

**NATIONAL TRUST FOR HISTORIC PRESERVATION**

**Memorandum of Agreement**

Among the National Trust for Historic Preservation, City of Seattle Department of Planning and Development and City Investors XVIII LLC (Project Owner)

THIS AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between the National Trust for Historic Preservation, a 501(c)(3) corporation, having a place of business at 1785 Massachusetts Avenue NW, Washington DC 20036, ("NTHP"), the City of Seattle ("City"), a Washington municipal corporation, through its Department of Planning and Development, having a place of business at 700 Fifth Avenue, Suite 3900, Seattle, Washington 98124-4019, and Project Owner, City Investors XVIII LLC, having a place of business at 505 Fifth Avenue South, Suite 900, Seattle, WA 98104 ("Project Owner"). In consideration of the promises hereinafter, the parties hereto agree as follows:

**I. BACKGROUND AND PURPOSE:** NTHP through the Preservation Green Lab (PGL), a field office of the NTHP located in Seattle, and the City are developing a Seattle Model Energy Code that is both more flexible and more effective in encouraging the re-use and energy-efficient retrofit of historic and existing buildings. NTHP and the City have identified owners of historic and existing buildings who are committed to improving the energy efficiency of their buildings while preserving historic character, and will help these "demonstration projects" achieve mutually agreed upon energy performance goals while testing the new model energy code framework. The demonstration projects should strive to demonstrate a substantive departure from the current Seattle Energy Code compliance pathways, and must demonstrate positive impacts on return on investment, project schedule, and energy performance versus existing compliance pathways.

The Supply Laundry Building, a designated City of Seattle landmark, located at 1265 Republican Street, Seattle, WA 98109-5529, and owned by City Investors XVIII LLC, is the entire physical scope of this demonstration project. For purposes of this Agreement, redevelopment of the Supply Laundry Building under the standards and procedures set forth herein constitutes the "Project." The Supply Laundry Building is part of a full-block redevelopment that will include two other new buildings. Only the preserved, existing structure designated as the Supply Laundry Building, located at 1265 Republican Street, Seattle, WA 98109-5529, is included within the scope of this contract - new construction is not included.

**II. DELIVERABLES:** The following scope of work generally defines the requirements expected to be provided by the City, the NTHP and the Project Owner under the terms of this agreement.

The goal of this demonstration project is to explore the effectiveness of energy code flexibility - with only minimal code requirements (see Project Owner commitments) - in achieving measured energy performance above that anticipated through current prescriptive and modeled-performance code paths.

Improvements must not change ability of Project Owner to meter overall systems and either meter tenant spaces or gather tenant energy data.

6. (a) Submit tenant energy performance to NTHP - may be anonymous data linked to tenant space size and use type, and (b) provide post-construction performance data to City of Seattle and NTHP (building and sub-metered) for the longer of: three years after 75% occupancy is achieved; until the date when the City determines that the Project meets the Minimum Standard; or, if the City determines that the Project does not meet the Minimum Standard, until the date when the Project Owner has implemented the required mitigation measure under Section II.A.8. Data may be provided via Energy Star Portfolio Manager and Target Finder.

7. (a) Strive to reach, and submit a design (to the City and NTHP) intended to achieve, an energy performance target of 60% better than 2003 CBECS' average for the specific building use; (b) construct and operate the building to achieve an absolute minimum of 50% better than the 2003 CBECS average (the "Minimum Standard"). The Minimum Standard must be achieved for twelve (12) consecutive months beginning after 75 percent occupancy is achieved. If the project does not initially meet the Minimum Standard, the Project Owner will have an additional twelve (12) months to demonstrate compliance.

**Submittal Requirements:**  
o Statement of performance target according to the following method:  
o Project will demonstrate energy performance at least 50% better than CBECS 2003 average for respective CBECS building category (as per Energy Star Target Finder weighted aggregate EUI by space type), measured in kWh/ft<sup>2</sup> (EUI), for twelve (12) consecutive months after 75 percent occupancy is achieved.

8. **Design Review:**  
Provide to the City a 60% and 90% design submittal and final permit set to allow comparison of the conventional energy code review and the new outcome-based path. The Project Owner will pay normal energy review fees for permit review staff time consistent with RS-29 modeled performance path review (hourly).

**Submittal Requirements:**  
o Project Owner will submit 60% and 90% energy design drawings to City. Project Owner will not be required to submit revised design drawings, but is required to provide to City and NTHP a summary response to suggested plan revisions.  
o Project Owner will submit final permit set at the official record of construction documents, which will be used by inspectors.  
o Project Owner will submit to NTHP all plan review and inspection reports, as per conventional inspection schedule and provided to Project Owner by City. Plan review

<sup>1</sup> The Commercial Buildings Energy Consumption Survey (CBECS) is a national sample survey that collects information on the stock of U.S. commercial buildings, their energy-related building characteristics, and their energy consumption and expenditures. See: <http://www.eia.gov/energy/cbees/>

3. Dedicate energy permit review staff time to evaluate energy modeling design strategies - verifying modeling tools and input assumptions. Project Owner will not be billed additionally for work outside the scope of the RS-29 permit review process for the building as designed. City staff will provide up to twenty (20) additional hours to evaluate alternative models and report on design strategies that would not be typically accepted. These hours are not part of permit review process and fees, and are contributions from the City to the demonstration program.

4. Commit to two (2) meetings to review proposed design with the parties hereto and design team (architect and engineer).

5. Coordinate parallel permitting processes and programs for demonstration projects, such as those with Priority Green permit process, with the express purpose of preventing unnecessary delays for the Project that might result from project participation or required compliance with multiple City review processes. Priority Green staff time will not exceed twenty (20) hours during the demonstration period for this project.

6. Dedicate time from City code officials and building inspectors (up to twenty (20) hours) to inspect building and submit inspection reports, as per conventional inspection schedule, to Project Owner. Inspection reports will be provided to Project Owner, but will be for documentation purposes only and will not be considered for purposes of enforcing code compliance.

7. Review and verify energy performance data, compare it to the Minimum Standard, and submit report to Project Owner and NTHP stating whether the Project meets the Minimum Standard. If the Project does not meet the Minimum Standard, review the mitigation measures proposed by Project Owner and determine whether they are sufficient pursuant to the criteria set forth in Section II.A.9.

8. If the Project Owner complies with the terms of this Agreement (as set forth in section II.A above), City will deem the Project to be in compliance with the Seattle Energy Code.

9. This Agreement does not change, reduce or eliminate Project Owner's obligation to pay the City for City staff review time as required by City code and/or regulations under the RS-29 review process (hourly) for the building as designed, except as noted herein.

10. The City may make compliance with this Agreement, or any of its terms, a condition of approval of any permit(s) that the City issues for the Project.

**C. NTHP obligations include:**

1. Create detailed reports and case studies specific to:
  - a. Process - ongoing progress reports that document development of the Outcome Based Energy Code (OBE-C) path.
  - b. Performance - technical reports regarding performance modeling, installation of M&V equipment, and post-occupancy performance

c. Provide reports and data to City of Seattle and to Project Owner in a timely manner

2. Commit to two (2) meetings to review proposed design with the parties hereto and design team (architect and engineer).

3. At NTHP's sole discretion, provide financial resources to reimburse the project team for additional modeling required for target setting and other analysis

4. Assist in appropriate target-setting and determination of compliance mechanisms (NTHP reserves the right to hire consultants to assist with this work at its sole cost)

5. Assist with post-construction analysis of performance data (NTHP reserves the right to hire consultants to assist with this work at its sole cost)

6. Provide for a consultant to produce a detailed case study, which would include:

- a. project approach
- b. project results

7. Assist in identifying potential resources for sub-metering equipment and ongoing monitoring

8. Coordinate media and promotion specific to this project and development of outcome-based energy code framework

**IV. TERM:** The term of this Agreement shall begin when fully executed by all parties, and shall end upon the later of: (1) three years after 75 percent occupancy is achieved; (2) the date when the City determines that the Project meets the Minimum Standard; or (3) if the City determines that the Project does not meet the Minimum Standard, the date when the Project Owner has implemented the required mitigation measure under Section II.A.9. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

**V. PAYMENT:** As between Project Owner and NTHP, there is not a payment component to this agreement. Costs related to additional energy modeling (beyond existing project work), installation of metering equipment (beyond minimum requirements and existing design), and Project Owner team time beyond that stated in this agreement will be negotiated on an as-needed basis, up to and not exceeding \$20,000.

**VII. ADDRESS FOR NOTICES:** All official notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing).

If to the NTHP: Anita Canovas  
National Trust for Historic Preservation  
1785 Massachusetts Avenue, NW  
Washington DC 20036

Via Email: [anita.canovas@nthp.org](mailto:anita.canovas@nthp.org)

If to City: Jayson Antonoff  
Sustainable Strategies Policy Advisor  
Department of Planning & Development  
700 5th Avenue, Suite 3800  
PO Box 34019  
Seattle, WA 98124-4019

Via Email: [jayson.antonoff@seattle.gov](mailto:jayson.antonoff@seattle.gov)

If to the Project Owner: Ada M. Hesley  
VP Real Estate  
City Investors XVIII LLC, c/o Vulcan Real Estate  
505 5th Ave. South, Suite 900  
Seattle, WA 98104

Via email: [brandanmo@vulcan.com](mailto:brandanmo@vulcan.com)

**IX. TERMINATION OF AGREEMENT:**

A. If the Project Owner violates any of the conditions listed in this Agreement, NTHP may, at its option, terminate NTHP's obligations under this Agreement thirty (30) days after the NTHP sends written notice of such termination to Project Owner, provided Project Owner fails to cure such violation during the thirty (30) day period. Such termination shall be effective upon the expiration of such thirty (30) day period.

B. Prior to commencement of construction of the Project, any party may terminate this Agreement in the following manner: (1) if one party determines that it intends to terminate the Agreement, the party agrees to notify the other parties in writing; (2) the parties shall meet within thirty (30) days of such notice; and (3) if the meeting does not satisfactorily resolve the terminating party's concerns, the party may terminate this Agreement sixty (60) days after the meeting to resolve concerns.

**X. GOVERNING LAW:** This agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

**XI. LIABILITY, INDEMNIFICATION AND DISCLOSURE:**

A. NTHP and Project Owner shall defend, indemnify and hold harmless each other and the City, including their officers, directors and employees, from and against all claims damages, costs, and expenses, including but not limited to attorney's fees, arising from or relating to any alleged act, omission, negligence, and/or misconduct by the indemnifying party related to the Project.

B. The NTHP and the City make no express or implied warranty as to the conditions of the research, data or any other intellectual property or product made, or developed under this agreement, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product.

**XII. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS:** All materials, documents, work, information protocols, processes data, results, work product and other items conceived, created, developed or produced under this Agreement ("Works and Materials"), expressly excluding all images of the Supply Laundry Building, shall become the property of the NTHP; provided, however, that all materials, documents, work, information protocols, processes data, results, work product and other items submitted or provided to the City may be used by the City for all public purposes and shall be subject to all applicable public disclosure requirements. The NTHP shall retain the copyright (including the right of reuse) whether or not the Work is completed.

**XIII. Confidentiality:** The confidentiality of nonpublic information shall be governed by a separate Non-Disclosure Agreement among NTHP and Project Owner dated October 10, 2010.

**IN WITNESS WHEREOF,** In consideration of the terms, conditions, and covenants contained herein, the parties have executed this Agreement by having their representatives affix their signatures below.

*[Signature]* 11-7-2011  
National Trust for Historic Preservation Date

*[Signature]* 10-31-11  
City of Seattle Date

*[Signature]* 10/27/11  
City Investors XVIII LLC Date  
By: City Investors LLC, its managing member

By: *[Signature]*  
Its: *[Signature]*

**NOTE:**  
THE FOLLOWING ITEMS DO NOT COMPLY TO PRESCRIPTIVE CODE COMPLIANCE REQUIREMENTS & WILL BE SUBJECT TO AN OUTCOME BASED PERFORMANCE REVIEW PER THE TERMS OF THE MOU:  
1.) DETAIL 1/A9.0 - AVERAGE THICKNESS OF TAPERED RIGID INSULATION OVER THE ROOF STRUCTURE HAS NOT BEEN DEMONSTRATED AT THIS TIME.  
2.) EXTERIOR DOORS - NFRC NUMBERS ARE NOT PROVIDED AT THIS TIME.  
3.) STEEL FRAMING AT STOREFRONT ENTRIES - W/AV INSULATION NOT PROVIDED AT THIS TIME.  
THESE ITEMS WILL BE ADDRESSED VIA OUTCOME BASED CODE ANALYSIS.

The scope of this project is limited to the Seattle Energy Code only, and does not include other building codes. Project owners will commit to ambitious energy performance objectives in exchange for code flexibility, with the goal of realizing greater energy performance and lower operations and maintenance costs. The goals of the Green Lab and City of Seattle include determining the optimal framework for the outcome-based code that will both lead to greater energy performance in existing buildings and be enforceable, both through pre-construction requirements and mitigation measures when performance targets are not met.

**A. Project Owner:** Project Owner makes certain commitments to the City of Seattle and NTHP, including:

1. Provide NTHP and City of Seattle with all project energy modeling data.
2. Allow and facilitate energy modeling of project via project energy consultant and/or engineer. At NTHP's sole discretion, NTHP will pay project energy consultant and/or engineer for energy modeling services when requested services are beyond the planned scope of the project team. If required, cost of additional modeling will be negotiated with NTHP, Project Owner and consultant at no additional cost to Project Owner. NTHP may, at its sole discretion, pay for modeling beyond that conducted by the Project Owner for the initial design.

3. Facilitate access to design team staff before, during and post-construction.  
o Invite and inform NTHP of all design meetings  
o Provide access to project architect and engineer - not to exceed ten (10) total billable hours during design and construction phase  
o Additional time will be negotiated between Project Owner and NTHP on an as-needed basis under terms mutually agreed by the parties.

4. Commit to two (2) meetings to review proposed design with the parties hereto and design team (architect and engineer).

5. Install metering equipment for all building energy systems, install automated lighting and thermal controls if existing lighting and thermostats are to be replaced, and ensure tenant cooperation with the foregoing; and either install sub-metering of all tenant spaces or implement lease provisions and/or CCRs that require tenant reporting of energy consumption, as further detailed below:

- Submittal Requirements:**
- o If existing lighting and thermostats are to be replaced as part of the project design, a detailed plan for automated controls of such lighting and thermal control systems.
  - o Detailed plan for sub-metering/monitoring of tenant loads. Requirements include:
    - o Sub-metering of each separate tenant space in the building, or
    - o Monitoring and reporting of each separate tenant space in the building
  - o Plan for adoption of lease provisions or condo CCRs that:
    - o Allow Project Owner to have access to tenant data.
    - o Require tenants or condo owners to abide by monitoring and automation requirements as part of any approved tenant improvements or other upgrades - tenant

and inspection reports will be for documentation purposes only and will not be considered for purposes of enforcing code compliance.

9. If, after the additional twelve (12) month period the Project has not achieved the Minimum Standard, the Project Owner will (a) submit to the City and NTHP a recalibrated energy model, to determine reasons the Project did not meet the Minimum Standard, and (b) conduct an ASHRAE Level II Energy Audit, or approved equivalent process, by a certified audit provider, to identify mitigation measures. If the Project demonstrates performance below the modeled equivalent minimum of Seattle Energy Code (a comparison of model's "at code" and "as designed"), the Project Owner will implement all mitigation measures, including operational changes, necessary to achieve performance at least equal to Seattle Energy Code. For Project Owner to be in compliance with this Agreement, the City must have approved the sufficiency of the mitigation measures prior to their implementation, which will be subject to new permits (if required)

10. Commit Project Owner team time to work with NTHP and be available for photos, interviews, and data gathering.

11. Share all project design and construction drawings, construction cost data specific to retrofit strategies, and pre- and post-retrofit performance data with NTHP.

12. Grant permission to NTHP, upon reasonable request, to photograph, document and publish work-in-progress. NTHP will provide Project Owner the right to review and approve all materials intended for publication or public dissemination. Project Owner will have fifteen (15) days to review and approve materials. After that period, if NTHP has not received comments, then it will be deemed reviewed and approved.

13. Commit to opening the building for certain press and public events, if not normally accessible to the public, and making available Project Owner and design team (at their sole discretion) for events and press, subject to tenant(s)'s approval for reasonable access.

**B. City of Seattle obligations include:**

1. Commit to timely and thorough participation in Project meetings and response to requests for review of materials.

2. Perform conventional energy plan review of 60% and 90% design submittals and inspection review to provide a comparison of standard code compliance against the outcome-based approach. The City will provide to Project Owner revised 60% and 90% design submittals, and also to Project Owner and NTHP a correction letter for 60% and 90% design drawings as per Standard energy review. Plan review staff will assist NTHP (up to ten (10) hours) in documenting how the outcome-based path will depart from conventional approach. These hours are not part of permit review process and fees, and are contributions from the City to the demonstration program.

**LAUNDRY BLOCK HISTORIC BUILDING**  
1265 REPUBLICAN ST.  
SEATTLE, WA 98109

**OUTCOME BASED CODE MOU**

**SUBMITTAL/REVISIONS:**  
BP CHECKSET 10.07.11  
BUILDING PERMIT 11.15.11  
BP CORRECTIONS 2.15.12  
90% CD ADDENDUM 3.9.12  
BP CORRECTIONS 3.26.12

DATE: FEBRUARY 15, 2012  
SCALE: N/A  
DRAWN: JH, CC  
JOB #: RA # 08-121  
DPD #6275258 (WEST) - PARENT  
DPD #6275584 (SUPPLY LAUNDRY)

**SHEET ECO.1**



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