

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6589

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH PORTLAND OFFICE OF TRANSPORTATION IN THE
AMOUNT OF \$2,990,836 FOR THE CONSTRUCTION OF
STREETScape IMPROVEMENTS OF RUSSELL STREET IN
THE INTERSTATE URBAN RENEWAL AREA**

WHEREAS, in order to revitalize Russell Street, a heritage district gateway, rich with the early history of Portland and of the immigrants and minorities who settled there, an area disenfranchised by construction projects that created barriers and displaced communities: Memorial Coliseum, I-5, and planned Emanuel Hospital expansion;

WHEREAS, streetscape improvement is used in the Interstate Corridor Urban Renewal Area ("ICURA") as a revitalization tool in key commercial corridors;

WHEREAS, on November 2003, by Resolution No. 36184, the Portland City Council adopted the Russell Street Improvements Planning Project Final Report (the "Plan"), which created a streetscape plan and new streetlight standards and design guidelines for Russell Street between North Interstate Avenue and Northeast Martin Luther King, Jr. Boulevard and also for North Mississippi and North Albina Avenues between North Interstate and Russell Street;

WHEREAS, the Plan is the result of extensive community involvement including a wide variety of opportunities where residents, business owners, workers, and others who use the street could be heard;

WHEREAS, the Plan will contribute to the revitalization in the area by creating a public investment strategy to improve the quality of the street for local businesses and residents and help strengthen the connection between Russell Street, the Interstate MAX light rail, the surrounding community, and major destinations such as Emanuel Hospital;

WHEREAS, this action is consistent with the Interstate Corridor Urban Renewal Area Plan and supports Russell Street's designation as a station community and commercial corridor in the Metro 2040 Plan, and as a community main street in the City of Portland's Transportation System Plan (the "TSP");

WHEREAS, the Russell Street Improvement Project (the "Project") was recommended through a community process outlined in the ICURA Transportation Implementation Strategy, listed on the TSP, and elevated to a priority project by the Portland Development Commission ("PDC");

WHEREAS, the Project is consistent with Phase I of the Plan and will include the installation of trees, sidewalk improvements and curb extensions, storm water management, art, ornamental streetlights, pedestrian crossings, and enhanced transit stops;

WHEREAS, \$27,500 of Project funding is included in the adopted 2007-2008 PDC Budget; and \$2,963,336 of Project funding is included in the proposed 2008-2009 PDC Budget, which is subject to final budget appropriation; and

WHEREAS, PDC initiated this Project because of its importance as a revitalization tool for a key commercial corridor and to strengthen the pedestrian connection between the Albina-Mississippi MAX station area and employment centers and residential areas to the east.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to enter into and execute an Intergovernmental Agreement with Portland Office of Transportation, substantially in the form attached hereto as Exhibit A, in the amount of \$2,990,836, subject to budget appropriation, to construct streetscape improvements of Russell Street; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

INTERGOVERNMENTAL AGREEMENT

Between
Portland Development Commission
And
Portland Office of Transportation
For the
**Russell Street Improvements Project -
Construction Phase**

This Intergovernmental Agreement (“Agreement”), dated this ____ day of _____, 2008, (“Effective Date”) is made and entered into by and between the **City of Portland, Office of Transportation** (“PDOT” or “Bureau”) and the **Portland Development Commission** (“PDC” or “Commission”).

RECITALS

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between the Commission and the Bureau will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. Russell Street is identified in the Albina Community Plan (1993) and Eliot Neighborhood Plan (1993) as a key commercial corridor and a pedestrian route connecting to the Interstate MAX light rail. Russell Street is designated as a Station Community and

commercial corridor in the Metro 2040 Plan and as a Community Main Street in the Transportation System Plan.

2. The community's vision for Russell Street and Lower Albina to become a revitalized historic design district, retaining its light industrial flavor, promoting night activity to make the area one of Portland's premier entertainment areas and strengthening the commercial corridor is advocated for in the Eliot Neighborhood Plan and supported by the Interstate Corridor Urban Renewal Advisory Committee.
3. The Russell Street Improvement project (the "Project") was recommended through a community process outlined in the ICURA Transportation Implementation Strategy, listed on the City of Portland TSP, and elevated to a priority project by PDC. The Project is consistent with Phase I of the Plan (as defined below). Phase 1 of the Plan includes Russell Street from Interstate Avenue to Kerby Avenue/Commercial Avenue (underneath I-5), Mississippi Avenue between Interstate Avenue and Russell Street, and Albina Avenue between Interstate Avenue and Russell Street. The Project will include the following: installation of trees, sidewalk improvements and curb extensions, storm water management, art, ornamental streetlights, pedestrian crossings, and enhanced transit stops. PDC initiated this Project because of its importance as a revitalization tool and to strengthen the pedestrian connection between the Albina-Mississippi MAX station area and employment centers and residential areas to the east.
4. In November 2003, by Resolution No. 36184, the Portland City Council adopted the Russell Street Improvements Planning Project Final Report (the "Plan"), which created a streetscape plan and new streetlight standards and design guidelines for Russell Street between North Interstate Avenue and Northeast Martin Luther King Jr. Boulevard and also for North Mississippi and North Albina Avenues between North Interstate and Russell Street. The Plan is the result of extensive community involvement including a wide variety of opportunities where residents, business owners, workers and others who use the street could be heard.
5. The Plan will contribute to the revitalization in the area by creating a public investment strategy to improve the quality of the street for local businesses and residents and help strengthen the connection between Russell Street, the Interstate MAX light rail, the surrounding community, and major destinations such as Emanuel Hospital.
6. The Plan area covers parts of two urban renewal areas, the Interstate Corridor (ICURA) and the Oregon Convention Center Urban Renewal Areas (OCCURA). Phase I of the Plan includes North Interstate Avenue to North Kerby and North Mississippi and North Albina between North Interstate and Russell Street, and is primarily in the ICURA with only a small stretch under the I-5 overpass to Commercial Avenue in the OCCURA.
7. Design and engineering for the Project will be completed in FY 2007-2008 under separate work order. PDC is prepared for PDOT to start the Bid and Award phase of the Project in June 2008 and has twenty-seven thousand five hundred dollars (\$27,500) available in FY 2007-2008 for the bid phase expenses. Two million nine hundred sixty-three thousand three hundred thirty-six dollars (\$2,963,336) is proposed for construction of the Project in the FY 2008-2009 PDC proposed budget. The construction budget is

based on 95% engineer's cost estimates. PDC's FY 2008-2009 budget will be approved no later than May 15, 2008 and adopted by June 28, 2008, prior to bid award. Construction is anticipated to start in summer 2008 and be complete by winter 2009.

8. PDOT shall provide final engineer's estimate in May 2008 for review by PDC. PDOT shall put Project out to bid only with PDC's written approval to move forward and acceptance of Project scope and estimated cost. PDOT shall manage the construction contract according to City standards and keep PDC informed of significant cost overruns and construction issues. PDOT anticipates delivery of completed Project by January 2009.

B. Schedule of Work and Budget

Plan			Budget FY 2007-08				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
A	Construction Bid and Award: Project will not go to bid until PDC's budget is approved. Budget Approval: May 15, 2008 Budget adoption: June 28, 2008	July 31, 2008	25,000	0	0	25,000	
A.1	Project Management		15,000				
A.2	Change Management-Performing Agency		10,000				
A.3	Work Product: Construction Contract Awarded						
Other	Funding Agency Controlled Contingency [Required]		2,500			2,500	
TOTAL	AUTHORIZED BUDGET Cost Not To Exceed		27,500	\$0	\$0	\$27,500	

Plan			Proposed Budget FY 2008-09				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
A	Construction - Phase I	December 31, 2008	410,000	404,160	1,760,800	2,574,960	

A.1	Project Management		30,000				
A.2	Construction Engineering		\$370,000				
A.3	Construction Contract				1,760,800		
A.4	Construction anticipated items			52,000			
A.5	Change Management – Performing Agency			352,160			
A.6	Work Product: Completion of Phase I						
B	Public Involvement	December 31, 2008	1,000			1,000	
B.1	Facilities, printing, mailing		500				
B.2	Translation / Interpretation		500				
B.3	Change Management – Performing Agency						
B.4	Work Product:						
D	Public Art	December 31, 2008			35,216	35,216	
D.1	RACC Contract				35,216		
D.2	Change Management – Performing Agency				0		
D.3	Work Product: RACC contract						
Other	Funding Agency Controlled Contingency				352,160	352,160	
TOTAL	AUTHORIZED BUDGET Cost Not To Exceed		\$411,000	\$404,160	\$2,148,176	\$2,963,336	

* More detailed project schedules identifying milestones dates are encouraged and can be attached to this agreement as an exhibit.

C. The party for whom the work is being performed, and who will be compensating the other party for performing the work, shall be referred to in this Agreement as the “Funding Agency”.

D. The party performing work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”.

E. Project Staffing – Performing Agency: The following Performing Agency personnel are being assigned to perform the work described above. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for authorized work. The Funding Agency will

not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform work under the Agreement, and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified personnel to perform work under the Agreement.

1. Winston Sandino, PDOT Project Manager
2. Jimi Joe, Engineer of Record
3. Project Management Support
4. Civil Design Engineer
5. Traffic Design Engineer
6. Drafter
7. Structures Engineer
8. Street Lighting/Signals Support
9. Survey

F. Project Staffing – Funding Agency: The following Funding Agency personnel are being assigned to perform the work described above.

1. Susan Kuhn, Project Manager

II. CONTRACT MANAGEMENT

A. Commission.

1. Contract Signatory. The Commission Contract Signatory shall be Bruce A. Warner, or such other person as designated in writing by the PDC Executive Director ("PDC Contract Signatory"). The PDC Contract Signatory is authorized to give notices and to carry out other Commission actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Commission Contract Manager shall be Lois Cortell ("PDC Contract Manager"). The PDC Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

B. Bureau.

1. Bureau Contract Signatory. The Bureau Contract Signatory shall be Susan D. Keil, or such other person as designated in writing by the Director of the Portland Department of Transportation ("Bureau Contract Signatory"). The Bureau Contract Signatory is authorized to give notices and to carry out other

Bureau actions referred to herein, including termination of this Agreement as provided in Section IV.

2. Bureau Contract Manager. The Bureau Contract Manager shall be Greg Jones ("Bureau Contract Manager"). The Bureau Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

C. Management Staffing.

1. A Project Manager shall be designated by the Bureau ("Bureau Project Manager"), and a Project Manager shall be designated by the Commission ("PDC Project Manager") to carry out designated responsibilities related to the Scope of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be Susan Kuhn, or such other person as designated in writing by the Director of Development.
 - b) The Bureau Project Manager ("Bureau Project Manager") shall be Winston Sandino, or such other person as designated in writing by the Director of the Portland Office of Transportation and approved by the PDC Project Manager.
2. If either Project Manager is not performing or is not able to continue performing the responsibilities related to the Scope of Work, then the respective Contract Manager shall designate a replacement Project Manager. If a replacement Project Manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in the Scope of Work.
3. The PDC Contract Manager and the Bureau Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either the Commission or the Bureau desires to replace a Project Manager, or other key staff identified in the Scope of Work, the party's Contract Manager shall notify the other Contract Manager in writing, and if required, they will meet to discuss and agree on adjusting the Scope of Work accordingly to provide adequate time to make such change.

D. Approvals.

1. No work shall be performed and no funds shall be obligated on the Project identified in the Scope of Work until this Agreement is executed.
2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work.

E. Project Management.

1. Bureau Project Manager shall provide an updated narrative of the Project status each month, highlighting construction change orders, anticipated cost overruns, and potential Project issues.
2. PDOT will provide and post Project signage, including identifying PDC and other project funders, and adequate "business open" signs during construction.

F. Public Involvement.

1. Where projects require public involvement, the Bureau and the Commission will collaborate on design of the public involvement plan that is endorsed by both Project Managers.
2. The Bureau and the Commission will keep each other informed of written material (e.g., news releases, brochures, news letters, reports) produced for the project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each Project Manager will inform the other of inquiry from a media or press representative and make reasonable efforts to consult with the other Project Manager prior to any verbal or written information on the project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards..

G. Meeting Participation. The Funding Agency and the Performing Agency Project Managers shall invite each other to attend all regular construction meetings organized for the Project.

H. Work Product. The Funding Agency Project Manager will, upon his or her request, have access to all construction files, including, but not limited to, drawings, specifications, designs, and draft and final copies of technical and consultant analysis and reports prepared or received during the course of the Project.

I. Subcontractors. A subcontractor is any other entity that the Performing Agency uses to carry out all or part of the Scope of Work.

1. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the PDC Project Manager:
 - a) Engineering and consultant coordination will be performed by Otak under a work order on flexible services contract no. 36666-2 that expires on June 30, 2008.
 - b) Landscaping Design services will be performed by Nevue Ngan Associates under a work order on flexible services contract no. 36602 that expires on June 30, 2008.

- c) Street Lighting Design services will be performed by DKS Associates under a work order on flexible services contract no. 36630 that expires on June 30, 2008.
2. The Performing Agency and/or any approved subcontractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work.

J. Regional Arts & Culture Council (RACC) – Percent for Art Program

1. RACC Percent for Art Program requirements apply to the construction of this project.
2. PDOT will be responsible for complying with the Regional Arts & Culture Council (RACC) as per requirements outlined in Chapter 5.74 Acquisition of Public Art of Resolution No. 36308. Two percent of the total Eligible Costs will be dedicated through this Project. Estimated construction costs for FY 08-09 are approximately \$1,760,800. The expected total contribution to RACC will be approximately \$35,216. PDC will provide funding for this requirement and has allocated funds in its budget; PDOT will implement requirements.
3. PDC and PDOT will work together with RACC and its advisory panels to oversee the selection of artist and artwork for Russell Street or otherwise apply these funds towards artwork in ICURA, at PDC's discretion.

K. Minority and Women Owned Businesses, and Emerging Small Businesses

1. When the Bureau is performing work for the Commission, the Bureau will employ its best efforts to meet or exceed the PDC utilization goals for Emerging Small Businesses and Women and Minority owned-businesses.

L. Special Contract Management Provisions

The Project will include a 20% construction contingency and an additional 20% Funding Agency Contingency. The Project will implement City of Portland standards for curb extensions, pedestrian lighting and sidewalk replacement. Potential risks include: unknown underground vaults, basement/grade, stormwater planter design and placement. Risk is mitigated for this Project through the following actions and agreements:

- Due diligence has been completed under the design and engineering phase to identify underground vaults, basement/grade issues, address storm water issues, etc., to the full extent possible.
- The Project construction budget is consistent with 95% engineer's cost estimate.
- PDC and PDOT agree that the Project will not be bid until PDC Project Manager and Bureau Project Manager discuss and agree in writing to the engineer's final estimate.

- If the bids are within 10% of the engineer's final cost estimate, PDC anticipates sufficient budget to complete construction.
- PDOT shall not award the construction contract if bids exceed the engineer's final cost estimates by more than 10%.
- PDOT shall not award the construction contract until PDC and PDOT are in agreement regarding the acceptability of the bids based on final cost estimates, the amount of the bids, and the status of PDC's FY 2008-2009 budget and PDOT has received written approval from PDC to proceed.
- The PDOT Project Manager shall provide the PDC Project Manager with written notice of all change orders over \$15,000 as they are received.
- All change orders over \$15,000 shall be subject to review and comment by the PDC Project Manager. The PDOT Project Manager shall review the change order and provide a written recommendation to the PDC Project Manager. The PDC Project Manager shall provide any comments on the change order to the PDOT Project Manager within five (5) business days after receipt of the recommendation from the PDOT Project Manager. If PDOT Project Manager does not receive PDC comments on the change orders within the five (5) business days, the change order will be automatically approved by the PDOT Project Manager.
- PDOT shall not approve any change order that requires the use of the Funding Agency Contingency without the prior written approval of the PDC Project Manager.
- The PDOT Project Manager shall communicate with the PDC Project Manager immediately upon the discovery of any issue that may have an impact on the Project scope, schedule, or budget.
- Thirty-two (32) surplus streetlights are being purchased through the Killingsworth Street Improvement Project (Phase I-B IGA) at a cost of approximately thirty thousand dollars (\$30,000), which will be transferred to the Project. PDOT will store the streetlights until needed for the Project. The streetlights will be provided to the Project at no cost.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Commission shall pay the Bureau a sum not to exceed **TWO MILLION NINE HUNDRED NINETY THOUSAND EIGHT HUNDRED THIRTY-SIX DOLLARS (\$2,990,836)** for accomplishment of the Schedule and Scope of Work.
- B. PDC funding for this Project shall be from the Interstate Corridor Urban Renewal Area and the Oregon Convention Center Urban Renewal Area, funds 370-10-19020 and 350-10-25525.

- C. The full amount of funds is not authorized in the current fiscal year's budget. If the project funding spans multiple fiscal years, the Commission will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If the full amount of funds is not authorized in the current fiscal year's budget, it is acknowledged that contract amounts identified for expenditure in future fiscal years have not been appropriated in the current year budget. If funding has been identified in the Portland Development Commission Five-Year Budget Forecast, Commission staff agree to recommend to the Commission Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. Commission funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- E. The Performing Agency may seek reimbursement from the Funding Agency for the following costs, subject to the expenditure of these funds being for approved activities in the Scope of Work and within the authorized budget. In certain circumstances, such as advance payment to RACC, the Funding Agency Project Manager may authorize a prepayment of future expense obligations.

1. Direct Costs

- a) Personal Services. Reimbursement for direct wages paid to personnel engaged in authorized work under this Agreement. Such reimbursement shall be calculated at the base hourly rate established in the Scope of Work.
- b) Benefit Costs. Reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees. The benefit reimbursement shall be FIFTY FOUR PERCENT (54%) of direct wages, which represents the average full benefit load attributable to city employees.
- c) Materials & Services. Actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and Bureau or Commission support staff personal services where the expenditure is for carrying out authorized work under the Scope of Work and within the authorized budget.
- d) Contracted Services. Reimbursement for contracted professional or construction services in carrying out authorized work under the Scope of Work and within the authorized budget.

2. Indirect Costs. Reimbursement for overhead costs is at the rate established annually by the Commissioner in charge of the Bureau. For Fiscal Year 07/08 of this Agreement the rate is SIXTY NINE AND FORTY TWO HUNDRETHS PERCENT (69.42%) of Personal Services and Benefit Costs. Indirect costs pay

for generally fixed costs related to the administration and operation of an organization, as well as program management costs including City Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.

3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditure rate of the Scope of Work. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.

- F.** Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this contract unless mutually agreed to in advance.
- G.** Change Management Controlled by Performing Agency. “Change Management” is the process by which the impact of changes is controlled or mitigated and alterations of the Project plan are evaluated, approved, and incorporated into the Project plan. It is required that funds for Change Management be identified above in Section I B, These funds are intended to be used to accommodate such changes within the specific Work Item. Change Management funds shall be managed by the Performing Agency. Communications regarding usage of Change Management are described in Section V. of this Agreement.
- H.** Contingency Controlled by Funding Agency. It is required that an amount for Project contingency be identified above in Section I B. The expected communications regarding events that may lead to the usage of the contingency are described in Section V of this Agreement. Any use of the contingency must be approved in writing by the Funding Agency.

IV. BILLING AND PAYMENT PROCEDURE

- A.** The Performing Agency shall submit to the Funding Agency Contract Manager a separate itemized billing for work performed as described in the Scope of Work for review and approval at least quarterly.
 - 1.** In order to receive timely payment, interim billings must be received no later than forty (40) days following the end of a billing period.
 - 2.** Final billings upon early termination of the Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings.
 - 3.** Current City plans include implementation of a new SAP enterprise business system. Both PDOT and PDC acknowledge that this implementation may

affect their ability to meet the above described timelines; however, each party shall make reasonable efforts to do so.

- B.** Each billing shall include a Project Status Report and a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
1. a description of the nature and cost of work accomplished;
 2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as desired by the Funding Agency Contract Manager.
 5. A template report shall be discussed and agreed to as part of the project's kickoff meeting.
- C.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the billing party in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

V. GENERAL

A. Termination.

1. The Termination Date of the Agreement is August 31, 2009.
2. Early Termination of Contract.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - c) In the event of early termination of a project, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the project's termination will be reimbursed.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the Project scope, schedule and budget for this phase of work. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A "significant impact" is one that may require expenditure of the Funding Agency controlled contingency, increase the budget beyond the total

authorized budget amount shown in I, B., or delay completion of this phase of the project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:

- a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
- b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed affects to the project's scope, schedule and budget.
- c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 2..

2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

- a) All conflicts should first be discussed and resolved if at all possible by the Project Managers specified in Section II.
- b) If the conflict cannot be resolved by the Project Managers, or involves one of the Project Managers, then the conflict should be elevated to the Contract Managers specified in Section II for discussion and resolution.
- c) Any conflicts not resolved by the Contract Managers shall be elevated to the Contract Signatories for discussion and resolution.

C. Compliance with Laws. In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

D. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, City agrees to indemnify, hold harmless and defend, PDC, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PDC, its directors, employees or agents under this Agreement.

E. Subcontracting. Work under this Agreement shall not be subcontracted in whole or in part to other than City agencies, without the prior written approval of the Funding

Agency Project Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing Agency to perform work under the Agreement, and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified contractors to perform work under the Agreement. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product.

Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced in connection with this Agreement (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products. Notwithstanding anything to the contrary contained herein, the parties acknowledge that section 17.24.085 of the City Code may require that all or part of the Work Product will become the property of the City and be transferred to the City Engineer upon completion of the Project.

1. Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
2. If the parties determine that the Performing Agency is unable or unwilling to complete the Project, and the Funding Agency determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon the Funding Agency's written request the Performing Agency shall assign ownership of the Work Product to the Funding Agency.
3. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

G. Status Reports. Project Status Reports are required to be submitted beginning within 60 days after execution of this Agreement and thereafter with each billing, at least quarterly. A failure to produce Project Status Reports will be brought to the attention of the Contract Manager by the Funding Agency Project Manager. Repeated failure to submit Project Status Reports may result in the Funding Agency withholding payment.

H. Delivery / Maintenance of Records. The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency

or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

I. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the Bureau and the Portland Development Commission and, if appropriate, financed by “*the Interstate Corridor Urban Renewal Project*”.
2. For projects involving construction activities funded by the Commission, the Bureau shall display a sign near the construction site and readily visible to the public, specifying that the project is being “*funded by the Portland Development Commission’s Interstate Corridor Urban Renewal Project*”. The sign shall remain in place until construction is complete.

VI. Amendments

1. Except as otherwise provided for in this Agreement, the Bureau or PDC may amend this Agreement only in writing signed by the Contract Signatories.
2. Changes to the Schedule of Work:
 - a) Changes to the Schedule of Work, including changes to scope, schedule, and budget which do not increase the total compensation under this Intergovernmental Agreement, may be made upon written agreement by the Project Managers identified in Section II of this Agreement.
 - b) Changes will not take effect or be binding on either party until agreed to in writing.

VII. Merger Clause

This agreement contains the entire agreement between PDC and the Bureau. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

IN WITNESS WHEREOF, the City of Portland, through the Portland Department of Transportation and the Portland Development Commission has executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Susan D. Keil, Director, Portland
Department of Transportation

Bruce A. Warner, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date