

Portland, Oregon

FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Rich Newlands	2. Telephone No. 503 823 7780	3. Bureau/Office/Dept. PDOT/PMD
4a. To be filed (date): February 22, 2012	4b. Calendar (Check One) Regular Consent 4/5ths <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	5. Date Submitted to Commissioner's office and FPD Budget Analyst: February 10, 2012
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed

1) Legislation Title:

* Authorize the Director of the Bureau of Transportation to execute an Intergovernmental Agreement with the Portland Development Commission in the amount of \$802,740 and authorize a competitive bidding process for construction of street improvements in the Lents Town Center Urban Renewal Area (Ordinance)

2) Purpose of the Proposed Legislation:

This IGA will authorize the use of PDC funding for the construction phase of the Lents Foster-Woodstock Streetscape Project. The IGA provides over-match funding for a related IGA, Ordinance 183968, which provides federal grant funding for construction of the project.

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

- | | | | |
|--|---|------------------------------------|--------------------------------|
| <input type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input checked="" type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |
| <input type="checkbox"/> Central City | | | |
| <input type="checkbox"/> Internal City Government Services | | | |

FINANCIAL IMPACT

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

The \$802,740 in revenue from the Portland Development Commission for this project is included in FY 11-12 budget. The grant ID is TR00079.

5) Expense: What are the costs to the City related to this legislation? What is the source of funding for the expense? *(Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)*

The expense funded by \$802,740 in revenue from the Portland Development Commission for this project is included in FY 11-12 budget. The grant ID is TR00079.

6) Staffing Requirements:

- Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?
No.
- Will positions be created or eliminated in *future years* as a result of this legislation?
No

(Complete the following section only if an amendment to the budget is proposed.)

7) Change in Appropriations *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed).*

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

☒ YES: Please proceed to Question #9.

☐ NO: Please, explain why below; and proceed to Question #10.

9) If "YES," please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

The current Council item is related to Resolution (35854), which adopted the Lents Town Center Business District Transportation Plan on January 12, 2000, and Ordinance 183968, adopted by Council on June 30, 2010, which accepted federal grant funding for implementation. Both items were the result of an extensive public involvement process that resulted in recommendations that were supported by the Portland Development Commission, the Lents Town Center Urban Renewal District, and the Lents Neighborhood Association.

There are no direct impacts anticipated to the community from this particular Council Item as it addresses only the procedural issue of which agency, ODOT or PBOT, will bid and award the construction contract.

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

See above.

c) How did public involvement shape the outcome of this Council item?

Public involvement did not shape this particular Council item.

d) Who designed and implemented the public involvement related to this Council item?

See above.

e) Primary contact for more information on this public involvement process (name, title, phone, email):

Rich Newlands, Project Manager, x37780, rich.newlands@portlandoregon.gov.

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

Yes. There will be periodic information updates during the construction phase.

KK 02-10-12

 FOR TOM MILLER

BUREAU DIRECTOR

TOM MILLER, Bureau of Transportation

INTERGOVERNMENTAL AGREEMENT

Between

Portland Development Commission

And

Portland Bureau of Transportation

For the

Foster-Woodstock Streetscape Enhancement Project: Construction Phase(s)

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" or "PBOT") 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

1. In 1999, Council adopted the Lents Town Center Business District Transportation Plan (the "Plan") which was developed in partnership between the Bureau, PDC, the Lents Town Center Urban Renewal Advisory Committee and the Lents Town Center Business District Transportation Plan Citizen Advisory Committee. The Plan identifies transportation system improvements that support the Plan's goal of revitalizing the area.
2. In 2006, PBOT and PDC collaborated on an application to METRO for Metropolitan Transportation Improvement Program ("MTIP") funding to implement the Plan.
3. In March 2007, PBOT was notified of funding award for \$1,900,000 to construct the Foster-Woodstock Streetscape Enhancement Project (the "Project"), to implement the Plan.
4. In September 2008, PDC approved project matching fund requirements of \$200,000.
5. After extensive public input to define project area priorities, the PDC Board approved an additional \$1,815,000 to include pre-design, design, engineering and right-of-way acquisition work with the recognition of additional funding of approximately \$787,000 for non-MTIP participatory construction costs, based on PBOT's cost estimate. The \$1.9M MTIP grant would be maximized for all MTIP-participatory construction costs.
6. Design and engineering for the Project is expected to be complete March 2012 with the Bid and Award phase of the Project, coordinated by the Bureau, to begin April 2012 with a projected completion date of December 2012.
7. The total estimated cost for the construction of the Project is \$. Funding sources include PDC and MTIP. PDC's total contribution to this Project is approximately \$2,617,740.00 (\$1,815,000 for design and engineering and \$ 802,740.00 for construction)
8. Construction of the Project by the Bureau requires right-of-way dedications and a Temporary Construction Easement ("TCE") for certain PDC-owned property in the Project area from PDC. Accordingly, the parties shall enter into that certain Deed for Right-of-Way Purposes of even date herewith and that certain Temporary Construction Easement of even date herewith (collectively, the "ROW Documents").
9. The Bureau shall manage the construction contract according to City standards, except as provided herein and keep PDC informed of significant construction issues associated with the property identified in the ROW Documents. The Bureau anticipates the Project to be substantially complete by October 2012.

10. This Agreement is the final Construction Phase of the Project. No future phases and/or additional work are anticipated.

B. Summary of Work and Budget

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

The Bureau will be fully responsible for bid and award of the Project contract, as well a construction of Foster-Woodstock Streetscape Enhancement Project as designed and engineered in the pre-construction phase (IGA#508013). The proposed work schedule, as of 1/15/12, is:

April/May 2012	Advertise for Bids
	Open Bids
May/June 2012	Award Bid
	Contract preparation
June/July	Preconstruction Meeting
	Notice to Proceed
	Begin Construction
October/November	Substantial Completion
June 2013	Final Completion Following Project Closeout

2. The following is a summary of the budget:

<u>Source</u>	<u>Total</u>	<u>F/Y</u>	<u>Use</u>
PDC – TIF	\$802,740.00	FY11/12 through FY 12/13	Construction and 2% for Arts
MTIP	\$1,716,404.00		Construction
Total	\$2,519,144.00		

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”.
4. The Bureau will coordinate all ROW dedication and TCE’s with Multnomah County.

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 Melissa Nelson (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 *Tom Miller*, 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 Sara King.
 - b) The Performing Agency Project Manager shall be Rich Newlands, or such other person as designated in writing by Dan Layden 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. Rich Newlands, Project Manager
2. Todd Liles, Construction Manager
3. Jennie Tower, Traffic Engineer
4. Ruthanne Bennett, Civil Engineer
5. Jimi Joe, Engineer of Record
6. Survey Crew, tbd
7. Signals & Street Lighting Inspector(s), tbd
8. Construction Inspector(s), tbd

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 coordination and management of the construction contract, as well as the MTIP funding and coordination with Oregon Department of Transportation for the Project.
2. Performing Agency Project Manager will coordinate Project needs with other bureaus and/or agencies as necessary to complete the Project.
3. Project Status Report summaries will be provided in verbal communication on a monthly basis.

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.

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: None

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 C. 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, the Bureau shall contact the PDC Contracts Coordinator to obtain the Business Equity Program Specifications and the Workforce Equity Program Specifications that outline the procedural requirements of the respective programs, including the 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. The PDC Contract Manager shall review any sub consultant change orders in excess of \$15,000."

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed **EIGHT HUNDRED TWO THOUSAND SEVEN HUNDRED FOURTY DOLLARS (\$802,740.00)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from Lents Town 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. An additional \$1,930,000 is provided through federal funding program, MTIP, for the Project as a whole (approximately \$213,596 for soft costs and \$1,716,404 hard costs).
- 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 2011-12. For that Fiscal Year, the Bureau's rate is 71.56% (Seventy-One and Fifty-Six 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) 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.

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 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 Lents Town Center Urban Renewal Project*".
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 Project*". 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.
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

Tom Miller, 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.)

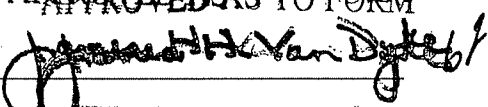
Patrick Quinton, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

APPROVED AS TO FORM


City Attorney
CITY ATTORNEY

Legal Counsel

City Auditor

Date

See Substitute
185162

ORDINANCE No.

*Authorize the Director of the Bureau of Transportation to execute an Intergovernmental Agreement with the Portland Development Commission in the amount of \$802,740 and authorize a competitive bidding process for construction of street improvements in the Lents Town Center Urban Renewal Area (Ordinance)

The City of Portland ordains:

Section 1. The Council finds

1. In 2006, Metro awarded the Portland Bureau of Transportation a Metropolitan Transportation Improvement Program grant to fund design and construction of pedestrian improvements consistent with the Lents Town Center Business District Transportation Plan, adopted by City Council on January 12, 2000 (Resolution 35854).
2. On September 26, 2008, the Portland Bureau of Transportation entered into an intergovernmental agreement with the Portland Development Commission to plan, design and build the Foster-Woodstock Streetscape Project, using the grant funding in conjunction with over-matching funds from the Portland Development Commission Contract No. 53140.
3. This intergovernmental agreement, attached as Exhibit A was approved to form by the City Attorney. The agreement covers the construction phase of the project. Both the Portland Development Commission and City Council are being asked concurrently to approve this Agreement, as the authority to enter into such an Agreement has not been delegated to the Executive Director or to the Director of the Bureau of Transportation.
4. This project is in the FY 2011/2012 budget. The grant is identified as the Foster-Woodstock Streetscape, TR000045.
5. The Bureau's level of confidence in the cost estimates for this project is medium, because the project design is approximately at 90%.

NOW, THEREFORE, the Council directs:

- a. The Mayor is hereby authorized to execute a Intergovernmental Agreement on behalf of the City of Portland from the Portland Development Commission for construction of the Foster-Woodstock Streetscape Project in substantially the form of the attached exhibit for this purpose.
- b. The OMF Grants Office is authorized to perform all administrative matters in relation to

the grant application, grant agreement or amendments, requests for reimbursement from the grantor, and to submit required online grant documents on the Mayor's behalf.

Section 2. The Council declares that an emergency exists because a delay would unnecessarily delay the City's ability to perform the activities authorized by the grant; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council,

Mayor Sam Adams
Prepared by: Rich Newlands:slg
Date Prepared: 2/9/12

LaVonne Griffin-Valade

Auditor of the City of Portland

By

Deputy

See Substitute

Ord. No. 185162

Agenda No.
ORDINANCE NO.

Title

*Authorize the Director of the Bureau of Transportation to execute an Intergovernmental Agreement with the Portland Development Commission in the amount of \$802,740 and authorize a competitive bidding process for construction of street improvements in the Lents Town Center Urban Renewal Area (Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: MAYOR SAM ADAMS</p> <p><i>K. Saltzman on behalf of Mayor Adams</i> COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Other: <i>Greg Jones</i></p> <p>Prepared by: Rich Newlands:slg Date Prepared: February 9, 2012 <i>RN</i></p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date FEBRUARY 22, 2012</p> <p>City Attorney Approval</p>	<p>CLERK USE: DATE FILED <u>FEB 16 2012</u></p> <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p>
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<p>AGENDA</p> <p>TIME CERTAIN <input type="checkbox"/> Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p> <p>CONSENT <input checked="" type="checkbox"/></p> <p>REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
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FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Leonard	4. Leonard	
Adams	Adams	