

**INTERGOVERNMENTAL AGREEMENT****Between****Portland Development Commission****And****Portland Bureau of Transportation****For the****NE 97th Avenue Green Street LID Project: Construction Phase**

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**

As the City of Portland's sole Metro-designated Regional Center, the Gateway Urban Renewal Area (the "URA") is expected to bear a large share of the employment and residential growth in East Portland. The URA is slated to become a high-density, mixed-use, pedestrian-friendly district served by MAX light rail with quality redevelopment and supporting infrastructure. As identified in the PDC Commission-approved Central Gateway Redevelopment Strategy, a significant hurdle facing redevelopment of Central Gateway is insufficient local street network. Currently, the local street network in Gateway is largely undeveloped and, in many cases, the City does not own the necessary rights-of-way for future street development. To begin implementing the Redevelopment Strategy, PDC funded the Central Gateway Street Plan and Infrastructure Study to revise the Gateway Master Street Plan and identify streets for improvement that promote connectivity, change the character of the district, and provide for redevelopment

opportunities. The Gateway Master Street Plan was approved by City Council on 10/22/09 with the passage of Ordinance #183270 as amended.

A redevelopment opportunity arose on NE 97th Avenue between Glisan and Davis as the Gateway Master Street Plan requires the developer to dedicate right-of-way for a street connection from NE 97th Avenue to NE 99th Avenue (the "Project"). To leverage the Project, PDC is investing up to \$325,000 in urban renewal dollars in street improvements on NE 97th Avenue and is implementing the Bureau of Environmental Services' ("BES's") 2008 Gateway Green Streets Master Plan utilizing a \$300,000 One Percent for Green grant, and a \$117,000 Watershed Investment Fund grant, a total of \$417,000. The grant funds are to showcase sustainable site practices, provide natural surface treatment for stormwater, increase much-needed green space, and serve as an amenity for the community by making a pedestrian connection to a key redevelopment area of Gateway. Improving NE 97th Avenue will also help demonstrate and promote the multiple benefits of Green Streets and has gained the strong support of developers and local property owners in the area.

Since the URA has limited funds, staff sought additional funding options through a Local Improvement District ("LID"). Property owners strongly supported the Project and an LID was successfully formed in May 2010. PDC and PBOT previously entered into an Intergovernmental Agreement to fund pre-construction. This Agreement will fund construction of the Project through close-out.

## **B. Summary of Work and Budget**

1. The following is a summary of the scope of work:

Construction of NE 97th Avenue as designed and engineered in the pre-construction phase (IGA #509020). The proposed work schedule, as of 11/10/10, is:

April 2011	Advertise for Bids
	Open Bids
May 2011	Contract Award by City Council
	Contract Execution
June 2011	Preconstruction Meeting
	Notice to Proceed
	Begin Construction
October 2011	Substantial Completion
June 2012	Final Completion Following Project Closeout

2. The following is a summary of the budget:

Source	Total
PDC - TIF	\$302,090
BES Grants – pass-through to PDC	\$417,000

NE 97th Avenue Green Street LID	\$438,659
Jones Extra Work Agreement	\$ 45,351
Chiapuzio Extra Work Agreement	\$115,320
<u>Oregon Dept. of Transportation</u>	<u>\$ 50,000</u>
Total	\$1,368,421

3. A detailed description of the scope of work and the budget is set forth in Exhibit A (the "Scope of Work and Budget") to this Agreement. The tasks, activities, and deliverables described in this Section B and detailed in the Scope of Work and Budget shall be referred to in this Agreement as the "Work".

## 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 Patrick Quinton, 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 the Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by the Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
  - a) The Funding Agency Project Manager shall be Sue Lewis, 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.

1. Andrew Aebi, Project Manager & LID Administrator
2. Dan Layden, Supervising Project Manager
3. Civil Design Section (CDS) Engineer of Record, Nicole Blanchard
4. Civil Design Section (CDS) Design Engineer, Jason Shepard
5. Civil Design Section (CDS) Contract Manager, John Wood
6. Survey Crew & Staff (for construction staking)

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

1. Sue Lewis, Project Coordinator

**H. Approvals.**

1. No work shall be performed and no funds shall be obligated 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 and Budget.

**I. Project Management.**

1. The Performing Agency Project Manager will be responsible for outreach to property owners related to the Project and the LID process, and will prepare the Final Assessment Ordinance for City Council consideration, and will respond to any objections to final assessment that may be filed by property owner(s). The Performing Agency Project Manager will also draft and execute MOUs with Parks' Urban Forestry for street tree planting and establishment, with BES for swale vegetation planting.
2. The Funding Agency Project Manager will be responsible for outreach to local property owners related to the Gateway Street Plan and PDC's redevelopment efforts.
3. Project Status Reports, including those related to the Business and Workforce Equity Policy, are required to be submitted within 60 days after the Effective Date of this Agreement and thereafter at a frequency of monthly. Reports may be submitted by e-mail or memo format and intended to be brief (two to three paragraphs) updates.

**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.**

1. 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.
2. The Funding Agency Project Manager will be invited and will be expected to attend the preconstruction meeting. The Funding Agency Project Manager will be invited to 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) BES – swale vegetation planting
  - b) Parks' Urban Forestry – street tree planting and establishment
  - c) Construction Contractor – to be determined through competitive bid process
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 according to one of three options: payment in full upon signing of this Agreement; payment in full upon issuance of the construction contract; or installation payments upon signing of this Agreement and the construction contract. The parties elect to make a payment in full upon issuance of the construction contract. The RACC amount listed in Exhibit A is an estimate for budget purposes. The Bureau will determine full payment calculated on the construction contract which is to be awarded through the construction bid process. The Bureau will invoice PDC the full payment upon issuance of the construction contract.

3. A Funding Agency representative will 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.

#### **O. Business and Workforce Equity**

1. The Business Equity Program of 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 Business Equity Program 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 (the "Utilization Goal"). The Workforce Equity Program of the Policy shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Workforce Equity Program applies, all subcontracts greater than \$100,000 must comply with the Policy's Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors on the Project are worked by state-registered apprentices and to work toward achieving certain Workforce Goals, as such terms and requirements are further described in the Policy attached hereto as Exhibit B. The Utilization and Workforce 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. If the Policy applies, information on utilization will be included in monthly Project Status Reports, as described in Section II.I.4 above.

#### **P. Special Contract Management Provisions**

1. Construction of this project will be combined with the SE Water Avenue & Yamhill Street LID in the 2011 Local Improvement Districts construction contract for economies of scale for both projects; however costs including progress payment, pay notes, construction quantities, etc. are being tracked separately, which is the Bureaus responsibility. There will be no cross-funding between the two projects.
2. Additional "extra work" agreements have been executed between PBOT and property owners within the project area to expand the scope of the NE 97th Avenue Green Street LID project as authorized by City Council. All "extra work" costs including design and construction will be charged 100% to the property owners with no PDC funding. Costs of the core project versus extra work will be allocated on the basis of construction costs, with quantities per the plans approved by the City Engineer and unit prices per the awarded construction contract.

## II. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed **FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED SIXTEEN DOLLARS (\$407,516)** for accomplishment of the Work, subject to budget authorization by the Funding Agency. See Exhibit A for breakdown of funding.
- B. The funding is from Gateway Regional Center URA.
- 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. Non PDC funds include Bureau of Environmental Services Watershed Improvement Grant and 1% for Green Grant, NE 97th Avenue Green Street LID and extra work agreements with property owners Jones, Chiapuzio and Oregon Department of Transportation.
- 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. 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 2010-11. For that Fiscal Year, the Bureau's rate is 65.88% (Sixty-Five and Eighty-Eight One Hundredths Percent) 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) This Agreement was originated in Fiscal Year 2010-11. For that Fiscal Year, the PDC rate is \$13.00 per labor hour [THIRTEEN DOLLARS AND NO ONE HUNDRETHS] of Personal Services and Benefit Costs billed under this Agreement. PDC Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including administrative staff, rent, telephone, power, insurance, office supplies and equipment.
  - c) 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.
- 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. 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.
- I. 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.

### III. 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.

#### IV. GENERAL

##### A. Termination.

- 1. The Termination Date of this Agreement is June 28, 2013.
- 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 Gateway Regional 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 Gateway Regional Center Urban Renewal Area". The sign shall remain in place until construction is complete.

#### **V. 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 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.

[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  
 (Executed under authority delegated by  
 Ordinance No. 181631, passed by  
 Council February 27, 2008, and  
 amended by Ordinance No. 183429,  
 passed by Council on January 6, 2010.)

\_\_\_\_\_  
 Patrick Quinton, Executive Director

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:  
 APPROVED AS TO FORM

APPROVED AS TO FORM:

\_\_\_\_\_  
 City Attorney **CITY ATTORNEY** *06/*

\_\_\_\_\_  
 Legal Counsel

\_\_\_\_\_  
 City Auditor

\_\_\_\_\_  
 Date

Exhibit A

184505

Intergovernmental Agreement - Exhibit A											
Scope Work and Budget											
NE 97th Avenue Green Street LID Project: Construction Phase											
Fiscal Year 2012-13											
Tasks and/or Deliverables		Budget Uses				Budget Sources					
#	Completion Date	Personal Services	Materials & Services	Capital Outlay	Subtotals	IGA #509020 expires 12/30/11	Funding Agency & NE 97th Ave Green Street LID	Jones Extra Work Agreement	Chappuzzio Extra Work Agreement	ODOT Extra Work Agreement	Subtotals
A. Project Management		\$ 7,007			\$ 7,007						
B. Engineering											
	Design Engineering				0.00						
	Construction Engineering	\$ 21,715			\$ 21,715		\$ 19,239		\$ 1,605	\$ 871	\$ 21,715
C. Right of Way Acquisition					0.00						
D. Construction				\$ 606,250	\$ 606,250		\$ 552,476		\$ 29,959	\$ 23,815	\$ 606,250
E. Auditor's & Financing Costs					\$ 52,796		\$ 52,796				\$ 52,796
	LID Construction Fund-Progress Payment Interest	\$ 48,088									
	LID Construction Fund - Superintendence	\$ 4,428									
	Recording	\$ 280									
F. Contingency				\$ 189,024	\$ 189,024		\$ 164,748		\$ 15,636	\$ 8,640	\$ 189,024
G. Overhead		\$ 20,346			\$ 20,346		\$ 12,978	\$ 1,898	\$ 4,827	\$ 643	\$ 20,346
					\$ 897,139						\$ 897,139
	Fiscal Year Total	\$ 101,865		\$ 795,274	\$ 897,139	0.00	\$ 807,377	\$ 3,033	\$ 52,529	\$ 34,201	\$ 897,139



## IGA Summary

				Personal Services	Materials & Services	Capital Outlay	Subtotals	IGA # 509020 Expires 12/30/11	Funding Agency & NE 97th Ave Green Street LID	Jones Extra Work Agreement	Chappuzzo Extra Work Agreement	ODOT Extra Work Agreement	Subtotals
FY 2010-11				\$ 471,282			\$ 471,282	\$ 325,000	\$ 25,373	\$ 42,319	\$ 62,791	\$ 15,799	\$ 471,282
FY 2011-12				\$ 101,865		\$ 795,274	\$ 897,139		\$ 807,377	\$ 3,033	\$ 52,529	\$ 34,201	\$ 897,139
			<b>Sub Total</b>	\$ 573,148		\$ 795,274	\$ 1,368,422	\$ 325,000	\$ 832,750	\$ 45,351	\$ 115,320	\$ 50,000	\$ 1,368,422
Total LID Project excluding Extra Work								\$ 1,157,750	IGA #509020 (\$325,000) plus Funding Agency & NE 97th Ave Green Street LID (\$832,750)				
Less BES Grant								\$ 417,000					
Sub Total								\$ 740,750					
PDC Remaining Obligation - 40.781711% per LID Petition Formation								\$ 302,091					
NE 97th Ave Green Street LID - 59.218289% per LID Petition Formation								\$ 438,660					
Subtotal								\$ 740,750					
PDC Remaining Obligation								\$ 302,091					
Plus BES Grant								\$ 417,000					
Sub Total								\$ 719,091					
Less IGA 509020								\$ 325,000					
Sub Total								\$ 394,091					
RACC Percent for Art PROJECT TOTAL								\$ 13,426					
PROJECT TOTAL								\$ 407,517					
IGA TOTAL AUTHORIZED AMOUNT								\$ 407,516					

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6787**

**ADOPTING AN AMENDED BUSINESS AND WORKFORCE  
EQUITY POLICY**

**WHEREAS**, the PDC Board of Commissioners (the "Board") adopted the Business and Workforce Equity Policy (the "Policy") on February 27, 2008 (Resolution No. 6561), with the objective of ensuring fair and equitable opportunities to Portland's diverse populations, promoting prosperity in all segments of Portland's diverse communities, fostering economic growth, and expanding competition in the market;

**WHEREAS**, the Policy was subsequently amended on January 29, 2009 (Resolution 6667) to add language from the Construction Wage Policy and incorporate workforce goals recommended by the Workforce Diversity Strategy Committee;

**WHEREAS**, the Policy objectives are pursued through the establishment of two separate and distinct programs: (1) the Business Equity Program (formerly the Good Faith Effort Program); (2) the Workforce Equity Program (principally, the Workforce Training and Hiring Program);

**WHEREAS**, it has subsequently been determined that small businesses are often negatively impacted by late payment on invoices and the addition of a "Prompt Payment" requirement to the Policy would be beneficial for small businesses;

**WHEREAS**, the applicability of the Workforce Equity Program for Intergovernmental Agreements ("IGAs") and a definition for IGAs was inadvertently left out of the Policy and should be added;

**WHEREAS**, to better facilitate implementation, the majority of the requirements established in the Project Apprenticeship and Equity Agreement ("PAEA") outlined in the Policy will be incorporated into the guidelines that will be distributed to developers and contractors and, therefore, the PAEA section should be removed from the Policy;

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby adopts an amended Business and Workforce Equity Policy, in the form attached hereto as Exhibit A; and

**BE IT FURTHER RESOLVED** that this Resolution shall become effective immediately after its adoption.

## Business and Workforce Equity Policy (Amended \_\_\_\_\_)

### A. OBJECTIVES OF THE POLICY

The objective of the **Business and Workforce Equity Policy** (the "Policy") is to:

- Ensure that the Portland Development Commission's ("PDC's) work provides professional, supplier and construction contracting opportunities to small businesses that have been historically under utilized including businesses owned by People of Color, Women and Emerging Small Businesses (collectively, "M/W/ESBs") and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources including Interagency and Intergovernmental Agreements; and
- Maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

In this way, it is PDC's aim to ensure fair and equitable opportunities to Portland's diverse populations, promote prosperity in all segments of Portland's diverse communities, foster economic growth, and expand competition in the market.

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program.

The Policy objectives are pursued through the establishment of two separate and distinct programs.

- **The Business Equity Program;** and
- **The Workforce Equity Program.**

### B. DEFINITIONS

1. **"Board"** means the PDC Board of Commissioners.
2. **"Business Financial Resource Tools"** means certain PDC business financial assistance programs including, but not limited to, the Quality Jobs Program, the Economic Opportunity Fund, the Direct Tax Increment Loan, and the EDA Revolving Loan and Real Estate Fund.
3. **"Certified Firms"** include M/W/ESB firms that have been certified by the State of Oregon as a Minority-owned business, a Women-owned business or an emerging small business.
4. **"DA" or "DDA"** means, respectively, a Development Agreement or a Disposition and Development Agreement that is typically entered into by and between a developer and PDC that sets forth the terms and conditions of property conveyance, if any, and the requirements for redevelopment of the property.

5. **"Direct Contracting"** included all professional, supplier and construction services purchased directly by PDC.
6. **"Enterprise Zone"** is a 5-year, 100% tax abatement program designed to encourage existing and new industrial firms to invest in new capital outlays in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.
7. **"Flexible Service Contract"** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.
8. **"Hard Construction Costs"** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Costs.
9. **"Intergovernmental Agreement"** is an agreement between PDC and another government entity, including the City of Portland.
10. **"Land Transactions"** is the sale of real property by PDC at any price for the purpose of a private or public project through a DDA.
11. **"PDC-Owned Construction Contracts"** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.
12. **"PDC Resources"** include:
  - (i) PDC funds in the form of grants, loans or payments. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants, loans or payments shall be combined to determine the total amount of PDC Resources; and
  - (ii) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction the value shall be that specified in the DDA.
13. **"PDC Sponsored Projects"** include all projects that are privately owned and constructed involving a Disposition and Development Agreement, Development Agreement, loan agreement, or other type of financial assistance agreement with PDC.
14. **"People of Color"** as used in this Policy includes persons who self identify as being other than Caucasian.
15. **"Personal Services Contract"** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.

16. **"Utilization Goal"** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.
17. **"Workforce Goals"** means the goals covering construction trades to utilize People of Color and Women as a percentage of total construction hours worked in a PDC Project.
18. **"Workforce Training and Hiring Program"** means the Workforce Training and Hiring Program originally authorized by the Board on December 18, 1997 (Resolution No. 5066) and further amended on September 16, 1998 (Resolution No. 5171) and reauthorized on February 27, 2008 (Resolution No. 6561) that pertains to apprentice utilization.

### C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:
  - a) A PDC Personal Services Contract for any amount;
  - b) A PDC-Owned Construction Contract greater than \$200,000;
  - c) A PDC Sponsored Project receiving more than \$300,000 of PDC Resources to finance a project with Hard Construction Costs greater than \$300,000; or
  - d) Intergovernmental Agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC Resources, whether performed by PDC or another agency. The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
3. **Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing the Utilization Goals, and is authorized to modify them based on such annual analysis:
  - a) Personal Services Contracts: 25 percent of the payments made under such contracts;
  - b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
  - c) PDC Sponsored Projects: 20 percent of Hard Construction Costs for residential low-rise construction and 20 percent of the Hard Construction Costs for commercial high-rise construction as calculated by an analysis of availability and capacity of Certified Firms for the specific project;

- d) Interagency and Intergovernmental Agreements: the PDC program shall apply. However, PDC may defer to the other agency's program if their program is similar to PDC's program with monthly reporting provided to PDC; and
- e) Flexible Service Contracts:
  - (i) 30 percent of the total number of contracts in any fiscal year; AND
  - (ii) 25 percent of the payments made under such contracts.
- 4. **Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB Coordinator) may negotiate a Certified Firm participation level that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.
- 5. **Prompt Payment.** The Contractor and/or Developer shall pay all subcontractors and suppliers within ten calendar days after receiving payment from PDC on all PDC-owned and sponsored construction projects.

#### D. THE PDC WORKFORCE EQUITY PROGRAM

- 1. **Purpose of the Workforce Equity Program.**
  - a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and
  - b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
- 2. **Applicability.** Direct Contracting entities, entities entering into a DA or DDA or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:
  - a) On a **PDC-Owned Construction Contract** or an **Intergovernmental Agreement** greater than \$200,000, the Workforce Equity Program shall apply to:
    - (i) The prime contract; and
    - (ii) Any subcontract greater than \$100,000.
    - (iii) The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
  - b) On a **PDC Sponsored Project** the Workforce Equity Program shall apply if the project receives \$300,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000 and shall apply to:

- (i) The prime contract; and
- (ii) Any subcontract greater than \$100,000.

### 3. Requirements.

a) Projects subject to the Workforce Equity Program shall:

- (i) Comply with the Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices, as such requirements are further described therein; and
- (ii) Work toward achieving the Workforce Goals phased over a ten-year period as outlined in the table below. The percentage of hours set forth below includes both apprenticeship hours and journey level hours.

**Workforce Goals**

Fiscal Year	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018
Female	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%
People of Color	25.5%	26%	26.5%	27%	27.5%	28%	28.5%	29%	29.5%	30%

- (iii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.

- b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans.

**4. Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Workforce Equity Program, PDC (the Project Manager, with assistance from the M/W/ESB Coordinator) may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

**E. Equal Employment Opportunity Certification.** Contractors and subcontractors subject to the Policy must be certified by the City of Portland as an Equal Employment Opportunity Employer.

**F. Damages.** The procedural requirements of the Policy are contractual obligations. In the event that PDC determines, in its sole and absolute discretion, that the procedural requirements of the Policy have not been complied with, then PDC's finding may result in one or more of the following:

1. A finding of breach of contract.
2. Disqualification of the developer, contractor or subcontractor to receive future PDC Resources or bid on future PDC solicitations.
3. A claim for liquidated damages.
4. Withholding of progress payments.

**G. Administration.** The Executive Director shall develop and administer administrative procedures and/or guidelines, and make any determinations necessary, to implement and manage the Policy.

**H. Exemptions.**

1. The Policy shall not apply to projects within an Enterprise Zone or PDC Resources derived from Business Financial Resource Tools that are intended to be used for working capital or property acquisition.
2. Any exemption or waiver of requirements of the Policy other than those stated in the Policy shall require approval of the Board.