

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**AUGUST 23, 2023**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Joint Powers Agreement between Boise State University and City of Boise

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code §§ 67-2326 - 2331

**BACKGROUND/DISCUSSION**

Boise State University (BSU) and the City of Boise (the “City”) own contiguous parcels of property in the Lusk District adjacent to Boise State’s main campus. In early 2023, BSU and the City jointly issued a request for information (“RFI”) seeking a developer interested in a public-private partnership to redevelop the Lusk Area parcels in a manner beneficial to both the City and BSU. JF Development Group LLC (“Developer”) responded to the RFI and is currently engaged in further discussions with BSU and the City, with a goal to enter into an agreement to develop the parcels owned by the City and BSU.

Recognizing the benefits of developing this area jointly, the City and BSU intend to continue to work together on a proposal to develop a mutually beneficial project in the Lusk area under a Joint Powers Agreement (collectively, the “Project” as more fully defined in the proposed Joint Powers Agreement). Mutually beneficial components of the Project include housing, parking, retail, office and service uses. In addition to the Joint Powers Agreement, the parties will enter into a non-binding memorandum of understanding with the Developer governing the period whereby the Developer will collaborate with the parties to further define and develop the Project.

Developing this Project is part of BSU’s overall plan to address housing shortages for students and faculty and to locate needed services near campus. In furtherance of these goals, BSU has already entered into a master lease for approximately 278 additional beds for student housing in this area, which was approved by the State Board of Education in October 2022 and will open for occupancy in August 2024. In addition to this student housing facility, the Lusk Project’s added housing capacity will help alleviate overall housing demand and provide more affordable options in and near campus for students, employees and members of BSU community, and provide related services and amenities for those residing in the Lusk neighborhood. BSU also expects to open its new residence hall in Fall 2025, which will provide an additional 450 student housing beds.

Idaho Code requires governing board approval of a Joint Powers Agreement. Because BSU believes it is beneficial to collaborate with the City in development of the overall Project, BSU is seeking the Board’s approval to enter into the attached Joint Powers Agreement with the City. The Joint Powers Agreement:

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- 1) Provides for collaborative decision-making between the parties with regard to the overall Project's design and development;
- 2) Calls for joint decision-making for decisions that impact both parties' aspects of the Project;
- 3) Allows each party to retain the right to solely make decisions about its parcels that do not directly affect the overall Project;
- 4) Permits either Party to terminate the Joint Powers Agreement with notice; and
- 5) Retains the right to its own separate property and the ability to proceed independently with its portion of the project.

**IMPACT**

Pursuing redevelopment of the Lusk area jointly with the City will help to address multiple university needs, including housing and parking capacity near campus. The Lusk District has the highest concentration of off-campus student housing in Boise and redevelopment with an increased mix of desirable uses will enhance students' experience and increase overall housing capacity and amenities near campus. Finally, BSU is interested in retaining in some fashion a portion of the Project for use as an incubation center in conjunction with its College of Innovation + Design.

There is no direct financial impact at this time. BSU's parcel is currently programmed with a West Commuter parking lot with approximately 180 stalls. If the Project moves forward, parking and revenue from this lot will be impacted, but comparable capacity will likely be gained in a newly constructed vertical parking structure within the overall development. Ultimately, BSU intends to structure the Project to be either revenue neutral or revenue positive to BSU, funded through a partnership with a private developer and other possible parties. BSU would present further information and binding agreements relating to the Project at a future meeting, once these details are developed.

**ATTACHMENTS**

- Attachment 1 – Proposed Joint Powers Agreement
- Attachment 2 – Proposed Memorandum of Understanding

**STAFF COMMENTS AND RECOMMENDATIONS**

Idaho Code § 67-2326 permits "state and public agencies to make the most efficient use of their powers by enabling them to cooperate to their mutual advantage and thereby provide services and facilities and perform functions in a manner that will best accord with geographic, economic, population, and other factors influencing the needs and development of the respective entities."

The Joint Power Agreement between Boise State University and the City of Boise clearly delineates and defines each party's role in exploring this mutually beneficial planned development in the Lusk District. Also included is a non-

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binding Memorandum of Understanding with Boise State University, the City of Boise and the Developer governing the period whereby the Developer will collaborate with the parties to further define and develop the Project.

There is no financial impact at this time. Updates for this project will be provided by Boise State University at future Board meetings.

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a Joint Powers Agreement with the City of Boise and to authorize the President and the Chief Financial and Operating Officer, or a designee, to execute the agreement in substantial conformance to the form submitted to the Board in Attachment 1.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**JOINT POWERS AGREEMENT**  
**City of Boise**  
**Housing and Community Development Division and**  
**Boise State University**  
**Capitol Campus Development Agreement**

This JOINT POWERS AGREEMENT (“**Agreement**”) is entered into as of \_\_\_\_\_, 2023 (the “**Effective Date**”) between the city of Boise City, Idaho (“**Boise City**” or “**City**”), an Idaho municipal corporation, by and through its Housing and Community Development Division, 150 N Capitol Blvd., Boise, Idaho 83702, and Boise State University, a state of Idaho public institution of higher education, by and through the Idaho State Board of Education, an agency of the State of Idaho and University board of trustees (“**BSU**” or “**University**”), 1910 University Drive, Boise, Idaho 83725, pursuant to Idaho Code § 67-2326-2331. The City and University may be individually referred to herein as a “**Party**” and collectively as “**Parties**.”

**WHEREAS**, the Parties are each “public agencies” as defined by Idaho Code § 67-2327 empowered by Idaho Code § 67-2326 to enter into this Agreement to make the most efficient use of their respective powers by enabling them to cooperate to their mutual advantage and thereby provide services and facilities and perform functions in a manner that will best accord with geographic, economic, population, and other factors influencing the needs and development of the Parties; and

**WHEREAS**, the Parties collectively own 4.7 acres of contiguous property located in the vicinity of S. Capitol Blvd. between W. Island Ave. and W. Royal Blvd. (collectively, the “**Property**” or individually, as to each party, its “**Property**”) in Boise’s Lusk District neighborhood; and

**WHEREAS**, the City owns approximately 3.1 acres of the Property, currently leased to low and very low-income tenants with significant barriers to securing housing in the private market (the “**City Property**”) and the University owns approximately 1.6 acres of the Property (the “**University Property**”), as depicted in the attached Exhibit A; and

**WHEREAS**, each Party has authority pursuant to Idaho law to develop or dispose of its Property for any purpose authorized by law; and

**WHEREAS**, the Parties share a common vision to create a landmark redevelopment of mixed-use and mixed-income housing, parking, retail, and other facilities and services on the Property (the “**Project**”) and recognize the opportunities for redevelopment are optimized by consideration of redevelopment of the Property as a whole, as opposed to individual development of individually owned parcels located therein; and

**WHEREAS**, the Parties have previously exercised their respective powers and authority as public agencies, pursuant to the laws of the State of Idaho, for the purpose of engaging in the issuance of a request for information to solicit ideas for financing the Project and redevelopment of the Property (“**Joint RFI**”), have mutually evaluated the responses thereto and mutually selected JF Development Group LLC, to serve as a common developer for the Project (the Developer); and

**WHEREAS**, the Parties intend that the Developer will collaborate with the Parties to design the Project pursuant to the terms of a joint Memorandum of Understanding (the MOU) to be executed between the Parties and Developer to outline the parameters for design and preliminary development stages of the Project. Upon completion of design and receipt of necessary approvals from the City of Boise Planning and Development Services Department, the Parties intend to negotiate separate but complementary long-term ground leases with the Developer which shall govern the construction and operation of the Project; and

**WHEREAS**, the Parties desire to enter into this Agreement setting forth the terms and conditions governing the joint preliminary development and design of the Project and to manage the MOU through the pre-development and design phase of the Project resulting in the issuance of entitlements, building permits and other authorizations to proceed including but not limited the negotiation of separate but complementary ground leases with the Developer (the “Pre-Development Stage” as hereafter defined); and

**WHEREAS**, prior to completion of the Pre-Development Stage, the Parties will meet and confer to determine whether a new or an amendment and restated Joint Powers Agreement is necessary or desirable for the construction and/or operational stages of the Project.

**NOW THEREFORE**, in consideration of the recitals and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**A. EFFECTIVE DATE**

This Agreement shall be effective upon the latest signature of a Party hereto, which shall occur immediately following the approval by each Party’s respective governing authority.

**B. PURPOSE AND SCOPE**

This Agreement governs the relationship of the Parties through the Pre-Development Stage of the Project and sets forth a mechanism for decision making and communication. For purposes of this Agreement, the “Pre-Development Stage” means

and includes the following activities: preliminary design, development, creation of initial proformas relating to financing, construction and operation of the Project, programming, initial entitlement processes up to and including the preliminary negotiations of separate but complementary ground leases or final development agreements relating to the Project. It is anticipated this Agreement will be terminated prior to or upon execution of the ground leases or development agreement and a subsequent joint powers agreement may be executed by the Parties, if necessary, to govern the construction, subsequent development stages and/or operation of the Project.

**C. TERM**

The Parties' duties and responsibilities under this Agreement shall begin on the Effective Date and unless renewed or terminated as expressly provided herein, shall continue for a period of three (3) years, expiring on the sooner of the third anniversary of the Effective Date or the execution of separate but complementary ground leases between the Developer and each of the Parties, whichever is sooner ("**Term**"). The Agreement may be renewed for an additional term or extended upon mutual written agreement of the Parties.

**D. RESOURCES AND FINANCING**

Each Party will be responsible for any required funding and resources to perform its obligations under this Agreement and with regard to the Project. In addition, each Party shall retain ownership of its own Property and assets throughout the Term. Each Party commits to providing sufficient resources and utilizing its respective legal authorities to further the Project to the maximum extent allowed by law. To wit:

**The City will:**

1. Assign professional staff with expertise to participate in the Project and may allow use of City spaces for Project-related meetings.
2. Provide project management for Project-related activities and ensures the Project aligns with the City's redevelopment goals, including increasing housing access and affordability, continuing to meet a HUD National Objective, and optimizing use of the City's land to maximize density in such a way that fosters placemaking and an innovative, sustainable design, among other shared benefit goals and specific City requirements stated in the Pre-Development MOU
3. Anticipate gap financing resource identification as necessary for Project viability and affordable housing objectives on the City-owned parcel via the underwriting process.
4. Consider, but is not obligated to provide, gap financing related to the University-owned parcel if required for Project viability, after evaluating whether resources are available.

**The University will:**

1. Assign inhouse professional staff with expertise to participate in the Project and may allow use of campus spaces for Project-related meetings.
2. Provide inhouse project management for Project-related activities and to ensure the Project aligns to University's redevelopment goals, including increased housing capacity near campus, increased parking capacity, retail and services complementary to the University's population, among other goals stated in the MOU of mutual benefit to the City and University.
3. Provide site information or University statistics that are beneficial to the Project.

Nothing in the foregoing commitments from the University shall create any financial risk or commit any future funds of the University during the Pre-Development Stage, nor shall the value of the University's land be used toward a guarantee, as security or a pledge for Project financing unless specifically authorized by the University. If a financial contribution from the University is required or desired for the viability of the Project, no such contribution can occur without prior express written consent of the University and prior to approval from any/all governing authorities to the extent required.

**E. STEERING COMMITTEE**

To administer this Agreement and the MOU(s) with the Developer, the Parties have agreed to the establishment of a Steering Committee, the membership of which shall consist of four (4) representatives of each party, designated by the Mayor of Boise City, and the President of Boise State University, respectively. The Steering Committee shall make Tier 2 decisions in accordance with the processes detailed in Section H and recommend escalation of decisions to Tier 3 and/or Tier 4, as further detailed under Section H. The Steering Committee shall meet no less than monthly for the Term of this Agreement and on such other occasions as necessary to meet Project deadlines and milestones. As of the effective date the members of the Steering Committee are:

**City of Boise:**

1. Hannah Brass Greer, Director of Strategic Initiatives, Mayor's Office
2. Tim Keane, Director Planning and Development Services
3. Maureen Brewer, Sr Manager Housing and Community Development
4. Wendy Ellestad, Sr Manager Enterprise Portfolio Management

**Boise State University:**

1. Jeff Banka, AVP of Financial Services and Treasurer
2. Christy Jordan, Executive Director, Capital Planning and Space Management

3. Evan Danforth, Executive Director, Architectural and Engineering Services
4. Drew Alexander, AVP of Campus Operations

Membership on the Steering Committee may be changed by each Party in their sole and exclusive discretion by providing written notice as provided in Section L of this Agreement.

#### **F. PROJECT MANAGERS**

Each party shall designate a Project Manager who shall serve as the single point of contact between their respective Party to the other. The Project Managers shall be a member of the Steering Committee but shall have independent authority to make Tier 1 decisions as described in Section H of this Agreement and shall regularly meet and share mutual responsibility and ownership for:

1. Preparing status reports and communications to the Steering Committee, Tier 3 and/or Tier 4 decision-making bodies.
2. Agenda setting and timely escalation of decisions-required upward to the Steering Committee, Tier 3 and/or Tier 4 decision-making bodies.
3. The Project Managers shall jointly be responsible to meet and confer on a weekly basis regarding shared aspects of the Project, as well as any Tier 1 decisions made by the respective Parties.

In addition, the City's Project Manager shall have the following separate duties and responsibilities, provided the University Project Manager shall be informed and may participate in any conversations or discussions upon request:

1. The City Project Manager shall be the primary point of contact for both the City and the University with the Developer for project related communication, provided that communication with Developer relating to Tier 1 decisions, and Party-specific requests for information and data which resides solely with the respective Party shall be communicated with such Party's Project Manager
2. The City Project Manager shall receive and distribute status reports, submittals or change requests from the Developer for Project-related communication.
3. The City Project Manager shall be the primary point of contact and liaison to other regulatory authorities with jurisdiction over the Project including but not limited to City Planning and Zoning Commission and Design Review Committee.

As of the Effective Date of this Agreement, the City's Project Manager is **Wendy Ellestad, Sr. Manager Enterprise Portfolio Management**



As of the Effective Date of this Agreement the University's Project Manager is **Drew Alexander, AVP of Campus Operations.**

Each Party may change the designated Project Manager in its sole and exclusive discretion by providing notice pursuant to Section L of this Agreement.

**G. MILESTONES**

Progress shall be monitored across a series of predictable and common milestones. Each milestone listed below establishes reference points for decision-making authority and administration. Project Managers working with the Developer will coordinate decisions relating to these milestones with the Steering Committee or final decision-makers as appropriate pursuant to Section H of this Agreement.

1. Planning:
  - a. Project goals and objectives
  - b. Project program
  - c. Site assessment
  - d. Public engagement strategy and initial outreach
2. Schematic Design (SD):
  - a. Preliminary site plan
  - b. Preliminary floor plans
  - c. Exterior concepts
  - d. Initial pro forma
3. Design Development (DD):
  - a. Drawing set
  - b. Building specifications
  - c. Refined pro forma

**H. DECISION MAKING**

It is the intent of the Parties that the City and University shall have equal influence on the Project as it relates to overall design and viability such that it meets the needs of each Party.

Approvals for the Project are expected to range in magnitude of impact. The tiered model below establishes a framework for decision-making as the Project progresses:

1. Tier One – Decisions that only impact the subject Party's parcel when considering the mix of uses, financial pro forma, site layout, Project design and/or delivery timeline shall be considered Tier One Decisions and shall be made by each Party independently as related to their Property by that Party's Project Manager.

2. Tier Two – Decisions that impact (or may impact) the overall Project but not in a manner that significantly affects the viability of the overall Project shall be made by majority consent of the Steering Committee at its regularly scheduled meeting, or at a special meeting if time is of the essence. Tier Two decisions are anticipated at:
  - a. Midpoint of Planning (site assessment, site layout, programming, pro forma)
  - b. Midpoint in Schematic Design (conceptual building massing, materials and orientation)
  - c. Additional decisions points that meet the definition of Tier Two decisions shall be considered by the Steering Committee in the same manner. In the event of a conflict with regard to a Tier Two decision, the decision can be escalated to a Tier Three decision for further consideration as provided below.
  
3. Tier Three – Decisions that will have a substantial effect on the financial pro forma, overall Project design, timeline, or viability of the Project shall include recommendation of the Steering Committee and be presented by that Party's Project Manager to be made by each Party's respective principal leadership, which for the City will include the Mayor's Office and the City Council and for the University includes the Executive Leadership Team. Tier Three decisions are anticipated at but not limited to:
  - a. Completion of Planning (site layout, programming, pro forma)
  - b. Completion of Schematic Design (site plans, exterior elevations, programming, pro forma)
  - c. Tier Two decisions escalated by the Steering Committee for consideration as a Tier Three decision.
  
4. Tier Four – In the event the Parties are unable to reach agreement on Tier 2 or Tier 3 decisions, the decisions shall be elevated to the Office of the Boise City Mayor and the Office of the President Boise State University for consideration as Tier Four decisions to be decided by the leadership of each Party. The Office of the Mayor and the Office of the President shall meet and confer and attempt to promptly resolve the dispute.

The Parties also recognize that the Project will require approval decisions by other regulatory bodies including but not limited to the Planning and Zoning Commission, and/or Design Review committee. These processes are governed by Idaho Statute and City Code but may overlap at times with approval processes undertaken pursuant to this Agreement. The City's Project Manager will act as the primary point of contact

and liaison for the Parties to these regulatory bodies and shall assist the Developer in navigating these approval processes.

**I. DISPUTE RESOLUTION AND GOVERNING LAW**

In the event the Office of the Mayor and the Office of the President are unable to reach agreement on Tier 4 decisions, the Parties reserve their respective rights and authorities to terminate or withdraw from this Agreement pursuant to Section O of this Agreement.

Time is of the essence and both the City and University agree to resolve decisions in a prompt manner to avoid Project delays.

Any dispute arising from or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Idaho and shall be determined by courts located in Ada County, Idaho.

**J. PUBLIC ENGAGEMENT; PUBLIC STATEMENTS**

The Parties agree that any communications between the Parties and the public or media should be coordinated. The roles and responsibilities of each party relating to public engagement area as follows:

**The City will:**

1. Lead the public engagement as it relates to the overall project. This may include, but is not limited to:
  - a. Designing and leading public workshops in partnership with University and Developer team(s), provided information directly relating to the University's role in the Project and materials relating to University's property should first be approved by University.
  - b. Ensuring City staff participation as needed to support public engagement events and workshops
  - c. Leading public messaging, press releases or press events.
  - d. Coordinate message content with the University

**The University will:**

1. Participate and assist with public engagement as it relates to the overall project. This may include but is not limited to:
  - a. Attending public workshops and assisting with preparation and facilitation
  - b. Assisting with public messaging and press releases
  - c. Hosting engagement activities on the University's campus or campus-adjacent properties

Any and all media releases, public announcements, public disclosures, promotional or marketing material sent either by the City or University relating to the Project, shall be coordinated between the Parties and subject to joint review and approval of both Parties and any additional and necessary personnel, prior to release or distribution. During the Term and thereafter, the Parties agree to take no action which is intended, or would reasonably be expected, to harm the other Party or any of its programs, its or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to such Party or its programs.

**K. LEGAL COMPLIANCE ; LIABILITIES**

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Agreement in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Agreement is intended to negate or otherwise render ineffective any such provisions or operating procedures. The Parties assume full responsibility for their performance under the terms of this Agreement. If at any time any Party is unable to perform its duties or responsibilities under this Agreement consistent with such Party's statutory and regulatory mandates, the affected Party shall immediately provide written notice to the other Parties and the Parties shall work in good faith to amend this Agreement or revise the Project so that it conforms to such Parties statutory and regulatory mandates, or such Party shall be permitted to terminate this Agreement.

Each Party shall be responsible for claims and damages to persons or property resulting from acts or omissions on the part of itself, its employees or agents. Neither Party assumes any responsibility for actions of the other Party nor for the consequences of any act or omission of any person, firm or corporation not a party to this Agreement. Each Party's liability shall be governed by the Idaho Tort Claims Act, Idaho Code Title 6, Chapter 9, as may be amended from time to time, and other applicable laws including without limitation Title 59, Chapter 10, Idaho Code and the Idaho State Constitution, as applicable to University. Any provision of this Agreement shall be void to the extent such provision violates applicable laws. Nothing in this Agreement shall be deemed to constitute a waiver by University of any privilege, protection, immunity otherwise afforded it under the Idaho State Constitution, Idaho Tort Claims Act, or any other applicable law or a waiver of its sovereign immunity, which is hereby expressly retained.

**L. NOTICE**

Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, or, if by email, upon actual receipt of the email, to the address set forth below:

If to Boise City: Boise City, Office of the Mayor  
Attn: Wendy Ellestad, Sr. Manager Enterprise  
Portfolio Management  
150 N. Capitol Blvd.  
Boise, Idaho 83702  
[wellestad@cityofboise.org](mailto:wellestad@cityofboise.org) [mailto:](#)

With a Copy to:

Mary Grant, Deputy City Attorney  
[mrgrant@cityofboise.org](mailto:mrgrant@cityofboise.org)

If to University: Boise State University  
Drew Alexander  
1910 University Drive  
Boise, ID 83725-1275  
[drewalexander@boisestate.edu](mailto:drewalexander@boisestate.edu)

With a Copy to:

Nikki Pantera, Deputy General Counsel  
[nicolepanter@boisestate.edu](mailto:nicolepanter@boisestate.edu)

#### **M. AMENDMENT**

This Agreement may not be amended except by mutual agreement between the City and University, in writing, properly executed by each Party's authorized signer. Amendments shall become effective upon the approval date of the last Party executing the Amendment.

#### **N. SEVERABILITY**

Any provision of this Agreement which shall be determined by a court to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

#### **O. TERMINATION AND/OR WITHDRAWAL**

Each Party reserves the right to terminate and withdraw with or without cause prior to expiration of the Term of this Agreement upon thirty (30) days written notice and no Party shall have recourse against the other for any such termination or withdrawal.

Upon Termination or Withdrawal, each Party reserves the right to continue to work with Developer to complete development of their respective parcels, or to abandon the

development of the parcel. During the Term and following any termination, each Party shall retain ownership of their respective Property and nothing herein shall be deemed to confer any ownership, beneficial, equitable or other interest of any kind to the other Party. Nothing in this Agreement shall restrict or prohibit either Party's engagement with the Developer for its own parcel within the Project or with respect to any other development Project of that Party.

All information, materials and documents developed pursuant to this Joint Powers Agreement shall become the property of both the City and the University. Each Party may, in its sole discretion, use or dispose of such information without consent from or compensation to each other, subject only to the express terms herein. .

**P. COSTS; PROJECT BUDGET**

The Parties shall each bear their respective costs and expenses in performing their obligations and pursuing matters under this Agreement and the MOU, including, but not limited to expenses of attorneys, advisors, consultants retained by or representing each Party. The Developer shall be responsible for financing the Pre-Development Stage of the Project and maintaining a Project Budget, with the Parties contributing separately to general costs required by each Party to perform its obligations hereunder. The overall Project Budget shall be maintained by the Project Managers and reported to the Steering Committee at its regular meetings.

**Q. FAILURE TO APPROPRIATE**

University is a public institution and its budget is subject to annual appropriation by the State of Idaho Legislature. This Agreement shall in no way or manner be construed to bind or obligate University or State of Idaho beyond the term of any particular appropriation of funds by the Legislature as may exist from time to time. University reserves the right to terminate this Agreement in whole or in part if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for University to continue to perform its obligations hereunder, or requires any return or "give back" of funds required for University to continue to perform its obligations hereunder, or if the Executive Branch of the State of Idaho mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the Parties hereto shall cease within ten (10) calendar days after notice by University of intent to terminate this Agreement under this provision.

**R. MISCELLANEOUS**

Each Party hereby certifies to the other Party that it is not currently owned or operated by the People's Republic of China and will not for the duration of this Agreement be owned or operated by the People's Republic of China.

The recitals set forth in this Agreement are hereby incorporated by reference.

This Agreement may be executed in one or more counterparts, with signatures delivered by electronic signatures, fax or emailed PDF documents with subsequent delivery of original signatures, all of which counterparts when taken together will comprise one document. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature, for this Agreement, means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

[End of document. Signatures on following page]

**By City:**

\_\_\_\_\_

\_\_\_\_\_  
Lauren McLean, Mayor

(Date)

City of Boise  
150 N Capitol Blvd  
Boise, Idaho 83702

ATTEST: \_

\_\_\_\_\_

\_\_\_\_\_  
Lynda Lowry, City Clerk

(Date)

**By University:**

\_\_\_\_\_

\_\_\_\_\_  
(Name), (Title)

(Date)

Boise State University  
1910 University Drive  
Boise, Idaho 83725



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU" or "Memorandum") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023 (the "**Effective Date**"), by and between [Developer], a [state] corporation ("**XXXX**"), located at [address, city, state, zip code] ("**Developer**" or "**Lessee**"), City of Boise City, Idaho ("**Boise City**" or "**City**"), an Idaho municipal corporation, by and through its Housing and Community Development Division, located at 150 N Capitol Blvd., Boise, Idaho 83702, and the Idaho State Board of Education, by and through Boise State University ("**BSU**" or "**University**"), an Idaho institution of higher education, located at 1910 University Drive, Boise, Idaho 83725. City and University may individually be referred to as "**Lessor**" or collectively as "**Lessors.**" Lessee, City or University may be referred to individually as a "**Party**", or collectively, the "**Parties.**"

### 1. PURPOSE AND SCOPE

The Parties hereby enter into this non-binding MOU to summarize their mutual agreements relating to a responsive bid proposal by Developer to redevelop, finance, construct, own, and operate one or more projects on property located in Boise's Lusk District neighborhood (the "**Project**"), on parcels owned by the City at 1025 S. Capitol Blvd. and 1028 S. Lusk Street (the "**City Property**"), and by the University at 855 W. Royal Boulevard (the "**University Property**", together with City Property, referred to as the "**Project Site**"). A graphic depiction of the proposed Project is attached hereto as Exhibit "A", provided the parties acknowledge that such exhibit is provided as concept only and will be modified as the Parties engage in project definition. This MOU reflects the Parties' most recent discussions and negotiations surrounding the Project and is intended to set forth certain material terms that each Party will require for the Project. The Parties seek to negotiate during the period of this MOU to further refine the scope and define material terms and understandings relating to the Project, to be memorialized in one or more Development Documents governing the development and operation of the Project whereby more concrete plans regarding the construction, development, budget, financing plan and legal structure of the Project will be created and finalized, resulting in binding Development Documents. The Parties anticipate the Development Documents will consist of a ground lease relating to the City Property, a ground lease governing the University Property and possibly additional related development agreement(s) or such further documents and agreement determined necessary as between Developer, as Lessee, and each respective of City and University, respectively, as Lessor (individually the "**City Ground Lease**" or the "**University Ground Lease**," as applicable or, collectively, the "**Development Documents**").

The Development Documents, among other things, will contain such terms, conditions, covenants, representations and warranties between the Parties as are (i) customary in a public-private partnership transaction of this nature, (ii) in compliance with the laws of the state of Idaho and any applicable federal laws, regulations or associated funding requirements applicable to the Project, (iii) terms, conditions, and restrictions on liabilities applicable to University as a public entity of the State of Idaho or City as a municipal corporation in the State of Idaho, as applicable, and (iv) such other terms as are mutually acceptable to the Parties. The Development Documents may also set forth the agreement of the Parties with respect to an anticipated lender requirements associated with the Project, and any associated representations, agreements, or documentations requested or required to be made by either Party. The Development Documents will include additional terms and conditions which are not contained forth herein and are subject to State Board and City Council approval.

### 2. RESERVATION OF RIGHTS: PROJECT DIVISION

Any Party may decide not to proceed with a proposed ground lease and/or development agreement for any reason until a binding contract is signed between Developer and the respective Party. Notwithstanding the foregoing, the Parties agree to negotiate in good faith the terms and provisions of the Development

Documents and to use reasonable, diligent efforts to finalize and execute such Development Documents.

In consideration of the design layout, proposed improvements within the Project site, financing, construction or other deliverables, the Parties reserve the ability to divide the Project into separate complementary projects under these terms and conditions. Either Party may, without consent of the other, divide a portion of the Project to be treated separately with the Developer, provided that:

- a. The Developer consents;
- b. The portion of the Project to be divided is sited wholly within that entity's property, including all applicable building and zoning requirements independent of the use and design on the other Party's adjacent property; and
- c. The project division will not adversely affect the feasibility of the remaining portions of the Project.

If any of these criteria are unmet, division of the Project may only occur with the written consent of all Parties. In the event the Parties cannot agree on a division of the Project, either Party may elect not to go forward with the Project. Any project division by either Party will remain subject to the terms and conditions of this Memorandum.

**3. RESPONSIBILITIES AND OBLIGATIONS OF DEVELOPER**

The general development of the Project Site will be consistent with the expectations set forth in the RFI, Proposal, this MOU, as well as any other aspects agreed to by the Parties. Developer agrees that the Project shall be developed under the following terms, conditions and constraints:

Applicable to the Project Site:

- a. The Developer shall provide a mixed-income (residential) and mixed-use (commercial/residential) development project with retail space, parking, expanded mobility and transportation options, and active streetscapes.
- b.
- c. The Project shall include a minimum of 500 units, ranging from deeply affordable units serving 30% area median income (AMI) households to market-rate that provides a mix of residential units serving households of various sizes and income levels. The retail space included in the Project should be designed to accommodate a range of commercial uses. A retail priority for the University is a 'one-stop' tenant that may include pharmacy, light grocery, and limited household items. The Developer should evaluate and strongly consider national chains capable of providing that commercial experience. The Project should not include drive-thru retail, and types of retail on the University Property are subject to approval by University.
- d. The Developer will create additional parking in a structured parking format, replace the current number of stalls on the University Property, and satisfy the general demands of the project and neighborhood. The project should not rely on surface parking.
- e. The Project's design should be especially impactful on the Capitol Boulevard-facing portions of the property, complementing the significance of the gateway corridor and recent construction on Boise State's campus.
- f. The Project will include, at minimum, a 12-foot-wide multiuse path along Capitol Boulevard in compliance with the Capitol Boulevard Design Overlay. The Developer will build the other streets in compliance with the street typologies identified in the Lusk Street Master Plan (Lusk Street: Type 1, Royal Blvd: Type 2 and Island Street: Type 3)
- g. The Project will meet or exceed minimums set by the City of Boise Green Building Code and/or the energy recommendations as provided by the Lessors.

- h. The Project will utilize green stormwater management, where possible, and explore the potential for all-electric operations, enhanced water conservation, electric vehicle infrastructure, connection to the City's geothermal energy system, and overall waste reduction.
- i. The Project will include broadband friendly infrastructure to include multiple conduits from common telecom demarcation points to external meet points to allow multiple providers to service the building and modern internal wiring and/or pathways that allow multiple broadband service types, such as ethernet, coax and fiber to the unit.
- j. The Project will comply with all applicable local and state building codes, and Developer will obtain any necessary planning and zoning approvals, including but not limited to:
  - a. Subdivision or planned unit development applications;
  - b. Variances;
  - c. Property line adjustments or parcel consolidations.
- k. The Developer will use diligent, good faith efforts to use local subcontractors (which shall have an Idaho Public Works license if and to the extent required by Idaho State Code) for as much of the onsite construction work as is feasible and practical.
- l. The Project design shall be reviewed with the Parties at intervals during the design development phase, with emphasis at the 30 / 60 / 90 design milestones. The final design shall be approved by the Parties before any applications are reviewed for planning and zoning approvals.
- m. The Developer and the Parties will meet and discuss the Project on a bi-weekly or monthly period, as the project activity requires.
- n. The Developer will minimally provide monthly status updates on the Project to provide progress information.
- o. The Developer will begin construction no later than 15 months after execution of this Memorandum (or such other feasible date that may be agreed to by the Parties after execution of this Memorandum).

City Expectations:

- a. The Developer will target a minimum of 400 units to households earning 60% of the area median income and below on the City Property.
- b. The Developer must minimally replace the 110 current units 1-for-1.
- c. A minimum of 51% of units on the City Property must serve households earning less than 80% of the area median income.
- d. The Developer will comply with all HUD and related federal statutes and regulations applicable to the Project, including but not limited to, the provisions of the Community Development Block Grant (CDBG) program (24 CFR Part 570), the HOME program (24 CFR part 92), and the Uniform Administrative Requirements and Cost Principles for federal awards (2 CFR Part 200).
- e. The Developer will comply with all regulations and policy related to the Uniform Relocation Assistance and Real Property Acquisition Act (URA) with respect to the Project, including the government-wide regulation that implements the URA (49 CFR Part 24 and 24 CFR Part 42), and HUD Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition.
- f. Any residential units on the City Parcel shall be advertised using an Affirmative Marketing plan by the property management agency, who will lease units in accordance with a Tenant Selection Plan, approved by the respective Lessor. The Tenant Selection Plan will be guided by the criteria tied to state and federal funding sources and will describe the standards used to screen for information on rental or criminal history. Screening criteria will likely include

exclusion of applicants with certain drug-related charges, sexually related charges, open bankruptcy or open eviction. To the extent multiple programmatic or funding criteria apply, the Lessee will defer to the most restrictive.

- g. The Developer will reserve 10% of units on the City's property for households exiting homelessness, utilizing Our Path Home's Dedicated Units Program. The Dedicated Units Program seeks to overcome barriers to housing, such as rental or criminal history, that often screen prospective tenants out and prevent households from exiting homelessness. The Dedicated Units Program will follow the Programmatic and funding criteria that apply to the Project.
- h. Secure financing. To the extent the leasehold interest, contemplated by the City Ground Lease, is intended to be pledged as security for a loan, the Developer shall submit the substantially final version of all related documents proposed in the loan transaction(s) along with a request for the City's written consent in accordance with the terms of a City Ground Lease, which consent shall not be unreasonably withheld.
- i. The Developer will promptly obtain all necessary approvals execute and deliver such papers, documents, and instruments reasonably necessary or proper to effectuate the City Ground Lease.

University Expectations: The University expectations articulated herein can be located on other parcels if the overall Project economics are supportive.

- a. The Developer shall maximize a mix of workforce housing units affordable to University employees and market-rate housing units on the University Property, while preserving buildout potential for other programmatic priorities. During the pre-development phase, the Developer shall provide a pro forma that allows for adjustment of unit pricing, so that the University can assess options for its housing priorities, as well as impacts on the ground lease agreement.
- b. Provide programming and pro forma for 20,000 square feet of multi-tenant office space, or an amount supported by a market analysis, whichever is greater. Office space should rely on vertical construction and dense, mixed-use development patterns to preserve overall housing unit capacity.
- c. The design should not hinder, complicate, or limit anticipated future buildout on the University's parcel across Royal Boulevard.

4. RESPONSIBILITIES AND OBLIGATIONS OF LESSORS

City and University agree that the Project will be developed under the following terms, conditions, and constraints:

- a. The Parties will retain ownership of their respective parcels;
- b. The Developer will be allowed conduct surveying and/or testing, as required for permitting prior to the execution of Ground Leases;
- c. The Parties will negotiate lease prices and terms that are contingent upon the securing the final financing for the Project, provided the Parties each reserve the right to execute its Ground Lease upon securing of financing for any portion of the Project divided as provided for above under Item 2 above, sited on its property;
- d. City will provide project management services to successfully work through the required planning and development and/or building reviews throughout the Project, up to issuance of

- certificate of occupancy for the Project;
- e. City will assist the Developer in communications with the neighborhood for the Project, including community meetings and/or outreach;
  - f. The Parties agree to grant, convey, and execute, to and/or with the other, any such easements, cross-access agreements or other instruments necessary to achieve the final Project design as agreed upon by the Parties;
  - g. The University shall bear no financial responsibility for work performed by the Developer during the design and pre-development phase and will not share financial risk in the Project;
  - h. University property, revenues, or funds may not be used as a guarantee for any financing;
  - i. The Parties will promptly obtain all necessary approvals execute and deliver such papers, documents and instruments reasonably necessary or proper to effectuate the Ground Leases;
  - j. The Parties will use good faith, diligent efforts to cooperate with Developer in being able to break ground by the date set forth above and to otherwise cooperate with Developer in seeking its applicable entitlements for the Project; and
  - k. The Parties will use good faith, diligent efforts to review Project design milestones and will not withhold approval unduly as long as all stipulations in this agreement are upheld.

**5. TERMS OF UNDERSTANDING**

The term of this Memorandum shall be for a period of 48 months from the Effective Date and may be extended upon written mutual agreement of all Parties. Any Party may terminate this MOU as to such Party with written notice to the other Parties. Upon execution hereof, the Parties will use diligent, good faith efforts to finalize and execute the Development Documents. The execution of both Ground Leases will supersede and terminate this Memorandum, unless earlier terminated by one of the Parties.

**6. LEGAL COMPLIANCE**

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures.

**7. LIMITATION OF LIABILITY**

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum.

**8. NOTICE**

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person, by certified mail, return receipt requested, or by electronic means with delivery confirmation to the address set forth in the opening paragraph or to such address as a Party may have furnished to the other Parties in writing.

**9. ASSIGNMENT**

The qualifications and identify of Developer are of particular importance for the City and University based on its responsive proposal for the Request for Information and Statement of Qualifications, noted as RFI 23-081. Accordingly, any rights or obligations of the Developer under this MOU are not assignable or transferrable except with the written consent of the City and University. Any purported voluntary or involuntary assignment or transfer of Developer's rights and obligations hereunder without such written consent shall be null and void.

**10. GOVERNING LAW**

This Memorandum shall be governed by and construed in accordance with the laws of the State of Idaho.

**11. AUTHORIZATION AND EXECUTION**

The signing of this Memorandum does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best of their abilities, the goals and objectives stated in this MOU. The Parties understand and acknowledge by reason of signing this MOU that no obligation whatsoever between them shall arise to purchase/sell/lease/develop the subject property until the Development Documents have been fully executed and delivered.

**12. PUBLIC STATEMENTS AND CONFIDENTIALITY**

In general, this MOU and other records relating to the Project may be subject to disclosure as required by Idaho Public Records Laws, as well as disclosure to State Board of Education and the Boise City Council, in their capacity as governing boards of University and City , respectively. The Parties agree that, unless disclosure is required by applicable law and except as established herein in connection with the RFI process and this MOU, they will not publicly disclose or discuss this MOU, the RFI, or this Project without the coordination and approval of all Parties other than discussion and disclosure to the extent necessary to each Party’s employees, attorneys, consultants, accountants, financial advisors, lenders and bankers required to know the same in implementing the provisions of this MOU. If disclosure is required under applicable law, then the disclosing Party will notify the other Parties and the Parties hereto will coordinate with regard to such disclosure to the extent practicable. Any and all media releases, public announcements, and public disclosures relating to this MOU or the underlying Project, including promotional or marketing material, but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party, shall be coordinated with and shall be subject to the written approval by each Party prior to release.

**13. COSTS**

The Parties shall each bear their respective costs and expenses in pursuing matters under this MOU, including, but not limited to, expenses of all attorneys, advisors and consultants retained by or representing them in connection therewith.

[End of document. Signatures on following page]

**By Developer:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Title

Company name  
Address  
City, State, Zip

**By City:**

\_\_\_\_\_  
Lauren McLean, Mayor

\_\_\_\_\_  
(Date)

City of Boise  
150 N Capitol Blvd  
Boise, Idaho 83702

ATTEST: \_

\_\_\_\_\_  
Lynda Lowry, City Clerk

\_\_\_\_\_  
(Date)

**By University:**

\_\_\_\_\_  
(Name), (Title)

\_\_\_\_\_  
(Date)

Boise State University  
1910 University Drive  
Boise, Idaho 83725

ATTEST: \_

\_\_\_\_\_  
?????

\_\_\_\_\_  
(Date)

Exhibit "A"