

**FIRST AMENDMENT**  
**to**  
**INTERGOVERNMENTAL AGREEMENT**  
**For the**  
**NE 97<sup>th</sup> Avenue Green Street LID Project: Construction Phase**

184861

This First Amendment to Intergovernmental Agreement (this "Amendment") is effective as of \_\_\_\_\_, 2011, (the "Effective Date") by and between the **City of Portland, Bureau of Transportation** ("Bureau") and the **Portland Development Commission** ("PDC"). Bureau and PDC may be referred to jointly in this Amendment as the "Parties" or individually as a "Party."

**RECITALS**

- A. PDC and Bureau entered into that certain Intergovernmental Agreement dated April 6, 2011 (the "IGA").
- B. PDC and Bureau desire to amend the IGA as set forth herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the undertakings and mutual covenants of the Parties, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, PDC and Bureau agree as follows:

1. **Definitions.** Capitalized terms used herein without definition shall have the meaning ascribed to them in the IGA.

**Background.** Section 1.A of the IGA is hereby deleted in its entirety and replaced with the following: "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 97<sup>th</sup> Avenue between Glisan and Davis. The Gateway Master Street Plan requires the developer to dedicate right-of-way for a street

connection between NE 97th Avenue to NE 99th Avenue. To leverage the redevelopment project, PDC is investing up to \$302,090 in urban renewal dollars in street improvements on NE 97th Avenue (the Project) and is implementing the Bureau of Environmental Services' ("BES") 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.

In addition, construction drawings for NE Flanders Street were designed and engineered by PBOT during the design phase for the Project: NE 97<sup>th</sup> Avenue Green Street LID Project. Constructing NE Flanders Street is vital in creating the connection between NE 97<sup>th</sup> and NE 99th serving both residents and public and further implement the Gateway Master Street Plan. To this effect, PDC will apply project cost savings, in the form of contingency funds, from the NE 97<sup>th</sup> Avenue Green Street LID Project, not to exceed the original budgeted amount of \$302,090, towards constructing NE Flanders Street. The BES grant funds of \$417,000 will only be applied towards the NE 97<sup>th</sup> Avenue core project. Property owner, Gordon Jones, dedicated land to the City of Portland as required by the Gateway Master Street Plan for the construction of NE Flanders Street. Costs exceeding the original budgeted amount of \$302,090 will be the responsibility of Mr. Jones through an extra work agreement coordinated and established by Bureau's Local Improvement District Manager.

To accomplish using contingency funds towards construction of NE Flanders Street, the Design IGA #509020 will be decreased by \$85,000 and transferred to the Construction IGA#510018."

2. **Summary of Work and Budget.** The following is hereby added to the end of Section 1.B.1 of the IGA: "Contingency funds shall be applied towards construction of NE Flanders as designed and engineered by Bureau."
3. **Summary of Work and Budget.** Exhibit A attached to the IGA in Section 1.B.3 is hereby deleted in its entirety and replaced with the attached Exhibit A."
4. **FUNDING / COMPENSATION / ALLOWABLE COSTS.** The amount "**FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED SIXTEEN DOLLARS (\$407,516)**" set forth in Section II.A of the IGA is hereby deleted and replaced with the amount "**FOUR HUNDRED NINETY TWO THOUSAND FIVE HUNDRED SEVENTEEN DOLLARS (\$492,517)**".

5. **Special Contract Management Provisions.** The following is hereby added to the end of Section II .P.2 of the IGA: "PDC will apply cost savings, not to exceed the original budgeted amount of \$302,090, towards constructing NE Flanders Street. Costs exceeding this amount will be the responsibility of the adjacent property owner, Mr. Gordon Jones, through an "extra work" agreement executed and managed by Bureau. To the extent that the construction of the NE Flanders Street work goes forward, Bureau, at its discretion, may accomplish such work either under: (i) the existing construction contract for NE 97th Avenue for which a Notice to Proceed was issued on July 12, 2011; or (ii) the 2012 Local Improvement Districts construction contract for which bids will be advertised in spring 2012.
6. **Miscellaneous.** Except as expressly modified hereby, the IGA remains unmodified and in full force and effect. This Amendment may not be amended except in writing signed by the Parties so authorized as stipulated in the IGA.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the Effective Date.

PDC:

BUREAU:

THE CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Patrick Quinton, Executive Director

By: \_\_\_\_\_  
Tom Miller, Director, Portland Bureau of Transportation

APPROVED AS TO FORM:

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: \_\_\_\_\_  
PDC Legal Counsel

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Auditor

**EXHIBIT A**

| Fiscal Year 2011-12                         |                 |                   |                      |                |            |                              |   |                            |                                 |                           |            |
|---|-----------------|-------------------|----------------------|----------------|------------|------------------------------|---|----------------------------|---------------------------------|---------------------------|------------|
| 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                       |                 | \$ 21,022         |                      |                | \$ 21,022  | \$ 15,417                    | 0   | \$ 3,403                   | \$ 1,504                        | \$ 698                    | \$ 21,022  |
| B. Engineering                              |                 |                   |                      |                |            | \$ -                         |   |                            |                                 |                           |            |
| Design Engineering                          |                 | \$ 135,235        |                      |                | \$ 135,235 | \$ 98,900                    |   | \$ 21,830                  | \$ 10,030                       | \$ 4,475                  | \$ 135,235 |
| Construction Engineering                    |                 | \$ 86,862         |                      |                | \$ 86,862  | \$ 57,200                    | \$ 19,760                                     |                            | \$ 6,419                        | \$ 3,482                  | \$ 86,862  |
| C. Right of Way Acquisition                 |                 | \$ 32,749         |                      |                | \$ 32,749  | \$ 30,000                    |   |                            | \$ 1,392                        | \$ 1,358                  | \$ 32,749  |
| D. Construction                             |                 |                   |                      |                |            |                              |   |                            |                                 |                           |            |
| E. Auditor's & Financing Costs              |                 |                   |                      |                |            |                              |   |                            |                                 |                           |            |
| Construction Fund-Progress Payment Interest |                 |                   |                      |                |            |                              |   |                            |                                 |                           |            |
| LID Construction Fund - Superintendence     |                 |                   |                      |                |            |                              |   |                            |                                 |                           |            |
| Recording                                   |                 |                   |                      |                |            |                              |   |                            |                                 |                           | \$ -       |
| F. Contingency                              |                 |                   |                      |                |            |                              |   |                            |                                 |                           | \$ -       |
| G. Overhead                                 |                 | \$ 195,414        |                      |                | \$ 195,414 | \$ 123,483                   | \$ 5,613                                      | \$ 17,086                  | \$ 43,446                       | \$ 5,786                  | \$ 195,414 |
|   |                 |                   |                      |                | \$ -       |                              |   |                            |                                 |                           |            |
| Fiscal Year Total                           |                 | \$ 471,282        |                      |                | \$ 471,282 | \$ 325,000                   | \$ 25,373                                     | \$ 42,319                  | \$ 62,791                       | \$ 15,799                 | \$ 471,282 |
|   |                 |                   |                      |                |            |                              |   |                            |                                 |                           | \$ 471,282 |

| 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   |                              | 5,139   | \$ 1,134                   | \$ 502                          | \$ 232                    | \$ 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                                 |                 |                   |                      | \$ 328,255     | \$ 328,255 |                              | \$ 274,481                                    |                            | \$ 29,959                       | \$ 23,815                 | \$ 328,255 |
| 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                                  |                 |                   |                      | \$ 467,019     | \$ 467,019 |                              | \$ 442,743                                    |                            | \$ 15,636                       | \$ 8,640                  | \$ 467,019 |
| 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 | Chappuzzio 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                |              |
|  | Sub Total | \$ 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  |           |                   |                      |                | \$ 240,000   |  |   |                            |                                 |                           |              |
| Sub Total  |           |                   |                      |                | \$ 479,091   |  |   |                            |                                 |                           |              |
| RACC Percent for Art PROJECT TOTAL                                   |           |                   |                      |                | \$ 13,426    |  |   |                            |                                 |                           |              |
| PROJECT TOTAL  |           |                   |                      |                | \$ 492,517   |  |   |                            |                                 |                           |              |
| IGA TOTAL AUTHORIZED AMOUNT  |           |                   |                      |                | \$ 492,517   |  |   |                            |                                 |                           |              |