

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Parks & Recreation
For the
Charles Jordan Community Center Re-Roofing Project

This Intergovernmental Agreement (this “Agreement”), dated this 1st day of July, 2015, (“Effective Date”) is made and entered into by and between the **City of Portland, Parks & Recreation** (“PPR”) 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. PPR is responsible for parks, open space, and recreation operations, services and improvements within the City.
3. A cooperative partnership between PDC and PPR 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.
5. The Portland City Council (“Council”), through Ordinance No. 181232, which was duly adopted by Council on August 29, 2007, and amended by Ordinance No. 183435, passed by Council on January 6, 2010, delegated to the Director of PPR and the City Auditor the authority to enter into intergovernmental agreements with PDC. The form of agreement used for this Agreement is substantially similar to the template that was approved by City Council through the above referenced Ordinance.

Now therefore, the parties agree as follows:

AGREEMENT

I. THE PROJECT

A. Background.

Since 2013, the Charles Jordan Community Center gym roof has been leaking. These leaks have impacted gym programming because of potential safety issues associated with a wet floor. Portland Parks & Recreation (PP&R) maintenance staff have repeatedly tried to stop the leaking with temporary caulking and roof patching; however, these maintenance-oriented solutions have proven to provide only short term benefit.

For this reason, PP&R contracted with Professional Roof Consultants (PRC) in April 2013 to evaluate the roof. As a result of this evaluation, PRC recommended replacement of the gym roof. In 2014, PP&R undertook design of a roof replacement with McBride Architecture that included an investigation of the roof substructure, selection of roof material, and new OSHA requirements for roof access including roof safety anchors and ladder access to the roof. Construction documents were completed and the project was prepared for bidding.

This project was bid in February 2015 using the City of Portland's standard procurement process for competitive low bids. Interstate Sheet Metal Inc. has been selected as the General Contractor and is currently awaiting execution of a Contract pending the availability of funds from the Portland Development Commission. Since the entire gym roof will be removed, construction is scheduled to begin July 1, 2015 to take advantage of the dry summer weather conditions.

The Interstate Corridor Plan identifies public improvements such as community facilities, branch library, arts center, multi-cultural center, intergenerational activity center, and child care as projects that benefit the community; furthermore, the PDC Board and City Council have approved the Eighth Amendment to the Interstate Corridor Urban Renewal Area Revised and Restated Plan which specifically authorizes funding for the roof replacement and finds the Charles Jordan Community Center to be an important benefit to the community and the Interstate Urban Renewal Area.

B. Summary of Work and Budget.

Summary of work:

- Construct, maintain and remove temporary work zone traffic control measures.
- Removal of existing metal roof system and installation of new standing seam roof system.
- Installation of fall protection system.
- Installation of roof access hatch, ladder, stairs.

Schedule:

- Construction Starts July 1, 2015
- Construction Duration 60 Days

- Construction Completion September 15, 2015

Overall Project Budget: Not to exceed \$603,000 Funded by PDC

- Construction
- Professional Services
- PP&R Construction Management
- Contingency

A detailed description of the scope of work and 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". PPR shall be referred to herein as the Performing Agency.

C. Funding Agency.

- 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.
- Contract Manager. The Funding Agency Contract Manager shall be *Dan 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.

- Contract Signatory. The Performing Agency Contract Signatory shall be *Mike Abbaté*, or such other person as designated in writing by the Performing Agency 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 IV.

- **Contract Manager.** The Performing Agency Contract Manager shall be *Dale Cook* (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.

- 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 designated responsibilities designated in this Agreement.
 - The Funding Agency Project Manager shall be Courtney Cohn, or such other person as designated in writing by Dan Spero.
 - The Performing Agency Project Manager shall be Reid Blanchard, or such other person as designated in writing by Dale Cook, and approved by the Funding Agency Project Manager.
- 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, or cannot be made available by hiring, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in this Agreement.
- 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 PPR 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.

- Reid Blanchard, Construction/Project Manager
- Dale Cook, Construction Management Supervisor
- Don Athey, Sr. Facilities Maintenance Supervisor

The following Parks Central Services staff will be working on this project based on availability.

- Carpenters:
 - Bill Akers, Gib Barthelemy, Scott Cooper, Don Joughin (Lead), Cody Meyer, Noel Prosser, Karen Trappen, Pete Zoltanski
- Facility Maintenance Technicians:
 - Ron Boyd (Lead), Dave Burt, Erik Cobbett, Les Kralicek, Dan Finley, Mike Murphy, Ray Hughes
- Electricians:
 - Chuck Baker, Darryl Brooks (Supervising Electrician), Frank Crofoot
- Utility Worker II:
 - Dennis Shadduck, Curtis Ross, Kevin Warfield

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

- Project Manager: Courtney Cohn, Budget Analyst

H. Approvals.

- No work shall be performed and no funds shall be obligated until this Agreement is executed.
- 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.

- Performing Project Manager
 - (1) Management of General Contractor and Associated Contract
 - (2) Management of Architect and Associated Contract
 - (3) Oversight of Construction Means, Methods and Details
 - (4) Verification of Schedule progress
 - (5) Preside over weekly construction meetings
 - (6) Facilitate and participate in problem solving
 - (7) Management of Budget, Costs, Change Orders
 - (8) Communication and involvement of Community Center Staff and Facilities
- Funding Project Manager
 - (1) Provide payment to PPR
 - (2) Review project reports and final reconciliation of sources and uses.
 - (3) Review alternative project list as submitted by PPR and ensure compliance with the Agreement
- Mark Ross of Portland Parks and Recreation will take the lead on media inquiries regarding construction of the roof. Shawn Uhlman of PDC will take the lead on inquiries regarding PDC's funding of the project. No other potential project management issues are anticipated at this time.
- Project will be completed in 90 days or less.

J. Public Involvement.

- This is a PPR improvement to an existing community center. Project stakeholders have been notified. No additional outreach is anticipated; however if additional outreach occurs, PPR and PDC will collaborate on design of the public involvement plan that is endorsed by both project managers.
- PPR and PDC will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
- Each project manager will inform the other 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. . This project is in the construction phase. Only project construction coordination meetings are expected. PDC Project Manager will request PPR Project Manager to be invited to the project construction coordination meetings as needed.

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 contracts with to carry out all or part of the Work.

- 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:
 - Interstate Sheetmetal, General Contractor (Self-performing all work)
 - McBride Architecture
- 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.

- 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. PPR has completed City of Portland bidding process for this project. Notice to proceed shall be issued once this Agreement is executed. PDC's participation in this project was included after the bidding process was complete and therefore the City of Portland's contracting policy applies to the project.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a lump sum not to exceed **Six Hundred Three Thousand DOLLARS (\$603,000)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from Interstate Corridor URA.
- C. The full amount of funds *is* authorized in the current fiscal year's budget. If the Project funding spans multiple fiscal years, the *Council / 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 Board of Commissioners that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. 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.
- E. The Performing Agency may seek payment for the project subject to issuing a notice to proceed to the contractor and funding being appropriated in the PDC FY 2015-16 Adopted Budget. Resources provided through this intergovernmental agreement may fund:
 - Direct Costs.
 - Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.
 - 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.
 - Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and PPR or PDC support staff personal services where the expenditure is for performance of the Work and within the authorized budget.

- Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.
- Indirect Costs. Covers reimbursement for overhead costs shall be at the rate established annually by Council for PPR in accordance with City Code Section 5.48 and for PDC in accordance with Cost Recovery Policy through Resolution 6560.
 - This Agreement was originated in Fiscal Year 2014-15. For that Fiscal Year, PPR's rate is 103.39% (ONE HUNDRED-THREE AND THIRTY-NINE HUNDRETHS PERCENT) of the sum of Personal Services and Benefit Costs per Ordinance No. 182377. PPR Indirect costs pay for administrative time and generally fixed costs related to program management costs including Council charges, central administration costs, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
 - This Agreement was originated in Fiscal Year 2014-15. For that Fiscal Year, the PDC rate is \$18.00 per labor hour (SEVENTEEN DOLLARS AND ZERO CENTS) 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.
 - 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; a change to the rate does not require an amendment to this Agreement.
 - 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.

F. 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.

G. Project Reconciliation. PPR shall provide PDC with a final notice of completion and reconciliation of actual sources and uses for the project within 30 days of project closeout.

- Unexpended tax increment resources from this Agreement must be returned to the Funding Agency within 60 days of final completion of the Project or be allocated towards other qualifying parks capital improvement projects within the Interstate Corridor Urban Renewal Area.
- Allocation to alternative qualifying parks capital improvements projects must be approved in writing by contract signatories.
- Alternative projects may include improvement to parks and various park infrastructure with the exception of buildings besides the Charles Jordan Community Center.
- The Performing Agency must provide a detailed report and accounting of qualifying alternative projects and project expenditures to PDC on a quarterly basis until \$603,000 in documented expenses has occurred.

IV. BILLING AND PAYMENT PROCEDURE

- A.** Funding Agency shall provide a full payment to Performing Agency within 20 days of Effective Date subject to appropriation in the PDC FY 2015-16 Adopted Budget and a notice to proceed being issued to the contractor.
- B.** The Performing Agency shall submit to the Funding Agency Project Manager a Billing Detail Report for work performed as described in the Scope of Work and Budget for review and approval at project completion.
- C.** Billing Detail Report at a minimum, each billing shall include:
- a description of the nature and cost of work accomplished;
 - the names, rates and hours worked of personnel;
 - disbursements to consultants, contractors and outside vendors for materials and services; and
 - any other specific detail or documentation as desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.

- D.** 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.

- The Termination Date of this Agreement is December 31st, 2015.
- Early Termination of Agreement.
 - This Agreement may be terminated at any time by mutual written consent.
 - Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - In the event of early termination of this Agreement, the work shall cease promptly, as reasonably possible, 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:
 - 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.

- Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed effects to the Project's scope, schedule and budget.
- Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 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.
 - All conflicts should first be discussed and resolved if at all possible by the project managers specified in Section II.
 - 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.
 - 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, PPR 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 PPR, 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, PPR, 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 that 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.

- Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
- 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.
- 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.

I. 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 PPR and the Portland Development

Commission and, if appropriate, financed by "*the Interstate Corridor Urban Renewal Project*".

2. For projects involving construction activities funded by PDC, PPR 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 Interstate Corridor Urban Renewal Project*". The sign shall remain in place until construction is complete.

VI. AMENDMENTS

1. Except as otherwise provided for in this Agreement, PPR 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 of this Agreement, 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 PPR. 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, PPR and PDC have executed this Agreement as of the Effective Date.

CITY OF PORTLAND


PORTLAND DEVELOPMENT COMMISSION

Mike Abbaté, Director, Portland Parks
and Recreation Bureau

(Executed under authority delegated by
Ordinance No. 181232, passed by
Council on August 29, 2007 and
amended by Ordinance No. 183435,
passed by Council on January 6, 2010.)

Date

APPROVED AS TO FORM:
APPROVED AS TO FORM


CITY ATTORNEY 6/18/15
City Attorney

Patrick Quinton, Executive Director

Date

APPROVED AS TO FORM:

PDC Legal Counsel

City Auditor

Date