

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6618

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH PORTLAND OFFICE OF TRANSPORTATION FOR THE
35 PERCENT PRELIMINARY ENGINEERING AND COST
ESTIMATING FOR THE WEST BURNSIDE/COUCH URBAN
DESIGN AND RENEWAL PROJECT; PROVIDING FUNDING IN
AN AMOUNT NOT TO EXCEED \$1,481,000**

WHEREAS, the Portland Development Commission (“PDC”) is undertaking the Downtown Waterfront Urban Renewal Project pursuant to an urban renewal plan adopted April 25, 1974, by the Portland City Council (“Council”), by Ordinance No. 31395, as subsequently amended, and the River District Urban Renewal Plan, adopted September 25, 1998 (together, the “Plans”);

WHEREAS, the Plans provide for the elimination of blight and deterioration; encourage conservation and rehabilitation of property and public facilities, redevelopment of properties not suitable for conservation and rehabilitation, and land uses which will help create a well balanced physical and economic environment; strengthened connections between the River District and its neighbors; and for enhancement of the economy and functional efficiency of the City of Portland (the “City”);

WHEREAS, the Portland Office of Transportation (“PDOT”) is responsible for transportation operations and improvements within the City public rights of way;

WHEREAS, Council adopted the Burnside Transportation and Urban Design Plan on December 11, 2002 (City Council Resolution No. 36114), which identified functional and aesthetic improvements to the right-of-way and established a blueprint for public and private investment;

WHEREAS, PDOT published the West Burnside/Couch Alternatives Analysis Report on December 1, 2006. The report recommended a couplet alignment for the West Burnside Street and NW Couch Street corridor and included a streetcar line in the alignment (collectively, the “Project”);

WHEREAS, Council adopted the West Burnside/Couch Alternatives Analysis Report on April 11, 2007 (City Council Resolution No. 36499), and directed PDOT to move forward with preliminary engineering and cost estimating for the Project. Accordingly, PDC and PDOT propose to enter into an Intergovernmental Agreement substantially in the form attached hereto as Exhibit A (the “IGA”);

WHEREAS, 64 percent of the Project area is located in the Downtown Waterfront Urban Renewal Area (“URA”) and River District URA and approximately 80 percent of the total work effort will be required within these two URAs;

WHEREAS, the total cost for the preliminary engineering and cost estimating for the Project included in the IGA is \$2,224,800, with proposed funding by PDC in the amount of \$1,481,000 with the remaining \$743,800 funded by PDOT with City of Portland General Transportation funds;

WHEREAS, for billable work completed in FY 2007-08, 50 percent of the work effort shall be allocated to the River District URA and 50 percent shall be allocated to the Downtown Waterfront URA;

WHEREAS, for billable work to be completed in FY 2008-09, 70 percent of the work effort shall be allocated to the River District URA and 30 percent shall be allocated to the Downtown Waterfront URA. Such reallocation of the funding for the respective work effort is based on the anticipated implementation of the recently amended River District URA;

WHEREAS, the funds contemplated under the IGA are included in the River District URA adopted FY 2008-09 budget. For the Downtown Waterfront URA, while the IGA will allow for the final disbursement of FY 2007-08 budgeted funds for work performed in FY 2007-08 on the Project, the proposed work in FY 2008-09 will require an amendment to the adopted FY 2008-09 budget. Such amendment will affect the allocation of funds to other projects within the Downtown Waterfront URA; and

WHEREAS, the Project will improve connections and safety across West Burnside Street, improve multi-modal facilities and vehicular access, stimulate redevelopment of vacant and underused properties, and support increased employment, housing, and retail opportunities in downtown Portland.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to enter into the IGA with PDOT, under which PDC will provide funding for the 35 percent preliminary engineering and cost estimating for the Project in an amount not to exceed \$1,481,000 subject to the authorization of the amended River District URA;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the IGA prior to and subsequent to execution, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change PDC's obligations or risks; 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
West Burnside / Couch Urban Design and Renewal Project

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 (the “City”), 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.
5. Portland City Council (“Council”), through Ordinance 181631, which was duly adopted by Council on February 27, 2008, delegated to the Director of the Bureau and the City Auditor the authority to enter into intergovernmental agreements with PDC. The form of agreement used for this Agreement is substantially similar to the template that was approved by Council through the above referenced Ordinance.
6. This form of agreement is intended for funding project phases, including, but not limited to: Project Development, Project Design, Right-of-Way Acquisition, and Construction Management and Engineering. It is not intended for the Bid and Award Phase of construction projects.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

- 1) **Background:** The Burnside Transportation and Urban Design Plan (the “Plan”) was adopted by the Council in December 2002. The Plan outlines recommendations that respond to the diverse needs of the Central City and its surrounding neighborhoods to integrate Burnside more fully into downtown Portland. The Plan’s Phase I work identifies catalyst development opportunities, recommends functional and aesthetic improvements to the right-of-way, and establishes a blueprint for public and private investment. The Plan’s implementation strategy describes a variety of tasks necessary to take the Plan from concept to construction (collectively, the “Project”).
- 2) Since 2002, the Plan’s Phase II work has been to complete conceptual design and planning work; produce an analysis and development opportunity strategy of the key development areas; and, develop a preliminary project funding and phasing strategy. As part of Phase II work, the Project was divided into four distinct segments:
 - Lower East (from East 14th Avenue to the eastside Burnside Bridgehead)
 - Lower/Central West (west end of the Burnside bridgehead to West 16th Avenue)
 - Upper West (from West 16th Avenue to West 24th Avenue)
 - Flanders Bike Boulevard
- 3) On December 1, 2006 PDOT published the West Burnside / Couch Alternatives Analysis Report that re-examined alternative alignments and recommended a couplet alignment for the Westside segments. In addition the Plan made a recommendation for adding a streetcar line to the Project corridor.
- 4) On April 11th, 2007, Council adopted the West Burnside / Couch Alternatives Analysis and directed PDOT to move forward with preliminary engineering and cost estimating for the recommended couplet and streetcar alignment adopted in the 2006 West Burnside / Couch Alternatives Analysis Report. At the completion of 35 percent engineering PDOT is to report back to Council for review of the design, a higher level of confidence cost-estimates and a proposed funding strategy.
- 5) On April 11th, 2007, Council also voted to move an alternative planned named “The Enhanced Existing Plan” to a greater level of design and planning. This portion of the Project is to be developed parallel to the 35 percent Preliminary Engineering, Specifications, and Estimating (PS&E). Funding for this portion of the Project, \$500,000, is entirely funded by general fund money.

- 6) On April 18, 2007, Council adopted the Portland Green Street Policy which directs the incorporation of BES approved Green Street technologies in city right-of-way infrastructure improvement projects.
- 7) In May of 2008, PDOT published the Amended Technical Refinements: Green Streets and Conceptual Streetcar Design Refinements Study document. The study identified the feasibility of design refinement ideas of several “green street” and streetcar plans into the Burnside Transportation and Urban Design Plan. Feasibility parameters included public preference input and spatial distribution of features.
- 8) In February 2008, PDOT and PDC executed Work Order #506000-13 for \$605,055 for preliminary engineering work on the Project in FY 07-08. A total of \$118,952 of those funds were expended in FY 07-08.
- 9) In February 2008, PDOT entered into a contract with a Survey and Mapping Consultant team to provide electronic survey and mapping for the project area boundaries. Mapping data is to be used for future preliminary engineering and estimating efforts
- 10) Work from Background Items #7 and #9 above began under Work Order #506000-13, Amendment No. 3, and has continued to the present. This work is listed in Section II, Schedule of Work and Budget as Work Items A through D.
- 11) Project area is to include (See Exhibit A for Project Area Map):
 - West Burnside from North West 2nd Ave to North West 24th Place
 - North West Couch from North West 2nd Ave. to 16th Ave.

The completion of a preliminary engineering and cost estimating package is a necessary step toward the implementation of the Plan to transform the street and to support the economic and social vitality of Burnside and the surrounding neighborhoods. These tasks are essential for evaluating future investment in the Project and creating the partnerships necessary for full implementation.

II. Schedule of Work and Budget

Plan			Proposed Budget FY 2008-09				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
A	<u>BASIS FOR DESIGN REPORT: WEST BURNSIDE /COUCH STREETCAR</u>	Jun-08	\$7,600	\$7,000	\$27,000	\$41,600	\$23,400
B	<u>BASIS FOR DESIGN REPORT: WEST BURNSIDE /COUCH GREEN STREETS</u>	Jun-08	\$11,000	\$1,000	\$26,000	\$38,000	\$21,400
C	<u>PROFESSIONAL SURVEYING AND MAPPING</u>	Jun-08	\$6,000	\$7,000	\$280,000	\$293,000	\$155,000
D	<u>SCOPING / BACKGROUND ENGINEERING</u>	Jun-08	\$30,000	\$7,000	\$0	\$37,000	\$11,000
E	<u>35% PREL. ENGINEERING, SPECIFICATIONS AND ESTIMATING</u>	Jun-09	\$320,000	\$6,400	\$520,000	\$846,400	\$473,000
E.1	<u>Data Collection Coordination</u>						
E.2	<u>Value Engineering</u>						
E.3	<u>Horizontal Curb Alignment Input and Evaluation</u>						
E.4	<u>Add Package analysis</u>						
F	<u>LOCAL FUNDING STRATEGY</u>	Jun-09	\$51,300	\$700	\$38,400	\$90,400	\$51,000
F.1	<u>Data collection / Analysis</u>						
F.4	<u>Reporting</u>						
Other	Funding Agency Controlled Contingency [Required] - 10%					\$134,600	
TOTAL	AUTHORIZED BUDGET					\$1,481,000	\$743,800

- A.** 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”. PDC shall be referred to herein as the Funding Agency.
- B.** The party performing work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency.” Bureau shall be referred to herein as the Performing Agency.
- C. 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. Bill Hoffman, Burnside / Couch Project - Project Manager
 2. Ross Swanson, West Segments Project Manager
 3. Jean Senechal -Biggs, Environmental Project Manager
 4. Lewis Wardrip, Traffic Engineering
 5. Brett Kesterson, Civil Engineering/Cost Estimating
 6. Mark Hawkins, Survey Manager
- D. Project Staffing – Funding Agency:** The following Funding Agency personnel are being assigned to perform the work described above.
1. Eric Jacobson, Project Manager
- E. Special Scope of Work Provisions.**
1. Additional Bureau staff will periodically be consulted with and asked review and approve consultant design work with regard to compliance of City operations and management issues and guidelines. Specific individual staff and scope of review is undetermined at this time. Review and consultation time may be billed to project work tasks listed in the above Schedule of Work and Budget

III. 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 (the "Bureau Project Manager"), and a Project Manager shall be designated by the Commission (the "PDC Project Manager") to carry out designated responsibilities related to the Scope of Work.
 - a) The PDC Project Manager shall be **Eric Jacobson**, or such other person as designated in writing by the Director of Development.
 - b) The Bureau Project Manager shall be **Bill Hoffman**, or such other person as designated in writing by the Director of PDOT 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 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 a 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. Eric Jacobson – PDC Project Manager – will provide guidance, prioritization and oversight of PDC's interests involving project scope, schedule and Budget.

Bill Hoffman, Burnside / Couch Project - PDOT Project Manager III – will oversee and coordinate the group of projects and contracts that relate to the Plan. This includes prioritizing schedule and scope of projects and public involvement as they relate to owners direction (Council direction, Bureau policy, partnership opportunities).

Ross Swanson, PDOT Project Manager II - will oversee the day to day operations of multiple contracts associated with the Project. Operations will include design oversight, schedule, budget, invoicing, consultant and contract management.

2. Project management between PDC and PDOT is to be a collaborative effort where all major decisions will be reviewed and discussed between the PDC and Bureau Project Managers. Regular coordination meetings with the Project Managers will be scheduled to review budgets, schedule, design, public involvement and design issues

F. Public Involvement.

1. Where Projects require public involvement, Bureau and 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 or significant project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

H. Work Product. The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence 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) Lloyd Lindley Design – Performing urban design, landscape architectural services, and public facilitation services for the Basis of Design: Green Streets work item listed above.
 - b) Portland Streetcar Inc & Lloyd Lindley - Performing conceptual street car planning and design services for the Basis of Design: Streetcar work item listed above.
 - c) Lochner Surveying and Engineering is performing electronic Survey and mapping work item services.
 - d) HHPR Engineers was is anticipated to be providing the engineering services for the Work Item PS&E listed above – pending successful contract negotiations for.
 - e) A consultant team yet to be named will perform consulting services while developing a Local Funding Strategy outlined in a future solicitation and contract.
 - f) Other Subcontractors as required – to be approved by PDC Project Managers

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. This Agreement is for planning, design and engineering to 35% PS&E only. Currently no Project funding is subject to the Percent for Art Program. Future funding for construction of the Project is expected to be subject to the Percent for Art Program; accordingly, eligible payments to RACC are expected to be provided in future eligible funding packages.

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

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

IV. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Commission shall pay Bureau a sum not to exceed **ONE MILLION FOUR HUNDRED EIGHTY ONE THOUSAND DOLLARS (\$ 1,481,000)** for accomplishment of the Schedule and Scope of Work.
- B. The funding is from the River District and Downtown Waterfront URAs. For billable work completed in FY 2007-08, the allocation of funding between the two URAs is as follows: 50 percent allocated to the River District URA and 50 percent allocated to the Downtown Waterfront URA. For billable work completed in FY 2008-09, the allocation of costs between the two URAs is as follows: 70 percent allocated to the River District and 30 percent allocated to the Downtown Waterfront URA. This change in the allocation of funding is a result of the anticipated implementation of the recently adopted amendment to the River District URA that will transfer portions of the Project area from the Downtown Waterfront URA to the River District URA. Such allocation of funding is subject to PDC's ability to implement the amended River District URA.
- C. While funding for the Project is authorized in the current fiscal year's budget for the River District URA, funding for the Downtown Waterfront URA will require an amendment to the 08-09 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 PDC Five-Year Budget Forecast, Commission staff agrees to recommend to the

Commission Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.

- D.** Other sources of funding include \$800,000 from the City's General Transportation fund for the fiscal year of 2007 / 08.

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.

Approximately 64 percent of the total Project length falls within the boundaries of the Downtown Waterfront and River District Urban Renewal Areas (URAs), while 36 percent of the study area is not located in an URA. PDC and PDOT staff have estimated that approximately 80 percent of the work effort will occur within the boundaries of the two URAs for the following reasons:

- Couplet transitions at 2nd and 15th avenues require multidisciplinary coordination for traffic, civil, rail, and structural engineering;
- Rail transitions at 2nd and 16th avenues require site-specific design rather than typical cross-section;
- Streetcar crossings at existing light rail lines on 5th and 6th avenues and streetcar lines on 10th and 11th avenues will require detailed track engineering;
- The Burnside Bridge will require detailed structural review and historical analysis;
- Of the 42 total signals that will require engineering work, 34 of those signals are located in the two URAs (20 in the River District URA and 14 in the Downtown Waterfront URA);
- Structural review and ODOT coordination will be required for the two existing bridge spans and associated ramps at the I-405 crossing;
- The vast majority of subsurface structural and basement vaults within the study area are located in the two URAs. The vaults require site-specific engineering regarding structural stability and drainage rather than typical cross sections;
- Greater efforts for utility identification and coordination will be required along the couplet portion of the Project due to the need to analyze both Burnside and NW Couch blockfaces; and
- The Project includes a shared pedestrian/vehicular streetscape along the north side of West Burnside Street between 2nd and 6th avenues. This aspect of the Project will require enhanced urban design and engineering work.

The upper West Burnside Street portion of the study area that is not located inside a URA does not involve the type of detailed, site-specific engineering as described above other than for the streetcar terminus.

Portions of both PDC's and PDOT's funds have already been expended as part of previous Work Order Agreement (506000-13 Amendment #3, approved 2/11/08). All costs listed under Section II – Scope of Work matrix, "Total PDC Budget" column reflect remaining unspent funds from the \$1.6 million PDC share. While the "Other Funding Sources" column reflects the remaining roll-over funds from PDOT's General Fund match.

- E.** Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- F.** 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.
- G. 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.
- H. 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 in Section I B Schedule of Work and Budget. These funds are intended to be used to accommodate such changes within the specific Work Item. The funds shall be managed by the Performing Agency, which shall notify the Project Manager and Contract Manager of the Funding Agency in writing of their use.
- I. Contingency Controlled by Funding Agency.** It is required that an amount for project contingency be identified in Section I B Schedule of Work and Budget. Communications regarding events that may lead to the usage of the contingency are described in Section V. B. Use of all or part of the contingency must be approved in writing by the Funding Agency, including underlying change orders.

V. 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.

VI. GENERAL

A. Termination.

1. The Termination Date of the Agreement is June 30, 2010.
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's 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, Bureau 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 Bureau, 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, Bureau, 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 PDC and, if appropriate, financed by "*West Burnside / Couch Urban Design and 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 West Burnside / Couch Urban Design and Renewal Project*". The sign shall remain in place until construction is complete.

VII. 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
(Executed under authority delegated by
Ordinance No. 181631, passed by
Council February 27, 2008.)

Bruce A. Warner, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date