

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Bureau of Transportation
For the
SE Center Street / Earl Boyles Park Frontage Improvements Project:
Design & Construction Phases

This Intergovernmental Agreement (this "Agreement"), dated this _____ day of _____, 20__, ("Effective Date") is made and entered into by and between the **City of Portland, Bureau of Transportation** (the "Bureau") 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. The Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between PDC 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. The Project

A. Background

The City of Portland Bureau of Parks and Recreation ("Parks") previously participated in the Boise/Earl Boyles Park Local Improvement District to improve Earl Boyles Park's SE Boise Street frontage along the south side of Earl Boyles Park. This frontage improvement was completed at no cost to PDC, and was assessed to the Bureau of Parks and Recreation and one other property owner with the passage of Ordinance No. 176683 on July 3, 2002.

The 10800 and 10900 blocks of SE Center Street is the last remaining frontage abutting Earl Boyles Park not improved to City standards except for a “paper” right-of-way abutting the 10800 block of SE Francis Street on the north side of Earl Boyles Park, which is not an existing passable street and is not currently used by the public for transportation purposes. Design work for these remaining blocks of SE Center Street has been completed, with funding equally shared between PDC and the Parks.

Improvements to Earl Boyles Park were dedicated on July 9, 2007, which has increased usage of the park. The lack of street frontage improvements and a designated parking area has resulted in parking conflicts between park users and residents of 10808 SE Center Street, 10820 SE Center Street, 10828 SE Center Street, 10832 SE Center Street and 10906 SE Center Street on the south side of Earl Boyles Park. These parking conflicts in turn jeopardize emergency access for park users and local residents.

PDC’s funding will construct 330 centerline feet of street improvements on SE Center Street to address these park access and parking issues.

B. Summary of Work and Budget

1. Work Scope Summary

- Calculate quantities, prepare specifications and estimate beginning on January 5, 2010.
- Advertise for bids on or after February 8, 2010.
- Bid opening on or after February 25, 2010.
- Council award of contract on or after April 15, 2010.
- Begin construction on or after April 16, 2010.

2. Budget summary

Work Item	FY10	FY11	Total
Project Management	\$ 1,000	\$ 4,900	\$ 5,900
Preliminary Engineering	\$ 10,200	\$ -	\$ 10,200
Construction Engineering	\$ 33,400	\$ 11,600	\$ 45,000
Construction	\$ 35,400	\$ 38,500	\$ 73,900
Change Management	\$ 8,900	\$ 6,200	\$ 15,100
Total	\$ 88,900	\$ 61,200	\$ 150,100

3. Detailed description of the scope and the budget

Project Management:

Outreach to property owners, including Parks, in advance of and during construction; coordinate preliminary engineering and construction engineering tasks detailed below.

Preliminary Engineering

Print plans, finalize quantities and specifications, advertise for bids, award contract.

Construction Engineering

Contract management.

Change Management

Accommodates field changes or other issues arising during construction; controlled by the Bureau, which is the Responsible Bureau for the contract.

II. CONTRACT MANAGEMENT

- 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 the Work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. The Bureau shall be referred to herein as the Performing Agency.
- C. Funding Agency.**
1. Contract Signatory. The Funding Agency Contract Signatory shall be Bruce A. Warner, or such other person as designated in writing by the Funding Agency Director (the "Funding Agency Contract Signatory"). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
 2. Contract Manager. The Funding Agency Contract Manager shall be Lois Cortell (the “Funding Agency Contract Manager”). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.
- D. Performing Agency.**
1. Contract Signatory. The Performing Agency Contract Signatory shall be Susan D. Keil, or such other person as designated in writing by the Director (the "Performing Agency Contract Signatory"). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.

2. **Contract Manager.** The Performing Agency Contract Manager shall be Kathryn Levine (the "Performing Agency Contract Manager"). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. A project manager shall be designated by Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by Funding Agency (the "Performing Agency Project Manager") to carry out the responsibilities designated in this Agreement.
 - a) The Funding Agency Project Manager shall be Kevin Cronin, or such other person as designated in writing by Amy Miller Dowell.
 - b) The Performing Agency Project Manager shall be Andrew Aebi, or such other person as designated in writing by Kathryn Levine and approved by the Funding Agency Project Manager.
2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, 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 this Agreement.
3. The Funding Agency Contract Manager and the Performing Agency Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either PDC or the Bureau desires to replace a project manager, or other key staff identified in section II.F. or section II.G. of this Agreement, the party's contract manager shall notify the other contract manager in writing, and if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

F. Project Staffing – Performing Agency: The following Performing Agency personnel are being assigned to perform the Work. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for performance of the Work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform the Work, and 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 shall be deemed as authorizing those identified personnel to perform the Work.
[INSTRUCTIONS: Name and title only, no hourly rate needed. It is okay to list a significant 'unfilled' position by title to acknowledge involvement of someone. DO NOT include personnel that are part of 'overhead' (e.g., bureau director).]

1. Andrew Aebi, Project Manager
2. Ruthanne Bennett, Design Engineer
3. Lola Gailey, Supervising Engineer

G. Project Staffing – Funding Agency: The following Funding Agency personnel are being assigned to perform the Work.

1. Kevin Cronin, Senior Project Manager
2. Sue Lewis, Project Manager
3. Amy Miller Dowell, Neighborhood Manager

H. Approvals.

1. No construction work shall be performed and no funds shall be obligated until this Agreement is executed; however, preparation of the bid package will begin on January 5, 2010.
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 and Budget.

I. Project Management.

1. The project manager will complete the project management tasks identified on page 3.
2. The project manager will notify the PDC project manager in writing of any material changes to scope, schedule or budget for this project.
3. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter at a frequency of 90 days. Reports will be submitted in writing concurrent with billings to PDC.
4. No project kickoff meeting will be held; however the PDC project manager will be invited to the preconstruction meeting following Council award of the contract.

J. Public Involvement.

1. Where projects require public involvement, the Bureau and PDC will collaborate on design of the public involvement plan that is endorsed by both project managers.
2. The Bureau 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.
3. 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.

- K. Meeting Participation.** Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project, except that the PDC project manager will not normally attend weekly construction meetings with the contractor.
- L. 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.
- M. Subcontractors.** A subcontractor is any other entity that the Performing Agency uses to carry out all or part of the Work.
1. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the Funding Agency Project Manager:
 - a) None until contract award.
 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 and Budget.
- N. 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 includes Eligible Costs and/or Eligible Funds for work conducted by the Bureau. The Bureau is responsible for fulfilling the requirements.
 2. Payments to RACC will be calculated based on the Eligible Costs of an Improvement Project and will be made in full upon issuance of the construction contract and is currently estimated at \$1,478.00.
 3. A Funding Agency representative will not be included in the Selection Panel as per City Code Section 5.74.020.F. A Performing Agency representative will not be included in the Selection Panel as per City Code Section 5.74.020.F. Payment will be made directly by the Bureau to RACC.

O. Business and Workforce Equity

1. PDC's Business and Workforce Equity Policy (the "Policy") shall apply if the Project is anticipated to have hard construction costs greater than \$200,000 and PDC's compensation under this Agreement is more than \$100,000. If the Policy applies, PDC's utilization goal for Emerging Small Businesses and Women and Minority owned-businesses (collectively, "M/W/ESBs") is twenty percent (20%) of the hard construction costs ("PDC's Goal") of the Project. In the event that the Performing Agency has an M/W/ESB utilization goal that is greater than PDC's Goal, such greater goal shall apply to the Project. The goals described in the Policy are aspirational only. There will be no legal consequence, including but not limited to termination, damages or liquidated damages, on account of the Performing Agency's failure to realize the goals described in the Policy. Nothing in this Agreement shall require the Performing Agency to discriminate in the award of contracts on the basis of race, sex or other impermissible criterion, or otherwise to violate the law.
[INSTRUCTIONS: contact Linda Andrews, PDC Purchasing Manager, or Lisa Gramp, PDC attorney, with questions related to PDC's goals.]
2. Outreach materials will be translated into Russian and Vietnamese to reflect the diversity of property owners adjacent to the project.

P. Special Contract Management Provisions

1. The PDC Contract Manager shall be informed in advance of any change orders in excess of \$5,000 following contract award.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed **ONE-HUNDRED FIFTY-THOUSAND DOLLARS (\$150,000.00)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from Lents Town Center Urban Renewal Area funds.
- C. The full amount of funds is not currently authorized in the current fiscal year's budget. The funds will be encumbered upon Council passage of the grant acceptance ordinance on or after February 3, 2010. All funding is subject to budget appropriation. Funding has been identified in the Portland Development Commission Five-Year Budget Forecast, and 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. 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.
- E. The Performing Agency may seek reimbursement from the Funding Agency for the following costs, subject to the expenditure of these funds for performance of the

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. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
- b) Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.
- c) Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and the Bureau or PDC support staff personal services where the expenditure is for performance of the Work and within the authorized budget.
- d) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.

2. Indirect Costs. Covers reimbursement for overhead costs at the rate established annually, for the Bureau in accordance with City Code Section 5.48 and for PDC in accordance with Cost Recovery Policy through Resolution 6560.

- a) This Agreement was originated in Fiscal Year 2009-10. For that Fiscal Year, the Bureau's rate is SIXTY FIVE AND EIGHTY-EIGHT HUNDREDTHS PERCENT (65.88%) of Personal Services and Benefit Costs. The Bureau Indirect costs pay for generally fixed costs related to the administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
- b) If this Agreement extends to a new Fiscal Year, the Performing Agency Contract Manager shall provide written notification to the Funding Agency Contract Manager of the new Fiscal Year rate.

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 expenditures described in the Scope of Work and Budget. 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 Agreement 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 are evaluated, approved, and incorporated into the Scope of Work and Budget. It is required that funds for change management be identified in the Scope of Work and Budget. These funds are intended to be used to accommodate such changes within the specific task or fiscal year. 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.
- H. Contingency Controlled by Funding Agency. It is required that an amount for project contingency be identified in the Scope 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.

IV. BILLING AND PAYMENT PROCEDURE

- A. The Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at least quarterly.
 - 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, the Funding Agency 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 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, which can be reasonably provided by the Performing Agency.
- C. If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency 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 this Agreement is June 30, 2011.
2. Early Termination of Agreement.
 - 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 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.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the scope, schedule and budget for the 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 the Scope of Work and Budget, 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 the Work under the Agreement, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Funding Agency Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified contractors to perform the Work. 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. 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.

H. 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 Lents Town Center Urban Renewal Area."
2. For projects involving construction activities funded by PDC, 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 Lents Town Center Urban Renewal Area." 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. Changes to the Scope of Work and Budget:

- a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this 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.

VIII. Miscellaneous Provisions

None.

[Signature page to follow]

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

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Susan D. Keil, Director
Portland Bureau of Transportation

Bruce A. Warner, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

APPROVED AS TO FORM

Amela Menezes
City Attorney
CITY ATTORNEY

Legal Counsel

City Auditor

Date