. A single hold-out property owner can limit the potential of an entire employment area. Lack of adequate infrastructure in an employment area can stymie development indefinitely. The density of employment uses is often too low to afford the cost of building new or upgraded infrastructure. Many of these lands have no or insufficient existing infrastructure such that development of sites is not economically feasible, once the cost of new infrastructure is accounted for.

This report details two new tools that could help jurisdictions overcome these two site readiness challenges. The first tool is a Horizontal Development Agreement (HDA). The HDA enables jurisdictions to bundle together the inducements they can offer landowners into a compelling package that can incentivize multiple landowners to cooperate with a jurisdiction in its efforts to develop employment lands. The second tool is a Regional Employment Land Investment Fund (RELIF). This tool utilizes an investment fund model to align the interests of jurisdictions and private landowners either within a single jurisdiction with diverse properties, neighboring jurisdictions with shared interests, or regional interests. The tool would pool employment lands to balance development risk and reward, increase access to public and private sources of capital, and encourage mutually beneficial cooperation rather than competition in the development of employment lands. What follows is an explanation of the tools, the key problems they intend to address, details on their structure, and implementation considerations.

### *Aligning Interests of Multiple Property Owners with Public Goals*

One of the region’s key challenges in moving forward with creating “development-ready” employment land concerns engaging the cooperation of property owners to aggregate properties into larger tracts that can support development and also (in the case of large areas that currently lack infrastructure) to cooperate in the funding and construction of infrastructure. In most instances, the region’s employment lands are not held in single ownership, but instead, several property owners control the land. This is the case for industrial sites in Coffee Creek in Wilsonville; Beaver Creek in Oregon City; North Hillsboro; Happy Valley; Forest Grove, Cornelius and Portland<sup>1</sup> (see Appendix A). Aggregation is also a critical issue with smaller sites throughout the region held by multiple parties (e.g., Beaverton, Fairview, Gresham, Milwaukie, Sherwood). Indeed, the situations where a single entity controls all the property are the exception rather than the rule (e.g., the Gresham Vista industrial area, which the Port of Portland controls). Given the land-constrained Portland Urban Growth Boundary (UGB), it is critical to address site

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<sup>1</sup> The 2017 Metro Regional Industrial Site Readiness Inventory Update identified 14 Tier 2 and Tier 3 industrial sites within these communities requiring aggregation into sites greater than 25 net acres.

readiness issues that limit utilization of employment lands within the UGB, including but not limited to site aggregation.

The Portland region has very few Tier 1 (development-ready within 6 months), 25 net acre employment sites. Moving employment sites from Tier 2 (7-30 months to development-ready) and Tier 3 (more than 30 months from development-ready) to Tier 1 status is a major challenge to the region's economic development agenda for both small and large sites alike. If the region is to attract development that requires larger sites, it will need to consider measures to aggregate properties into single ownerships. While this paper is focused primarily on aggregation of large employment sites, it should be noted that the aggregation of smaller sites is often key to seeing other employment areas develop as well (e.g., commercial development in the region's centers and corridors).

## Tool 1: Horizontal Development Agreement (HDA)

Property owners have a variety of sometimes conflicting perspectives on cooperation with a coordinated aggregation strategy. Some property owners are fully engaged, willing to sell for a fair price to an entity that is seeking to aggregate land, and willing to cooperate in a planning effort to identify suitable zoning regulations, an infrastructure concept, and a funding strategy. Other property owners are not amenable to such cooperation, for a variety of reasons. This includes: a presumption that their property is worth more than what they perceive they will get out of a cooperative strategy; a complex ownership structure such as a trust which makes timely decision-making difficult; a simple distrust of either the jurisdictions involved and/or the other property owners. This lack of cooperation impedes the ability of a jurisdiction (as well as those property owners who *do* want to cooperate in development efforts) to fulfill economic objectives. Two key challenges result from this lack of property owner alignment: difficulty in aggregating smaller sites into suitably sized larger lots; and difficulty in planning, funding, and constructing necessary infrastructure.

Aligning the interests of a group of property owners has typically been the domain of brokers and some land developers; but there is often little financial incentive to participate in a protracted, tedious and highly uncertain aggregation process. Outside of Urban Renewal Areas, the public sector has traditionally played a limited role in these assembly processes. However, local governments have incentives to offer landowners that put these jurisdictions in a strong position to influence land assembly. These incentives include annexation, zoning entitlements and infrastructure funding and construction. A tool that can formalize a jurisdiction's leverage of its entitlement and infrastructure spending authorities to reward coordination among landowners can be an effective means of achieving its desired outcomes.

The **Horizontal Development Agreement (HDA)** is a proposed tool to address the challenges and development dynamics related to site aggregation and assembly. This tool would be a mechanism under which property owners and a jurisdiction (or possibly multiple jurisdictions)

commit to mutual obligations and cooperate in the entitlement and development of land in preparation for new employment use.

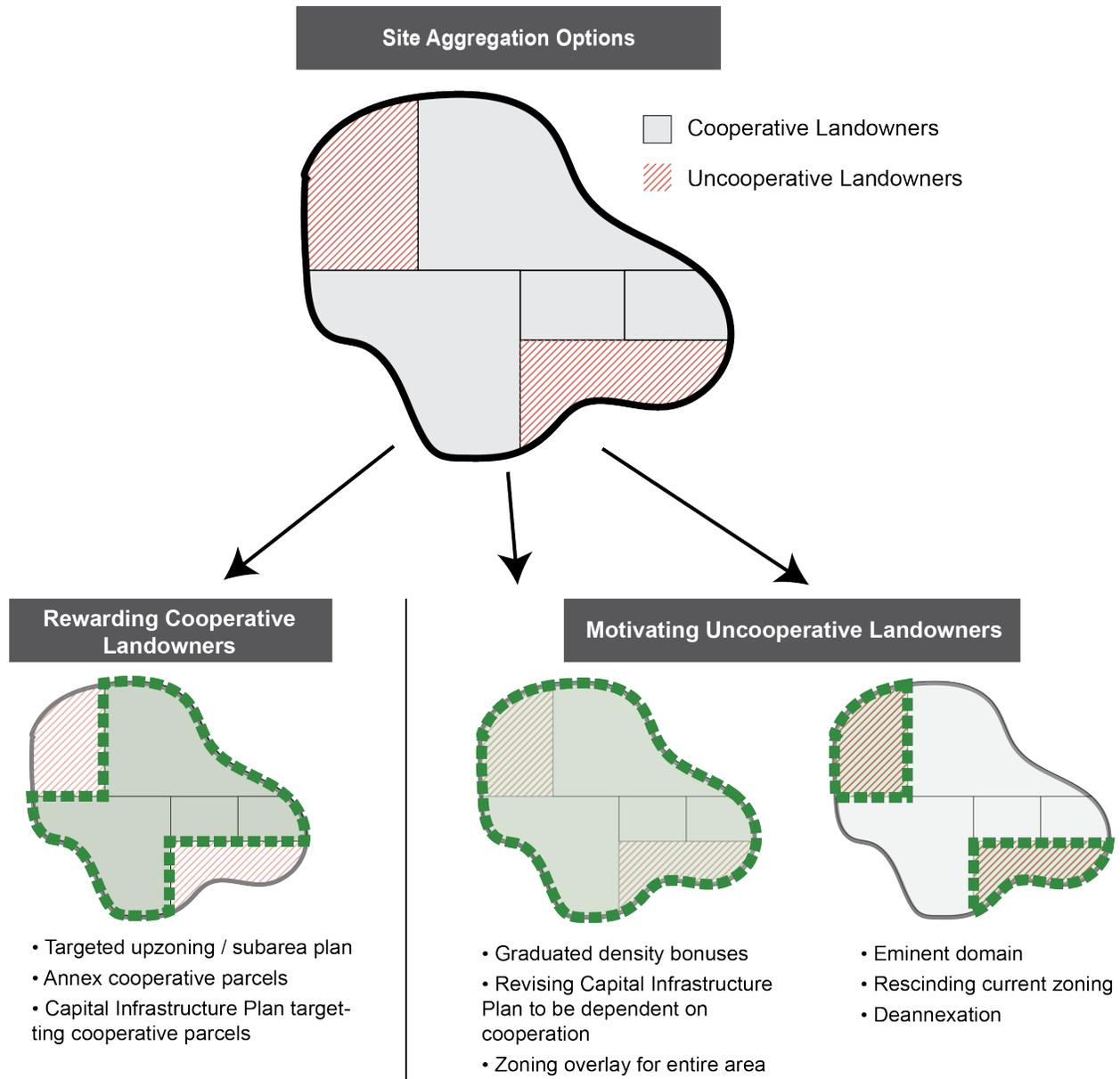
The provisions within an HDA are intended to reward property owner cooperation by providing a variety of incentives that a property owner can access in exchange for participating in land aggregation and infrastructure planning. The HDA is intended to allow for a jurisdiction to strategically bundle the public incentives (“carrots”) and regulations (“sticks”) it wants to utilize to induce property owner cooperation. As discussed below, some jurisdictions may opt to not use every possible incentive identified here; or they may be bound by earlier decisions that prevent certain incentives from being utilized. One of the benefits of this tool is that it does not require any state legislation.

### *Authority and Incentives Available to Jurisdictions*

Jurisdictions have several incentives at their disposal that they may elect to deploy to stimulate aggregation:

- **Pre-development Funding:** for infrastructure planning, wetlands evaluation, environmental assessments, appraisals, marketing, etc.
- **Annexation:** in cases where some or all of the affected property is currently outside of a city boundary and cannot be developed for policy or other reasons until it is annexed into a city.
- **Zoning and Other Development Entitlements:** targeted upzoning, increased density bonuses, zoning overlays, as well as a jurisdiction’s influence and assistance in securing entitlements from other entities such as the Oregon Department of State Lands, or the Oregon Department of Environmental Quality.
- **Infrastructure:** planning and construction (funded through urban renewal, Local Improvement Districts, or other sources).

Decisions on the use of these incentives in an HDA is the exclusive domain of local jurisdictions. However, private interests can help catalyze discussions around the merits of the HDA as an aggregation tool. To evaluate the potential benefit of an HDA, jurisdictions first need to have a shared vision for the future use of the employment lands to be aggregated, understand the local tools at their disposal, and the private property owners’ interests.



### Rewarding Cooperative Landowners

A jurisdiction has a strong interest in concentrating its efforts in portions of an employment district where there is a healthy percentage of properties controlled by cooperative property owners. Cooperative property owners might demonstrate their cooperation through a willingness to participate in Local Improvement Districts or other infrastructure funding mechanisms, and/or a willingness to enter into a Letter of Intent or similar instrument to cooperate in site aggregation efforts.

A jurisdiction may reward property owners' cooperation by creating a zoning plan for a specific geography (e.g. an entire employment area or a more targeted district). It may adopt a Capital Improvement Plan for infrastructure to serve the future uses. It may create a tax increment

finance district or other funding mechanism. In situations where a substantial majority of property owners in a quadrant of the overall employment area are “cooperative”, but there is a general lack of cooperation outside of that quadrant, the jurisdiction may want to prioritize efforts on the quadrant with the cooperative property owners. The jurisdiction may elect to only apply the zoning to the one subarea, retaining older, low density, “pre-urbanized” zoning in the balance of the employment area. In cases involving unincorporated land, the jurisdiction may want to limit its initial annexation phase to the “cooperative” quadrant. The jurisdiction may also choose to concentrate its infrastructure investment in that same subarea. Under this scenario, the areas dominated by property owners who do not want to participate may remain undeveloped and unserved, until such time that a preponderance of property owners agree to engage in the jurisdiction’s broader vision for the employment area.

### **Motivating Uncooperative Landowners**

To motivate uncooperative landowners to participate, a jurisdiction may want to consider providing a variety of collective benefits for a given set of adjacent property owners. Some land assembly and infrastructure investment efforts do require all property owners to cooperate. In this instance, the jurisdiction may want to predicate its actions (i.e., up zoning property; planning and constructing infrastructure; acquiring properties) on cooperation of all affected property owners. In such a scenario, the jurisdiction may make provisional commitments to property owners to undertake its actions, subject to all affected property owners agreeing to participate. In this case, those property owners who are willing to participate can exercise their influence on property owners who decide to “hold-out”. This has the benefit of not putting the public entity in the position of pressuring property owners themselves and instead relying on peers in the area to motivate participation.

### **Oregon Challenges to Land Assembly**

The challenge of property owners in a future employment area who are resistant to cooperation was exacerbated in 2006 when Measure 39 passed in Oregon. Measure 39 significantly limited the powers of eminent domain for private redevelopment. Jurisdictions may still condemn private property for a public purpose (e.g., a street, a school, a park); however, they cannot condemn private property for the purpose of assembling larger tracts for ultimate private redevelopment. Fortunately, in most instances, it is not necessary to attain 100% property owner

cooperation to assemble, plan and develop employment lands (see box, “Portland Region’s Experience with Land Assembly”).

### **Portland Region’s Experience with Land Assembly**

Below are three examples illustrating some of the region’s experiences with land assembly:

- Ronler Acres in Hillsboro was a failed, abandoned subdivision comprised of 300+ owners. The City of Hillsboro assembled these properties to attract Intel’s flagship campus, at times using the threat of condemnation. Had Measure 39 been in effect in at the time of this effort in the early 1990s, Hillsboro would not have been able to assemble the site, and Intel would have almost certainly had to locate its mammoth Ronler Acres campus (representing tens of billions of dollars in investment) to another state.
- Genentech’s original plans for its Hillsboro facility entailed the acquisition of two major, multi-acre parcels as well as several smaller properties. Genentech was ultimately unsuccessful in acquiring all of the smaller properties, and as a result, simply revised its plans to exclude those properties.
- Portland’s Pearl District required the cooperation of four major players (Hoyt Street Properties, a private entity which owned the 40+ acres of former Burlington Northern rail yards; the Port of Portland’s Terminal One property; Portland Development Commission’s Union Station and surrounding rail yards; and property owned by the Naito family). Together, these properties constituted less than 50% of the entire Pearl District geography, and yet the four ownerships taken together were large enough, and strategically located, to allow for the effective planning and development of what is likely the state’s most successful real estate endeavor.

### **Timing is Important for Maximum Leverage**

The effective deployment of the tools at a jurisdiction’s disposal is predicated on *leverage*, and timing determines how much leverage a city has. If a site has no suitable zoning and no commitments of infrastructure funding, then the city can leverage those factors to incentivize cooperation. Conversely, if a site has expansive zoning and relatively complete infrastructure in place already, a city’s leverage is diminished. The earlier in the planning-annexation-zoning-funding process the city can step in, the more leverage the city has to compel cooperation. Employment sites with aggregation challenges around the region are at various stages of this continuum and will need to tailor their approach based on an understanding of this relationship, the tools at a jurisdiction’s disposal, and their community’s vision.

Unfortunately, some jurisdictions fail to use the leverage that they have with these tools. Instead, they may “prematurely” establish zoning areas for employment uses, construct critical infrastructure, or annex lands without first securing necessary property owner cooperation. For those jurisdictions that have already taken these actions, a jurisdiction can reconsider its earlier actions, although such an approach would likely engender strong opposition. Infrastructure cannot be “un-built”, but zoning entitlements can be rescinded. A city can even de-annex lands. These measures may be aggressive moves on a jurisdiction’s part, even if it is a jurisdiction’s prerogative to de-annex or down-zone an employment area. Less controversial, in the case of areas where infrastructure has been planned but not yet built, the jurisdiction may revise its Capital Improvement Plan to postpone construction of planned infrastructure projects until the jurisdiction has secured the cooperation of property owners.

If the jurisdiction does not want to revisit its earlier actions or decisions, the jurisdiction may still consider an incentive approach to induce property owner cooperation. It may for instance create a zoning overlay that allows higher densities, or more flexible uses, limiting the application of that overlay to properties whose owners cooperate in making lands development-ready.

### *Horizontal Development Agreement Implementation*

Jurisdictions that face property owner aggregation challenges in their employment areas may want to consider a **Horizontal Development Agreement (HDA)** to link a jurisdiction’s incentives and leverage property owner cooperation. A jurisdiction would take the following steps in exploring the HDA model as a solution:

- **Education:** Because the HDA model is a new approach in Oregon, it will probably require education. Economic development staff may need to educate themselves, their department colleagues and political leadership about the approach to determine whether it makes sense for that particular jurisdiction.
- **Vision:** A shared vision and knowledge of incentive tools available for the employment area requiring aggregation by city leadership and departments (planning, transportation, public works, engineering, legal, financial, executive) is an important first step to determining whether a jurisdiction should pursue an HDA. The jurisdiction will need to determine what levers it does have. Has the area in question been annexed? Does the city have a vision for the area? Does the zoning allow the uses envisioned for the area? Is there an infrastructure concept for the area? Is there a Capital Improvement Plan, or some other strategy for funding of the infrastructure?
  - If the city has already exercised most or all of its levers (e.g., annexation, zoning, infrastructure), then the HDA approach may not make sense. In such an instance, the city may have little “bargaining power” in its attempts to align private property owner interests with the city’s vision.
- **Engagement:** If there appears to be merit in pursuing an HDA, leadership and economic development staff will want to engage property owners and development interests fairly early in the process to determine an approach that may result in shared benefits for the

jurisdiction and the property owners. As noted earlier, the impetus to develop an HDA may come from the city, from property owners and development interests, or a combination thereof. The city will be the final decision-maker on whether to proceed with an HDA.

- **Alignment:** Alignment of leadership and city departments to collectively develop an HDA to support the city's shared vision and continued "education" and collaboration is essential if the effort is to be successful.
- **Draft HDA:** Once the decision has been made to use the HDA approach, the jurisdiction will need to develop a draft HDA working with affected interests. Each HDA will be tailored to this vision, the incentive tools available, and the city's risk tolerance.

Below is an outline and brief description of the key elements of the HDA. A more detailed template of an HDA is included in Appendix B of this report. This template will need to be adapted to the particular needs and circumstances of each jurisdiction. Elements of an HDA may require areas of expertise beyond the expertise that exists within a specific jurisdiction. A jurisdiction may want to consider retaining outside real estate, legal or other assistance in crafting the agreement and negotiating its terms with affected property owners.

### *Horizontal Development Agreement: High Level Draft Outline*

1. **Recitals.** This section lays out why the parties are entering into the agreement, outlining the mutual benefits of coordination. Specific recitals might include such components as:
  - Jurisdiction recognition that it needs property owners' cooperation to fulfill its economic development objectives.
  - Property owner recognition that the city provides substantial value in the form of funding of concept planning; pre-development funding; entitlements; infrastructure planning, engineering, funding and construction; and removal of other barriers to development.
2. **Vision.** This section identifies the parties' shared vision for the long-term and acknowledges the parties' desire to work together to realize benefits (i.e., creation of the area as a major new employment area, with targeted long-term jobs and investment goals; intentions regarding zoning, infrastructure concept, natural resource retention, and equity).
3. **Decision-making and Conflict Resolution.** This section acknowledges that the jurisdiction has ultimate decision-making authority over zoning, infrastructure, and funding; but that individual property owners have ultimate decision-making authority over their willingness to cooperate. Individual property owners acknowledge that their decision to not participate carries consequences such as lack of entitlement and/or annexation, lack of infrastructure, etc. This section includes provisions for conflict resolution.
4. **Cooperation in Concept Planning.** This section acknowledges that the jurisdiction and its public partners will lead in concept planning in the area but will consult with property owners. This consultation may take several forms, including creation of an Owner Advisory Group.

5. **Property Owner Cooperation.** This section lays out the actions that a property owner will have to take, or commit to take pursuant to the HDA, that serve as the basis of the jurisdiction's willingness to provide the incentives set forth in subsequent sections. What constitutes "Property Owner Cooperation" will vary from jurisdiction to jurisdiction, but might include any or all of the following:
  - Agreement to cooperate with adjacent property owners to aggregate and develop land for traded-sector employment at a certain job density and wage level; create minimum investment value per acre; commit to equity objectives such as good faith hiring and vendor relationships, etc.
  - Agreement to sell to someone who would be obligated to aggregate and build as agreed to above.
6. **Entitlements.** This section acknowledges entitlement authority over lands within the area, including the jurisdiction's authority related to zoning and building permits. It acknowledges the jurisdiction's intention to provide good faith assistance to property owners in securing state and federal entitlements such as wetland fill, transportation and brownfield "no further action" approvals from the Oregon Department of State Lands, U.S. Army Corps of Engineers, Oregon Department of Transportation, and Oregon Department of Environmental Quality, as well as good faith intention to expedite the jurisdiction's approvals.
7. **Jurisdiction's Pre-development Assistance.** This section lays out one of the jurisdiction's incentives for cooperation. This might include funding of pre-development activities to remove barriers to development (e.g., wetland delineations, traffic impact analyses, environmental assessments, geotechnical/soils, topographical survey; tree survey/mapping of significant resource areas). The jurisdiction's pre-development assistance may be in the form of a grant, or a loan, or a combination thereof. If a loan to the property owner, this could be a soft loan due on sale of the property.
8. **Infrastructure.** This section would potentially include a number of provisions:
  - It may lay out a process for developing an infrastructure concept plan.
  - It may acknowledge the jurisdiction's authority over design, funding, and construction of infrastructure (e.g., streets, sewer, stormwater, water).
  - It may tie the jurisdiction's willingness to perform design/engineering and construction of infrastructure to property owner cooperation to achieve the jurisdiction's development vision.
  - It may address phasing (including an acknowledgement of the jurisdiction's intention to reward cooperation, such as only building infrastructure where there is property owner cooperation as outlined in Section 5).
  - It may establish provisions for public acquisition (e.g., fee simple and/or easements) for infrastructure, including provisions for System Development Charge credits/offsets.

- It may include provisions for cooperation in funding of infrastructure. Possible tools include urban renewal, Local Improvement District, and regional/State transportation dollars.
9. **Annexation** (for HDAs which include properties that are currently outside of an incorporated jurisdiction, with annexation being a necessary pre-condition to establishment of zoning). This section acknowledges that a city will not annex a property, entitle it, and provide infrastructure to it without property owner obligations as per the prior Infrastructure section.
  10. **Zoning**. This section acknowledges that a jurisdiction will not establish employment zoning without property owner obligations as per Section 5. This section might also include a provision related to zoning incentives for cooperating property owners (especially in instances where a city does not want to rescind existing zoning entitlements).
  11. **Sale of Property**. This section could have a number of features. It may give the jurisdiction right of first refusal to acquire properties at some pre-determined price formula (e.g., current appraisal). It may give special consideration to property owners who sell to a site aggregator. It may include a provision allowing the jurisdiction to obtain an assignable option to acquire properties, using some pre-determined formula to establish sale price. It may acknowledge that upon sale of a property, any outstanding pre-development loan dollars are due to the jurisdiction.
  12. **Provision for Future Signatories**. This section provides provisions for property owners who do not participate in the initial HDA to join later. In the best-case scenario, as the HDA proves successful in making land more valuable, other property owners will recognize that it is also in their interest to participate.

## Tool 2: Regional Employment Land Investment Fund (RELIF)

### *Funding Model that Balances Risk and Reward for Mutual Regional Benefit*

Related to the issue of creating development-ready sites is the need to raise sufficient capital to cover costs of acquisition for site aggregation and infrastructure. In this regard, both public and private partners alone are limited by their individual resources. Moreover, the diversity of sites and the high cost of acquiring sites and building infrastructure are risk factors for individual entities to tackle these issues alone. Creative approaches are required to achieve site readiness (both infrastructure and aggregation) for the more challenged employment land sites in the Portland UGB, and regional discussions to address those challenges are merited.

One idea would be to use a successful model from the realm of institutional investments by creating a **Regional Employment Land Investment Fund (RELIF)**. The basic premise behind the tool is to create a pool of investment funds from different public and/or private partners to focus

the region's employment readiness funds on developing sites that are best positioned and share the returns broadly.

By pooling funds together through a partnership of public and/or private entities, all parties are able to share the risks and rewards involved with site readiness and end use development and effectively outperform what any entity can achieve alone. Public partners could be represented by a single jurisdiction or a group of jurisdictions, and private partners could be landowners and/or other third-party institutional investors.

### *Basic Mechanics of RELIF*

The RELIF tool would fund employment land development (including site assembly and infrastructure) with shared participation (risk/reward) among regional partners, both public and private, in the Portland metropolitan area, while also providing an attractive investment opportunity for institutional investors.

RELIF would utilize public and private investment funds – with land, infrastructure and financial investments all pooled – to develop top priority regional sites and equitably distribute the fund's returns and benefits to fund investors. This tool requires multiple partners with financial skin in the game – investing in a full spectrum of development not limited to site readiness. The return would be generated from the full spectrum of development – including sale of the property to business users.

Incentives and restrictions would be built into the fund's structure to encourage individual property owners to participate in the fund. Participating public entities would commit to prioritize actions supportive of participating properties, and the fund's ability to provide access to attractively priced and structured capital would provide additional incentives. Participating property owners would also be eligible to share in fund financial returns.

RELIF would deploy public/private resources in the general partner/limited partner structure common to private equity and institutional real estate investment funds. Depending on the circumstances of the employment land involved, either a single jurisdiction, a group of jurisdictions or a regional entity would serve as the general partner (GP). The GP would coordinate financing, site assembly and infrastructure necessary to achieve site readiness. Land, infrastructure and financial investments would all be pooled into a fund (or funds) with the financial returns and other benefits equitably distributed among the limited partners (LPs) once properties have been sold.

The GP would be responsible for securing the necessary LP investments for fund viability, for managing and investing those funds (within pre-established "mission" and credit boundaries), and for distributing returns. More specifically, the GP would need to be empowered to:

- Pool third-party investment from institutional investors, public funding commitments, land and other contributed assets.

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- Secure financing to “leverage” the pooled fund.
- Enter into intergovernmental agreements with local jurisdiction or regional parties related to infrastructure development, regulatory assistance, etc.
- Enter into development and investment agreements with real estate interests.
- Buy and sell land.
- Distribute financial and non-financial fund returns among the LPs.

In this model, LPs provide funds as “passive investors” with limited control over ultimate deployment of the funds, and with an expectation of a return higher than public equity (stock market) funds over the long term. The limited partners could also include the sponsor jurisdictions, landowners, as well as the strictly financial third-party institutional investors.

There are three potential GP management approaches to the RELIF:

- 1) A single, larger jurisdiction with a diverse portfolio of sites;
- 2) Neighboring jurisdictions with shared interests (for example, Tualatin-Sherwood-Wilsonville/Clackamas County-Washington County with a shared transportation corridor adjacent to employment areas); or
- 3) A regional entity with multiple LPs (for example, the Port of Portland, Metro, or Tri-Met).

### *Precedent Examples of State Funds*

Previous examples of this type of fund model (e.g., Oregon Special Public Works Fund, Meyer Memorial Real Estate Investment Trust) have demonstrated benefits to both large and small (or strong and weak) projects. For example, state infrastructure financing “pools” have been able to offer benefits both to small jurisdictions with relatively limited access to credit and to large jurisdictions with highly rated credit.

When the Oregon Special Public Works Fund (SPWF) pool was created, it used an explicit strategy of matching speculative projects in small rural jurisdictions with more mature projects in larger Portland area jurisdictions. The smaller projects achieved access to credit that otherwise may not have been possible, and at a low cost of capital. The larger projects benefited from access to “off-balance-sheet” capital and more flexible terms than they could have achieved with direct credit market access. The SPWF was able to offer these capital cost and structure flexibility benefits to borrowers because the diversity of a pooled investment fund creates a strong platform for raising and investing funds.

RELIF could achieve similar synergy in site readiness results, for example, by pooling (for investment/funding purposes) sites requiring relatively low investment in infrastructure with sites that are infrastructure challenged. Each type of site would benefit from the advantages of the pool – greater access to capital, lower cost of capital, etc.

### *Key Benefits of RELIF*

A key benefit of a multi-jurisdiction or regional fund approach is that areas with less well-positioned employment land can pool their lands (in a single fund) with better positioned lands, which allows them to get a piece of a shared return. Similarly, differently positioned lands within a single jurisdiction could be pooled to achieve overall lower cost and/or higher returns.

This shared risk and reward model should help reduce competition and encourage collaboration across the region, in addition to sharing a desire to focus limited funds on maximizing the potential of the best positioned properties. Conversely, parts of the region that happen to have better positioned land today, such as Portland, may be landlocked in the future, and would benefit from having access to an investment in a long-term pipeline of pooled employment lands across the region. Larger cities with more diverse employment land portfolios can also benefit from this approach.

For the region's cities, counties and other jurisdictions, the RELIF model provides a mechanism to leverage the institutional investment model to reach a larger pool of low cost capital for both site assembly and infrastructure. The regional public collaborators would also gain from the returns and non-financial benefits achievable through the pooled investment approach. This should, in theory, help projects gain access to significant, leveraged third-party financing.

The public collaborators would also gain from the returns and non-financial benefits achievable through the pooled investment approach. In fact, certain of the fund's financial and non-financial "returns" could be dedicated to addressing intra-regional inequities resulting from employment land development.

### *RELIF Implementation Alternative Scenarios*

As noted previously, there are three GP management alternative approaches to developing a RELIF structure to help finance aggregation and infrastructure needs within the Portland UGB. The RELIF GP could be created by:

- A single jurisdiction (for employment land within that jurisdiction)
- A group of jurisdictions (for employment lands in more than one jurisdiction)
- A regional entity (for a region-wide program to address site readiness)

The broader the geographic scope of the fund and the more diverse the property holdings, the greater the opportunity to maximize benefits. However, the more parties in the fund, the more complex decision-making and lengthy timeframe is likely to be required to establish the fund. For multi-jurisdiction or regional applications of this tool versus a single jurisdiction approach, there may be difficulty creating alignment among all city and regional entities, particularly with respect to the selection of the GP entity, the structure of the LP governance model, and the prioritization of investments.

Given the complexity of this tool and concerns regarding regional capacity, a statewide pilot project could initially focus on employment lands in the Portland UGB managed out of the Oregon State Treasurer's Office. This office has the financial investment and marketing expertise required to pool and manage funds for such a purpose. As a next step, a contingent of diverse, regional interests may consider meeting with the Treasurer to discuss this concept.

Below is a high level outline of the implementation scenarios<sup>2</sup>:

### **Single Jurisdiction GP**

- The sponsoring jurisdiction (a city, for example) either serves directly as the GP or establishes an entity for that purpose (whichever is legally feasible).
- The city/GP works with collaborating properties to plan an employment land development program.
- The city/GP creates the "pool" of sites and infrastructure projects and secures third-party investment in the fund from LPs.
- The city/GP coordinates the implementation of the employment land site readiness project, using the pooled features of the fund to ensure that both "strong" and "weak" sites are served.
- As sites develop, the city/GP distributes the financial returns of the fund, including sale of property.

### **Multi-Jurisdiction GP**

- The sponsoring jurisdictions (e.g., two or more cities, a combination of cities and/or counties) create a vehicle to serve as the GP – either an entity (like a county service district) or a non-entity (an intergovernmental agreement or IGA) to serve directly as the GP. In the case of an IGA, the sponsoring jurisdictions (through the IGA) would jointly manage the selection and oversight of the GP through a governance structure similar to a board of directors.
- The GP works with collaborating jurisdictions and properties to plan an employment land development program – with projects in each of the participating jurisdictions.
- The GP creates the "pool" of sites and infrastructure projects and secures third-party investment in the fund from LPs.
- The GP coordinates the implementation of the employment land site readiness projects, using the pooled features of the fund to ensure that both "strong" and "weak" sites are served in each of the participating jurisdictions.
- As sites develop, the GP distributes the financial returns of the fund. In the multi-jurisdiction scenario, this might include agreement among that participating entities to allocate some portion of the returns/benefits toward equity objectives.

### **Regional Entity GP**

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<sup>2</sup> See the section below on technical implementation steps regarding the legal complexities involved.

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- The GP sponsor in this structure could be either an existing regional entity, a group of regional players (regional entities + cities and/or counties) or a non-entity (an intergovernmental agreement) – whichever is both politically and legally feasible.
- The GP works with collaborating jurisdictions and properties to plan an employment land development program – with projects in each of the participating jurisdictions.
- The GP creates the “pool” of sites and infrastructure projects and secures third-party investment in the fund from limited partners.
- The GP coordinates the implementation of the employment land site readiness projects, using the pooled features of the fund to ensure that both “strong” and “weak” sites are served in each of the participating jurisdictions.
- As sites develop, the GP distributes the financial returns of the fund. In the regional GP scenario, this might include agreement among that participating entities to allocate some portion of the returns/benefits toward equity objectives.

*RELIF Technical Implementation Steps*

Because RELIF would be a new tool for Oregon site readiness, the process of implementation would necessarily involve research into the adaptability of existing authorities for the alternative implementation structures and, potentially, development of new structures. An analysis of the legal, financial and other issues is outside the scope of this project. Due to the complexity of this tool, a potential management entity would need to seek outside legal, real estate and financial counsel. Given that caveat, the outline below provides a roadmap to potential RELIF implementation. Appendix C provides a high level draft outline of the basic terms for a RELIF.

IMPLEMENTATION STEPS	NOTES
1. Engage stakeholders	Engage and educate regional stakeholders and potential investors on the benefits of the RELIF tool.
2. Develop overall program/fund strategy	Based on further analysis of the options, select which of the three (or four) proposed alternative structures will be pursued.
3. Research legal structure options <ul style="list-style-type: none"> <li>• GP/LP</li> <li>• Regional public partners (as investors, regulators, infrastructure owners)</li> <li>• Real estate interests (including tax matters)</li> <li>• Financial investors</li> </ul>	Working from existing legal structures (authorities for public entities and investment and tax structures for private entities), determine which can best be adapted for the RELIF objectives.

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IMPLEMENTATION STEPS	NOTES
<p>4. Design investment / financing model</p> <ul style="list-style-type: none"> <li>• Sources &amp; uses of fund               <ul style="list-style-type: none"> <li>○ Equity and debt financing</li> <li>○ Land assembly &amp; infrastructure</li> </ul> </li> <li>• Develop fund financial pro forma</li> </ul>	<p>Based on a detailed understanding of the likely targets for site development investment, develop detailed investment and financing models for the RELIF program. This design would address both key elements of the program: Program requirements and funding options for site development and structure of the investment fund vehicle.</p>
<p>5. Develop partnership program structure</p> <ul style="list-style-type: none"> <li>• Financial</li> <li>• Legal</li> <li>• Operational/governance</li> </ul>	<p>Develop the conceptual structure of the multiple partnerships involved in the RELIF site readiness program to the level necessary to seek interest and commitment from potential partners.</p>
<p>6. Secure early participant interest commitments</p> <ul style="list-style-type: none"> <li>• Draft “Placement Memorandum”</li> <li>• Regional public partners governance Memorandum of Understanding</li> </ul>	<p>Engage parties in both the site readiness program and the RELIF investment program and secure Memorandum of Understanding-level commitments to participate.</p>
<p>7. Draft full/final underlying legal documents</p> <ul style="list-style-type: none"> <li>• GP/LP</li> <li>• GP-public entity intergovernmental agreements</li> <li>• GP-real estate interest development agreements</li> </ul>	<p>Develop the detailed agreements necessary to implement the RELIF fund and the site readiness development programs.</p>
<p>8. Secure investor, public partner and real estate interest commitments</p>	<p>Execute final, comprehensive legal commitments (“closing”).</p>
<p>9. Secure funding</p>	<p>Based on 6 &amp; 7 above, secure third-party financing as indicated by the fund program plan.</p>
<p>10. Operate</p>	<p>Implement the RELIF fund and site readiness program.</p>

## Appendix A: Large Employment Sites Requiring Assembly

An update to the Regional Industrial Site Readiness Inventory, completed in 2017, identified 13 large lot sites requiring aggregation to achieve the 25+ net acres threshold in the study. These sites included:

### Tier 2 (7-30 months to development-ready status)

Of the 11 Tier 2 sites, totaling approximately 673 net developable acres, two of these sites required property owner assembly; however, all were willing to transact.

Site Name	Size	Number of Taxlots / Owners	Willingness to Sell
#62 Rock Creek Site in Happy Valley, Clackamas County	40.83 gross acres, 36.82 net acres	5 tax lots, 2 property owners	For Sale – Willing to Transact
#104 Meek Subarea Site in Hillsboro, Washington County	268.02 gross acres, 257.42 net acres	8 tax lots, 7 property owners	Willing to Transact

### Tier 3 (more than 30 months to development-ready status)

Of the Tier 3 sites, 11 sites totaling approximately 617 net developable acres required property owner assembly. Some property owners were willing to sell; others were not.

Site Name	Size	Number of Taxlots / Owners	Willingness to Sell
#4 ESCO Corp Site in Portland, Multnomah County	37.62 gross acres, 29.92 net acres	6 tax lots, 3 property owners	Willingness to sell N/A
#33 Coffee Creek Industrial Area. Site 1 in Wilsonville, Washington County	89.59 gross acres, 84.70 net acres	21 tax lots, 16 property owners	Not willing to sell
#35 Tonquin Industrial Area in Tualatin, Washington County	49.52 gross acres, 34.32 net acres	8 tax lots, 7 property owners	Willing to sell
#36 Tigard Sand & Gravel Site in Tualatin, Washington County	301.08 gross acres, 25.00 net acres	15 tax lots, 3 property owners	Not willing to sell

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Site Name	Size	Number of Taxlots / Owners	Willingness to Sell
#59 Coffee Creek Industrial Area - Site 2 in Wilsonville, Washington County	45.07 gross acres, 44.49 net acres	12 tax lots, 7 property owners	Not willing to sell
#60 Coffee Creek Industrial Area - Site 3 in Wilsonville, Washington County	28.82 gross acres, 26.22 net acres	10 tax lots, 6 property owners	Not willing to sell
#61 Coffee Creek Industrial Area - Site 4 in Wilsonville, Washington County	46.57 gross acres, 42.37 net acres	12 tax lots, 8 property owners	Not willing to sell
#64 Woodfold-Marco MFG Inc. (East Oak Street) Site in Forest Grove, Washington County	- 27.67 gross acres, 25.06 net acres	2 tax lots, 2 property owners	Not willing to sell
#101 Vanrose Farms and Bert & Bernie LLC Site in Hillsboro, Washington County	271.64 gross acres, 224.83 net acres	2 tax lots, 2 property owners	For Sale - Willing to sell
#110 Davis Family Trust & Remi Taghon Cornelius Washington County	49.01 gross acres, 40.21 net acres	10 tax lots, 2 property owners	Some willing to sell, some not
#117 Chamberlain Site in Wilsonville, Washington County	43.00 gross acres, 39.40 net acres	9 tax lots, 11 property owners	Not willing to sell

Reference: 2017 Regional Industrial Site Readiness Inventory:

<https://portlandalliance.com/assets/pdfs/RPT-Regional%20Industrial%20Site%20Readiness-2017%20Inventory%20Update-171020.pdf>

## APPENDIX B: HORIZONTAL DEVELOPMENT AGREEMENT TEMPLATE CITY OF XXX, OREGON

*Disclaimer: This document is an example or template of a Horizontal Development Agreement. There are numerous variables that an HDA will have to incorporate, varying from jurisdiction to jurisdiction. The example below attempts to capture some of these variables with callout boxes on the side, but, by no means, is every possible variable identified here.*

*A jurisdiction considering implementing such an agreement should seek independent legal, financial, real estate and other expertise required to develop such an agreement tailored to its unique needs and circumstances. Text highlighted in gray represent where user input is needed.*

THIS HORIZONTAL DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between the (City of XXX), an Oregon municipal corporation ("City")<sup>1</sup> and (Name of Entity that owns the property in question), an Oregon limited liability company registered with the State of Oregon ("Property Owner")<sup>2</sup>. Together, the City and the Property Owner are referred to as the "Parties".

### RECITALS

A. The City seeks to promote a healthy economy, and has determined that the (name of area) District, roughly bounded by (Name streets, natural features, or other features that encompass the area) (hereinafter referred to as the "District") is a suitable place for generating new jobs and business investment.

B. The District is currently characterized by XYZ<sup>3</sup>

C. To advance its goal of promoting jobs and business investment, the City has annexed the District (or portions of the District) into the City, has created a Concept Plan for the District in consultation with the Property Owner as well as other owners of property within the District, and has established zoning which calls for a broad range of employment use – manufacturing, corporate office, warehousing and distribution, and support commercial<sup>4</sup>. Among other things, the Concept Plan (Exhibit A) identifies

### Footnotes

<sup>1</sup> This Agreement may be for a City or a County; it may also be used for multiple jurisdictions (e.g., a City and a County).

<sup>2</sup> It is assumed that individual property owners would enter into separate HDAs, as opposed to a single HDA with multiple owners.

<sup>3</sup> In this recital, describe current physical characteristics (e.g., farms, low density older SFRs, creeks, woods, old and inadequate infrastructure). Reference an aerial or other exhibits which characterize the current conditions.

<sup>4</sup> This section posits a specific scenario – i.e., a district which has been annexed, zoning established, and a concept plan created. Within any given District, some or all of these actions may not have taken place at the time of the HDA.

the general location for new streets and other infrastructure, addresses environmentally sensitive areas to be protected, and provides an estimated cost and phasing schedule for future improvements.

D. The Property Owner owns an X acre site within the District (the “Property”), located at the corner of X and Y Streets. The Property Owner is supportive of the City’s goals regarding the promotion of the local economy and is therefore willing to participate in further efforts to achieve these goals, as set forth in this Agreement.

E. The Parties recognize that the City has secured (or is intending to secure) Agreements with other owners of property within the District, recognizing that the fulfillment of the Parties’ mutual goals will require the good faith cooperation of many such owners of property. The Parties further recognize that no one can be compelled to enter into this Agreement but does so upon a Property Owner’s independent determination that it is in his/her interest, as well as that of the broader community, to cooperate in this endeavor.

F. This Agreement provides the Property Owner with certain rights and obligations as regards the development of his/her property. As set forth herein, the Property Owner may elect to rescind his/her Agreement to cooperate with the City. In so doing, the Property Owner recognizes that he/she will be released from all the obligations set forth herein; he/she will also relinquish his/her entitlement to the rights set forth herein.

G. This Agreement is intended to advance the Parties’ mutual interest in preparing the District for new jobs and business investment, by addressing such critical considerations as pre-development activities (and the funding thereof); zoning including incentives for development that best aligns with the City’s goals for high quality, high job density development; and the funding, planning, design, construction and phasing of infrastructure to serve future growth.

H. The Parties’ willingness to enter into this Agreement is predicated on their understanding of mutual benefit – the City’s (and broader community’s) benefits include new investment that creates good-paying jobs and generates property tax revenues supporting the City’s (and other jurisdictions’) many services including police, fire, parks, streets, libraries, and so forth. The Property Owner’s benefits include the ability to sell the property at an appropriate value

reflective of the planning and investment made by the City and others, a value likely to be higher than would have been the case if the Property Owner had opted not to enter into this Agreement.

I. The terms of this Agreement are as follows:

### TERMS

1. Shared Vision. The City and the Property Owner share a common vision for the development of the District. That vision, encompassed in the Concept Plan (Exhibit A<sup>5</sup>) calls for aggregation of properties in the district, and the phased development of the District with new manufacturing and related businesses, while protecting significant natural features such as (list natural resource features - a creek and restored riparian habitat, significant stands of trees, etc.). The Concept Plan calls for phased infrastructure investment to accommodate new development. This infrastructure includes (describe major infrastructure features – new streets, sewer and water trunk lines, etc.). The regulatory framework and infrastructure investment/phasing is predicated in part on the cooperation of the Property Owner (along with other owners) and their willingness to participate in the implementation of the vision (as set forth in this Agreement).
2. Concept Plan.<sup>6</sup> The City and the Property Owner agree to cooperate in the creation of a Concept Plan for the District. That Plan will address annexation strategy; zoning (including incentives); infrastructure planning, design, funding, construction, and phasing; and identification and protection of significant natural features. The Parties acknowledge that the City will lead and fund this Concept Plan effort, in concert with other affected agencies (insert names of agencies). The City commits to consult with Property Owner (and other affected property owners), providing them with meaningful opportunities to understand the factors and criteria driving decisions, and providing them with the opportunity to influence the Concept Plan.
3. District Advisory Committee. The City will form a District Advisory Committee (“DAC”), consisting of owners of properties within the District as well as other stakeholders<sup>7</sup>. The DAC will serve as a “sounding board” representing community interests, serving as a

### Footnotes

<sup>5</sup> If a concept plan has not been formed, this sentence should be struck. If a broader “shared vision” does not exist, this section should be rewritten to state that the Parties agree to work together and with other affected parties (property owners and agencies) to craft a vision that incorporates the elements listed – zoning – infrastructure, protected natural features, etc.

<sup>6</sup> This section is irrelevant if a Concept Plan has already been done.

<sup>7</sup> A Development Advisory Group is optional but may help to build trust among the parties

- conduit of information to the general community, and providing a Property Owner perspective on decisions that the City and its agency partners may make affecting the District. The meetings of the DAC will be open to all interested parties, and the City shall make reasonable effort to notify all interested parties of DAC meetings, as well as other actions that may affect their interests.
4. Decision-Making & Conflict Resolution. Both Parties have specific decision-making authority. The City has the authority (either itself, or in consultation with other government bodies) to establish and modify development regulations affecting all property within the District. It also has the authority to determine the design, funding, and phasing of infrastructure. It has the authority to determine the timing and requirements associated with annexation of properties within the District. Finally, the City has the authority to determine how to spend its pre-development funds. The Property Owner alone have the right to decide whether to sell their property, or to participate in funding mechanisms (described later herein) for infrastructure improvements. That said, the Property Owner recognizes that some decisions he/she makes may materially affect the City’s willingness to take actions that may affect the timing of development within the District. In the event of conflicts between the Parties, both Parties will strive to resolve those conflicts in a fair manner, recognizing the mutual benefits of their continued cooperation.
  5. Property Owner Willingness to Participate in Land Aggregation Efforts. The Property Owner recognizes the City’s desire to aggregate multiple property ownerships into larger properties, recognizing that there is a shortage of larger employment sites (25 acres or more) within the Portland region. The Property Owner agrees to sell the Property to a developer who is assembling land with the District, at a price to be negotiated<sup>8</sup>; AND/OR<sup>9</sup> The Property Owner agrees to enter into an option<sup>10</sup> with the City as set forth in Exhibit B; AND/OR The Property Owner has entered into a right-of-first refusal Agreement allowing the City to purchase the Property, as set forth in Exhibit C.
  6. Annexation.<sup>11</sup> The City intends to initiate annexation of the Property. The City’s willingness to do so is predicated in part on the Property Owner’s willingness

## Footnotes

<sup>8</sup> There are lots of options to establish price. Maybe the price is “to be negotiated” (although this provides no guarantee that the Property Owner will actually sell). More aggressive language would include an obligation for the Property Owner to sell to the aggregator for some pre-agreed to formula (i.e., appraisal by both buyer and seller, with a third appraiser selected by the first two appraisers in the event of a discrepancy in value, etc.).

<sup>9</sup> “And/Or” language is used here because the two are not necessarily mutually exclusive. The Property Owner may be willing to sell to an aggregator and also enter into an Option with the City. In this event, the Option would acknowledge the possibility of sale to another purchaser (i.e., be willing to terminate the option in the event that another party acceptable to the City intends to purchase the property).

- to cooperate in the City's efforts to develop the District as evidenced by the Property Owner's signing of this Agreement.
7. Establishment of Zoning. The Parties acknowledge that the City has the authority to establish and amend the zoning for all lands within the District<sup>12</sup> through legislative action. The City's willingness to establish higher density zoning (including incentives for particular forms of development) will be predicated in part on the Property Owner's willingness to cooperate in the City's efforts to develop the District as evidenced by the Property Owner's signing of this Agreement.
  8. Entitlements. The Parties acknowledge that the City has sole authority over land use building permits for any new development within the District. The City will make every effort to provide for the timely review of and action on any such permits. Moreover, for projects that are supportive of the Concept Plan (Exhibit A), the City will exercise its influence to secure permits issued by other authorities, including but not limited to (insert - names of agencies).
  9. Pre-Development Assistance. The City has dedicated funds for various pre-development activities including: environmental assessments, land appraisals, soils and geotechnical studies, traffic impact analyses, delineation and characterization of wetlands or other environmentally significant areas, and preliminary site planning and feasibility analyses for specific development concepts. Subject to funding availability, the City is willing to provide pre-development grants to the Property Owner (or a developer interested in the Property), on a 4:1<sup>13</sup> reimbursable basis. Terms of any such grants are subject to City procedures and guidelines, including City determination that the proposed development that might result from these pre-development activities aligns with the City's vision. The awarding of these grant funds is also predicated on the Property Owner's willingness to cooperate in the City's efforts to develop the District as evidenced by the Property Owner's signing of this Agreement.
  10. City Due Diligence. The City or its agents may conduct due diligence and inspections of the Property, including such physical, legal, and engineering inspections, environmental and soil tests and investigations as it may deem necessary or desirable. The City shall inform Property Owner at least 24 hours in advance of any

## Footnotes

<sup>10</sup> (PRIOR PAGE) Terms of such option are subject to negotiation, but may include a specific price, or a price to be determined at closing by some pre-agreed to formula. Terms will also include length of option; when some or all of the option becomes non-refundable; the prerogative and intent of the City to assign its option to a private developer; etc.

<sup>11</sup> (PRIOR PAGE) This section is irrelevant if the property has already been annexed.

<sup>12</sup> (PRIOR PAGE) This section is irrelevant if the property has already been zoned.

<sup>13</sup> The specific property owner financial match will be determined in the negotiation agreement process.

such studies and investigations being undertaken. Such studies and investigations may include, without limitation, zoning, land use, environmental, title, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters. The scope and cost of the due diligence and studies and investigations shall be the sole discretion and responsibility of City. The City shall provide to Property Owner copies of all studies, including environmental and soils studies, surveys, title reports and similar information developed during the Due Diligence by City. The City agrees that it shall promptly repair or restore any damage caused by the entry of the City or its agents upon or under the property.

11. Infrastructure. The Concept Plan (Exhibit A) includes conceptual location of infrastructure necessary to serve the long-term development of the District, including the property<sup>14</sup>. Infrastructure includes streets and sidewalks, sanitary and storm sewer, water, and preservation of environmentally significant areas. The Parties agree that the City (and or its agency partners) has authority over the design, funding, phasing, and timing of all public infrastructure within the District. The City's willingness to perform design/engineering and construction of infrastructure will be predicated on the Property Owner's willingness to cooperate in the City's efforts to develop the District as evidenced by the Property Owner's signing of this Agreement.
12. Infrastructure Funding. The Parties agree to cooperate in the funding of infrastructure. The Property Owner acknowledges that the City has formed (or intends to form) an Urban Renewal Area, which will generate tax increment dollars which can be used for infrastructure funding. AND/OR The Property Owner agrees to not remonstrate against a Local Improvement District as set forth in Exhibit D.<sup>15</sup> AND/OR The Property Owner agrees to dedicate land (AND/OR easements) for the purpose of constructing public infrastructure in exchange for the City's awarding of System Development Charge Credits, as identified in Exhibit E. AND/OR The Property Owner understands that the City has secured (or is seeking) funding from (insert agency) for the purpose of funding infrastructure.
13. Duration. The Term of this Agreement shall be two years from the Effective Date. The Parties may jointly

## Footnotes

<sup>14</sup> If the Concept Plan has not been completed yet, the language in this section should be changed to future tense (i.e., the City intends to complete a Concept Plan which will be the basis of this Agreement).

<sup>15</sup> This exhibit would lay out the method of calculation and other key terms of the Local Improvement District

agree in writing to extend this Agreement for up to two additional one-year renewal terms. The City's willingness to extend the Agreement would be predicated in part upon its determination that the Property Owner continues to demonstrate good faith efforts to cooperate in the implementation of the City's plans to develop the District as an employment area. In making this determination, the City will consider such factors as the following:

- Property Owner's willingness to seriously consider offers to purchase the Property by Site Aggregators and/or the City.
- Property Owner's willingness to participate in funding strategies for infrastructure development, and/or to participate in the dedication of land or easements allowing construction of infrastructure.

14. Termination. This Agreement shall automatically terminate upon sale of the Property to a Site Aggregator, in which case the current Property Owner will be released from his/her obligations under this Agreement. The Parties may terminate this Agreement by mutual agreement if latent conditions are discovered on the Property or events occur that would, presently or with the passage of time, prevent the development of the Property in general accordance with the Concept Plan (Exhibit A). Notwithstanding the above, either Party may at their sole option, terminate this Agreement by notice in writing if the other Party makes a material misrepresentation in the course hereof, otherwise fails to act in good faith, or if a Party becomes insolvent, or in the terminating party's reasonable estimation, if a Party otherwise is unable to perform under as set forth below in this Agreement.
15. Performance Timeline. The Performance Timeline attached as Exhibit F establishes the good faith expectations of the Parties during the term of the Agreement. Unless a specific date is set forth, the times for performance in the Timeline establish ranges and/or estimates and not strict deadlines.
16. Memorandum of Understanding. Tentative agreements on the terms of any future formal agreements may be memorialized in a written Memorandum of

Understanding (“MOU”), or series of such memoranda, during the Term of this Agreement. Any such MOUs will provide the continuing framework for final negotiations and preparation of future formal agreements related to the participation of the Property Owner in site aggregation efforts or other actions that allow for the implementation of the Concept Plan.

17. Indemnity and Insurance.<sup>16</sup> The Property Owner hereby agrees to indemnify, defend and hold City, including its appointed and elected officials, officers, employees and agents, harmless from and against any and all claims for injury to persons or damage to property caused by or resulting from the acts or neglect of the City or its representatives or consultants on or about the Property. During the term of this Agreement, the City shall maintain insurance with respect to its activities on or about the Property, naming the Property Owner as an additional insured, in amounts as follows: (i) commercial general liability insurance with a combined single limit of not less than \$1,000,000 per occurrence and with at least \$2,000,000 general aggregate; (ii) auto liability insurance with combined single limit of \$1,000,000 per occurrence; (iii) employer’s liability insurance with a limit of not less than \$1,000,000; (iv) professional liability insurance with a limit of at least \$2,000,000 per claim; and (v) in addition to the primary limits specified in (i) and (ii) above, excess liability insurance with a limit of not less than \$4,000,000 for each occurrence and in the aggregate. The indemnity required under this Section shall survive termination of this Agreement.
18. No Assignment. Neither party shall assign or transfer its interest in this Agreement.
19. Governing Law. This Agreement shall be governed by the laws of the state of Oregon.
20. Time of the Essence. Time is of the essence of this Agreement.
21. Amendments. This Agreement may be amended only by the written agreement of the Parties hereto.

## Footnotes

<sup>16</sup> The specific types and levels of insurances are provided as examples only; specific types and levels will vary depending on the policies of the affected jurisdiction.

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22. Notices. All notices given under this Agreement must be in writing and either (i) personally delivered, (ii) delivered by express mail, Federal Express or comparable courier service, or (iii) delivered by certified mail, postage prepaid, return receipt requested, as follows:

To City: NAME OF CITY  
(Name), City Manager  
Address  
City, Oregon 97XXX

To Property Owner: (name of ownership entity)  
(contact for ownership entity)  
Address  
City, Oregon 97XXX

All notices shall be deemed effective upon receipt. Any party may from time to time change its address for purposes of this Section by notice in writing to the other party.

PROPERTY OWNER:

CITY:

(Owner)  
An Oregon limited liability company  
By: \_\_\_\_\_  
(name)  
Managing Member

(city), an Oregon municipal  
corporation  
By: \_\_\_\_\_  
(name)  
City Manager

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

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

## Appendix C: High Level Draft Outline of Basic Terms for a Regional Employment Land Investment Fund (RELIF)

To illustrate the concept in more detail, the outline below adapts and translates the basic terms of a typical institutional investor / private equity fund structure to the RELIF site readiness fund concept.

ITEM	TERMS
Purposes of Fund	<ul style="list-style-type: none"> <li>• To fund employment land development (including site assembly and infrastructure) with shared participation (risk/reward) among the regional partners (both public and private) in the Portland metropolitan area, while providing an attractive investment opportunity for institutional investors.</li> </ul>
Fund Structure	<ul style="list-style-type: none"> <li>• The Regional Employment Land Investment Fund will utilize public/private investment funds designed to mirror the general partner/limited partner structure of institutional investment funds – with land, infrastructure and financial investments all pooled – supporting the development of top priority regional sites and equitably distributing the fund’s returns and benefits.</li> <li>• Incentives and restrictions will be built into the fund’s structure to encourage individual property owners to participate in the fund. Participating public entities would commit to prioritize actions supportive of participating properties and the fund’s ability to provide access to attractively priced and structured capital would provide additional incentives. Participating property owners would also be eligible to share in fund financial returns.</li> </ul>
Parties – RELIF Overall	<ul style="list-style-type: none"> <li>• Regional Industrial Land Investment Fund (RELIF) General Partner (GP)</li> <li>• Participating Industrial Land Owners (ILOs)</li> <li>• City Partners (CPs)</li> <li>• RELIF Limited Partner Investors (LPs)</li> </ul>
Parties	<ul style="list-style-type: none"> <li>• RELIF GP</li> <li>• Participating Property Owner ILOs</li> <li>• City or Cities</li> <li>• RELIF LPs</li> </ul>
Basic Development Principles – Development Program	<ul style="list-style-type: none"> <li>• Successful highest and best use development of the Site depends on:                             <ul style="list-style-type: none"> <li>○ Provision of necessary infrastructure at sustainable cost</li> <li>○ A supportive and stable development regulatory environment</li> <li>○ Assembly of parcels into marketable employment sites</li> <li>○ Continued provision of necessary municipal services</li> </ul> </li> <li>• All Parties will benefit from timely, successful development of the Site</li> </ul>

ITEM	TERMS
	<ul style="list-style-type: none"> <li>○ Land value for served and developed properties will increase substantially providing a potential financial return for property owners and investors</li> <li>○ The economy will expand, providing employment opportunities and fiscal returns</li> <li>● Parties investing in a cooperative program for development of the Site should gain a return on that investment over and above the return generated for non-participating properties</li> </ul>
Development Process	<ul style="list-style-type: none"> <li>● GP and City jointly develop the Site Land Development Program (the Site Program):             <ul style="list-style-type: none"> <li>○ Secure initial roster of Participating Properties / ILOs</li> <li>○ Development plan/design                 <ul style="list-style-type: none"> <li>▪ Property database</li> <li>▪ Optimal employment site assembly configuration</li> <li>▪ Annexation, entitlements and prospective zoning map</li> </ul> </li> <li>○ Program requirements, cost estimates and timelines                 <ul style="list-style-type: none"> <li>▪ Infrastructure</li> <li>▪ Property assembly</li> <li>▪ Site development</li> </ul> </li> <li>○ Development Financing Plan / Sources &amp; Uses of Funds                 <ul style="list-style-type: none"> <li>▪ Public financing (Federal, State, Local)</li> <li>▪ Local improvement districts</li> <li>▪ Latecomer / free-rider payments</li> <li>▪ RELIF Fund investment</li> <li>▪ ILO equity</li> </ul> </li> <li>○ Ongoing operations and maintenance funding                 <ul style="list-style-type: none"> <li>▪ Infrastructure</li> <li>▪ Municipal services</li> <li>▪ Program area operations and maintenance (e.g. ongoing maintenance of infrastructure improvements)</li> </ul> </li> </ul> </li> <li>● GP and City enter into the Site Development Agreement to implement the program             <ul style="list-style-type: none"> <li>○ City establishes regulatory and fiscal context for all area properties                 <ul style="list-style-type: none"> <li>▪ Annexation (participating properties)</li> <li>▪ Zoning (participating properties)</li> <li>▪ Planning infrastructure and public facility siting</li> <li>▪ Local improvement district boundaries and assessments</li> <li>▪ Latecomer / free-rider fees and charges</li> <li>▪ Ongoing operations and maintenance charges</li> </ul> </li> <li>○ GP manages outreach to and intake of participating ILOs                 <ul style="list-style-type: none"> <li>▪ Offers to purchase or option properties</li> <li>▪ Incentives to pooled development interests</li> <li>▪ Diversity of investment and return potential</li> </ul> </li> </ul> </li> </ul>

ITEM	TERMS
	<ul style="list-style-type: none"> <li>○ GP manages development with City leading infrastructure implementation                             <ul style="list-style-type: none"> <li>▪ GP invests Fund resources to support participating property shares of infrastructure (direct investment, bond proceeds, and local improvement district proceeds)</li> <li>▪ GP invests Fund resources to complete assembly into optimal parcels and to make each site development-ready</li> </ul> </li> <li>○ GP works with the entire employment real estate community to secure optimal access to local, regional, national and international land user markets</li> <li>● GP sells, leases or otherwise conveys employment sites to end users and allocates returns to ILOs, LPs, CPs</li> </ul>
<p>Limited Partner Investment Objective &amp; Commitments &amp; Returns</p>	<ul style="list-style-type: none"> <li>● Fund LPs agree to participate in the Site Program additional Fund investments (beyond the Site Program) consistent with overall Fund objectives and investment criteria</li> <li>● The Fund’s LPs seek a base return comparable to an institutional investor infrastructure allocation with potential upside related to successful land development. LPs also benefit from the pooled fund assets and liabilities and subordinated/contributed infrastructure funding.</li> </ul>
<p>General Partner Commitments</p>	<ul style="list-style-type: none"> <li>● The Fund’s GP agrees to:                             <ul style="list-style-type: none"> <li>○ Manage the Fund for the benefit of the Parties efficiently and effectively</li> <li>○ Provide authority as needed to enable the creation and management of the fund</li> <li>○ Pool third-party investment from institutional investors, public funding commitments, land and other contributed assets</li> <li>○ Secure financing based on the pooled Fund</li> <li>○ Enter into intergovernmental agreements with regional parties related to infrastructure development, regulatory assistance, etc.</li> <li>○ Enter into development and investment agreements with real estate interests</li> <li>○ Enter into development agreements with City Partners</li> <li>○ Buy and sell land</li> <li>○ Distribute financial and non-financial fund returns</li> <li>○ Invest Fund resources as necessary and appropriate to support pre-closing and pre-development activities</li> </ul> </li> </ul>
<p>City Commitments &amp; Benefits/Returns</p>	<ul style="list-style-type: none"> <li>● City agrees to:                             <ul style="list-style-type: none"> <li>○ Focus annexation access, infrastructure investments and up-zoning entitlements on participating properties</li> <li>○ Use condemnation as needed and appropriate to secure right of way and other property for needed infrastructure and other public facilities</li> </ul> </li> </ul>

ITEM	TERMS
	<ul style="list-style-type: none"> <li>○ Provide limited credit support for financing of public infrastructure</li> <li>○ Participate in the overall Site Program by establishing local improvement districts and establishing assessment structures which promote cooperative property development</li> <li>○ Take other actions as detailed in Development Process section above.</li> <li>● City expects to benefit from the Program through:               <ul style="list-style-type: none"> <li>○ Fund investment supporting City-owned infrastructure and public facilities</li> <li>○ GP management / cooperative assistance in establishing and managing the Site Program</li> <li>○ Property Tax Revenues</li> <li>○ Full development of the Site</li> </ul> </li> </ul>
Participating Property Owner ILO Commitments & Benefits/Returns	<ul style="list-style-type: none"> <li>● Participating Property Owner ILOs agree to:               <ul style="list-style-type: none"> <li>○ Assembly of their property into optimally sized employment development sites, whether by sale to the Fund or through cooperating development agreement</li> <li>○ Prior to, or in lieu of, a sale, convey to the Fund:                   <ul style="list-style-type: none"> <li>▪ Option to purchase at a pre-determined price</li> <li>▪ Non-remonstrance for local improvement districts approved as part of the overall Site Development Program</li> <li>▪ Non-remonstrance for annexation to the City</li> </ul> </li> <li>○ Receive a pro-rata interest in the Fund's Site Program as consideration for conveying the land into the Program</li> </ul> </li> <li>● Participating Property Owner ILOs expect to benefit from the Program through:               <ul style="list-style-type: none"> <li>○ Fund accepting pre-development risk</li> <li>○ GP/Fund management of the development program</li> <li>○ Certainty of development timing and cost</li> <li>○ Option for immediate monetization of property at a base valuation</li> <li>○ Access to pooled returns and benefits vs. solely from individual ILO property</li> <li>○ Upside potential from overall regional employment site development program</li> </ul> </li> </ul>
Conditions Precedent to Closing	<ul style="list-style-type: none"> <li>● Fund to secure sufficient investment to cover all obligations for the Site Program plus any fund operating requirements</li> <li>● Completion of the Master Development Agreement and all of the related commitments</li> <li>● GP to secure sufficient ILO commitments to ensure success of the Site Program</li> </ul>
Investment Committee	<ul style="list-style-type: none"> <li>● The Investment Committee will consist of the GP and a Regional Local Government Partner Representative (rotating among the regional partners on a periodic basis)</li> </ul>

Metro Employment Land Readiness || Task 2: New Site Development Real Estate and Finance Tools

ITEM	TERMS
	<ul style="list-style-type: none"> <li>The Investment Committee will have the sole and exclusive authority to approve any Investment meeting the Fund Investment Criteria and Fund Investment Limitations.</li> </ul>
Advisory Board	<ul style="list-style-type: none"> <li>The GP will establish an Advisory Board comprising representatives of LPs. The GP will select such representatives in its sole discretion; provided that the LPs with the largest Capital Commitments will be offered the opportunity to designate a representative to the Advisory Board. The Advisory Board will resolve questions that are presented to the Advisory Board by the GP that relate to conflicts of interest or potential conflicts of interest and provide such advice and counsel as is requested by the GP regarding other Fund matters.</li> </ul>
Program Financing / Sources & Uses	TO BE COMPLETED BASED ON DEVELOPMENT PROGRAM