

INTERGOVERNMENTAL AGREEMENT Justice Center Bus Duct Replacement Project

This Intergovernmental Agreement (“IGA”) is entered into by and between the City of Portland (“City”), and Multnomah County (“County”), each a “Party” and collectively, the “Parties.”

This IGA is authorized pursuant to ORS 190.110, City [Ordinance/Resolution] No. _____, County [Ordinance/Resolution] No. _____ and becomes effective upon full execution by the Parties.

PURPOSE

City and County desire to work together to replace the bus duct system at the Justice Center (the “Project”), which is a common element pursuant to the condominium agreement to which both the City and the County are parties. The Justice Center’s bus duct system is composed of incoming building electrical service, busway risers, and electrical distribution equipment, which are mostly of original construction (1981). These components are fast approaching the end of their useful life and are at risk of failure. The Project will focus primarily on replacement of the main incoming electrical service and busway risers because the failure of these components would result in a significant, if not complete, electrical outage throughout the entire building. An electrical outage at the Justice Center should be avoided at all costs due to the nature of the services provided at the Justice Center, including intake and release for Portland Police to the Multnomah County jail system, Multnomah County’s maximum security jail, a City of Portland police precinct, police offices, and arraignment courtrooms. These functions cannot be performed at other locations without performing significant planning and incurring substantial costs, which makes this a time-critical Project.

By this IGA, the County agrees to manage the design and construction of the Project as more fully described in attached Exhibit A - Statement of Work, and Exhibit B – Anticipated Project Budget and Work Schedule, and the City agrees to reimburse the County for costs associated with the Project as described in this IGA.

GENERAL PROVISIONS

1. Effective Date and Duration. This IGA is effective upon execution by all Parties. Unless earlier terminated pursuant to Section 8 or extended, this IGA shall expire when the Project is completed and paid for by the Parties, as described herein. Contract termination shall not extinguish or prejudice either Party’s right to enforce this IGA with respect to any uncured default, or breach.
2. Project Costs. The costs of the Project shall be apportioned as follows: County is responsible for 57.91% plus the Elevator #2 Cost Credit (as defined herein), City is responsible for 41.34% less the Elevator #2 Cost Credit, and the owner of Unit 4 is responsible for 0.75%. The Parties will be responsible for their own escort costs for work conducted within each Party’s owned space, and as required for their respective operational needs. Escort costs on Lower Level 2 in the common walkway will be paid by the County. It is assumed that no escort will be required for Unit 4, and the other common areas, but if an escort is required, the escort costs shall be paid by the County. The County will not be reimbursed for design costs that it expended on the Project in Fiscal Years 2021-2022 or prior, and accordingly these costs are not included in the figures in Exhibit B.

The City recently completed upgrades to Elevator #2 of the Justice Center. The County and its consultants have identified a route for the electrical wiring that uses the shaft in which City’s Elevator #2 operates. This has been vetted as a lower cost option and also poses fewer risks than

using the existing utility shaft but will also decommission this elevator for use by the City in perpetuity. In exchange for the use of City's Elevator #2 for the Project, County will provide the City with a Project cost credit of \$428,000 (the "Elevator #2 Cost Credit") thereby reducing amounts owed to the County for the Project as described above. The Elevator #2 Cost Credit will be applied as compensation to the County from the City for payment of the City's allocable portion of Project Costs during the first year of construction.

3. **Project Managers.** Each Party has designated a Project Manager to be its formal representative for the Project. All reports, notices, and other communications required under or relating to this IGA, or the Project, shall be directed to the Project Managers indicated below.

The County's Project Manager shall manage the day-to-day activities of the Project. This shall include coordination with the design team, stakeholders and the construction contractor. Other County Facilities' staff time devoted to the Project shall be charged to the Project and included in the total Project costs subject to apportionment as required by Section 2. County trades time will be limited to trades staff working directly on the Project related to the portions of the Project that are of shared interest with the City. It will not include any work related to the detention electronics system.

City Project Manager

Name: Jeremy Hunt

Title: Facilities Capital Asset Management Supervisor, Office of Management and Finance

Address: 1120 SW Fifth Ave., Suite 1250

Portland, OR 97204

Phone: (503) 823-8010

Email: jeremy.hunt@portlandoregon.gov

County Project Manager

Name: JD Deschamps, PE

Title: Senior Project Manager, Multnomah County Facilities & Property Management

Address: 401 N Dixon Street, Portland, OR 97227

Phone: (503) 988-4615

Email: jd.deschamps@multco.us

4. **Amendments.** The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by mutual written consent of both Parties.
5. **Reimbursement to the County.**
Reimbursement Timing: The County Project Manager shall submit to the City Project Manager an itemized list with backup invoices (a "Project Reimbursement Request") no more than once per month for reimbursement of Project costs incurred. The City shall approve and pay all Project Reimbursement Requests within [thirty (30) days] of receipt.
6. **Construction.**
 - A. All construction documentation will be the property of both the County and the City, and all documentation, including as-builts, will be readily available or provided to both Parties as the Project progresses and upon close out.
 - B. All surety bonds (performance, payments, and warranties) shall be provided to protect all owners of the Project.

7. Construction Changes.

- A. Because of the complexity of the Project and the potential unknowns that could be discovered in the field, City and County recognize and acknowledge that while County commits that it will do as much as it can to manage the Project in a way that avoids overruns, and to have a high confidence in the cost estimates produced in relation to the Project, there may be a significant number of changes required to the plans and specifications during construction which could increase Project costs and duration. Upon discovery of previously unknown issues, County shall promptly inform City as to whether and how the issue will impact the Project scope, timeline or approved budget; whether the issue is a unit owner responsibility, a shared responsibility of multiple unit owners, or a common element expense; an assessment of whether the Project may still proceed without addressing the discovered issue and any significant risks; and if the discovered issue must be addressed during the Project. County will be responsible for outlining multiple cost effective and reasonable options for consideration by both Parties.
- B. County and City agree to make timely responses as appropriate and required to keep the Project progressing pursuant to the Project schedule. Should the project schedule need to be amended, it will be done by mutual agreement and documented by mutual written consent.
- C. The City and County Project Managers shall meet monthly to review Project budget status and construction change orders. Change orders up to \$100,000 may be approved by the designated City and County Project Managers. Change orders greater than \$100,000 shall be elevated to the City's Division of Asset Management Manager and County's Facilities Director for mutual approval prior to the County's decision to incur such costs and obligate the City under this IGA. The City representatives' authority to approve change orders is limited to the annual City budget appropriation for this Project and the City Ordinance authorizing this Agreement. Individually and cumulatively, changes orders may not increase the City's overall financial liability; the current estimated City overall financial liability is approximately \$12,500,000, as noted in Exhibit B. Any change order which would increase the City's legal risks, would exceed available funds appropriated in the City's annual budget, or would increase the City's share of the overall Project cost shall require assessment of legal and financial risks by the City Attorney and subject to approval of the Mayor.

8. Early Termination.

- A. The Parties may mutually agree in writing to terminate this IGA upon terms and conditions that they will prescribe at such time.
- B. A Party may terminate this IGA for failure of the other Party to comply with the material terms and conditions of this IGA. Termination under this Article shall be available only upon the exercise and exhaustion of compliance with the "Dispute Resolution" provisions of this IGA, and the issuance of a written thirty (30) day notice from the Party seeking termination to the other Party.

9. Dispute Resolution.

- A. To the extent permitted by law, any disagreement, matters in question, or dispute, between the Parties arising out of or relating to the Project or this IGA (a "Dispute") shall be resolved pursuant to this Section 8 ("Dispute Resolution"). Dispute Resolution does not

apply where a decision or approval is subject to the Party's sole discretion; however, to the extent that such a decision is subject to a Party's "reasonable discretion," the reasonableness of the decision shall be subject to Dispute Resolution.

- B. In the event either Party believes a Dispute exists, it shall give notice to the other specifying in reasonable detail the nature of such Dispute. The Parties shall seek in good faith to negotiate a resolution of the Dispute including, without limitation, by agreeing to reasonable requests of the other to hold a meeting to discuss such Dispute.
 - C. If the Parties are unable to resolve their Dispute in accordance with this Section 8, it is agreed that such Dispute will be submitted to a mediator prior to any litigation, and the Parties hereby expressly agree that no claim or Dispute arising under the terms of this IGA shall be resolved other than first through good faith negotiation, then through mediation and, only in the event said mediation efforts fail, through litigation. Any litigation involving or relating to the terms of this IGA or the Exhibits attached hereto shall be tried to the court without a jury, and each Party shall be responsible for payment of its own costs and expenses including, without limitation, attorney fees. Any litigation arising from or related to this IGA shall be conducted solely and exclusively in the Circuit Court of Multnomah County. THE PARTIES, BY EXECUTION OF THIS IGA, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURT. Except as provided in this Section, neither Party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either Party does not have the right to seek judicial enforcement of this IGA.
 - D. The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both Parties. Mediation will be conducted in Portland, Oregon, unless both Parties agree in writing otherwise. Both Parties agree to exercise good faith efforts to resolve disputes covered by this Section through this mediation process. If a Party requests mediation and the other Party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either Party. The Parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.
 - E. **Unless otherwise agreed in writing, during the period that any mediation or litigation is pending under this IGA, the Parties shall continue to comply with all terms and provisions of this IGA, which are not subject to the Dispute. Notwithstanding anything herein to the contrary, pending final resolution of any Dispute, except as otherwise agreed in writing, the Project shall proceed through completion in accordance with the Project schedule, and the Parties shall continue to make timely payments for Project costs in accordance with this IGA.**
10. Captions. The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.
11. Choice of Law. Oregon law shall govern this IGA and all rights, obligations and disputes arising out of the IGA without regard to principles of conflicts of law.

12. Severability/Survival. If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.
13. Ownership of Work Product. All work product, including reports, research data in hard copy or electronic form that result from this IGA, are the joint property of City and County.
14. Access to Records. Both Parties and their duly authorized representatives shall have access to the other Party's books, documents, papers, and records which are directly pertinent to this IGA, for the purpose of making audits, examinations, excerpts, and transcripts.
15. Subcontracts and Assignment. Neither Party will subcontract or assign any part of this IGA without the written consent of the other Party.
16. Compliance with Applicable Law. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Project under this IGA.
17. Non-Discrimination. Each Party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
18. Insurance. Each Party shall be responsible for providing workers' compensation insurance as required by law. Neither Party shall be required to provide or show proof of any other insurance coverage. The City shall be made an additional insured party in all County contracts related to this Project.
19. No Third-Party Beneficiary. City and County are the only Parties to this IGA and, as such, are the only Parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
20. Indemnification. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), including without limitation, specifically subject to and within the financial limits and conditions set forth at ORS 30.272 for local public bodies and at ORS 30.273 for public bodies, each Party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action arising from this IGA or arising out of or resulting from the acts or omissions of the indemnitor, its employees, agents, or representatives in connection with or arising out of the Project. The Parties' indemnity obligations shall survive the termination of this IGA. All County contractors shall be required to indemnify, defend, and hold harmless the City.
21. Merger Clause. This IGA constitutes the entire agreement between the Parties pertaining to the subject matter hereof. No waiver, consent, modification or change of terms of this IGA shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this IGA.

This IGA may be signed in two (2) or more counterparts, each of which shall be deemed an original and which, when taken together, shall constitute one and the same agreement. The Parties agree that City and County may execute this Agreement, including any contract amendments, by electronic means, including the use of electronic signatures.

CITY OF PORTLAND

MULTNOMAH COUNTY

By: _____

By: _____

Date: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

City Attorney

By _____
Assistant County Attorney

EXHIBIT A: STATEMENT OF WORK

1. LRS Architects, Inc. (“LRS”) and its sub-consultants shall provide design services for the replacement of the bus duct system, including architectural and electrical design, and possibly structural upgrades or design related to relocating MEP systems depending on the progression of the design.
2. The County has had a third-party cost estimate and constructability review performed on the 90% drawings.
3. The County shall coordinate design and construction with the Multnomah County Sheriff’s Office, City of Portland Police Bureau, and the City’s Project Manager.
4. The County shall lead the construction bidding and evaluation of bids, negotiation and award.
5. The County shall lead the negotiation and leasing of space, if applicable, within the Justice Center for lay-down areas and meeting space for the Contractor.
6. Contractor shall be responsible for ordering of materials and construction of the bus duct replacement while coordinating any limited shutdowns with building users.
7. The building will remain open and operational for the duration of construction.
8. The PGE electrical vault will require upgrades that will be performed by the Contractor.
9. Project administration from design through Project close out shall be performed by the County. LRS shall support the County with this scope of work.

EXHIBIT B: ANTICIPATED PROJECT BUDGET & WORK SCHEDULE

The City and County shall cooperate and exercise good faith efforts to provide documents, review, comment, and resolve comments on plans and specifications so that the Project schedule milestones are met. The Parties agree that, should the Project schedule be revised in the future, they shall make best efforts to comply with the updated schedule milestones.

PROJECT BUDGET

The Project budget is estimated to be approximately \$30,000,000 with funding milestones and total anticipated commitments for both Parties as noted in the chart below. This amount includes what is considered the base scope of work, estimated at \$25.5 million, and \$4.5 million in related electrical system work that is logical to undertake concurrently with the base scope of work. By signing this IGA, both Parties agree that they will have secured adequate funding by the dates articulated in the table; likewise, that they will be able to secure funding for any agreed-upon change orders that create cost overruns in relation to the table below.

Anticipated 5-Year Cost Spread, Apportioned by Owner				
Fiscal Year	Total	City (41.34%)	County (57.91%)	Unit 4 Owner (0.75%)
FY 23-24	\$650,000	\$268,710	\$376,415	\$4,875
FY 24-25	\$2,750,000	\$1,136,850	\$1,592,525	\$20,625
FY 25-26	\$12,000,000	\$4,960,800	\$6,949,200	\$90,000
FY 26-27	\$11,100,000	\$4,588,740	\$6,428,010	\$83,250
FY 27-28	\$3,500,000	\$1,446,900	\$2,026,850	\$26,250
TOTALS	\$30,000,000	\$12,402,000	\$17,373,000	\$225,000

PROJECT SCHEDULE

Bidding of the Project will occur in mid-2023 and construction will start in the winter of 2023. The duration of construction is estimated to be between 5 and 8 years.