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**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**Portland Development Commission**  
**And**  
**Office of Management and Finance**  
**For the**  
**Union Station Tracks and Building**  
**Preliminary Engineering and Environmental Review**

This Intergovernmental Agreement (this "Agreement"), dated this 29<sup>th</sup> day of May, 2013, ("Effective Date") is made and entered into by and between the **City of Portland, Office of Management and Finance** ("OMF" or "City") and the **Portland Development Commission** ("PDC").

**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. PDC acquired Union Station property located at 800 NW 6th Avenue, Portland, Oregon 97209 ("Union Station") to meet the objectives of the Downtown Waterfront Urban Renewal Plan.
3. In 2008, Union Station and certain surrounding property were removed from the Downtown Waterfront Urban Renewal Area and, in 2009, added to the River District Urban Renewal Area, and the Amended and Restated River District Urban Renewal Plan expressly contemplates rehabilitation of Union Station as part of the anticipated redevelopment and development of surrounding areas.
4. Portland's Union Station was completed in 1896; The Portland Development Commission acquired the station in 1987 from the Portland Terminal Railroad Company.
5. In 2000, the Union Station Facility Assessment and Seismic Work Plan was prepared to provide a high level summary of improvements required at the facility; and in 2007 an update of the associated preliminary cost estimates was completed.
6. Previously completed work at Union Station has addressed several critically-needed repairs, but more work is needed to bring the station and adjoining tracks into a state of good repair.
7. Pursuant to the Federal Rail Administration ("FRA") Grant/Cooperative Agreement Number FR-HSR-0094-11-01-00, dated September 23, 2011, incorporated herein by this reference and made a part of this Agreement, the Oregon Department of Transportation ("ODOT") is granted statutory authority to conduct and fund the Portland Union Station Tracks and Building Preliminary Engineering and Environmental Review.

8. Pursuant to the Intergovernmental Agreement between ODOT and PDC for Project Name: Portland Union Station Tracks & Building PE/NEPA ("ODOT Agreement"), dated March 25, 2013, incorporated herein by this reference and made a part of this Agreement, ODOT has committed to provide High Speed Intercity Passenger Rail ("HSIPR") grant funds received from the FRA (the "HSIPR Grant") to PDC for the purpose of completing preliminary engineering ("PE") and environmental review ("NEPA") of additional building and track/platform upgrades.
9. The completion of the PE and NEPA tasks for the building and track/platform upgrades ("Project") will inform the design, cost, and schedule for improvements to be completed in future final design and construction phase(s).
10. Improvements to the passenger building will preserve the historic facility, increase energy efficiency, help return the facility to a state of good repair, and improve passenger safety and accessibility; Improvements to the tracks and platforms are expected to improve yard ingress/egress, ADA accessibility, and functionality of the electrical, storm, and water systems in this area.
11. The Office of Management and Finance ("OMF") has knowledge of the existing conditions of Union Station and provides day-to-day property management services for Union Station; therefore both parties desire to enter into an agreement that will establish terms and conditions by which PDC will engage and compensate OMF for performing specific services to further the completion of the tasks contemplated in the ODOT Agreement.

Now therefore, the parties agree as follows:

## AGREEMENT

### I. Scope of Work

Advisory Services. OMF will participate and assist in the PDC-led completion of the tasks identified in Exhibit A in accordance with the schedule set forth therein. The tasks identified in Exhibit A are part of the Project. OMF participation is anticipated to include, but not be limited to: attendance in regular and/or significant Project team meetings; participate on consultant selection teams; review and comment on draft deliverables; evaluation and prioritization of design alternatives, schedule impacts, future construction sequencing and environmental review considerations; research and provide information regarding existing property conditions, operations, maintenance, tenants and uses; and other Project needs as identified by PDC.

## II. CONTRACT MANAGEMENT

### A. PDC

1. Contract Signatory. The PDC Contract Signatory shall be Patrick Quinton, 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 PDC actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The PDC Contract Manager shall be Melissa Nelson ("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. OMF

1. OMF Contract Signatory. The OMF Contract Signatory shall be Bryant Enge, or such other person as designated in writing by the Director of the Office of Management and Finance ("OMF Contract Signatory"). The OMF 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 V.
2. OMF Contract Manager. The OMF Contract Manager shall be Bob Kieta ("OMF Contract Manager"). The OMF 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 OMF ("OMF Project Manager"), and a Project Manager shall be designated by the PDC ("PDC Project Manager") to carry out designated responsibilities related to the Project.
  - a) The PDC Project Manager ("PDC Project Manager") shall be Dave Obern, or such other person as designated in writing by the Asset Management Division Manager in the Finance & Business Operations Department of the Portland Development Commission.
  - b) The OMF Project Manager ("OMF Project Manager") shall be Jim Coker, or such other person as designated in writing by the Manager of Facilities Services in the Business Operations division of the Office of Management and Finance 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 Project, then the respective Contract Manager shall designate a replacement Project Manager. If a

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replacement Project Manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities related to the Project.

3. The PDC Contract Manager and the OMF Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either the PDC or OMF desires to replace a Project Manager, or other key staff identified below, 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 Project accordingly to provide adequate time to make such change.

**D. OMF Project Staffing:** The following OMF personnel are being assigned to perform OMF's obligations under this Agreement. Only work on the Project performed by personnel listed below, or work of personnel subsequently determined by OMF as necessary to the Project, shall be reimbursed.

1. Bob Kieta, Facilities Operations Manager
2. Jim Coker, Supervising Project Manager
3. Wendy Gibson, Operations Manager

**E. PDC Project Staffing:** The following PDC personnel are being assigned to the Project.

1. Jina Bjelland, Asset Management Division Manager
2. Dave Obern, Construction & Environmental Services Manager
3. Elise Hendrickson, Construction Coordinator
4. Colin Polk, Environmental Coordinator
5. Wendy Wilcox, Construction Specialist
6. Sarah Harpole, Senior Project Manager

**F. Approvals.**

1. No work shall be performed and no funds shall be obligated until this Agreement is executed.
2. OMF is not obligated to perform, and PDC is not authorized to pay for, any work not identified in the Scope of Work and Budget.

**G. Project Management.**

1. PDC and OMF agree that the success of the Project is the highest priority and both commit to have their representatives fully engaged to ensure successful

completion of the Scope of Work under this Agreement and compliance with the ODOT Agreement and HSIPR Grant.

2. The OMF project manager shall be responsible for informing and seeking input from other staff at OMF to ensure the Project team and other OMF staff working on Union Station are adequately informed and coordinated.
3. The PDC project manager will provide the OMF project manager with reasonable notice to attend all regular or significant Project meetings organized for the Project, as deemed appropriate by PDC.
4. The PDC project manager will provide reasonable time for review and comment on draft materials when input from OMF is desired, to the extent practicable given Project constraints and/or grant requirements.
5. PDC shall have the sole authority to select, manage and direct the work of any consultants procured by PDC.
6. PDC will serve as the primary point of contact for any written or oral communication with ODOT or FRA regarding grant-related issues. OMF shall notify PDC of any Project-related communications with ODOT or FRA.

#### **H. Public Involvement.**

1. OMF and PDC 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.
2. Each project manager will inform the other project manager 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. To the extent practicable, PDC will serve as the primary point of contact and information for the media or press.

#### **I. Regional Arts & Culture Council (RACC) – Percent for Art Program.** City Code Section 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art.

1. This Agreement does not have Eligible Costs for the Percent for Art Program, as described in City Code Section 5.74.020 and/or this Agreement does not have Eligible Funds for the Percent for Art Program as described in City Code Section 5.74.020.C.

### III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. PDC shall pay OMF a sum not to exceed **ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000)** for accomplishment of the authorized work performed on the Project and within the Scope of Work, subject to budget authorization by PDC.
- B. The funding is provided from the HSIPR Grant and, by PDC, from the *River District Urban Renewal Area*.
- 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 PDC 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, PDC staff agrees to recommend to the PDC Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. [Section Reserved]
- E. PDC 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.
- F. OMF may seek reimbursement from PDC for the following costs, subject to the expenditure of these funds being for approved activities performed on the Project; within the Scope of Work; and to the extent they are in compliance with the terms of the HSIPR Grant and the ODOT Agreement and are allowable costs as set forth in the standards of OMB Circular A-87, "Revised Cost Principles for State and Local Governments" ("Allowable Costs").
  - 1. Direct Costs
    - a) Personal Services. Reimbursement for direct wages and fully loaded benefits paid to personnel engaged in authorized work under this agreement. Such reimbursement shall be calculated at the base hourly rate established by OMF.
    - b) Materials & Services. Actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and OMF support staff personal services where the expenditure is for carrying out authorized work performed on the Project and within the Scope of Work.
  - 2. The PDC Project Manager shall be immediately notified of any actual or anticipated variance between the maximum payment to OMF under this Agreement (as set forth in Section III(A)) and the billable hours necessary to

complete the requested work. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, PDC shall not be obligated to make payments for costs that exceed the maximum payment amount.

- G. Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
- H. Indirect Costs. Indirect Costs of OMF will not be reimbursed as an eligible expense under this Agreement.

#### IV. BILLING AND PAYMENT PROCEDURE

- A. OMF shall submit to PDC a separate itemized billing for work performed by task as described in the Scope of Work for review and approval at least quarterly, or as required by ODOT or FRA grant representatives.
  - 1. In order to receive timely payment, interim billings must be received no later than thirty (30) days following the end of a billing period.
  - 2. Final billings upon termination or early termination of this 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, PDC will have no obligation to honor late billings.
- B. Each billing shall include a Billing Detail Report in a format created and/or approved by PDC and OMF. At a minimum, each billing shall include:
  - 1. a description of the nature and cost of work accomplished, by task;
  - 2. the names, rates and hours worked of personnel; and
  - 3. any other specific detail or documentation as desired by the PDC Contract Manager, ODOT, or FRA.
- C. If billings are received with incomplete information or disputed items, the PDC will advise OMF in writing what specific information is missing or disputed. The PDC will proceed to process payment for items not in dispute.

#### V. GENERAL

##### A. Termination.

- 1. The Termination Date of this Agreement is December 30, 2015.
- 2. Early Termination of Agreement.
  - a) This Agreement may be terminated at any time by mutual written consent.

- b) Commencement of any work associated with Tasks A or B described in Exhibit A is subject to approval by FRA. If such authorization is not received, PDC may terminate this Agreement.
- c) PDC may terminate this Agreement effective upon written notice to OMF if PDC fails to receive funding (including but not limited to HSIPR Grant funds from ODOT), appropriations, limitations or other expenditure authority sufficient to allow PDC, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- d) PDC may terminate this Agreement effective upon written notice to OMF if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or PDC is prohibited from paying for such work from the planned funding source.
- e) PDC may terminate this Agreement effective upon delivery of written notice to OMF, or at such later date as may be established by PDC, if OMF fails to perform or comply with any provisions of this Agreement, or so fails to pursue the work as to endanger performance of the ODOT Agreement in accordance with its terms.
- f) In the event of early termination of this Agreement, 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 Agreement's termination will be reimbursed.

2. Sections V(D), V(E) and V(G) shall survive termination of this Agreement.

**B. Conflict Resolution.**

- 1. 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.
  - 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.
  - 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 without the prior written approval of the PDC Project Manager.

**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.

1. PDC shall own all final Work Products upon completion and acceptance by PDC.
2. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

**G. Delivery / Maintenance of Records.** OMF shall maintain records on a current basis to support its billings to PDC. PDC or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of OMF regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

**VI. Amendments**

1. Except as otherwise provided for in this Agreement, OMF or PDC may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope and Schedule of Work:

- a) Changes to the Scope and Schedule of Work, including changes to scope and schedule which do not increase the maximum permissible reimbursement by a party, as set forth in Section III, 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 OMF. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

## **VIII. Miscellaneous Provisions**

The Project shall be implemented consistent with the terms of the ODOT Agreement. OMF and PDC agree to comply with all of the provisions and terms and conditions of the FRA Grant/Cooperative Agreement Number FR-HSR-0094-11-01-00, as identified and incorporated into this Agreement by Recitals, Paragraph 7, above, and of the ODOT Agreement, as identified and incorporated into this Agreement by Recitals, Paragraph 8, above, in their entirety, as such agreements may be amended from time to time.

[Signature page to follow]

IN WITNESS WHEREOF, OMF and PDC have executed this Agreement as of the Effective Date.

**CITY OF PORTLAND****PORTLAND DEVELOPMENT COMMISSION**

*Bryant Enge by RAK*

Bryant Enge, Director  
Bureau of Internal Business Services

Patrick Quinton, Executive Director

*5-29-13*

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date

Mayor Charlie Hales

Date

## Exhibit A: Project Tasks

| SCOPE                |                                                                                     | SCHEDULE        |
|----------------------|-------------------------------------------------------------------------------------|-----------------|
| <i>Subproject</i>    | <i>Task</i>                                                                         | <i>Due Date</i> |
| N/A                  | <b>Project Management</b>                                                           | <b>4/30/15</b>  |
|                      | 1.1 Detailed Work Plan & Budget (Contracted Services)                               | 8/31/13         |
|                      | 1.2 Project Management & Grant Administration (Staff/Contracted Project Management) |                 |
| A - Building:        | <b>Preliminary Engineering (Contracted Services)</b>                                | <b>3/31/15</b>  |
|                      | A2.1 Preliminary Building Design (Conceptual, Schematic, 60% DD)                    |                 |
|                      | A2.2 Revised Construction Project Cost Estimate for Final Design and Construction   |                 |
|                      | A2.3 Revised Construction Project Implementation Schedule                           |                 |
|                      | A2.4 Revised Construction Project Benefits Estimate                                 |                 |
|                      | A2.5 Project Management Documentation                                               |                 |
|                      | A2.6 Financial Planning Documentation                                               |                 |
| A - Building:        | <b>Environmental (Contracted Services)</b>                                          | <b>3/31/15</b>  |
|                      | A3.1 Draft Environmental Review Document or CE Worksheet                            | 12/31/14        |
|                      | A3.2 Final Environmental Document                                                   |                 |
| B - Tracks/Platform: | <b>Preliminary Engineering (Contracted Services)</b>                                | <b>3/31/15</b>  |
|                      | B2.1 Preliminary Building Design (Conceptual, Schematic, 60% DD)                    |                 |
|                      | B2.2 Revised Construction Project Cost Estimate for Final Design and Construction   |                 |
|                      | B2.3 Revised Construction Project Implementation Schedule                           |                 |
|                      | B2.4 Revised Construction Project Benefits Estimate                                 |                 |
|                      | B2.5 Project Management Documentation                                               |                 |
|                      | B2.6 Financial Planning Documentation                                               |                 |
| B - Tracks/Platform: | <b>Environmental (Contracted Services)</b>                                          | <b>3/31/15</b>  |
|                      | B3.1 Draft Environmental Review Document or CE Worksheet                            | 12/31/14        |
|                      | B3.2 Final Environmental Document                                                   |                 |