

189287

**Intergovernmental Agreement Between
Portland State University and the City of Portland
for
Turbine Replacement Project,
Urban Center Condominium**

This Intergovernmental Agreement ("Agreement") is between Portland State University ("PSU") and the City of Portland ("City"), condominium Owners in the Urban Center Condominium. PSU and City shall be collectively referred to herein as the "Parties" and individually as a "Party". The Parties are authorized to enter into this Agreement under ORS Chapter 190.

RECITALS

- A. The buildings located at 1900 SW 4th Avenue, Portland, Oregon, consist of PSU's Fourth Avenue Building ("FAB") and the City's building ("Tower") and are a commercial condominium with units owned by PSU and City and common elements shared by the Parties. Use and maintenance of the condominium are governed by the terms of the Condominium Declaration for Urban Center Condominium ("Declaration") and the Bylaws of Urban Center Condominium Association ("Bylaws") originally established in the State of Oregon on 06-24-1996.
- B. The project consists of two separate phases. Phase I refers to design and engineering work and Phase II refers to all remaining work after the design and engineering phase is complete. Total project cost for both phases, including all soft costs, is estimated not-to-exceed \$5,000,000. Phase I project cost, including all soft costs, is estimated not-to-exceed \$275,000 of the total project cost, the remaining balance of total project cost shall be used for Phase II. Both parties agree that funding has been allocated for Phase I and believe that funds will be allocated for Phase II by June 30, 2019.
- C. Both parties agree that PSU will pay for 50% and the City will pay for 50% of the total costs of Project, which include both Phase I and II costs.
- D. Both parties are in agreement to proceed with Phase I engineering effort and design work for the option described in the attached Exhibit A, Fourth Avenue Building Emergency Power Turbine Study, dated April 14, 2017, option 4, which include the removal and replacement of the existing 3 MW Turbine with two (2) new 2 MW diesel generators (collectively referenced as "Turbine Replacement" or "Project"). The Project will include associated electrical distribution reconfiguration, re-piping and rerouting of existing diesel fueling system, which source the new generator equipment, commissioning requirements and any structural enhancement requirements. Roof replacement and new installation, directly located beneath the existing turbine location and new location of the new generators is also agreed upon.

Now, therefore, City and PSU hereby incorporate the above Recitals and agree as follows:

189287

1. PSU RESPONSIBILITIES

- a. PSU will act as Agent for the Condominium Association, to be approved by the Urban Center Condominium Board of Directors, and will assume responsibility for preparing the detailed scope of work, procuring, contracting, scheduling and paying directly for this agreed upon work. PSU will progress-bill the City no more than monthly for the agreed upon contribution.
- b. Any procurement undertaken by PSU in this Project for goods and services, professional/expert services, or construction services will be done in accordance with PSU's standards, which may be found at: <http://www.pdx.edu.ogc/psu-standards-formerly-oars>.
- c. PSU will conduct a formal solicitation to select a Phase I consultant to oversee design and engineering work. Prior to executing a contract with the select consultant, Phase I project budget approval in the not-to-exceed amount of \$275,000 will be obtained from the Urban Center Condominium Board of Directors.
- d. PSU will provide the City with timely opportunity to review and comment on solicitation/procurement documents, and responsive contractor bids or proposals, prior to PSU's contract award. It is agreed that the goal would be for the Parties to mutually determine best qualified contractor(s) or vendor(s), within twelve (12) business days upon receiving construction proposals.
- e. PSU will prepare a mutually acceptable Project Scope of Work, including, at minimum, facility design and engineering for the future acquisition and installation of generators and associated equipment necessary for Project operation, Project Budget and Project Schedule.
- f. PSU will have responsibility for overall Project management and will consult with the City in each significant step of the Project. If PSU uses its internal staff for some or all of the facility design, engineering or management for the project, the internal staff should have similar skills, experience and qualifications as any potential contracted service providers and the cost for such internal staff time should be billed at the same rate that PSU assesses any of its own departments or divisions for similar work.
- g. PSU will process and approve invoices related to this project.
- h. The design, scope and intent of the project is to make every effort to not disrupt PSU's or the City's business, systems, and/or use of their building. In the event that a service interruption is required to complete and or assist in an effort to complete this work, PSU will utilize the existing written method of procedure process, which will give the City the opportunity to approve the required work along with the ten-day notice approval. Supplemental systems/equipment will be added where needed to ensure vital operation and functionality.
- i. PSU will resolve contract claims, and timely pay contractors for work in the Project. Unless agreed to in writing, the City shall not be responsible for cost overrun in the Project or expenditure in excess of the mutually agreed Project budget. The City's total "Not to

189287

Exceed" amount for its contribution to the Project will be identified in the City's funding responsibility provided in a subsequent amendment to this IGA.

- j. Any City funding provided to PSU for the Project but not actually spent must be returned to the City within 30 days following the Project closeout.

2. CITY RESPONSIBILITIES

- a. The City will contribute 50% of costs for all phases of the Project.
- b. The City shall contribute up to \$137,500.00 for its share of the costs of Phase I of the Project. The City will tender an initial contribution of 25% of City's share of Phase I to PSU no later than 30 days following the full execution of this Agreement. This contribution will be used in the initial design and engineering work. PSU will keep contemporaneous records of Project costs and payments in accordance with its ordinary accounting processes. The City will be invoiced for its remaining share of the costs of Phase I of the Project and it shall make payment therefor as provided in this Agreement.
- c. After PSU has expended the initial contribution, PSU may bill the City for its share of the expenses no more than monthly and at Project completion the final balance. The City shall tender the requested Project funds to PSU within thirty 30 days of PSU's request, unless the Parties agree to a longer time for funds transfer.
- d. The City shall timely respond to all requests for review, input, and approval as provided under this Agreement. The City shall not unreasonably withhold, delay, or condition its approval of any item for which its approval is required under this Agreement. Time is of the essence for the City's obligations hereunder.

3. OWNERSHIP/TITLE AND WARRANTIES

After construction is complete, PSU and the City will own, maintain and be responsible for all warranty items for the Project as agreed upon in the existing Condominium agreement, including any supplemental declarations and or amendments. PSU shall retain all right, title and interest in the design documents prepared for the Project and may use, reuse, revise and modify design documents at its sole discretion.

4. TERM; TERMINATION

This Agreement is effective from the date it is fully executed by the authorized signatories as shown below. PSU shall commence work on the Project as soon as practicable after Agreement execution. This Agreement shall be effective until completion of all Project work and closeout, which may include final accounting and documentation exchange, and which is expected to be no later than 90 days from substantial completion.

This Agreement may be terminated by mutual written consent of the Parties. In the event that a Party determines that there is a material breach of the Agreement which may warrant termination for cause in a contract, the Parties will attempt to resolve the issue of breach and cure under the below Dispute Resolution clause.

5. MUTUAL RECIPROCAL OBLIGATIONS.

The Parties shall cooperate and exercise good faith efforts and due diligence to complete their respective obligations set forth in this Agreement and assign sufficient resources (whether time, material or personnel) to ensure the obligations in this Agreement may be accomplished without delay.

6. ACCESS TO RECORDS

Both Parties and their duly authorized representatives shall have access to the books, documents, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Upon written request from the City, in addition to Project closeout, PSU will provide the City copies of Project records including documentation of expenditures.

7. OREGON LAWS AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between PSU and the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

8. PARTY REPRESENTATIVES

The Parties' points of contact for this Agreement and the Project work are identified below.

Agreement Representatives:

Dan Zalkow, Associate VP
Portland State University
Planning, Construction & Real Estate
1600 SW 4th Ave, Suite 501
Portland, Oregon 97201
503-725-5466
zalkowd@pdx.edu

David O'Longaigh, Division Manager
City of Portland
Office of Management and Finance
1120 SW 5th Avenue, Room 1250
Portland, Oregon 97204
503-823-2039
david.olongaigh@portlandoregon.gov

Project Managers:

Joshua R. Steed, PE
Portland State University
Facilities Senior Electrical Engineer & PM
617 SW Montgomery
Portland, Oregon 97201
503-725-9941
jrsteed@pdx.edu

Ron Umali
City of Portland
Office of Management and Finance
1120 SW 5th Avenue, Room 1250
Portland, Oregon 97204
503-823-6948
ron.umali@portlandoregon.gov

189287

Legal Representation:

Michael Grieser
Portland State University
Office of General Counsel
1600 SW Fourth Avenue, Suite 840K
Portland, OR 97201
503-725-2648
michael.grieser@pdx.edu

Linda Law
City of Portland
Office of the City Attorney
1221 SW Fourth Avenue, Room 430
Portland, OR 97204
503-823-4047
linda.law@portlandoregon.gov

Any formal notice provided for under this Agreement shall be sufficient if in writing and delivered to the Agreement Representative of the Party. The Project Managers shall be responsible for performance of obligations under this Agreement, approve work and billing and carry day-to-day activities required to accomplish the installation.

9. DISPUTE RESOLUTION

If a dispute arises regarding this Agreement, the Parties agree to exercise good faith in expeditiously resolving any conflict. All conflicts should first be discussed and resolved if at all possible by the persons identified in the Notice section. Any conflicts not resolved by the contact person shall be elevated to the designee of the governing board of the Parties, specifically the Mayor for the City and the President of PSU, for discussion and resolution. The Parties may submit a dispute to mediated negotiation prior to any party commencing litigation, and will participate in good faith in a non-binding mediation process with the mediator selected by mutual agreement of the Parties and all mediator expenses shared equally. If the Parties are unable to mutually agree to a mediator, each Party will select a temporary mediator and those mediators shall jointly select the permanent mediator. In the event of dispute, each Party shall bear its own costs and attorney fees.

10. AMENDMENT

This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the Party's authorized designee, subject to approval by the Party's legal counsel. The City's Agreement Representative or sequential designee is authorized to execute an amendment to this Agreement provided that such amendment does not increase the City's financial obligations. PSU's Director of Contracting and Procurement Services is authorized to execute an amendment to this Agreement.

11. CONTRIBUTION IN LIEU OF INDEMNIFICATION

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own

189287

choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the Parties are jointly liable, each Party shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party in such proportion as is appropriate to reflect the Parties' relative fault. The Parties' relative fault shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Each Party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that Party had sole liability in the proceeding.

12. INSURANCE; WORKERS COMPENSATION

The Parties acknowledge that they are self-insured entities for liability and property damage and are responsible for providing workers' compensation insurance to their own employees as required by law. Each Party's self-insurance shall be maintained at levels to exceed the Oregon Tort Claims Act liability limits applicable to the Party and in sums that would be commercially reasonable to protect the Parties' potential liabilities and interests under this Agreement. Each Party must immediately notify the other, not more than thirty (30) days after, if either Party's self-insurance lapses or in any way becomes ineffective. Any claims for injury or damage to person or property arising out of or alleged to arise out of this Agreement shall be subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act that may be applicable to the Party. Both Parties are responsible, regardless of the location of an accident, direction and control at the time of an accident, or where work is being performed, for any injury to their subject workers. Neither Party is required to provide or show proof of any other insurance coverage.

PSU is insured through the Oregon Public Universities Risk Management and Insurance Trust. All PSU personnel, officers and employees, acting within the scope of their employment are covered for claims arising out of a single accident or occurrence. PSU is a subject employer under the Oregon Workers' Compensation law in compliance with ORS 656.017 and will maintain worker's compensation insurance throughout the duration of this Agreement. PSU will require that contractors maintain insurance coverage as required in PSU General Terms 2014, with the City of Portland as an "additional insured" entity to the awarded contracts.

13. ETHICS AND CONFLICTS OF INTEREST

Each Party will be responsible to ensure that its employees and agents comply with, at minimum, State government ethics requirements under ORS 244, and any entity specific government ethics and conflicts of interest rules. The Party's officers or employees, during the person's tenure, must not have any financial interest, direct or indirect, in this Agreement or the contracts arising from this Agreement.

14. COMPLIANCE WITH APPLICABLE LAW

The Parties shall comply with all applicable federal, state, and local laws and regulations in carrying out this Agreement, including but not limited to nondiscrimination, civil rights and

189287

equal employment opportunity and rehabilitation provisions under applicable federal, state and local laws, including but not limited to: Civil Rights Act of 1964; Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008; Age Discrimination in Employment Act; the American with Disabilities Act and amendments thereof; ORS Chapters 659 and 659A; and Portland City Code Title 23. The Parties shall not discriminate in the provision of its services to the public or in its employment practices because of race, color, religion, sex, age, disability, familial status, sexual orientation, national origin or other protected status. Employment practices include but are not be limited to: hiring, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Parties shall incorporate the requirements of this paragraph in all of other agreements for work related to this Agreement, except agreements governed by Section 104 of Executive Order 11246 shall comply with the requirements of the Executive Order and relevant federal regulations.

15. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

16. FORCE MAJEURE

Neither Party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that Party's reasonable control. In addition to notifying the other as soon as practicable, the affected Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

17. NO THIRD PARTY BENEFICIARY

PSU and City are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.

18. MERGER/COMPLETE AGREEMENT

This Agreement, along with any attachments or exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

19. COUNTERPARTS; ELECTRONIC TRANSACTION

This Agreement may be executed in multiple counterparts, electronically delivered, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. The Parties agree that they may conduct this transaction, including any

189287

amendments or extension, by electronic means including the use of electronic signatures and facsimiles.

This Intergovernmental Agreement is effective upon full execution by the authorized representatives of the Parties as shown below.

PORTLAND STATE UNIVERSITY**THE CITY OF PORTLAND**

Kevin Reynolds
Vice President
Office of Finance and Administration

Carmen Merlo
Deputy Chief Administrative Officer
Office of Management and Finance

Date

Date

Approval to Form

City Attorney's Office

Copy to:

Contracting and Procurement Services
1600 SW 4th Ave, Suite 260
Portland, OR 97207
503-725-4386
contract@pdx.edu

&

Urban Center Condominium Association:
Laverne M. Livernoche
Commercial Property Manager
617 SW Montgomery Street
Portland, OR 97201
503-725-9919
laverne.m.livernoche@pdx.edu