

AGREEMENT BETWEEN
THE CITY OF PORTLAND, OREGON
AND
CITY OF PORTLAND, OREGON PUBLIC
BUILDINGS CORPORATION

149542
EXHIBIT A1

This Agreement dated _____, 1980 between the City of Portland, Oregon (City) and City of Portland, Oregon Public Buildings Corporation (PBC).

Recitals:

1. The City requires an office building so that it can consolidate its programs at a central location. The City desires that the building be both attractive and economical. The building will be referred to herein as the "Building," and "providing the Building" shall include all activities in relation to the Building including financing, design, construction, furnishing and leasing the Building.

2. The City has authorized and approved the organization of a nonprofit corporation, "The City of Portland, Oregon Public Buildings Corporation" to finance, construct and lease the Building to the City.

3. PBC has authority and is willing to finance the design and construction of the Building through the issuance of tax exempt revenue bonds, the execution of a Trust Indenture and Indenture of Mortgage (Indenture) between PBC and a Trustee, and the execution of a Lease (Lease) providing for the lease and ultimate transfer of the Building to the City pursuant to tax

exempt revenue bonding procedures. This Agreement is intended to be in support of and not in any way to modify the Indenture and Lease.

4. PBC and the City have agreed on a procedure by which three teams submitted bids for the design and construction of the Building. The City has selected the team offering the most advantageous proposal. PBC will sell tax exempt revenue bonds and contract with the selected team for the design and construction of the Building.

5. The City will be responsible for and administer the design, construction and furnishing of the building, including without limitation those duties assigned to the City and Project Manager in the Contract Documents for the design and construction of the Building (Contract Documents). PBC may act in an advisory capacity when requested to do so by the City.

6. The City will provide, or has provided, the consultants, staff, and services it determines necessary to prepare the Contract Documents, to select the design and the design/build contractor, and to administer the design, construction, and furnishing of the Building.

Agreement:

I. OBLIGATIONS OF THE PARTIES

A. The City shall be responsible for and perform and

hereby is authorized by PBC to perform all functions in connection with the preparation of Contract Documents, the selection of the design and the design/build contractor, the administration of the design and construction of the Building and the administration of the furnishing of the Building, including but not limited to the functions of the City and PBC described in the Lease, the Indenture, and the Contract Documents for the design, construction, furnishing, and completion of the Building for occupancy by the City. PBC shall not enter into any contract or agreement regarding the Building or otherwise obligate the City without the approval of the City, unless such contract or agreement is required by the Lease or the Indenture.

B. The City has retained Morse/Diesel, Inc. to act as Project Manager in connection with the design, construction, and furnishing of the Building and to perform the functions described in the Contract Documents. The City may designate Morse/Diesel or other consultants hired by the City to supervise and act as Project Manager in connection with other contracts that the City requests PBC to enter into in connection with the design, construction, and furnishing of the Building.

C. It is the intention of the City and PBC that the City will have full responsibility to see that PBC is provided with a completed and properly constructed and furnished building that meets City occupancy requirements by the time that rental payments by the City to PBC are required to meet PBC payments to the Trustee under the Indenture. The Contract Documents are not intended to be a limitation on the services to be provided by the City.

D. PBC shall contract for the design, construction and furnishing of the Building and shall lease the Building to the City for a period of time and on terms necessary to enable PBC to issue tax exempt revenue bonds on terms and in an amount approved by the City.

E. The City shall be responsible for operation and maintenance of and renewals and replacements to the Building or any part of the Building when possession is turned over to the City by the Contractor.

F. The City shall transfer marketable title to the Annex Block to PBC through an exchange of property or such other method and on such terms as are necessary to enable PBC to issue tax exempt revenue bonds on terms and in an amount approved by the City. PBC shall have the right to mortgage or otherwise encumber the Annex Block to or for the benefit of the trustee for the bondholders as security for the tax exempt revenue bonds issued by PBC. The City and PBC shall sign other documents required by bond counsel for a valid bond issue with interest that is exempt from federal and state of Oregon income taxes.

G. PBC shall issue tax exempt revenue bonds in an amount and on terms approved by the City. The City shall provide the financial advisor with the information necessary for the Official Statement and be responsible for the completeness and correctness of such information. Proceeds from the revenue bonds and other

revenues related thereto shall only be used to reimburse the City, to pay for the design, construction and furnishing of the Building, to pay PBC expenses, to establish the reserves and funds and pay the expenses required or authorized by the Indenture, and for other purposes approved by the City and allowed by the Indenture.

H. PBC shall transfer title to the Annex Block, the Building, and the provided furnishings to the City free of all encumbrances except encumbrances caused to be placed thereon by the City upon payment in full of the bonds and other obligations of PBC incurred in relation to the Annex Block, the Building, and the furnishings, provided that PBC shall not incur any such obligations unless approved by the City.

I. PBC shall not engage in any activities not described herein or required by the Lease or Indenture unless it first obtains written approval of the City therefore.

II. REIMBURSEMENT AND PAYMENTS

Subject to the provisions of the Indenture, PBC shall reimburse the City for money the City at any time has spent or spends in connection with the design, construction, and furnishing of the Building.

The City, after the sale of tax exempt revenue bonds by PBC, shall submit to PBC a cumulative statement of expenses incurred

prior to the date of sale and thereafter a monthly statement of the amount of the reimbursement. The City statements shall include such information as is required by the Trustee. PBC promptly will issue its Written Requisition for payment to the Trustee and payment will be made as provided in the Indenture.

Payments to the Contractor and to third persons for the design, construction, and furnishing of the Building will be pursuant to Certificates for Payment described in the Contract Documents and certifications required by the Indenture issued by the Project Manager and approved for payment by the Director of the City's Office of General Services. PBC shall issue its Written Requisitions to the Trustee for payments based on the Certificates and certifications and approvals and has no responsibility for determining the propriety of such payments.

The reimbursement and payments provided herein are limited to and payable only from the proceeds from the sale of tax exempt revenue bonds and only as provided in the Indenture.

In the event PBC's contract with the design/build contractor authorizes the contractor to proceed with design and engineering work prior to the sale of tax exempt revenue bonds, and in the event PBC is not able to sell the bonds or with the City's written agreement declines to sell the bonds by July 1, 1980, the City shall pay the design/build contractor for its work as provided in the design/build contract, in an amount not exceeding \$350,000.

III. TERM

This agreement shall remain in effect until PBC transfers the Building to the City and the statute of limitations has barred all claims against PBC, its directors, officers, employees or agents, except that in the event PBC is not able to sell tax exempt revenue bonds to finance the construction of the Building or, with the City's written agreement declines to sell such bonds, then PBC may terminate this agreement by giving written notice to the City, provided that in that event the City's obligation to make payment to the design/build contractor as provided in Section II hereof shall continue until fulfilled.

IV. INSURANCE AND INDEMNIFICATION

In consideration of PBC's agreement to finance, contract for the design, construction, and furnishing of, and lease the Building to the City, the City shall provide insurance and indemnification for PBC as provided herein.

A. Insurance

The City shall obtain and maintain as part of its insurance program directors' liability insurance in which the directors of PBC are named as insureds in connection with providing the Building, as follows:

1. Comprehensive general liability insurance in the amount of \$300,000 per incident.
2. Difference in conditions insurance (including errors and omissions) in the amount of \$300,000 per incident.
3. Umbrella excess coverage for both comprehensive general liability and difference in conditions in the amount of \$5,000,000.

The City also shall obtain and maintain as part of its insurance program any insurance that PBC is required to provide under the Indenture.

B. Indemnification

The City shall hold PBC, its directors, officers, agents, and employees (hereafter "PBC" in this Section IV (B)), harmless and indemnify them from any and all liability that arises out of or in connection with providing the Building except liability based upon gross negligence or willful misconduct. The City at its expense shall defend or cause to be defended any and all claims against PBC in connection with providing the Building. The City shall select counsel to defend such claims and approve settlement of claims. This hold harmless and indemnification includes any PBC obligation of indemnification to its directors, agents, and employees based on statute and on the indemnification provisions in PBC's Articles of Incorporation and Bylaws.

V. AUTHORITY TO OBLIGATE PBC

The City and Morse/Diesel, Inc. shall have no right or

authority to commit or otherwise obligate PBC except as expressly authorized herein or by other written authorization from PBC.

VI. ASSIGNMENT AND AMENDMENT

This Agreement shall be binding on the City, PBC, their successors and assigns. Neither party may assign this Agreement without the consent of the other party. This Agreement may be amended only by written agreement of the City and PBC.

CITY OF PORTLAND, OREGON

By _____
Commissioner of Public Utilities

Mayor

CITY OF PORTLAND, OREGON PUBLIC
BUILDINGS CORPORATION

By _____
Title:

Approved as to form:

City Attorney

ORDINANCE NO. 149542

An Ordinance authorizing a contract with City of Portland, Oregon Public Buildings Corporation regarding the financing, design, construction, furnishing and leasing of, and the provision of real property for, a City office building, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

- (1) The City requires an office building so that it can consolidate its programs at a central, economical location.
- (2) The City has authorized and approved the organization of a non-profit corporation, "City of Portland, Oregon Public Buildings Corporation" (PBC) to finance, design, construct, furnish, and lease the building to the City.
- (3) PBC is willing to finance the design, construction and furnishing of the building through the issuance of tax exempt revenue bonds and to lease and ultimately transfer the building to the City pursuant to tax exempt revenue bonding procedures.
- (4) The City, through a design-build competition, has selected a team to design and construct the building.
- (5) The City is willing to be responsible for and administer the design, construction, and furnishing of the building.

NOW, THEREFORE, the Council directs:

- (a) That the Commissioner of Public Utilities and the City Auditor are authorized to execute a contract, substantially similar in form to that attached hereto as Exhibit "A," with the Corporation.

ORDINANCE No.

Section 2. The Council declares that an emergency exists because it is necessary to proceed with the financing, design, construction and furnishing of the building as soon as possible in order to secure maximum economic and financial benefits to the City; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Approved by the CITY OF PORTLAND
GEORGE YERKOVICH

Filed MAY 8 1980

emergency.
building, and declaring an
real property for, a City office
I-5 and of, and the provision of
construction, furnishing and
garding the financing, design,
Public Buildings Corporation on re-
with City of Portland, Oregon
An Ordinance authorizing a contract

Title

ORDINANCE No. 140215

Calendar No. 1238

Mayor of the City of Portland

Auditor of the City of Portland

Attest:

Passed by the Council, MAY 7 1980

Commissioner Ivancie
CPTThomas:mc
April 30, 1980

Contract as amended

Calendar No. 1538

ORDINANCE No. 149542

Title

An Ordinance authorizing a contract with City of Portland, Oregon Public Buildings Corporation regarding the financing, design, construction, furnishings and leasing of, and the provision of real property for, a City office building, and declaring an emergency.

| THE COMMISSIONERS VOTED AS FOLLOWS: | | |
|--|------|------|
| | Yeas | Nays |
| Ivancie | | |
| Jordan | | |
| Lindberg | | |
| Schwab | | |
| McCreedy | | |

| FOUR-FIFTHS CALENDAR | |
|----------------------|--|
| Ivancie | |
| Jordan | |
| Lindberg | |
| Schwab | |
| McCreedy | |

Filed MAY 2 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

Donna Clark
Deputy

| |
|----------------------|
| INTRODUCED BY |
| Commissioner Ivancie |

| |
|----------------------------|
| NOTED BY THE COMMISSIONER |
| Affairs |
| Finance and Administration |
| Safety |
| Utilities <i>FTL MK</i> |
| Works |

| |
|--|
| BUREAU APPROVAL |
| Bureau: |
| Prepared By: Date: |
| CPTThomas April 30, 1980 |
| Budget Impact Review: |
| <input type="checkbox"/> Completed <input type="checkbox"/> Not required |
| Bureau Head: |

| |
|---------------------------------|
| NOTED BY |
| City Attorney <i>CPT</i> |
| City Auditor <i>[Signature]</i> |
| City Engineer |