

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 6985**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE  
PORTLAND BUREAU OF TRANSPORTATION FOR THE CONSTRUCTION  
OF THE WEST BURNSIDE AND PEARL DISTRICT INTERSECTION SAFETY  
AND ACCESS PROJECT IN THE RIVER DISTRICT URBAN RENEWAL AREA;  
PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,879,465**

**WHEREAS**, the Portland Development Commission ("PDC") is undertaking the River District Urban Renewal Plan, adopted September 25, 1998, by the Portland City Council ("Council") and subsequently amended (the "Plan");

**WHEREAS**, the Plan provides for the improvement of the transportation system to enhance traffic flow and connections to adjacent districts of the City;

**WHEREAS**, the Portland Bureau of Transportation ("PBOT") is responsible for transportation operations and improvements within the City public rights of way;

**WHEREAS**, Council adopted the Pearl District Access and Circulation Plan on June 13, 2012 (City Council Resolution No. 36932) and, as the first implementing action, directed PBOT to install seven traffic signals in priority locations to improve access and safety;

**WHEREAS**, PBOT has identified improvements to nine intersections, including installation of eight new or modified traffic signals, left-turn lanes, curb extensions, and associated channelization (collectively, the "Project") to implement Council's directive;

**WHEREAS**, PBOT and PDC entered into an Intergovernmental Agreement dated September 10, 2012, as amended, whereby PDC provided \$465,535 for the design and engineering of the Project;

**WHEREAS**, the Project will enhance safety, improve connections, and promote economic development by improving access into the Pearl District and Central Business District from West Burnside Street; and

**WHEREAS**, this expenditure is included in the River District Urban Renewal Area Approved FY 2012-13 budget.

**NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director is hereby authorized to enter into an Intergovernmental Agreement substantially in the form attached hereto as Exhibit A (the "IGA") under which PDC will provide funding for the construction of those portions of the Project within the River District Urban Renewal Area in an amount not to exceed \$1,879,465;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to the IGA if such changes, in the opinion of the Executive Director in consultation with the General Counsel, do not materially change PDC's obligations or risks; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 6985**

**EXHIBIT A**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE CONSTRUCTION OF THE WEST BURNSIDE AND PEARL DISTRICT INTERSECTION SAFETY AND ACCESS PROJECT IN THE RIVER DISTRICT URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,879,465**

Exhibit A includes this cover page and contains 19 pages:

- Intergovernmental Agreement between Portland Development Commission and Portland Bureau of Transportation for the West Burnside and Pearl District Circulation Improvements Project: Construction Phase
  - Exhibit A – Scope Work and Budget
  - Exhibit B – Project Map

**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**Portland Development Commission**  
**And**  
**Portland Bureau of Transportation**  
**For the**  
**West Burnside and Pearl District Circulation Improvements Project:**  
**Construction Phase**

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”) 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**

Over the past twelve years, the area known as the Pearl District neighborhood has dramatically transformed from an industrial warehouse district to a high-density, mixed-use community. Traffic operations and street functions in the district have changed due to land use changes (e.g. the replacement of the Lovejoy viaduct with a main street and the Portland Streetcar line). On December 5, 2008, by Ordinance No. 182319 and Resolution No. 36642, the Council adopted the *North Pearl District Plan*, building upon previously adopted plans including the 1998 *River District Urban Renewal Plan* and the 2001 *Pearl District Development Plan*.

On June 13, 2012 the *Pearl District Access and Circulation Plan* (the “Plan”) was adopted by Council (Resolution No. 36932). The Plan was developed in cooperation with other City bureaus and with participation from property owners, residents, business persons, and other interested citizens. The Pearl District's community, as well as the greater Portland community, has asked for improved access and safety improvements in and through the district.

The Plan will contribute to the goals of the North Pearl District Plan and the Portland Plan in advancing sustainable communities via the increased use of multi-modal access and travel within the district. The Plan also supports access for automobiles and truck traffic by maintaining access to regional transportation and freight facilities, and by reducing conflicts between trucks, automobiles, bicycles, and pedestrians at interchanges with regional facilities and streets.

At the time of adoption, Council directed the Bureau staff to collaborate with stakeholders to implement the projects and, as the first implementing action of the Plan, to install traffic signals at seven key priority intersections identified in the Plan, including:

- New traffic signals at NW Couch / 12<sup>th</sup>, NW Couch / 11<sup>th</sup>, and NW Couch / Broadway;
- New traffic signals at NW 13<sup>th</sup> / Glisan and NW 13<sup>th</sup> / Everett;
- Modified signals at 4<sup>th</sup> / W. Burnside., and 12<sup>th</sup> / W. Burnside to allow for a northbound left turn lane from Burnside;
- A modified signal at 3rd Ave / W. Burnside to allow for a southbound left-turn lane from Burnside; and
- Pedestrian, Americans with Disability Act (ADA), and lighting improvements at key intersections in the district.

The Transportation Commissioner further clarified that these signalization improvements are to include left-turn lanes on West Burnside Street in order to further the access and economic development objectives of the Plan.

On September 10, 2012, PDC and the Bureau entered into an Intergovernmental Agreement for the design and engineering of the signalization of the seven intersections (Design and Engineering IGA) for a total cost of \$469,599, of which PDC contributed \$465,535 and the Bureau contributed \$4,064. The scope of work for the Design and Engineering IGA included:

- Traffic demand and operational modeling of the proposed improvements;
- Engineering and cost estimating, including a set of construction documents for bid at a later date; and
- Public involvement and outreach to neighborhood associations, property owners, and other stakeholders.

The work called for in the Design and Engineering IGA is scheduled to be completed by May 31, 2013. Sufficient work has been completed to establish a construction budget for the purposes of entering into an Intergovernmental Agreement between PDC and the Bureau to fund construction of the improvements (“Construction IGA”).

The Adopted FY 2012-13 PDC Budget includes \$1,879,465 to construct the improvements.

The purpose of the work (collectively, the “Project”) defined in this Agreement, is to provide:

- Economic development improvements by improving access from W. Burnside Street, into the Pearl and Central Business districts. West Burnside Street is the highest volume city street in the central city, and currently prohibits left turns into either district.
- Safety improvements and congestion relief at priority intersections.

## **B. Summary of Work and Budget**

1. Work Scope Summary. The following is a summary of the scope of work (collectively, the “Work”).

The Project includes bid, award, and construction of the following:

- New traffic signals at NW Couch / 12<sup>th</sup>, NW Couch / 11<sup>th</sup>, and NW Couch / Broadway;
- New traffic signals at NW 13<sup>th</sup> / Glisan and NW 13<sup>th</sup> / Everett;
- Modified signals at 4<sup>th</sup> / W. Burnside., and 12<sup>th</sup> / W. Burnside to allow for a northbound left turn lane from Burnside;
- A modified signal at 3rd Ave / W. Burnside to allow for a southbound left-turn lane from Burnside; and
- Pedestrian, Americans with Disability Act (ADA), and lighting improvements at key intersections in the district.

The Work will include:

- Calculate quantities, prepare specifications and estimate beginning on January 14, 2013.
- Advertise for bids on or after March 27, 2013.
- Bid opening on or after April 24, 2013.
- Council award of contract on or after May 23, 2013.
- Begin construction on or after May 31, 2013.
- Complete construction on or before December 15, 2013.

2. Budget summary.

- a) The full budget for the work is \$2,089,465. Of this amount, the Bureau will fund \$210,000 and PDC will fund \$1,879,465.
- b) Funding for the project will be used to pay the Bureau staff time and subcontractor fees to construct the Project. The Project is nearly entirely located in the River District Urban Renewal Area (RDURA). Small portions of the Project, specifically, the half block west of SW 3<sup>rd</sup> Avenue centerline between 3<sup>rd</sup> and 4<sup>th</sup> Avenues, and a portion of a curb extension on the southeast corner of West Burnside Street/SW 3<sup>rd</sup> Avenue intersection, are not located in the RDURA. Funding for these portions of the construction of the Project will be paid by the Bureau. The remainder of the work in this Agreement will be funded entirely by tax increment financing (TIF) funds from the RDURA. This work will occur during FY 2012-13 and FY 2013-14.

[Budget Table Attached as Exhibit A]

## **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 Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
  - a) The Funding Agency Project Manager shall be Eric Jacobson, or such other person as designated in writing by Lew Bowers.

- b) The Performing Agency Project Manager shall be Ross Swanson, or such other person as designated in writing by Greg Jones 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.
- Ross Swanson, Project Manager
  - Chris Armes, Project Manager
  - Nelson Chi, Signal and Lighting Engineer Associate
  - Todd Rosinbum, Senior Signal and Lighting Engineer
  - Eva Huntsinger, Senior Engineer (Civil)
  - Lewis Wardrip, Senior Traffic Engineer
  - Mauricio Leclerc, Planner
  - Grant Morehead, Planner

- G. Project Staffing – Funding Agency:** The following Funding Agency personnel are being assigned to perform the Work.
- Eric Jacobson, Project Manager
  - Steven Shain, Central City Manager
  - Lew Bowers, Central City Division 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 Project Manager will complete the project management tasks identified in Section 1.B.
2. The Performing Agency Project Manager will notify the PDC project manager in writing of any material changes to scope, schedule or budget for this project.
3. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter at a frequency of 90 days. Reports will be submitted in writing concurrent with billings to PDC.
4. No project kickoff meeting will be held; however the Funding Agency Project Manager will be invited to the preconstruction meeting following Council award of the contract.

#### **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, except that the PDC project manager will not normally attend weekly construction meetings with the contractor.

**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:
  - a) None until contract award.
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. Payment to RACC will be calculated based on the Eligible Costs of an Improvement Project and will be made in full upon issuance of the construction contract and is currently estimated at \$33,540.36.
3. Payment to RACC will be made directly by the Bureau.
4. A Funding Agency representative will not 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. 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 Policy 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. In the event that the Performing Agency has an M/W/ESB utilization

goal that is greater than PDC's Goal, such greater goal shall apply to the Project. The 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, information on utilization will be included in monthly Project Status Reports, as described in Section II above.

2. Outreach materials will be translated into Russian and Vietnamese to reflect the diversity of property owners adjacent to the project.

**P. Special Contract Management Provisions**

1. The PDC Contract Manager shall be informed in advance of any change orders in excess of \$5,000 following contract award.
2. The Bureau shall not award the construction contract until PDC and PBOT are in agreement regarding the acceptability of the bids based on final cost estimates, the amount of the bids, and the Bureau has received written approval to proceed.

**III. FUNDING / COMPENSATION / ALLOWABLE COSTS**

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed ONE MILLION EIGHT HUNDRED SEVENTY-NINE THOUSAN FOUR HUNDRED SIXTY-FIVE dollars (**\$1,879,465**) for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from River District Urban Renewal Area.
- 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. Funding has been identified in the Portland Development Commission Five-Year Budget Forecast, and 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. 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 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.

3. This Agreement was originated in Fiscal Year 2012-13. For that Fiscal Year, the Bureau's rate is SEVENTY THREE AND SEVENTY-EIGHT HUNDREDTHS PERCENT (73.78%) 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.

4. This Agreement was originated in Fiscal Year 2012-13. For that Fiscal Year, the PDC rate is \$17.00 per labor hour [SEVENTEEN DOLLARS AND NO ONE HUNDRETHS] 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.

5. 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.

6. 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. 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.
- H. 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.
- I. The Performing Agency will not seek reimbursement from the Funding Agency for any expenses associated with the demolition, removal, redesign, or reinstallation of project components that are attributable to either Performing Agency or Contractor error or oversight, such as errors or omissions in the construction plans and specifications or installation of project components inconsistent with the constructions plans and specifications, discovered after Contract Closeout.**

#### **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 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 Agreement 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 River District Urban Renewal Area.”

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 River District Urban Renewal Area.” 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. 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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
Date

**Intergovernmental Agreement - Exhibit A**

**Scope Work and Budget**

West Burnside and Pearl District Circulation Improvements Project

**Fiscal Year 2012-13**

| <u>Tasks and/or Deliverables</u> |                                                  |                 | <u>Budget Uses</u>  |                      |                      |                      | <u>Budget Sources</u> |                     |               |                      |
|----------------------------------|--------------------------------------------------|-----------------|---------------------|----------------------|----------------------|----------------------|-----------------------|---------------------|---------------|----------------------|
| #                                | Description                                      | Completion Date | Personal Services   | Materials & Services | Capital Outlay       | Subtotals            | Funding Agency        | Performing Agency   | Other Sources | Subtotals            |
| A                                | Project Management                               | 6/30/13         | \$ 8,000.00         | \$ -                 | \$ -                 | \$ 8,000.00          | \$ 6,500.00           | \$ 1,500.00         | \$ -          | \$ 8,000.00          |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
| B                                | Bid Support                                      | 5/23/13         | \$ 1,500.00         | \$ 6,400.00          | \$ -                 | \$ 7,900.00          | \$ 5,900.00           | \$ 2,000.00         | \$ -          | \$ 7,900.00          |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
| C                                | Construction Engineering                         | 6/30/13         | \$ 21,000.00        | \$ 5,000.00          | \$ -                 | \$ 26,000.00         | \$ 6,000.00           | \$ 20,000.00        | \$ -          | \$ 26,000.00         |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
| D                                | Construction Contract                            | 6/30/13         | \$ -                | \$ -                 | \$ 171,574.00        | \$ 171,574.00        | \$ 131,574.00         | \$ 40,000.00        | \$ -          | \$ 171,574.00        |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
|                                  | Change Management (Performing Agency Controlled) | 6/30/13         | \$ -                | \$ -                 | \$ 26,849.00         | \$ 26,849.00         | \$ 26,849.00          | \$ -                | \$ -          | \$ 26,849.00         |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
| E                                | Contingency (Funding Agency Controlled)          | N/A             | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
|                                  |                                                  |                 | \$ -                | \$ -                 | \$ -                 | \$ -                 | \$ -                  | \$ -                | \$ -          | \$ -                 |
| <b>Subtotals =</b>               |                                                  |                 | <b>\$ 30,500.00</b> | <b>\$ 11,400.00</b>  | <b>\$ 198,423.00</b> |                      | <b>\$ 176,823.00</b>  | <b>\$ 63,500.00</b> | <b>\$ -</b>   |                      |
| <b>Fiscal Year Total =</b>       |                                                  |                 |                     |                      |                      | <b>\$ 240,323.00</b> | <b>\$ 176,823.00</b>  |                     |               | <b>\$ 240,323.00</b> |

**Fiscal Year 2013-14**

| <u>Tasks and/or Deliverables</u> |                                                  |                 | <u>Budget Uses</u>   |                      |                        |                        | <u>Budget Sources</u>  |                      |               |                        |
|----------------------------------|--------------------------------------------------|-----------------|----------------------|----------------------|------------------------|------------------------|------------------------|----------------------|---------------|------------------------|
| #                                | Description                                      | Completion Date | Personal Services    | Materials & Services | Capital Outlay         | Subtotals              | Funding Agency         | Performing Agency    | Other Sources | Subtotals              |
| A                                | Project Management                               | 6/30/14         | \$ 18,500.00         | \$ -                 | \$ -                   | \$ 18,500.00           | \$ 14,000.00           | \$ 4,500.00          | \$ -          | \$ 18,500.00           |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
| B                                | Bid Support                                      | N/A             | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
| C                                | Construction Engineering                         | 12/15/13        | \$ 118,153.50        | \$ 31,946.50         | \$ -                   | \$ 150,100.00          | \$ 138,100.00          | \$ 12,000.00         | \$ -          | \$ 150,100.00          |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
| D                                | Construction Contract                            | 12/15/13        | \$ -                 | \$ -                 | \$ 1,505,444.00        | \$ 1,505,444.00        | \$ 1,385,444.00        | \$ 120,000.00        | \$ -          | \$ 1,505,444.00        |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
|                                  | Change Management (Performing Agency Controlled) | 12/15/13        | \$ -                 | \$ -                 | \$ -                   | \$ 141,557.00          | \$ 131,557.00          | \$ 10,000.00         | \$ -          | \$ 141,557.00          |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
| E                                | Contingency (Funding Agency Controlled)          | N/A             | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
|                                  |                                                  |                 | \$ -                 | \$ -                 | \$ -                   | \$ -                   | \$ -                   | \$ -                 | \$ -          | \$ -                   |
| <b>Subtotals =</b>               |                                                  |                 | <b>\$ 136,653.50</b> | <b>\$ 31,946.50</b>  | <b>\$ 1,505,444.00</b> |                        | <b>\$ 1,669,101.00</b> | <b>\$ 146,500.00</b> | <b>\$ -</b>   |                        |
| <b>Fiscal Year Total =</b>       |                                                  |                 |                      |                      |                        | <b>\$ 1,815,601.00</b> | <b>\$ 1,669,101.00</b> |                      |               | <b>\$ 1,815,601.00</b> |

|                                             |                        |                        |                        |
|---------------------------------------------|------------------------|------------------------|------------------------|
| <b>RACC Percent for Art PROJECT TOTAL =</b> | <b>\$ 33,540.36</b>    | <b>\$ 33,540.36</b>    | <b>\$ 33,540.36</b>    |
| <b>PROJECT TOTAL =</b>                      | <b>\$ 2,089,464.36</b> | <b>\$ 1,879,464.36</b> | <b>\$ 2,089,464.36</b> |
| <b>IGA TOTAL AUTHORIZED AMOUNT =</b>        | <b>\$ 1,879,464.36</b> |                        |                        |

Exhibit B. Project Map

