

INTERGOVERNMENTAL AGREEMENT

Citywide Tree Planting Strategy

This Intergovernmental Agreement ("Agreement") is entered into between the **City of Portland**, acting by and through Portland Parks & Recreation, hereinafter referred to as SPONSOR and **Portland State University**, hereinafter referred to as UNIVERSITY. This Contract may refer to the SPONSOR and UNIVERSITY individually as a "Party" or jointly as the "Parties".

RECITALS

WHEREAS the research project ("Project") contemplated by this Agreement is of mutual interest and benefit to SPONSOR and UNIVERSITY;

WHEREAS the performance of such research is consistent, compatible and beneficial to the academic role and mission of UNIVERSITY as an institution of higher education;

WHEREAS the results of the Project will benefit the citizens of the SPONSOR's parks and natural areas;

THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I - PROPOSED WORK

UNIVERSITY shall use reasonable efforts to conduct the research Project in accordance with the Project research plan, titled "Citywide Tree Planting Strategy" as described in ATTACHMENT A ("Scope of Work"), incorporated herein by reference.

The Project will be under the direction and supervision of the UNIVERSITY's principal investigator, Vivek Shandas, Ph.D. ("PI"). If, for any reason, Dr. Shandas is unable to continue to serve as PI and both Parties are unable to identify a mutually acceptable replacement, SPONSOR shall have the right to terminate this Agreement according to ARTICLE XIII.

ARTICLE II - TERM AND PROJECT PERIOD

This Agreement becomes effective as of June 1, 2016 and will terminate on June 30, 2017, unless extended by mutual written agreement of the Parties or terminated early in accordance with ARTICLE XIII. The Project may begin and costs may be incurred by UNIVERSITY beginning June 16, 2016.

ARTICLE III - CONSIDERATION

Cost Reimbursable: In consideration of UNIVERSITY's performance of the Project, SPONSOR shall reimburse UNIVERSITY for the estimated cost of the Project in an amount not to exceed ("NTE") \$50,000 US DOLLARS, including direct and indirect costs in accordance with ATTACHMENT B ("Budget"). SPONSOR recognizes that the Budget is the UNIVERSITY's best estimate of the total cost to support the Project, and UNIVERSITY may submit to SPONSOR a revised budget for additional funds if the cost of the Project is reasonably expected to exceed the NTE amount. SPONSOR is not liable for any payment in excess of the NTE amount unless agreed to by SPONSOR in writing via a written amendment to the Agreement. UNIVERSITY may adjust the Budget at its discretion, provided that such rebudgeting is within the NTE amount and consistent with the Project.

UNIVERSITY shall invoice SPONSOR no more often than quarterly for all costs of the Project incurred to date but not previously invoiced. SPONSOR shall pay UNIVERSITY within thirty (30) calendar days of receipt of

any invoice. UNIVERSITY shall submit invoices by mail or electronic means to the SPONSOR's Financial Contact indicated in ARTICLE XVI.

All payments to UNIVERSITY under this Agreement shall be made by ACH in accordance with the payment instructions provided with each invoice. For purposes of identification each ACH payment must refer to the Project title, the Agreement number, and the name of the PI.

ARTICLE IV - PERFORMANCE AND REPORTING REQUIREMENTS

UNIVERSITY is responsible for providing all reports and/or deliverables identified in ATTACHMENT A.

ARTICLE V - PUBLICATION BY UNIVERSITY

UNIVERSITY retains the right to publish or otherwise publicly disclose any results of the Project conducted by UNIVERSITY. At least thirty (30) calendar days prior to submission for publication or disclosure, UNIVERSITY will submit a copy of any proposed manuscript or other disclosure relating to the Project to SPONSOR. SPONSOR may review such manuscript to identify patentable subject matter and any inadvertent disclosure of SPONSOR Confidential Information. Should SPONSOR identify patentable subject matter, SPONSOR may request that UNIVERSITY delay publication for period of time not to exceed an additional thirty (30) days if necessary to permit the preparation and filing of such patent application by SPONSOR.

UNIVERSITY may use, reuse, and analyze the data developed by UNIVERSITY during the course of the Project for teaching or research purposes only. UNIVERSITY shall not sell, give away or commercialize SPONSOR data without SPONSOR's prior written permission.

ARTICLE VI - COPYRIGHT

Copyright materials created under this agreement will be both UNIVERSITY and SPONSOR jointly owned.

ARTICLE VII – PATENTS AND INVENTIONS

All such patentable inventions made under this Agreement and all such patentable inventions shall include both UNIVERSITY and SPONSOR jointly owned.

It is anticipated that there will be no University Inventions under this Agreement. However, in the event that any University Inventions are created, conceived or developed as a result of performing the Project by UNIVERSITY, UNIVERSITY shall promptly disclose any such University Inventions to SPONSOR. To the extent that UNIVERSITY has the right to do so, UNIVERSITY own jointly with SPONSOR.

ARTICLE VIII - CONFIDENTIALITY

"Confidential Information" shall mean any information which is provided by one Party to the other and (i) is clearly marked confidential with an appropriate legend at the time of disclosure if disclosed in a tangible or written form, or (ii) if disclosed orally or in any other transitory medium, is identified as confidential at the time of disclosure and provided in a written summary within thirty (30) days of disclosure. A receiving Party's obligation to protect Confidential Information of the disclosing Party shall not include information that:

- a. was already in receiving Party's possession prior to disclosure;
- b. is or becomes a matter of public knowledge through no fault of receiving Party;
- c. is independently developed by receiving Party without use of disclosing Party's Confidential Information;
- d. is received by or becomes known to receiving Party from another source in a manner that does not knowingly breach an obligation of confidentiality owed to the disclosing Party; or
- e. is approved for release or use by written authorization of the disclosing Party.

Each Party shall only use the other party's Confidential Information for the purposes of the Project. The receiving Party shall exert reasonable efforts to protect the disclosing Party's Confidential Information for a

period of three (3) years from the date of receipt against unauthorized use, dissemination or publication. All written documents containing Confidential Information and other material in tangible form received by either Party under this Agreement shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing Party upon request, except one copy may be retained for archival purposes.

Notwithstanding the foregoing, the receiving Party may disclose Confidential Information as required by law, court order, or government regulation provided however, that the receiving Party timely notifies and provides disclosing Party with an opportunity to minimize or oppose such disclosure. Both Parties acknowledge each is subject to, and shall treat appropriately marked Confidential Information as confidential to the extent permitted under the Oregon Public Records Law (ORS 192.410-192.505).

ARTICLE IX – EQUIPMENT AND OTHER PROPERTY

N/A

ARTICLE X - INDEMNIFICATION

To the extent permitted by the Oregon Constitution and to the limits of the Oregon Tort Claims Act, both Parties agree to be responsible for any wrongful or negligent acts or omissions, or those of its officers, agents, employees or representatives under this Agreement, including third party intellectual property infringement.

In the event that Work Product is known by either Party to contain materials protected by Third Party Intellectual Property, and to the extent necessary to the other Party to use the Work Product for the purposes described in Article I or the Scope of Work, the Party that included such materials in the Work Product or required including such materials in the Work Product, shall either (i) secure on the other Party's behalf a royalty-free, nonexclusive, non-commercial and irrevocable right to use, reproduce, distribute copies of, perform and display such Third Party Intellectual Property and to authorize others to do the same, or (ii) remove such materials from the Work Product and re-deliver Work Product without any materials known by either Party to be protected by Third Party Intellectual Property unlicensed by either Party, or (iii) if option (i) or (ii) above is not reasonably viable, the Parties shall agree to an equitable reduction in payment due to inability to use the Work Product that contains such material for the purposes. Although University will not intentionally include material in the Work Product that is known to be protected by a third party's patent or trade secret rights if the third party's rights would interfere with the Sponsor using the Work Product for State governmental purposes, University makes no warranties that material included in Work Product does not infringe a third party's patent or trade secret rights.

ARTICLE XI – GOVERNING LAW AND DISPUTES

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without regard to the conflict of law provisions therein. Venue of any action brought under this Agreement shall occur, if in the state courts, in the circuit court of the State of Oregon for Multnomah County, and if in the federal courts, in the United States District Court for the District of Oregon.

In cases where a dispute arises in relation to this Agreement, the Parties agree to make a good faith effort to settle the dispute by mutual consultation.

ARTICLE XII - ASSIGNMENT

Neither Party shall assign or transfer any interest in this Agreement, nor assign any claims for money due or to become due during this Agreement without the prior written approval of the other Party.

ARTICLE XIII - TERMINATION

Either Party may terminate this Agreement by giving the other Party at least thirty (30) days prior written notice of such termination. In the case of such termination, UNIVERSITY will proceed in an orderly fashion to terminate any outstanding commitments and to stop the work as soon as it is practicable to do so.

If this Agreement is terminated for any reason prior to the completion of the Project, SPONSOR shall reimburse UNIVERSITY for all documented reasonable costs incurred for the Project through the date of termination. Such costs shall include all non-cancelable commitments that exist at the time the notice of termination is received. However, in no event will SPONSOR's financial obligation for the Project exceed the NTE amount set forth in ARTICLE III.

In the event that either Party commits a material breach of its obligations under this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Agreement immediately upon written notice to the Party in breach.

Termination of this Agreement, however effectuated, shall not release the Parties from their rights and obligations under the ARTICLES on Consideration, Equipment and Other Property, Copyright, Patents and Inventions, Publication by UNIVERSITY, Confidentiality, Indemnification, Use of Name, and Export Control.

ARTICLE XIV – EXPORT CONTROL

Each Party understands and agrees that it is subject to and responsible for its own compliance to applicable United States laws, regulations or orders including those related to the export or re-export of technical data, technology, equipment, materials and software. SPONSOR recognizes that as an institution of higher education, UNIVERSITY does not wish to take receipt of export-controlled information unless knowingly and expressly agreed to in writing. SPONSOR represents that all Confidential Information provided to UNIVERSITY does not contain export control-listed technology or technical data identified on any US export control list, including the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 121. In the event SPONSOR intends to provide UNIVERSITY with export control-listed information, SPONSOR will notify UNIVERSITY beforehand in writing, and only supply such information upon written confirmation from an authorized representative of UNIVERSITY.

ARTICLE XV – ORDER OF PRECEDENCE

In the event of a conflict between the Articles of this Agreement and the appendices and attachments hereto, the conflict shall be resolved by the following order of precedence:

Amendments to the Agreement
The ARTICLES of the Agreement
The Scope of Work, ATTACHMENT A
The Budget, ATTACHMENT B

ARTICLE XVI - NOTIFICATION

All notification required by this Agreement shall be executed in writing by the parties hereto and shall be directed to the following individuals:

LEGAL NOTICES/AUTHORIZED REPRESENTATIVES	
For UNIVERSITY: Jennifer Ward, Associate Director Sponsored Projects Administration Portland State University PO Box 751 (SPA) Portland, OR 97207-0751 Phone: 503-725-8308 Email: awards@pdx.edu	For SPONSOR: Harry Auerbach Chief Deputy City of Portland Attorney's Office 1221 SW Fourth Ave., Room 430 Portland, Oregon 97204 Phone: 503-823-4047 Email: harry.auerbach@portlandoregon.gov
FINANCIAL CONTACT	
For UNIVERSITY: Anisa Chisti, Finance & Compliance Manager Sponsored Projects Administration	For SPONSOR: Cynthia Castro Portland Parks & Recreation

Portland State University P.O. Box 751 (SPA) Portland, OR 97207-0751 Phone: 503-725-3668 Email: spafct@pdx.edu	6433 NE Tillamook Street Portland, OR 97213 Phone: 503-823-2141 Email: Cynthia.castro@portlandoregon.gov
PRINCIPAL INVESTIGATOR	
For UNIVERSITY: Vivek Shandas Portland State University PO Box 751 (USP) Portland, OR 97207-0751 Phone: (503) 725-5222 Email: vshandas@pdx.edu	For SPONSOR: Angie DiSalvo Portland Parks & Recreation 10910 N. Denver Ave. Portland, OR 97217 Phone: 503-823-4484 Email: angie.disalvo@portlandoregon.gov

ARTICLE XVII – ENTIRE AGREEMENT, MODIFICATIONS, WAIVER AND SEVERANCE

This Agreement constitutes the complete and final Agreement between the Parties. Any modifications to this Agreement or the Project must be executed via an Amendment in writing by the authorized representatives of the Parties. Terms and conditions which may be set forth (front, reverse, attached or incorporated) in any purchase order issued by SPONSOR in connection with this Agreement shall not apply, except for informational billing purposes.

The failure of a Party in any instance to insist upon the strict performance of the terms of this Agreement will not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the Party's failure to insist upon strict performance or at any time in the future, and such terms will continue in full force and effect.

Each clause of this Agreement is a distinct and severable clause and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby.

ARTICLE XVIII – INDEPENDENT CONTRACTOR

In the performance of the Agreement, neither Party is authorized or empowered to act as agent for the other Party nor shall one Party be bound by the acts or conduct of the other Party under this Agreement, any liability or understanding unless expressly stated herein. Each Party shall perform its duties hereunder as an independent contractor and not as an employee of the other. The Parties, nor any agent or employee of either Party, shall not be entitled to unemployment insurance or workers compensation benefits through the other Party.

ARTICLE XIX – USE OF NAME

Neither Party shall use the name or symbol of the other Party in any advertising, sales promotion nor other publicity matter without prior written approval except as required by the Oregon Public Records Law (ORS 192.410-192.505).

ARTICLE XX – NO WARRANTIES

ALL INTELLECTUAL PROPERTY, PROJECT RESULTS, REPORTS AND DELIVERABLES DEVELOPED BY UNIVERSITY UNDER THIS AGREEMENT ARE PROVIDED TO SPONSOR "AS IS." UNIVERSITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY, COMPLETENESS, OR FITNESS FOR ANY PURPOSE OR CONDITION INCLUDING FREEDOM FROM ANY PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT WITH RESPECT TO THE PROJECT RESULTS, THE


DELIVERABLES CREATED UNDER THE PROJECT OR PUBLICATIONS RESULTING FROM THE PROJECT, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESSED OR IMPLIED.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. SPONSOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE AGREEMENT AND SPONSOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

PORTLAND STATE UNIVERSITY

SPONSOR

By:  _____
Jennifer L. Ward, Associate Director
Name/Title: Sponsored Projects Administration
Date: 8/5/16

Jennifer L. Ward
2016.08.05 12:30:57 -06'00'

By: _____
Name/Title: _____
Date: _____

Approved as to Form:

By: _____
Deputy City Attorney

City Attorney's Office

Date:

ATTACHMENT A

Scope of Work

Summary

Portland State University (PSU) proposes to join with Portland Parks & Recreation (PP&R) for an assessment of tree planting locations as part of a broader initiative for meeting the City's canopy goals. This Project includes the following key activities:

1. Conduct literature reviews to understand how other cities have expanded tree canopies, and the (real or presumed) effects of canopy expansion on environmental and social conditions in the city.
2. Review existing City plans to develop an 'alignment matrix' that describes significant overlaps as they pertain to initiatives for canopy expansion. The result will consist of a 'best practices' document that identifies specific cities, their approach to canopy expansion, and overlaps with exiting City plans.
3. Conduct spatial analysis to identify areas in the city where expanding tree canopy will have direct benefit to the social and environmental conditions in the city.

Throughout the research process, this Project will engage relevant stakeholders as necessary. During the preliminary phase, engagement efforts may be directed to urban forestry staff from select cities. In the second phase, we will reach out to community groups and other potentially affected communities to understand the opportunities and challenges of expanding tree canopies in select neighborhoods.

Under this Agreement, PSU will consult with PP&R staff to: design the strategy for conducting the literature review and City plan analysis; conduct the spatial analysis and development of a planting plan; and provide a summary of the Project findings, and produce a report that captures the work completed.

This Project is scheduled to begin September 15, 2016 and run through September 15, 2017.

Scope of Work

Based on a series of Project scope meetings with PP&R and PSU project team members, the following scope of work and general Project design was identified.

First, the PSU Project team will conduct literature reviews to understand how other cities have expanded tree canopies, and the (real or presumed) effects of canopy expansion on environmental and social conditions in the city. In addition, the City of Portland has several existing plans (e.g. The Portland Plan, Urban Forestry Management Plan, Climate Action Plan, and Watershed Management Plan), which have goals that may pertain to expanding the urban forest. By reviewing the existing City plans, the graduate student researcher will develop an 'alignment matrix' that describes significant overlaps as they pertain to initiatives for canopy expansion. The result will consist of a 'best practices' document that identifies specific cities, their approach to canopy expansion, and overlaps with exiting City plans.

Based on results from above-mentioned literature review, a second component will include conducting spatial analysis to identify areas in the city where expanding tree canopy will have direct benefit to the social and environmental conditions in the city. The approach will be multi-scaled, which assumes that expanding tree canopies requires a consideration of varying factors that constrain tree plantings at city, neighborhood, and planting site levels. By using publicly available data, including a recently acquired LiDaR dataset, along with socio-demographics, land use, among other datasets, each neighborhood will be described in terms of the potential plant-able locations. By working directly with Urban Forestry staff, each neighborhood will further contain a proposed hierarchy for prioritizing planting locations. We assume that each neighborhood will contain different factors that impact planting options, and any efforts must consider the local context.

Finally, throughout the research process, this Project will engage relevant stakeholders as necessary. During the preliminary phase, engagement efforts may be directed to urban forestry staff from select cities. In the second phase, we will reach out to community groups and other potentially affected

communities to understand the opportunities and challenges of expanding tree canopies in select neighborhoods. While the spatial analysis will point to specific locations as high potential for expanding tree canopy, having community buy-in will be essential. To that end we will conduct solicit involvement through neighborhood associations, attending local events, and emailing relevant list serves and other online media. The substance of the outreach will focus on past experiences, current challenges, and the options for supporting the maintenance of any expansion in neighborhood canopy. The outcome of our outreach efforts will be a context-specific understanding about community concerns and support, which will help to refine the recommendations for planting potential by neighborhood.

To accomplish these steps, we will rely on one graduate research assistant, and to the extent possible engage graduate level classes. We will document each of the steps in a formal report that will be produced at the end of these analyses. We will also assume that urban forestry staff and PSU researchers will meet every two weeks to ensure swift completion of each of the stages in the Project.

Timeline

September, 2016: Develop detailed work plan in consultation with City Urban Forestry; begin selecting comparable cities and City plans for conducting literature reviews;

October - November, 2016: Conduct literature review of select plans; outreach to select cities; develop matrix

December, 2016: Assemble existing spatial data, and identify data needs; construct the work flow of the analysis; clean and integrate datasets; conduct preliminary outreach to neighborhood associations and relevant City bureaus;

January - March, 2016: Conduct spatial analysis of datasets at multiple scales, including field validation as needed; further engagement of relevant stakeholders;

April– June, 2017: Develop prioritization system for identifying planting options for neighborhoods, including the construction of an online tool for use by PP&R staff;

July – August, 2017: engage relevant stakeholders in the City and other organizations for feedback on prioritization scheme; and

August– September, 2017: Develop final report that describes the process of identifying planting locations in the city, and findings.

ATTACHMENT B

Budget

Description		Salary	Calendar	TOTAL
Salaries & Wages			Months	
Principal Investigator		\$ 9,704	0.8	7,599
Graduate Research Assistant	Academic Year	\$ 2,724	4.0	10,786
Hourly Wages		Hourly Rate	# Hours	
Graduate Research Assistant	Summer 2016	\$ 15.26	390.0	5,950
Graduate Research Assistant	Summer 2017	\$ 15.26	60.0	916
Fringe Benefits				
Principal Investigator				2,348
Graduate Research Assistant				834
Subtotal - Personnel				28,433
Other Direct Costs				
Tuition Remission		\$ / Term	# of Terms	
Tuition		\$3,750	3	11,250
Subtotal - Other Direct Costs				11,250
Total Direct Costs				39,683
Indirect Costs				10,317
GRAND TOTAL				50,000