

INTERGOVERNMENTAL AGREEMENT

Between
Portland Development Commission
 And
Portland Bureau of Transportation
 For the

102nd Ave: NE Glisan St – SE Washington St (PH2): Construction Phase

This Intergovernmental Agreement (this “Agreement”), dated this _____ day of _____, 2013, (“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.

This Agreement provides the local match necessary for Federal Highway Administration grant for the Bid and Award Phase of the construction project. Now therefore, the parties agree as follows:

AGREEMENT

I. THE PROJECT

A. Background

In 2006, the Bureau received a \$4,200,000 grant from the Federal Highway Administration for construction of Phase One of streetscape improvements from NE Weidler to NE Glisan Street. Construction was completed in 2008. Approximately \$445,563 in project cost savings remained. PDC then provided \$50,000 to combine with the Phase I cost savings for design engineering for Phase II improvements from NE Glisan to SE Washington Streets. Design Engineering for Phase II is complete.

Portland Development Commission ♦ Portland Bureau of Transportation
 Intergovernmental Agreement – *102nd Ave: NE Glisan St. – SE Washington St (Phase II):
 Construction Phase*

In 2011, the Bureau was awarded \$540,000 federal grant to complete right-of-way purchase in preparation for Phase II construction. PDC then provided the \$60,000 matching funds requirement for the federal grant. With right-of-way portion now secured with the project shifts to construction.

The Bureau was awarded an additional \$1.1M federal grant for construction of Phase II (collectively, the "Project"). Under this Agreement, PDC will fund the \$140,000 local match necessary for expenditure of the federal funds. The following schedule reflects the various stages of Phase II:

1. FY 2010-11:Preliminary Engineering (complete)
2. FY 2011-12 and FY 2012-13:Right-of-Way (complete)
3. FY 2013-14:Construction (the subject of this agreement)

B. Summary of Work and Budget

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

The Bureau will bid, award, and manage the construction of the Project, which will include installation of, at a minimum, 10 existing street banners provided by PDC remaining from Phase I.

2. The following is a summary of the budget:

The Project construction budget is \$1,240,578. PDC's budget for the Project is \$140,000, the agreed-upon local match to complement federal funds for completing the construction phase.

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 *Daniel Spero* (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 *Leah Treat*, or such other person as designated in writing by the Director (the "Performing Agency Contract Signatory"). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Performing Agency Contract Manager shall be *Kathryn Levine* (the "Performing Agency Contract Manager"). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. A project manager shall be designated by Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by Funding Agency (the "Performing Agency Project Manager") to carry out the responsibilities designated in this Agreement.
 - a) The Funding Agency Project Manager shall be Sue Lewis, or such other person as designated in writing by Sara King.
 - b) The Performing Agency Project Manager shall be Winston Sandino, 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. 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, 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. Winston Sandino, Project Manager
2. Hollie Berry, Contract Manager
3. Norberto Adre, Signals and Street Light Designer
4. Andrew Sullivan, Traffic Engineer
5. Marty Maloney, Right-of-Way Agent

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

1. Sue Lewis, Project Manager

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 shall be responsible for making the local match payment to the Oregon Department of Transportation Local Government Investment Pool, if required.
2. The Performing Agency Project Manager will be responsible for making the local match payment and managing the preliminary engineering.
3. The Funding Agency Project Manager will be responsible for the reimbursement to the Bureau of the local match payment.

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 does not have Eligible Costs for the Percent for Art Program, as described in City Code Section 5.74.020 and/or this Agreement does not have Eligible Funds for the Percent for Art Program as described in City Code Section 5.74.020.C.

O. Business and Workforce Equity

1. PDC's Equity Policy (the "Policy") will not apply because the Project is federally funded. The Bureau shall, accordingly, comply with all applicable federal requirements in regards to fair contracting.

P. Special Contract Management Provisions

None

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency an amount of **ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000)** in a single lump sum upon receipt of an invoice after the Effective Date of this Agreement.
- B. The funding is from Gateway Regional Center URA.
- C. The full amount of funds will be authorized in the current fiscal year's budget.
- D. There are no other non-PDC funds in this Agreement.
- 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.

IV. BILLING AND PAYMENT PROCEDURE

- A. The Performing Agency shall submit to the Funding Agency Project Manager an invoice to receive payment under this Agreement.
- B. Each billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, the billing shall include:
 1. Agreement number and date of invoice
 2. Project name
 3. A description of the nature and cost of work to be accomplished;
- C. If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

V. GENERAL**A. Termination.**

1. The Termination Date of this Agreement is June 30, 2014.
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, Bureau 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 Bureau, 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, Bureau, 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 bureaus of the City of Portland, 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 Project*".
2. For projects involving construction activities funded by PDC, the Bureau shall display a sign near the construction site, readily visible to the public, specifying that the Project is being "*funded by the Portland Development Commission's Gateway Regional 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 and PDC may amend this Agreement only in writing signed by the signatories to this Agreement.
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]

