

**Intergovernmental Agreement
for
Jasmine Block Pre-Development
Building Programming Study (Exhibit A)**

This Intergovernmental Agreement (Agreement), dated this ____ day of _____, 2016, is made and entered into between the City of Portland (City) and Portland State University (PSU).

RECITALS

1. PSU's University District Framework plan articulates PSU's intention to support urban-scale mixed-use development in the South Downtown/University District, a sub-district within the Central City that would seamlessly weave educational, office, and retail uses together, and connect people to places through street, park, and other open space investments.
2. Portland's Central City Plan describes the City's intention to foster the Central City's development as the heart of the City and the region, and as a location that provides a place for people to call home, and offers diverse employment and educational opportunities, office and government services, and is a retail and entertainment hub.
3. On October 13, 2014, the City signed a non-binding Letter of Intent (LOI) with PSU indicating the City's interest in securing at least 30,000 gross square feet of office space in a joint PSU-City mixed-use project in the University District through a condominium partnership or a long-term lease. Through the LOI, certain development considerations including scheduling, policy vision, financial evaluation, building/space requirements, desired scope and operation, and project development concepts were expressed by the City.
4. As the potential site for a new joint PSU-City mixed use project, which is anticipated to include two additional project partners, PSU proposed that the parties consider the land located between SW 5th Ave and SW 4th Ave, and SW Montgomery and SW Harrison Streets, which is comprised of two adjoining parcels (1S1E03CB2600 and 1S1E03CB 2800), collectively referenced as the "Jasmine Block".
5. The Jasmine Block is owned by the Portland Development Commission (PDC). Through an Agreement for Disposition and Development of Property dated April 3, 2015 with PDC, PSU has rights to complete studies and seek funding to develop the Jasmine Block, and potentially may acquire ownership of the site.

6. In order to better understand each party's needs, desires, constraints and concerns for potential joint commitment in the Jasmine Block development project, a pre-development building programming study (Study) must be conducted.
7. PSU has the capacity to take the lead to engage the contractor for the Study through PSU's public procurement process.
8. The purpose of this Agreement is to set forth the parties' responsibilities for undertaking in a mutually beneficial collaborative effort the Study.

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

1. **PSU Obligation for the Study.** In accordance with PSU's Procurement and Contracting Standards, PSU will contract with one or more contractors, including but not limited to licensed and qualified design, architecture, and/or engineering professionals, to undertake a pre-development building programming study (Study) for the potential development of the Jasmine Block for use by the parties. PSU will provide the City with timely opportunity to review and comment on solicitation/procurement documents and submitted proposals prior to PSU's contract award, with the goal that the parties mutually determine best qualified contractor(s) for the Study. Any intellectual property rights arising from work produced in the Study will be jointly owned or jointly licensed to use, as the case may be, without the need for the City to seek separate intellectual property rights from any contractor or any third party.
2. **Scope of the Study.** The Study must assist the parties in identifying precise user needs of the parties, and key internal building adjacencies, policy and process requirements, site development options and constraints, and a rough magnitude of costs for the potential development of a mixed-use building on the Jasmine Block. Clarification and refinement of the tasks and deliverables for the Study will be done mutually and collaboratively by the parties. The parties understand that completion of the Study will not obligate either party to commit to development of the Jasmine Block.
3. **Assessment of Policy Disparities.** Each party has adopted policies, practices and procedures (collectively referenced as 'policies'), making certain social and equitable choices that are beyond basic requirements imposed by laws or regulations, but which could affect a real property development project that the party is involved. Examples of such policies include but are not limited to: procurement goals for MWESB/DBE contractor participation in public works project; sustainability goals in design, construction or improvement; equity and universal accessibility in non-gender bathroom facilities; and public arts funding. The parties will work with contractor in the Study to identify the relevant policies applicable to the proposed project and differences, including relevant PDC policies. Where policy conflicts are identified, the parties will work towards mutual agreement on how to achieve the greatest

overall social and equity goals in the potential development project. Zoning, land use, and transportation and other development requirements will be separately reviewed and analyzed in the Study.

4. **Tasks and Deliverables.** The Study must include, at minimum, the tasks and deliverables identified below.
 - a. Task and Deliverables 1: Kick-off Meeting. The Kick-off Meeting will be scheduled and conducted in a mutually acceptable and collaborative fashion. Meeting notes and summary of the meeting, capturing any party consensus, and discussion/decision points, shall be produced.
 - b. Task and Deliverable 2: Project Goal Setting. It is expected that project goal setting will be done through gathering information regarding user needs of each party which may be done through interview. Notes and memoranda (drafts and final) describing the project goals shall be produced.
 - c. Task and Deliverable 3: Program and Regulatory Requirements Analysis. It is expected that a program and regulatory requirements analysis will be done through similar information gathered from the parties. Notes and memoranda (drafts and final) describing the program and key regulatory requirements shall be produced.
 - d. Task and Deliverable 4: Development of Programming Concepts. It is expected that up to three programming concepts will be developed and documented through text and diagrams. Concerns, constraints, assumptions, conditions and contingency the parties need to consider for project success should be clearly identified.
 - e. Task and Deliverable 5: Site Development Investigation. Commercially reasonable pre-development property investigation will be conducted. Results and reports will be provided to the parties. It is expected that a memorandum describing the results of the site development investigation with an emphasis on key development opportunities and constraints will be produced. That memorandum should include recommendations for additional investigation steps the parties should take in actual project development but which may not have been done due to being outside the scope of the Study.
 - f. Task and Deliverable 6: Cost Estimates. It is expected that up to three cost estimates with documented assumptions shall be produced. These estimates must take into account the same factors/variables that each party would prudently consider in a solo project, and identify any party-specific variables.

- g. **Task and Deliverable 7: Concept Prioritization.** Prioritize the concepts developed under Task 4, based on knowledge gained during Tasks 5 and 6. Provide rationales for prioritization. Provide documentation of meetings, and a report describing prioritization of programming concepts.
 - h. **Task and Deliverable 8: Final Report.** It is expected that drafts reports will be provided to the parties for review and comment prior to final report of the Study. The final report must document the process and programming findings.
5. **Mutual and 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. **Community Involvement.** Each party will identify potential future community involvement approaches for the party's component of the project, and will share potential approaches and concerns with the other party.
 7. **Cost of the Study.** Each party shall be responsible for its internal administrative costs, including project management for this Agreement. At the present time, the anticipated contract cost for the Study will be approximately \$60,000. The parties agree that the City will be responsible for one-third of the actual contract cost, with a maximum contribution not to exceed \$20,000. PSU will provide documentation of the actual amount PSU paid. Unless the parties otherwise agreed in writing, the City will have at least thirty (30) days after completion and acceptance of all deliverables to tender payment to PSU.
 8. **Term.** This Agreement is effective from the date this Agreement is fully executed by the authorized signatories as shown below until June 30, 2017, unless otherwise amended in writing. PSU shall require its contractor(s) to complete the Study by no later than May 1, 2017.
 9. **Party Representatives.** The parties' points of contact for this Agreement and the Study are identified below.

Agreement Representatives:

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

Bryant Enge, Director
Office of Management and Finance (OMF)
Bureau of Internal Business Svcs
1120 SW 5th Avenue, Room 1250
Portland, Oregon 97204
(503) 823-6962
bryant.enge@portlandoregon.gov

Project Managers for the Study:

Jason Franklin, Director
Campus Planning & Design
1600 SW 4th Ave, Suite 340
503-725-2031
jason.franklin@pdx.edu

Alexandra Howard, Strategic Project/Asset
Manager
OMF - Bureau of Internal Business Svcs.
1120 SW 5th Avenue, Room 1204,
Portland, Oregon 97204
alexandra.howard@portlandoregon.gov,
(503) 823-5566,

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 Study.

10. **Dispute Resolution.** If a dispute arises regarding this IGA, 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. This Agreement shall be governed by the laws of the State of Oregon without regard to conflicts of law provision.
11. **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 is authorized to execute an amendment to this Agreement provided that such amendment do not increase the City's financial obligations. PSU's Director of Contracting and Procurement Services is authorized to execute an amendment to this Agreement.
12. **Termination of Agreement.** This Agreement may be terminated by mutual written agreement 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 above Dispute Resolution clause.

13. **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. Either 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 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 PSU is jointly liable with the City (or would be if joined in the Third Party Claim), PSU 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 City in such proportion as is appropriate to reflect the relative fault of PSU on the one hand and of the City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of PSU on the one hand and of the City on the other hand 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. PSU's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if PSU had sole liability in the proceeding. With respect to a Third Party Claim for which the City is jointly liable with PSU (or would be if joined in the Third Party Claim), the City 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 PSU in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of PSU on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the City on the one hand and of PSU on the other hand 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. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
14. **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.

15. **Successors; No Assignment; No Third Party Beneficiary.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the parties. 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. There are no third party beneficiaries to this Agreement, either express or implied.
16. **Severability/Survivability.** If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.
17. **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 officer or employee, during the person's tenure, or for one year thereafter, must not have any financial interest, direct or indirect, in this Agreement, the contracts arising from this Agreement.
18. **Compliance with Law; Non Discrimination.** 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 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.

19. **Complete Agreement.** This Agreement represents the entire agreement between the parties with regarding to the Jasmine Block Development Study. There are no other oral or written agreement between the parties regarding this subject matter. There are no oral or written representations or warranties made by either party, implied or express, other than those contained in this Agreement.

20. **Counterpart; Electronic Transaction.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The parties agree that they may conduct this transaction, including any 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

Dan Zalkow, Associate VP
Planning, Construction & Real Estate

Bryant Enge, Director
Bureau of Internal Business Services

Date

Date

Approval to Form

City Attorney's Office