

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 6941**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON IN AN AMOUNT NOT TO EXCEED \$600,000 FOR THE JEFFERSON HIGH SCHOOL FRONTAGE IMPROVEMENT PROJECT IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA**

**WHEREAS**, Portland Development Commission (“PDC”) , as the city of Portland’s urban renewal agency, is responsible for urban renewal and revitalization of the Interstate Corridor Urban Renewal Area in accordance with and pursuant to the Interstate Corridor Urban Renewal Area Plan, adopted August 23, 2000, by the City Council, by Ordinance No. 174829 (as amended, the “ICURAP”);

**WHEREAS**, Portland Public Schools (“PPS”) operates Kindergarten through grade 12 public schools in the City of Portland, including Jefferson High School located at 5210 N. Kerby Avenue, Portland, Oregon (“Jefferson High School”), in the Interstate Corridor Urban Renewal Area;

**WHEREAS**, an extensive community planning process developed an plan for the Jefferson High School Frontage Improvements (the “Project”) in conjunction with community members, property and business owners in the area;

**WHEREAS**, the purpose of the Project is to create and enhance a distinct cultural identity at Jefferson High School that reflects the character of the Humboldt neighborhood and serves the people and employers of the area;

**WHEREAS**, the expenditure of funds for the project are currently in the adopted FY 2011-2012 PDC budget and in the draft FY 2012-2103 budget;

**WHEREAS**, the completion of the Project will fulfill public objectives in the ICURAP and will contribute to meeting City goals for the elimination of blight in the Killingsworth corridor and the Interstate Corridor Urban Renewal area; and

**WHEREAS**, PDC and PPS have now negotiated an Intergovernmental Agreement, in the form attached hereto as Exhibit A (the “Agreement”), for PDC’s construction of the Project in an amount not to exceed \$600,000.

**NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director is hereby authorized to enter into the Agreement;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to the Agreement, if such changes do not materially increase PDC's obligations or risks as determined by the Executive Director in consultation with PDC's General Counsel; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective 30 days after its adoption.

**Adopted by the Portland Development Commission on April 30, 2012**



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Emily Swensen, Recording Secretary

**Exhibit A**

**Intergovernmental Agreement**

**with School District No. 1J, Multnomah County, Oregon**

**Portland Development Commission**

**Board of Commissioners**

**April 30, 2012**

**Resolution No. 6941**

**Exhibit A includes this cover page and contains 13 pages:**

- Intergovernmental Agreement
  - Attachment A – Property
  - Attachment B – Project Description
  - Attachment C - Budget

## **INTERGOVERNMENTAL AGREEMENT**

This intergovernmental Agreement (this "Agreement") is entered into this \_\_\_ day of \_\_\_ 2011 (the "Effective Date") by and between the Portland Development Commission, the City of Portland's duly designated urban renewal agency ("PDC"), and School District No. 1J, Multnomah County, Oregon ("PPS").

### **RECITALS**

- A. PPS operates K-12 public schools in the city of Portland, including Jefferson High School located at 5210 N. Kerby Avenue, Portland, Oregon ("Jefferson High School"), in the Interstate Corridor Urban Renewal Area;
- B. PDC, as the city of Portland's urban renewal agency, is responsible for urban renewal and revitalization of the Interstate Corridor Urban Renewal Area in accordance with and pursuant to the Interstate Corridor Urban Renewal Area Plan, adopted August 23, 2000, by the City Council, by Ordinance No. 174829 (as amended, the "ICURAP");
- C. After an extensive community planning process conducted in 2002 and 2010, the Humboldt neighborhood, including business and property owners, Jefferson High School Alumni Association and the PTA expressed their desire for better visual and physical connections between the Jefferson High School campus and NE Killingsworth Street;
- D. Consistent with the desire of the surrounding neighborhood, PPS and PDC wish to improve the visual and physical connection between the Jefferson High School campus and NE Killingsworth Street to better integrate Jefferson High School with its surrounding community and further the revitalization of the Interstate Corridor Urban Renewal Area consistent with the ICURAP;
- E. In order to improve the visual and physical connection between the Jefferson High School campus and NE Killingsworth Street, PDC and PPS desire to enter into this Agreement to establish the terms and conditions under which PDC will fund, design and construct improvements to the frontage of the Jefferson High School campus on NE Killingsworth St and PPS will provide PDC with access to the campus to construct the improvements and accept ownership of and maintenance responsibility for the improvements once constructed.

Now therefore, PDC and PPS agree as follows:

### **AGREEMENT**

#### **I. CONSTRUCTION OF THE PROJECT**

PDC shall fund and construct, on the portion of the Jefferson High School campus fronting NE Killingsworth Street and identified in Attachment A (the "Property"), the

improvements described in Attachment B (the "Project"). As part of the Project, PDC shall:

- A. Enter into a contract with an architectural and engineering firm (the "A/E Firm") for the necessary design and engineering work consistent with the concept described in Attachments A and B (the "A/E Contract"). PDC shall permit PPS to review and comment on the Project design as it is developed.
- B. Subject to PPS's prior written approval of the permit applications, obtain all permits necessary for construction of the Project.
- C. Enter into a contract with a construction contractor (the "Contractor") for construction of the Project based on the design prepared by, and under the oversight of, the A/E Firm (the "Construction Contract"). PDC shall include in the Construction Contract a requirement that the Contractor indemnify, defend and hold harmless PPS and its officers, directors, members, employees and agents from any and all damages, losses, costs, expenses (including attorney fees), claims and liabilities relating to or pertaining to work on the Project performed by Contractor or its agents, employees or subcontractors. PDC shall also include in the Construction Contract a requirement that Contractor maintain in force during the term of Construction Contract, insurance coverage of the types and in the amounts set forth below with PDC and PPS listed as additional insured under the insurance:
  - 1. Commercial General Liability Insurance with coverage limits no less than \$2.0 million general annual aggregate, with a \$1.0 million minimum limit per occurrence.
  - 2. Automobile Liability Insurance with coverage limits no less than the minimum amounts required by law.

## II. ACCESS TO PROPERTY AND OWNERSHIP AND MAINTENANCE OF IMPROVEMENTS

- A. Subject to security clearance by PPS, PPS hereby grants PDC, and its employees, contractors, subcontractors and agents, the license and right to enter and use the Property as reasonably necessary to construct the Project. To obtain security clearance, individuals must report to PPS Security Services for a criminal history background check and fingerprinting, and for issuance of a PPS identification badge. The cost of the criminal history background check and badge issuance (currently \$82 per individual) is the responsibility of PDC (or PDC's contractor, as agreed to between PDC and its contractor).
- B. PPS represents to PDC that, to the best of PPS's ability and using the best information available, the Property is free from defects and is suitable for construction of the Project. Without limiting the generality of the preceding sentence, PPS agrees and acknowledges that PDC has no obligation or responsibility to conduct any environmental investigation, abatement, remediation or other

cleanup of the Property or to cure any subsurface or other defects in the Property that may be found during construction. If PDC encounters any subsurface or other defects in the Property that potentially render the Property unsuitable for construction of the Project, it shall stop work on the Project and promptly notify the PPS Contract Manager.

- C. On the date of PDC's written notification to PPS that the city of Portland Bureau of Development Services has given final approval of the construction performed under the general building permit issued for the Project (the "Completion Date"), all right, title and interest in and to the improvements constructed as part of the Project that is held by PDC ("PDC's Interest") shall immediately and automatically transfer to and vest in PPS. If requested by PDC, PPS shall execute and deliver to PDC such additional documents as PDC may reasonably require to evidence transfer of PDC's Interest to PPS and PPS's acceptance thereof. The obligations under the preceding sentence shall survive the automatic termination of this Agreement on the Completion Date.
- D. On the Completion Date, PPS shall assume all responsibility for maintenance of the Project, including but not limited to, insuring the Project against loss in a manner consistent with PPS's insurance of other similar improvements owned by PPS; provided, however, that PPS shall notify PDC in writing of any repair that PPS believes is covered under a warranty provided under the Construction Contract and PDC shall tender the claim to the Contractor, as appropriate. This Section II (D) shall survive the automatic termination of this Agreement on the Completion Date.

### III. CONTRACT MANAGEMENT

- A. The following individuals are designated to manage this Agreement and the Project on behalf of PDC.
  - 1. PDC Contract Signatory. The PDC contract signatory shall be Patrick Quinton, or such other person designated by the PDC Executive Director. The PDC Contract Signatory is authorized to give notices and to carry out other PDC actions referred to herein, including termination of this Agreement as provided in Section VIII.
  - 2. PDC Contract Manager. The PDC Contract Manager shall be Denyse McGriff, or such other person designated by the PDC Executive Director ("PDC Contract Manager"). The PDC Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.
  - 3. PDC Construction Manager. The PDC Construction Manager shall be David Obern, or such other person designated by the PDC Executive Director ("PDC

Construction Manager”). The PDC Construction Manager is responsible for management of the construction activities associated with the Project.

- B. The following individuals are designated to manage this Agreement on behalf of PPS.
  - 1. PPS Contract Signatory. The PPS Contract Signatory shall be the PPS Superintendent or her designee. The PPS Contract Signatory is authorized to give notices and to carry out other PPS actions referred to herein, including termination of this Agreement as provided in Section VIII.
  - 2. PPS Contract Manager. The PPS Contract Manager shall be Edward Bruin, or such other person designated by Tony Magliano, PPS Facilities Director (“PPS Contract Manager”). The PPS Contract Manager is responsible for the day- to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.
- C. The PDC Contract Manager and the PPS Contract Manager will confer at least monthly to review Project management and staffing performance and identify desired or needed changes, if any.
- D. Project Management
  - 1. The assigned Project staff shall hold regular meetings during the construction of the Project. PDC shall prepare periodic status reports highlighting any change orders, anticipated cost overruns, and other Project opportunities and constraints.
  - 2. During construction of the Project, PDC will provide and post Project signage identifying PDC and PPS.
  - 3. If additional outreach is needed with the Jefferson Frontage Community Advisory Committee, PDC will coordinate an outreach meeting.
- E. Meeting Participation. PDC Project staff will invite PPS Project staff to all regular meeting or significant Project meetings and share documents and plans as they are produced.
- F. Subcontractors. A subcontractor is any other individual or entity that PDC contracts with (or that a subcontractor contracts with to carry out all or a portion of the work of the Project). PDC may subcontract all or any portion of the Project work as PDC determines necessary or desirable and PDC shall have the sole authority to direct the work of any subcontractor. Notwithstanding its use of subcontractors, PDC shall remain obligated for performance of its obligations hereunder, and PPS shall incur no obligation to the subcontractor hereunder.

IV. 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 including the appropriations and budget limitation laws of each party.

V. OWNERSHIP OF WORK PRODUCT

Unless otherwise agreed to in writing by the parties, PDC will own all right, title and interest in and to any and all data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other written materials produced in connection with this Agreement. PDC will provide PPS with copies of the final as-built drawings and specifications. PDC hereby grants to PPS a non-exclusive, perpetual and irrevocable license to utilize the final as-built drawings and specifications for maintenance of the Project after completion thereof.

VI. PROJECT ACKNOWLEDGEMENT

Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge that the Project is a joint effort of PDC and PPS. This Section VI shall survive the automatic termination of this Agreement on the Completion Date.

VII. CONFLICT RESOLUTION

If a dispute arises regarding this Agreement, PDC and PPS agree to exercise good faith in expeditiously resolving said dispute in the following manner.

- A. All disputes should first be discussed and resolved if at all possible by the Contract Managers.
- B. If the dispute cannot be resolved by the Contract Managers, or involves one of the Contract Managers, then the conflict should be elevated to the Contract Signatories for discussion and resolution.

VIII. TERMINATION

- A. This Agreement shall terminate automatically on the Completion Date.
- B. This Agreement may be terminated at any time by mutual written agreement of the parties.
- C. PDC may, by and effective upon written notice to PPS, terminate this Agreement prior to the Completion Date if:
  - 1. PDC determines, in its discretion, that the cost of the Project is likely to exceed PDC's budget set forth in Attachment C (the "Budget");



2. PDC determines, in its discretion, that it is unable to complete the Project because of factors beyond its control, including but not limited to, PPS's failure to approve permit applications in a timely manner or PDC's lack of access to the Property because of its inability, despite reasonable efforts, to obtain necessary security clearances from PPS;
3. PDC's governing body fails to appropriate sufficient funds to complete the Project; or
4. PPS breaches its representation set forth in Section II (B) hereof or PDC otherwise determines, in its discretion, that the Property is not suitable for construction of the Project.

If PDC terminates this Agreement (other than a termination arising from the environmental condition of the Property) and unless PDC and PPS otherwise agree, PDC shall, to the extent permitted by any appropriated funds remaining in the Budget, restore the Property to a condition substantially equivalent to that existing prior to PDC's commencement of the Project. If PDC terminates this Agreement because of the environmental condition of the Property, PDC will cooperate with PPS's efforts to return the site to a safe and occupiable condition, environmental laws permitting, but PDC shall have no obligation to restore the Property.

#### IX. MISCELLANEOUS PROVISIONS

- A. This Agreement may be amended only in writing and by mutual consent.
- B. This Agreement (including all the Attachments which are incorporated herein by this reference) constitutes the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the parties relating to the subject matter hereof.
- C. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to PPS:

Portland Public Schools  
Attn: Edward Bruin  
P.O. Box 3107  
Portland, OR 97208-3107  
Telephone: (503) 916-2000, ext 74201  
Facsimile: (503) 916-3253

with a copy to:

Portland Public Schools  
Attn: Jollee Patterson, General Counsel  
P.O. Box 3107  
Portland, OR 97208-3107  
Telephone: (503) 916-3570  
Facsimile: (503) 916-2724

If to PDC:

Portland Development Commission  
Attn: Denyse McGriff  
222 NW Fifth Avenue  
Portland, OR 97209  
Telephone: (503) 823-3295  
Facsimile: (503) 865-3733

with a copy to:

Portland Development Commission  
Attn: General Counsel  
222 NW Fifth Avenue  
Portland, OR 97209  
Telephone: (503) 823-3200  
Facsimile: (503) 823-3368

- D. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any legal action regarding this Agreement must be brought and conducted in the federal or state court, as appropriate,

serving Multnomah County, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.

- F. PPS and PDC are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any direct or indirect right to a third party unless that third party is specifically identified by name in this Agreement and expressly described as an intended beneficiary of this Agreement.
- G. This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.
- H. Both parties understand and agree that this Agreement is not intended and does not create an employment relationship between PPS and PDC, its officers, employees, or agents. At all times under this Agreement, PDC and PPS are acting and performing as independent contractors. Each party's signature on this Agreement certifies its independent contractor status.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**PDC: PORTLAND DEVELOPMENT COMMISSION**

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

APPROVED AS TO FORM:

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

**PPS: SCHOOL DISTRICT NO. 1 J, MULTNOMAH COUNTY, OREGON**

\_\_\_\_\_  
Carole Smith, Superintendent

APPROVED AS TO FORM:

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

ATTACHMENT A

PROPERTY

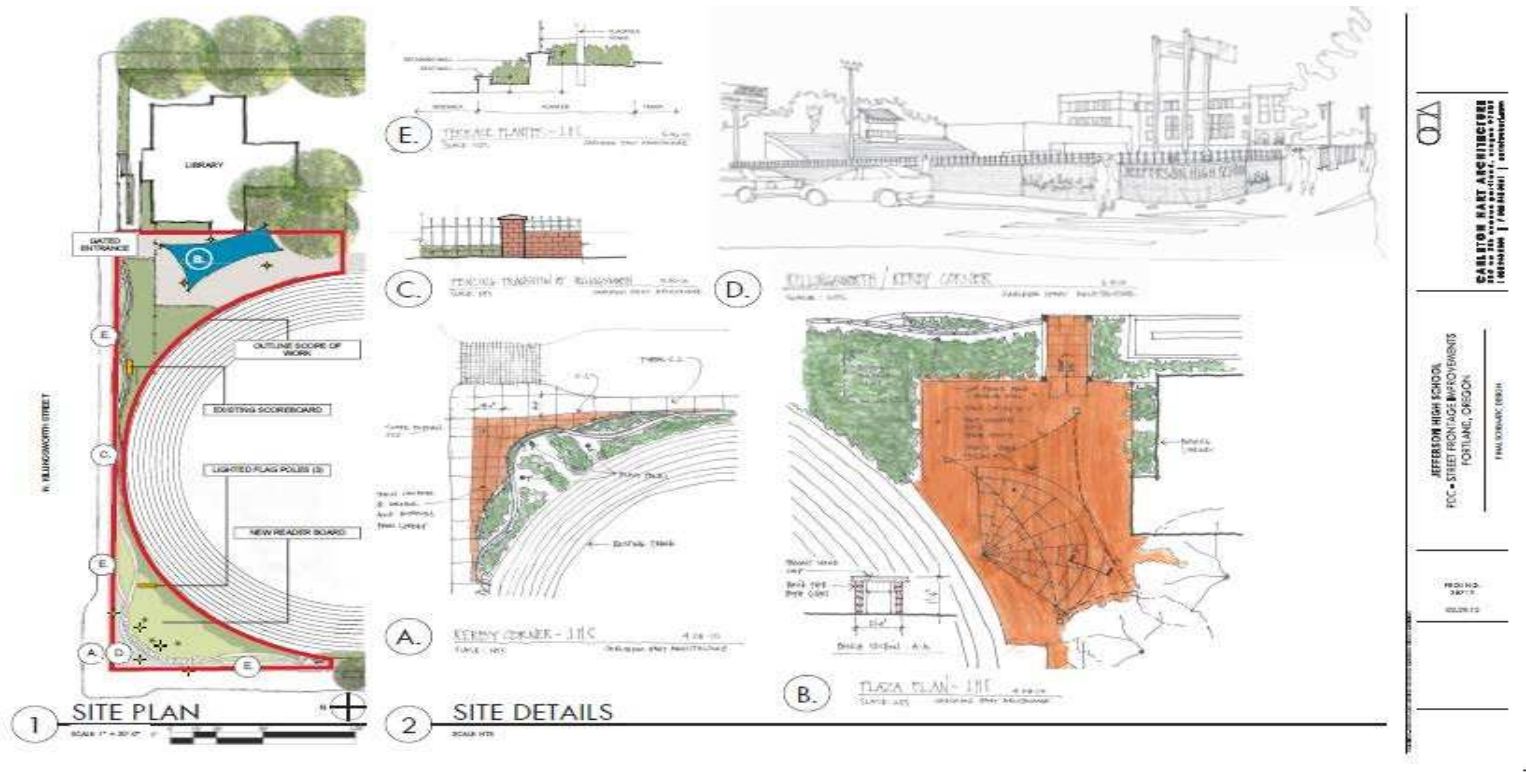


## ATTACHMENT B

### PROJECT DESCRIPTION

The Project shall consist of the following improvements:

- Terrace planter along the entire length of the Killingsworth frontage with fencing transition as indicated by (E) and (C) in diagram;
- New black iron picket fence to match the fencing at the North Portland branch of the Library to the east, including a possible gate. The fence would extend along the entire Killingsworth frontage and along the Kerby frontage approximately 65 feet +/-;
- School identification signage generally shown on (B) and (D) in the diagram below;
- Optional Element- would be to construct the base for the plaza. PDC will determine whether to construct this optional element based on the anticipated cost.



## ATTACHMENT C

### BUDGET

#### Jefferson High Frontage Improvements

Project Budget 2-22-2012

#### Construction Hard Costs\*

Base Bid Estimate Cost	\$	400,000.00
Sub Total Base Bid	\$	400,000.00
Construction Contingency @15%	\$	60,000.00
<b>Total Est Hard Cost</b>	<b>\$</b>	<b>460,000.00</b>

#### Construction Soft Costs\*\*

A/E Carleton Hart	\$	84,000.00
A/E WO Contingency Estimated	\$	10,000.00
Topo Survey	\$	3,800.00
Geotechnical	\$	4,230.00
Permits & Fees @ (2% of Hard Base Bid)	\$	8,000.00
Spec Inspection & Other PTE @ (2% Hard Base Bid)	\$	8,000.00
2% for Arts (2% of Hard Base Bid)	\$	8,000.00
Misc @ 1%	\$	4,000.00
Sub Total Soft Costs	\$	130,030.00
Soft Contingency @ 5% (rounded)	\$	6,500.00
<b>Sub Total Estimate Soft Cost</b>	<b>\$</b>	<b>136,530.00</b>

#### Project Mgmt & Administration

PDC Procurement (in Kind)	\$	-
PDC Construction Services Project Mgmt (in Kind)	\$	-
	\$	-

<b>Sub Total Hard Costs w/15% Contingency</b>	<b>\$</b>	<b>460,000.00</b>
<b>Sub Total Soft Costs w/5% Contingency</b>	<b>\$</b>	<b>136,530.00</b>
<b>Total Estimated Project Cost</b>	<b>\$</b>	<b>596,530.00</b>

**\*Assume:**

- No environmental cleanup costs
- Work during regular work hours
- On Site Staging & temp access over curb

**\*\* Assume:**

- No Utility Svc Connection Fee's
- No SDC Charges
- No Planning Design Review

**RESOLUTION NO. 6941**

**RESOLUTION TITLE:**

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON, IN AN AMOUNT NOT TO EXCEED \$600,000 FOR THE JEFFERSON HIGH SCHOOL FRONTAGE IMPROVEMENT PROJECT IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA


**Adopted by the Portland Development Commission on April 30, 2012**

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner John Mohlis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

**CERTIFICATION**

**The undersigned hereby certifies that:**

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.*

	<p><b>Date:</b></p> <p>June 27, 2012</p>
<p><b>Emily Swensen, Recording Secretary</b></p>	