

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PORTLAND
AND THE UNIVERSITY OF PORTLAND**

This Development Agreement is entered into between the City of Portland (the “City”) and the University of Portland, a private non-profit corporation of the state of Oregon (the “University”), on _____, 2010, the Effective Date.

RECITALS

1. On April 15, 2010, the City of Portland adopted the River Plan, Volume 1B: Code Amendments and Zoning Maps (the “River Plan”). The River Plan placed the Environmental Conservation and Environmental Protection Overlay zones over significant areas of the University of Portland campus and placed a new River Environmental Zone along the Willamette River frontage of the University of Portland’s River Campus.
2. The University of Portland accepted and supported most of the zoning code and comprehensive plan amendments applied to the University’s campus through the adopted River Plan. However, the University of Portland sought the removal of a portion of the Environmental Conservation Overlay zone from an approximately 50,500 square foot portion of the upper campus to facilitate University development (the “Gateway Site”). The Gateway Site is more particularly described on **Exhibit B** and is located approximately 1000 feet from the river.
3. The Gateway Site is located in Inventory Site WR10 in Volume 3A of the Natural Resources Inventory: Riparian Corridors and Wildlife Habitat adopted as part of the River Plan on April 15, 2010 by the City Council (the “WRNRI”). The WRNRI identifies the bluff containing the Gateway Site as part of a 7-mile corridor of remnant oak escarpment extending north to Chimney and Pier Parks and south to the Fremont Bridge. Savannah/oak woodland and upland scrub/shrub areas are identified nearby, with the steep slope of the Gateway Site identified as forest vegetation type. The functional values of the larger bluff include wildlife movement corridor and connectivity. The Gateway Site is within an area designated by the City as high relative value as a Special Habitat Area. The Inventory states that the Special Habitat Area “contains remnant Oregon white oak and provides critical upland wildlife habitat corridor that connects to the Willamette River at Cathedral Park, and to Willamette Cove and southward along the bluff to the Fremont Bridge.” (Inventory at page 228). The Gateway Site itself is sparsely vegetated and contains no Oregon white oak. The habitat is also fragmented at this location by an existing access road.
4. The Gateway Site was included in the University’s 1994 Conditional Use Master Plan boundaries in 1994 (“1994 CUMS”). The City approved an expanded boundary in 1998 taking in all of the land surrounding the Gateway Site. Under the 1994 CUMS, the City approved the Gateway Site for University development, although a specific building was not yet designed.

5. In 2008, the University of Portland agreed to acquire the 35-acre riverfront property from Triangle Park LLC (“Riverfront Site”). As part of the acquisition, the University entered into a bona fide prospective purchaser agreement (“BFPPA”) to remediate the Riverfront Site from contamination caused by prior property owners and to develop the site with University uses. The Gateway Site redevelopment was an important factor in the acquisition of the Riverfront Site because it provided an opportunity to visually, physically and operationally connect the University’s River Campus with the existing upper campus on the bluff.
6. Reflecting the parties’ mutual intent to allow appropriate development of the Gateway Site, the City adopted Resolution No. 36780, attached as **Exhibit A** (the “Resolution”), which directs staff of the affected city bureaus to negotiate a Development Agreement that contains the terms and conditions under which the City of Portland will remove the Environmental Conservation Overlay Zone from the Gateway Site while ensuring that the disturbance or removal of the natural resources within the Gateway Site will be adequately mitigated.
7. Specifically, Resolution No. 36780 provides:

“NOW, THEREFORE, BE IT RESOLVED that the Bureau of Planning and Sustainability, with assistance from the Bureau of Development Services, the Bureau of Environmental Services, the Office of Healthy Working Rivers and other affected City bureaus, is directed to pursue negotiating a Development Agreement with the University of Portland and, if negotiations are successful, to present a draft for a City Council hearing no later than October 15, 2010. If City Council approves the development agreement the City will remove the environmental overlay zoning on the University of Portland property along the N. McCosh Street frontage between N. Portsmouth Avenue and N. Van Houten Street and the University will, in exchange for this reduction in the area and application of the Environmental Overlay zones, agree to mitigate for disturbance of the area where the conservation zone is removed, consistent with what would be required as a result of an environmental review.”
8. Pursuant to the Resolution, the University submitted to the City an existing conditions site plan of the Gateway Site identifying: (1) the boundaries of the Gateway Site; (2) topography of the Gateway Site shown by contour lines; (3) existing improvements; (4) in the disturbance areas, the distribution outline of shrubs and groundcovers with a list of most abundant species; (5) trees greater than 6 inches in diameter, identified by species; and (6) the footprint of the proposed disturbance area. The existing conditions site plan is attached as (E1) in **Exhibit B**. There are no Oregon white oaks located within the disturbance area of the Gateway Site.
9. The City and the University desire to remove the Environmental Conservation Overlay Zone from the Gateway Site and to modify the Environmental Overlay Zone boundary to include the entire mitigation area illustrated in the Gateway Mitigation Plan, Exhibit B. The areas identified for mitigation in Exhibit B will be protected with a new Environmental Protection Overlay Zone.

10. The University desires to develop the Gateway Site with a building that reflects the University’s commitment to sustainable building design and that responds to its location near a wildlife corridor. The University intends to incorporate design principles that minimize the Gateway Building’s impact on bird and other wildlife species using the wildlife corridor.
11. The City and the University recognize that development of the Gateway Site will require an amendment to the University’s existing Conditional Use Master Plan (“CUMP”) or a new CUMP. The CUMP amendment will propose a specific development for the site as well as design standards for the development of the Gateway Site.

AGREEMENT

II. RIGHTS AND OBLIGATIONS OF THE PARTIES

A. University Rights and Obligations

1. Mitigation Plan

The University will compensate for the unavoidable impacts that will result from development within the Gateway Site and removal of the Environmental Conservation Overlay zone on the Gateway Site and the impacts to the resources and functional values on the Gateway Site identified in the Inventory by implementing the mitigation plan (“Gateway Mitigation Plan”) attached as **Exhibit B**. The Gateway Mitigation Plan recognizes the Special Habitat Area located on Waud Bluff and its intended function as a wildlife habitat corridor. The Gateway Mitigation Plan also recognizes that Oregon white oak is a unique and important habitat type along the bluff and proposes creation of Oregon white oak habitat as described in the Gateway Mitigation Plan. The Gateway Mitigation Plan includes: (a) resources and functional values to be restored, created or enhanced on the mitigation site; (b) documentation of coordination with appropriate local, regional, state or federal regulatory agencies, if required; (c) mitigation timetables; (d) monitoring and evaluation procedures; and (e) remedial action for unsuccessful mitigation.

2. Timeline for Implementation of Gateway Mitigation Plan

University will commence implementation of the Gateway Mitigation Plan no later than one (1) year from the Effective Date of this Agreement, consistent with the terms of the Gateway Mitigation Plan, **Exhibit B**. The first implementation phase shall include preparation of the new oak woodland identified as White Oak Restoration Area on the Gateway Mitigation Plan and removal of invasive species and native groundcover and shrub replacement in the Mixed Forest Restoration Area consistent with the Gateway Mitigation Plan. The second implementation phase shall include restoration of the Maple Bench Area with a native tree and shrub mix consistent with the Gateway Mitigation Plan.

3. Inspection and Completion of Gateway Mitigation Plan

The inspection and maintenance plan for the Gateway Mitigation Plan shall be conducted consistent with the terms of the Gateway Mitigation Plan, Exhibit B. Upon completion of each phase of the Gateway Mitigation Plan, University will notify the City of such completion. The City will inspect the mitigation site or sites and determine whether the Gateway Mitigation Plan has been appropriately implemented consistent with **Exhibit B**. If the City determines that the Gateway Mitigation Plan has been appropriately implemented consistent with **Exhibit B**, the City will issue a notice of completion to the University within seven (7) days of its final inspection. If the City determines that further work is required to render the mitigation site or sites consistent with **Exhibit B**, the City will provide the University with a notice to cure any deficiencies on the mitigation site or sites. The University will have a period of thirty (30) days from the date of notice to cure any deficiency. Within seven (7) days of taking the curative action, the University will notify the City of the cure and request a final inspection. To the extent further curative action is required each party will notify the other party consistent with the terms of this Paragraph 4.

4. Allowed and Prohibited Uses of Mitigation Areas

Uses allowed and prohibited in mitigation areas created through implementation of the Gateway Mitigation Plan shall be as provided in PCC Chapter 33.430.

5. Sustainable Design Principles

As required by Portland City Code Title 33, the University shall obtain a conditional use master plan approval for development of the Gateway Site prior to securing a building permit for the site.

The University shall incorporate design features on the Gateway Building that minimize the Gateway Building’s impact on bird, animal and other wildlife species using the wildlife corridor. These sustainable design practices shall include, but are not limited to, bird- and animal-friendly design and construction materials, eco-roofs that provide habitat features, and vegetative or other screening, and integration of building footprint to the extent practicable.

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B. City Rights and Obligations

1. Amendment of ESEE Analysis and Zoning Maps

The City will prepare all necessary supporting documentation and will submit proposed amendments to the River Plan / North Reach *Volume 1B: Code Amendments and Zoning Maps* and *Volume 3C: Economic, Social, Environmental and Energy Analysis and Recommendations for Riparian Corridors and Wildlife Habitat* (ESEE Analysis) to City Council. The amendments will remove the Environmental Conservation Overlay Zone from the Gateway Site and will apply the Environmental Protection Overlay Zone to those areas subject to mitigation under the Gateway Mitigation Plan, **Exhibit B**. The

proposed Zoning Map amendments will be as illustrated in **Exhibit C**, Future Zoning Map Amendments.

2. Timeline for Amendments to ESEE Analysis and Zoning Maps

Except as provided below, City will complete the ESEE amendment and Environmental Conservation Overlay Zone removal process within one (1) year from the Effective Date of this Agreement. For purposes of this paragraph completeness means a final decision of approval to remove the Environmental Conservation Overlay Zone from the Gateway Site (“Final Removal Decision”). City’s obligation to complete the ESEE amendment and Environmental Conservation Overlay Zone removal process and issue a Final Removal Decision is contingent on the conclusion of all legal proceedings that currently prevent City from amending those sections of the River Plan that affect the University of Portland campus. In the event this contingency is not resolved within one (1) year from the Effective Date of this Agreement, City will complete the ESEE Amendment and Environmental Conservation Overlay Zone removal process and adopt a Final Removal Decision within 60 days of the date the Council adopts any final corrective action to resolve this contingency.

3. Approval of Gateway Mitigation Plan

The proposed Gateway Mitigation Plan is consistent with the criteria for resource enhancement projects in PCC 33.430.250.B.1-3.

The plan ensures that there will be no loss of total resource. The Gateway Site comprises 50,500 square feet. This square footage will be relocated and enlarged through implementation of the Gateway Mitigation Plan in a manner consistent with **Exhibit B**. Pursuant to **Exhibit B**, the new Oak Restoration Area shall comprise 77,520 square feet. The new corridor will replace the Gateway Site at a favorable ratio of 1.5 to 1, ensuring that there will be no loss of resource area under PCC 33.430.250.B. Instead, the resource area will be enlarged by nearly 25,000 square feet. In addition to the Oak Restoration Area, the new Maple Bench Restoration Area will re-forest 17,710 square feet of land currently located in an Environmental Conservation Overlay zone. This area is currently largely devoid of vegetation and is used by the University as a staging and stockpiling area, again expanding rather than decreasing the total resource area to be implemented under the Gateway Mitigation Plan.

Pursuant to **Exhibit B**, there will be no significant detrimental impact on any resources or functional values. Currently, the Gateway Site contains no Oregon white oaks and is a discrete area of the bluff with limited vegetative cover compromised by an existing winding road. The area of the Gateway Site will be fully replaced in width and volume under the Gateway Mitigation Plan in a manner that reduces the impact of segmentation and restores a better connection between the southeast and northwest corridor.

Finally, this reconnection of the corridor will result in a significant improvement to the number of Oregon white oaks in the area. The Gateway Mitigation Plan requires the introduction of 356 white oaks in a location that was previously devoid of oaks.

Together, the expanded wildlife corridor and new oak woodland will be a significant improvement to corridor connectivity and remnant white oak habitat.

Notice of the resource enhancement activities permitted under this Agreement has been provided consistent with PCC 33.430.230.

III. TERMINATION OF AGREEMENT

This Agreement will terminate on January 1, 2063, if not sooner terminated by mutual written agreement of the parties.

IV. DEFAULT/CURE

The following will constitute default:

Any breach of the provisions of this Agreement whether by action or inaction, which continues and is not remedied within sixty (60) days after the non-defaulting party has given written notice to the defaulting party specifying the breach; provided that if the defaulting party determines that the breach cannot with due diligence be cured within a period of sixty (60) days, the non-defaulting party may, in its sole discretion, grant a longer period of time to cure the breach, so long as the defaulting party diligently proceeds to cure the breach and the cure is accomplished within no more than 120 days.

V. DISPUTE RESOLUTION

If any dispute arises between the Parties concerning the terms of this Agreement or the Parties' obligations or activities under this Agreement, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties prior to commencement of arbitration or litigation. If the parties fail to agree on a mediator, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

VI. REMEDIES

A. Specific Performance

If a Party defaults under the terms of this Agreement, the non-defaulting party may, in addition to any other remedies at law or in equity compel the other Party's performance under this Agreement or prevent any action contrary to this Agreement by injunction or other equitable relief.

B. Nonexclusive Remedies

No remedy conferred upon or reserved to any Party under this Agreement is intended to be exclusive of any other remedy allowed by law. Unless expressly provided otherwise in this Agreement, each and every remedy will be cumulative and will be in addition to any other remedy given to each Party in this Agreement.

If the City either does not amend the Environmental Conservation Overlay zone as contemplated in this Agreement or does not obtain final approval and acknowledgement of the Environmental Overlay zoning in the River Plan, the University shall not be obligated to perform any of its obligations under this Agreement.

If the University does not implement and complete the Gateway Mitigation Plan within the time specified in **Exhibit B**, the City may amend the ESEE and restore the Environmental Conservation zoning to the Gateway site.

C. Waiver of Default

To the extent not precluded by this Agreement, the non-defaulting Party may, in its discretion, waive any default hereunder and its consequences and rescind any consequence of such default. In case of any such waiver or rescission, the Parties will be restored to their respective former positions and rights under this Agreement, but no such waiver or rescission will extend to or affect any later or other default, or impair any right consequent thereon. No such waiver or rescission will be in effect unless it is in writing and signed by the non-defaulting Party.

VII. GOVERNING LAW; VENUE; JURISDICTION

This Agreement will be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. .

VIII. NO BENEFIT TO THIRD PARTIES

University and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. There are no third-party beneficiaries of this Agreement.

IX. NOTICES

All notices given under this Agreement will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

The University:	Jim Kuffner Assistant Vice President for Community Relations and Special Projects University of Portland
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5000 N. Willamette Blvd.
Portland, Oregon 97203-5798
Phone: (503) 943-7331
Fax: (503) 943-7322

With a copy to: Christe White
Christe C. White LLC
1308 NW Everett Street
Portland, Oregon 97209

The City: Director
Bureau of Planning & Sustainability
1900 SW 4th Avenue, Suite 7100
Portland, OR 97201-5380

With a copy to: City Attorney
1221 SW 4th Avenue, Suite 430
Portland, OR 97204

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

X. NON-WAIVER

Waiver by any Party of strict performance of any provision of this Agreement will not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement will be a waiver of only that provision. A waiver of a provision in one instance will be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

XI. SURVIVAL

Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

XII. CALCULATION OF TIME

All periods of time will include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period will be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" will mean any holiday observed by the State of Oregon.

XIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts will constitute one and the same instrument.

XIV. AMENDMENTS

This Agreement (including exhibits) may be amended only by mutual written agreement of the Parties. No amendment to any provision of this Agreement will be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to another Party’s performance or failure to perform, or any failure or delay by any Party to enforce its rights under this Agreement.

XV. ENTIRE AGREEMENT

This Agreement (including exhibits) is the entire agreement between the Parties relating to the subject matter covered by this Agreement. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either party, express or implied, other than those contained in this Agreement.

XVI. EXHIBITS

The Exhibits attached to this Agreement are an integral part of this Agreement and are fully incorporated into this Agreement where they are referenced in the text of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first set forth above.

City: CITY OF PORTLAND

By: _____
Sam Adams, Mayor

By: _____
Lavonne Griffin-Valade, City Auditor

Approved as to form:

Office of City Attorney

By: _____

Print Name: _____

Its: _____

University:

UNIVERSITY OF PORTLAND, a private non-profit corporation of the State of Oregon

By: _____

Print Name: Rev. E. William Beauchamp, C.S.C.

Its: President