

## STREETCAR LOOP PROJECT REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "Agreement") is between the City of Portland, by and through the Portland Bureau of Transportation ("PBOT"), and Portland General Electric Company ("PGE"), and is dated as of \_\_\_\_\_. Each of these entities is referenced as a "party" and, collectively, as "the parties."

### RECITALS

A. On behalf of the City of Portland, PBOT intends to proceed with construction of an extension of the Portland Streetcar system from the Pearl District in NW Portland to the Oregon Museum of Science and Industry ("OMSI") in SE Portland. ("Loop Project").

B. The Loop Project includes construction of a viaduct bridge structure over the Union Pacific Railroad tracks between SE Martin Luther King Boulevard and the Project terminus just south of OMSI ("OMSI Viaduct").

C. The design, location and configuration of one of the piers that is part of the OMSI Viaduct structure, if constructed as originally designed, would require that PGE relocate, at their cost, a PGE-owned conduit duct bank ("CDB").

D. PGE has requested that PBOT design and construct an alternative pier ("Straddle Pier") so that PGE can avoid the cost associated with the CDB relocation. The Straddle Pier design has been completed and is included in the Issued for Bid Documents dated August 2009.

E. As part of the Loop Project, PBOT is willing to include the design and construction of the Straddle Pier subject to agreement from PGE to reimburse PBOT for the cost of this work.

F. PBOT and PGE are executing this Agreement to outline their respective obligations related to design and construction of the Straddle Pier, and reimbursement of costs associated with such design and construction.

Now, therefore, the parties agree as follows:

### **AGREEMENTS:**

1. Duties of PGE.

1.1 In addition to the information PGE has already provided to PBOT regarding the location, depth and other characteristics of the CDB, PGE will provide other information relevant to construction activities associated with design and construction of the Straddle Pier.

1.2 PGE will provide onsite inspectors and/or other representatives to observe the construction associated with the Straddle Pier upon notification by PBOT, as provided in Section 6 herein. However, PGE's presence at the construction site does not in any way limit the liability of the City, PBOT, or any of their contractors performing work associated with the design or construction of the Straddle Pier.

1.3 PGE shall not direct PBOT's contractor in its performance of its work, but shall communicate through PBOT, except with regard to actions by PBOT's contractor that, in the sole discretion of PGE, could affect the health and safety of the contractor's personnel and other personnel at the construction site and/or the integrity or operability of the CDB, in which case PGE shall have the authority to order PBOT's contractor to stop work until such time that PGE can communicate with PBOT and determine how to proceed with the construction.

1.4 PGE shall be responsible for the costs of design of the Straddle Pier and for the incremental construction cost of the Straddle Pier relative to the original pier design. PGE agrees that these costs shall be as follows:

1.4.1 Straddle Pier Design Costs: \$30,000

1.4.2 Straddle Pier Construction Costs: \$191,870

1.5 PGE shall also be responsible for additional costs not to exceed \$25,000 that result from construction of the Straddle Pier and that result from unforeseen site conditions, extra depth to pilings or other similar costs directly attributable to the construction of the Straddle Pier ("Additional Costs"). PBOT will notify PGE regarding the Additional Costs within 14 days of the date when PBOT has knowledge of such Additional Costs. PBOT will document any Additional Costs in detail acceptable to PGE, and PGE shall negotiate in good faith to resolve any dispute regarding Additional Costs.

1.6 PGE shall reimburse the City for the Straddle Pier Design Costs, the Straddle Pier Construction Costs and any Additional Costs within thirty (30) days of receipt by PGE of an invoice for such costs that conforms with Section 2.3 herein.

2. Duties of PBOT.

2.1 PBOT shall oversee, manage and engage construction contractors to perform construction of the Loop Project and the Straddle Pier.

2.2 Prior to construction of the Straddle Pier, PBOT or its contractor shall expose the CDB by removing soils above and beside the CDB to a depth approximately one foot below the CDB and will arrange with PGE to send a representative to the field to monitor and approve the excavation of the ground around the CDB. Arrangements shall be made in advance by calling the PGE representative listed in Section 6.

2.3 PBOT shall submit to PGE detailed invoices for any costs subject to reimbursement by PGE pursuant to this agreement. With regard to Straddle Pier Design Costs, PBOT can submit an invoice to PGE for such costs at any time following execution of this Agreement. With regard to Straddle Pier Construction Costs and Additional Costs, PBOT shall not submit an invoice for such costs to PGE until Straddle Pier construction is complete.

3. Insurance. City shall require its contractor to name PGE as an additional insured on the contractor's insurance during construction. City shall furnish PGE evidence of said insurance coverage prior to City's performing any work on the CDB.

4. Term. The term of this Agreement shall commence upon execution hereof by all of the parties, and shall end upon completion of the construction of the Straddle Pier unless otherwise terminated pursuant to Section 18, but no later than June 30, 2012.

5. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and personal representatives, successors, and permitted assigns.

6. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received only upon the date of actual receipt thereof (or when delivery thereof is refused by the addressee), as follows:

<b>PGE:</b>	Mr. John Watkins
	Phone: (503)425-1609

Portland General Electric Company.  
121 SW Salmon St.  
Portland, Oregon 97204

**PBOT:**

Vicky Diede  
Phone: 503-823- 7137  
Portland Bureau of Transportation  
1120 SW Fifth Avenue, Suite 800  
Portland, Oregon 97204

7. Change of Address. Notice of change of address shall be given by written notice in the manner specified in Section 6.

8. Consequential Damages.

8.1 In no event shall the City of Portland or its officers, employees, agents or contractors be liable for any lost profits, lost savings, incidental damages or consequential damages in connection with or arising out of this Agreement.

8.2 In no event shall PGE or its officers, employees or agents be liable for any lost profits, lost savings, incidental damages or consequential damages in connection with or arising out of this Agreement.

9. Amendments. This Agreement may be amended only by an agreement in writing executed by both parties.

10. Headings. The headings used in this Agreement are solely for convenience or reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

11. Counterparts. This Agreement may be executed by the parties in separate counterparts, including telecopied counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

12. Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, this Agreement shall be interpreted and enforced to the greatest extent possible to give effect to the intent of the parties as if such invalid or unenforceable provision remained a part hereof.

13. Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any

waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

14. Time of Essence. Time is of the essence for each and every provision of this Agreement.

15. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

17. Venue. This Agreement has been made entirely within the state of Oregon. If any suit or action is filed by any party to enforce, interpret, or rescind this Agreement or otherwise with respect to the subject matter of this Agreement, venue shall be in the federal or state courts in Portland, Oregon.

18. Termination.

18.1 The parties may, by mutual written agreement, terminate this Agreement at any time.

18.2 In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement on 30 days prior written notice to the breaching party unless: (1) the breach of this Agreement is cured within such 30 day period; or (2) if a complete cure may not practicably be completed within such time period, all reasonable steps have been taken within such period to commence a cure of the default, and such cure is diligently completed thereafter.

19. Default: Remedies. If either party fails to perform fully its obligations under this Agreement, the other party shall be entitled to pursue all remedies available under this Agreement and any remedies available at law or in equity, except as may be limited by other portions of this agreement.

20. Integration. This Agreement contains the entire agreement between the PBOT and PGE and supersedes all prior written or oral discussions or agreements except those in this Agreement.

21. Prohibited Interest. No member, official, or employee of PBOT shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal

interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly interested.

Contract No. \_\_\_\_\_

Pursuant to Ordinance No. \_\_\_\_\_

Contract Description: Streetcar Loop Project Reimbursement Agreement

**PORTLAND GENERAL ELECTRIC SIGNATURE(S):**

By: \_\_\_\_\_

Name: \_\_\_\_\_

(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contract No. \_\_\_\_\_

Pursuant to Ordinance No. \_\_\_\_\_

Contract Description: Streetcar Loop Project Reimbursement Agreement

**CITY OF PORTLAND SIGNATURE(S):**

By: \_\_\_\_\_

Office of the Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_

Office of City Auditor

Date: \_\_\_\_\_

Approved as to Form:

By:  \_\_\_\_\_

Office of City Attorney

Date: 1/22/10