INTERGOVERNMENTAL AGREEMENT

between

PORTLAND STATE UNIVERSITY

and

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

PPS Agreement No. IGA PSU Agreement No.

This AGREEMENT Shall be binding on the District only if it is

signed by THE DEPUTY CLERK OR AUTHORIZEDDESIGNEE

This intergovernmental agreement (“Agreement”) is made by and between School District No. 1J, Multnomah County, Oregon (“District”) and Portland State University (“University”). The parties agree as follows:

###### UNIVERSITY DATA

Check the University office that will manage this Agreement:

**[ ]  Business Office**

**University Contact Person:** Karen Thomson, Director, Contracting & Procurement Services

**Address:** Portland State University, PO Box 751 (CAPS), Portland, Oregon 97207-0751

**Telephone:** 503.725.3441

**Email:**

**[ ]  Office of Research & Strategic Partnerships**

**University Contact Person:** Jennifer Ward, Associate Director, Sponsored Projects Administration

**Address:** Portland State University, P.O. Box 751 (SPA), Portland, Oregon 97207-0751

**Telephone:** 503.725.9900

**Email:**

**District Point of Contact:**  Name of Dept./School Agreement Manager (*Email prefix@pps.net*), Name of Dept./School, Portland Public Schools, P.O. Box 3107, Portland, Oregon 97208-3107

**\*All information in this Agreement is subject to public records law. Please contact the District Point of Contact listed above if you have questions.**

### **TERMS AND CONDITIONS**

1. **Term and Termination.** This Agreement becomes effective on the date of the last signature below and shall continue through      , unless earlier terminated as provided below. Costs may be incurred from      .

In all cases, notice of intent to terminate early must meet the requirements listed in Section 24 (Notices). Any early termination of this Agreement shall be without prejudice to any rights or duties accrued before such termination, and District shall reimburse University for all reasonable, noncancellable costs incurred for the project through the date of termination. The parties agree to deal with each other in good faith during any period after notice of intent to terminate early has been given. This Agreement may be terminated as follows:

1. Mutual: District and University may terminate this Agreement at any time by their signed, written instrument.
2. 30 Days’ Written Notice: Either party in its sole discretion may terminate this Agreement for any reason on 30 days’ written notice to the other party.
3. Breach: Either party may terminate this Agreement in the event of a breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.
4. University Licensing, etc.: District may terminate this Agreement immediately by written notice to University upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that University must hold to provide services under this Agreement.

e. Furlough: District reserves the right to terminate or otherwise suspend this Agreement if District’s Board of Education determines that funding is insufficient to remain open and calls for a district-wide furlough or similar temporary District closure. District shall notify University as soon as it becomes aware that insufficient funding will result in a district-wide furlough or similar temporary District closure requiring such termination or suspension of this Agreement. Any temporary closure shall not affect amounts due University under this Agreement, subject to a pro-rated adjustment for reduction in services or need for goods during the furlough.

1. Agreement Documents. This Agreement consists of these Terms and Conditions and the documents (“Exhibits”) listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents. The Exhibits to this Agreement include the following documents:

 Exhibit A (Statement of Work)

 Exhibit B (Name of Exhibit B) If no Exhibit B, please delete these two fields

1. **Statement of Work and Payment; Project Managers.** The partiesshall perform the work described in Exhibit A (Statement of Work and Payment). Unless otherwise stated in Exhibit A, District shall pay University net 30 days upon work completion and District acceptance, invoice approval, and in accordance with these Terms and Conditions. Project managers listed below are responsible for project performance but do not have the authority to change the terms of this Agreement.

|  |  |
| --- | --- |
| **University****Project Manager/Principal Investigator** | **District** **Project Manager** |
| **Name, Title:**      **Address:** Portland State University, P.O. Box 751 (Mailstop      ) Portland, OR 97207-0751**Telephone:**     **Email:***@pdx.edu* | **Name, Title:**      **Address:** Portland Public Schools, P.O. Box 3107, Portland, OR 97208-3107**Telephone:**     **Email:***@pps.net* |

1. **Maximum Total Payment for Work; Non-appropriation.** No payment shall be made until this Agreement is fully executed by both parties. The maximum total payment under this Agreement, including all expenses whatsoever, is **$**;(Use this area to detail the use of funds if needed. Otherwise, please delete this field.) this is a not-to-exceed amount, and the District will not pay more than this amount unless specifically agreed to in an executed amendment to this Agreement.District is prohibited from Contracting for services for which it has not received appropriated funds. If payment for services under this Agreement extends from one District fiscal year into a subsequent District fiscal year, District’s obligation to pay for such work is subject to approval of future Board of Education appropriations to fund those services. The above notwithstanding, the District is obligated to pay for all services performed by Contractor without regard to the fiscal year in which the services are performed.
2. **Independent Contractors.** By its signature on this Agreement, Contractor certifies that the service or services to be performed under this Agreement are those of an independent Contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under this Agreement. Contractor represents and warrants that Contractor, its subcontractor, employees, and agents are not "officers, agents, or employees" of the District within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300).  Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.
3. **Subcontractors; Assignment.** Neither party may subcontractor, assign, or transfer (collectively, “subcontractor”) any interest in this Agreement without the prior written consent of the other party. If consent to a subcontractor is properly given, then in addition to any other provisions of this Agreement, the subcontracting party shall hold its subcontractor to all the terms and conditions of this Agreement that would otherwise bind the party to whom consent was given. The parties agree that any such subcontractors shall have no binding effect on the consenting party to this Agreement.
4. **Access to Records.** Each party shall have access to the books, documents, and other records of the other party, which are related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.
5. **Copyright and Publication.**
6. University Rights: Subject to the Oregon Public Records law (ORS 192.311-192.478) and except for District Confidential Information (defined below in Section 12 (Confidentiality)), University shall own, and may assert copyright on Deliverables it produces under this Agreement.  “Deliverables” include any and all papers, monographs, articles, summations, or reports of any kind created by University under this Agreement. University may make oral presentations to District regarding the subject matter of this Agreement. University shall have the right to use all Deliverables for its own purposes and to provide similar services to third parties outside this Agreement. This right includes, but is not limited to, the right to publish or present at meetings the results of research conducted by University that resulted in Deliverables.
7. District Rights: When the services provided by University under this Agreement include a Deliverable that is a written work product, University shall provide such Deliverable to District in written hard copy and/or electronic form. District shall have the right to use for its own non-commercial purposes all Deliverables produced by University under this Agreement. This right shall include, but is not limited to, the right to include Deliverables in District’s published works and in its presentations to third parties and to otherwise use, reuse, reproduce, translate, and modify the deliverables. If District changes or edits Deliverables in any meaningful manner, University may request that District include a written notice delineating those modifications in the Deliverables.
8. Publicity, etc.: District will not include the name of University in any advertising, sales promotion, or other publicity matter without University’s prior written approval. District shall submit such request for prior written approval by electronic or physical mail to, and such written approval may only be granted by, University’s Contact Person listed under University Data on page 1. Such approval will be deemed given if University has not answered District’s written consent request within 45 days of University’s receipt of such request. District will correctly attribute authorship to University, where appropriate.
9. Publication Prerequisites: Neither District nor University shall unreasonably deny permission to publish any Deliverables to the other party. The parties shall provide a copy of any Deliverable for review to the other party before its publication. Thirty days before University submits any document for proposed publication, University agrees to provide to District the proposed publication for the latter’s review of District-owned confidential or proprietary information. University shall not publish any District Confidential Information without District’s written permission.
10. Acknowledgement: All research reports and other publications relating to Deliverables produced by University under this Agreement shall bear proper acknowledgment of the support provided by District and other relevant parties.
11. **Discoveries; Inventions.**
12. University Rights: All rights to inventions or discoveries arising from research conducted by University under this Agreement shall belong to the University and shall be disposed of in accordance with University’s policies.
13. District Rights: To the extent that University has the legal right to do so and subject to the limitations and conditions of the Oregon Public Records Law, University shall offer to District the first right to negotiate a royalty-free, non-exclusive, non-commercial, irrevocable, and perpetual license for any discoveries and inventions related to the subject matter of this Agreement. If District does not elect to secure such license, rights to inventions disclosed hereunder shall be disposed of in accordance with University policies with no further obligation to District. Nothing contained in this Agreement shall be deemed to grant either directly or by implication, estoppel, or otherwise, any license under any patents, patent applications or other proprietary interests of any other invention, discovery or improvement of either party.
14. **Criminal Background Check.** University authorizes District to obtain information about University and its history and to conduct a criminal background check, including fingerprinting, of any officer, agent, or employee of University that will have unsupervised contact with students under this Agreement. University also agrees to cause University’s employees and/or subcontractors, if any, to authorize District to conduct such background checks. University shall pay all fees assessed by Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to the University under this Agreement, unless University elects to pay such fees directly.
15. **Work Performed on District Property.** University shall comply with the following:
16. Identification: University Personnel must carry photo identification and must present it to any District Personnel upon request. If University cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to University
17. Sign-in Required: As required by schools and other District locations, each day University’s employees are present on District property, those employees must sign into the location’s main office to receive an in-school identification/visitors tag. University’s employees must display this tag on their person at all times while on District property.
18. No Smoking: All District properties are tobacco-free zones; University is prohibited from using any tobacco product on District property.
19. No Drugs: All District properties are drug-free zones as enforced by the Portland Police Bureau.
20. No Weapons or Firearms: Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones; University is prohibited from possessing on its persons or in its vehicles any weapons or firearms while on District property.
21. **Confidentiality.**
22. Nondisclosure of Confidential Information: Subject to Oregon Record Law (ORS Chapter 192.311-192.478), each party agrees that it will make all reasonable efforts to maintain the confidentiality of any Confidential Information received from the other party. Each party agrees that it will use any such Confidential Information only in performing its duties under this Agreement. In this Agreement, “Confidential Information” means information marked or designated in writing by either party as “confidential” prior to its initial disclosure to the other party. Confidential Information given orally must be identified as “confidential” at the time of disclosure and reduced to writing with appropriate “confidential: markings within 30 days.
23. Oregon Public Records Laws: All performances under this Agreement are subject to the limitations and conditions of the Oregon Public Records Law (ORS Chapter 192.311-192.478). University agrees that during the term of this Agreement, any data provided by District that are described or labeled as confidential shall not be disclosed to any person, firm, or other entity except on the written authorization of District. Should this Agreement terminate for any cause, University agrees to return to District all data provided to it and described or labeled by District as confidential. University may retain, however, copies of those records as specifically allowed for by the Oregon Public Records Law.
24. Family Educational Rights and Privacy Act: **Family Education Rights and Privacy Act (“FERPA”) prohibits the re-disclosure of confidential student information.** Contractor agrees to protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99), collectively “FERPA.”  Contractor acknowledges that information disclosed to Contractor by District may include records that are subject to FERPA, and that to the extent this is the case, Contractor will be considered a “school official” as that term is used in FERPA. As such, Contractor agrees that it will hold all information disclosed to it in strict confidence and will not use such information except as required to perform its obligations under this Contract. Contractor further agrees that will it not disclose or re-disclose any such information except (a) with the express written authorization of District, or (b) as required by law but only to the extent permitted by law and only in the manner prescribed by law.  If Contractor receives a court order or subpoena seeking education records or information contained in education records, it shall immediately notify District in writing. If Contractor re-discloses personally identifiable information from education records on behalf of District in response to an order or subpoena under 34 C.F.R. § 99.31(a)(9), Contractor must provide the notification required under 34 C.F.R. § 99.31(a)(9)(ii). District will assist Contractor with complying with this notification requirement.
25. Security: District shall deem any unauthorized removal of any District physical property by University a breach and cause for immediate termination of this Agreement. University shall bear sole responsibility for any liability resulting from any action or suit brought against District as a result of University’s willful or negligent release of documents or property contained in or on District’s property.
26. Protection of Pupil Rights Amendment: As required by the Protection of Pupil Rights Amendment (“PRPA,” 20 USC 1232(h), 34 CFR Part 98), University shall ensure that its Personnel obtain written parental/guardian consent before minor students are required to participate in any U.S. Department of Education-funded survey, analysis, or evaluation that reveals information enumerated in the statute.
27. Other: The confidentiality obligations imposed by this Agreement shall not apply to
	* 1. Information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by the recipient;
		2. Information received from third parties who have the necessary rights to transfer that information without any obligation of confidentiality;
		3. Information known to the recipient before this Agreement’s effective date without obligation of confidentiality;
		4. Information that is independently developed by recipient and documented in writing without use of, or reference to, any Confidential Information of the other party; or
		5. Information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that if either party is required to disclose Confidential Information, that party shall first give the other party notice and shall provide such information as may be reasonably necessary to enable the other party to take action to protect its interests.
28. **Compliance with Applicable Law.** Each party shall comply with all federal, state, and local laws applicable to public Agreements and to the work done under this Agreement, and all regulations and administrative rules established pursuant to those laws.
29. **Employee Removal.** At District’s request, University will immediately remove any University Personnel from all District properties in cases where the District determines, in its sole discretion that removal of that employee is in the District’s best interests.
30. **No Third Party Beneficiaries; Successors in Interest.** University and District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement. This Agreement shall bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any.
31. **Liability.** Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), each party assumes liability for its own negligent, wrongful, or intentional acts or omissions, and any costs, expenses, attorney fees related thereto or those of its directors, employees, or agents in the performance of the Agreement.
32. **Non-discrimination Clause.** Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this Agreement. The parties further agree not to discriminate in their employment or personnel policies.
33. **Insurance.**
34. University, as a public university, is insured by the Public Universities Risk Management and Insurance Trust (PURMIT). All University personnel, officers and employees, acting within the scope of their employment are covered for claims arising out of a single accident or occurrence, limited by ORS 30.270 and 30.273. University is a subject employer under the Oregon Workers’ Compensation law in compliance with ORS 656.017, and will maintain workers’ compensation insurance through the duration of this Agreement.
35. District is self-insured according to the statutory limits set in the State of Oregon for any liability, property, and auto claims. District represents and warrants that it has and will maintain adequate funding of this self-insurance to cover any claim that may result from or arise out of this Agreement. In addition, District is self-insured for its workers’ compensation for employees and shall provide benefits as prescribed by the State of Oregon.
36. **Controlling Law; Venue.** Any dispute under this Agreement or related to this Agreement shall be governed by Oregon law, and any litigation arising out of the Agreement shall be conducted in courts located in Multnomah County, Oregon.
37. **Amendments; Renewal.** Any amendments, consents to or waivers of the terms of this Agreement shall be in writing and signed by both parties. The parties may renew this Agreement by their signed, written instrument.
38. **Waiver; Severability.** Waiver of any default or breach under this Agreement by either party does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. 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 invalid.
39. **Counterparts.** The parties may execute this Agreement in counterparts, each of which constitutes an original and all of which comprise one and the same Agreement. Counterparts may be delivered by electronic means.
40. **Entire Agreement; Limitations.** When signed by the authorized representatives of both parties, this Agreement and its attached exhibits is their final and entire agreement. As their final expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein. This Agreement shall not be construed to include or preclude any written agreement between University and District already in force on this Agreement’s effective date.
41. **Notices.** Any notice required under this Agreement is sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested:

 **If to District: If to University:**

 Director, The University contact person listed under Purchasing & Contracting **“**University Data” on page 1

 Portland Public Schools

 P.O. Box 3107 cc: University Project Manager listed in Portland, Oregon 97208-3107 Section 3 (Statement of Work and Payment;

 Project Managers)

 T: 503.916.3421

 F: 503.916.3109

 cc: District Project Manager listed in Section 3

 (Statement of Work and Payment; Project Managers)

**I HAVE READ THIS AGREEMENT AND ITS ATTACHED EXHIBITS, IF ANY. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT on behalf of the party I represent AND AGREE TO BE BOUND BY ITS TERMS.**

**UNIVERSITY DISTRICT**

Portland State University School District No. 1J, Multnomah County, Oregon

Signature Emily Courtnage

 Director, Purchasing & Contracting

Printed Name and Title Date

Date