

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 6991

APPROVING THE INTERGOVERNMENTAL AGREEMENT PORTLAND UNION STATION TRACKS AND BUILDING PE/NEPA BETWEEN THE PORTLAND DEVELOPMENT COMMISSION AND THE OREGON DEPARTMENT OF TRANSPORTATION

WHEREAS, the Portland Development Commission (“PDC”) acquired the Union Station property located at 800 NW 6th Avenue (“Union Station”) in 1987 to meet the objectives of the Downtown Waterfront Urban Renewal Plan, and in 2008 Union Station was removed from the Downtown Waterfront Urban Renewal Area, and in 2009 Union Station was added to the River District Urban Renewal Area and the Amended and Restated River District Urban Renewal Plan;

WHEREAS, Degenkolb Engineers prepared the Union Station Facility Assessment and Seismic Work Plan in 2001, which identified a range of needed facility improvements, and in 2007 PDC, Office of Management and Finance, and Architectural Cost Consultants updated the cost estimates associated with the recommended improvements and identified their timing as critical, near critical, or long term;

WHEREAS, since 2007 PDC has implemented many improvements to Union Station, yet the need for significant upgrades remains;

WHEREAS, PDC desires to complete preliminary design development and environmental due diligence for the remaining uncompleted building improvements and certain surrounding infrastructure improvements, and the cost of this scope of work is estimated at \$4,959,051 (“Project”);

WHEREAS, the Federal Railroad Administration has awarded up to \$3,967,243 from the High Speed and Intercity Passenger Rail Program, to be provided on an 80 percent match basis for completing preliminary engineering and environmental review of certain improvements to Union Station (“FRA Grant”);

WHEREAS, the FRA Grant funds will be provided to PDC through the Oregon Department of Transportation (“ODOT”) by the Intergovernmental Agreement Portland Union Station Tracks and Building PE/NEPA between PDC and the Oregon Department of Transportation (“IGA”);

WHEREAS, PDC will provide the local 20 percent match, estimated at \$991,808 for the total Project cost, and have responsibility for any Project cost overruns; and

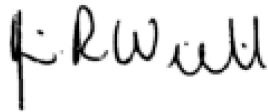
WHEREAS, ODOT will be reimbursed for its expenses in assisting with the Project, currently estimated at \$129,372.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is authorized to execute the IGA between PDC and ODOT, substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that that the Executive Director may approve changes to the IGA 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 immediately upon its adoption.

Adopted by Portland Development Commission on March 13, 2013



Gina Wiedrick, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 6991

EXHIBIT A

**APPROVING THE INTERGOVERNMENTAL AGREEMENT PORTLAND UNION
STATION TRACKS AND BUILDING PE/NEPA BETWEEN THE PORTLAND
DEVELOPMENT COMMISSION AND THE OREGON DEPARTMENT OF
TRANSPORTATION**

Exhibit A includes this cover page and contains 20 pages:

- Intergovernmental Agreement Portland Union Station Tracks and Building PE/NEPA, ODOT Misc. Contract and Agreement No. 28209
 - Exhibit A: Statement of Work

INTERGOVERNMENTAL AGREEMENT

PORTLAND UNION STATION TRACKS AND BUILDING PE/NEPA

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and the Portland Development Commission, hereinafter referred to as "PDC," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. Union Station railroad passenger terminal, located at NW 6th Street and Irving Street in Portland, is a part of the regional transportation system. The property is owned by PDC.
3. Union Station is advantageously situated in Portland's central area, at the confluence of multiple transportation modes, and immediately adjacent to a significant redevelopment opportunity of approximately twenty (20) acres. Maintaining Union Station as a passenger rail station and multimodal hub offers the opportunity to knit together the surrounding uses and development opportunities with the multitude of transportation options and the historic station as a unique district anchor and attractive amenity.
4. This important historic transportation facility in downtown Portland is in need of significant renovation. The objective of this Agreement is for the PDC to complete preliminary engineering (PE) and environmental review in compliance with Federal Railroad Administration's (FRA) *Procedures for Considering Environmental Impacts* (64 FR 28545 (May 26, 1999 [FRA Environmental Procedures])) and the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations (40 CFR 5s 1500-08), of the Portland Union Station Tracks & Building Project, as further described in Sections 2 and 3 of the Scope of Work set forth in Exhibit A.
5. The Omnibus Appropriations Act, 2010, Public Law 111-117 (December 16, 2009), hereinafter referred to as "FY10," provides funding for high speed rail infrastructure investment and job preservation and creation.
6. Pursuant to FRA Grant/Cooperative Agreement Number FR-HSR-0094-11-01-00, dated September 23, 2011, incorporated herein by this reference and made a part of this Agreement, ODOT is granted statutory authority to conduct and fund the Portland Union Station Tracks and Building Preliminary Engineering and Environmental Review, as further described below.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT and PDC agree that the PDC shall perform the Portland Union Station Tracks & Building Preliminary Engineering and Environmental Review, hereinafter referred to as "Project," described in "Exhibit A" the Statement of Work, attached hereto, and by this reference made a part of this Agreement.
2. The total Project cost is estimated at \$4,959,051. The FRA funding is limited to eighty (80) percent of the estimated cost for completing the Project up to a maximum amount of \$3,967,243. ODOT's costs are estimated at \$129,372 and will be paid eighty (80) percent from the FRA funds, and twenty (20) percent from PDC funds. Based on the total Project cost estimate set forth above, PDC's contribution of the total Project cost is \$991,808. PDC shall be responsible for any nonparticipating costs and Project costs beyond the estimate. PDC funding assistance shall not be less than twenty (20) percent of the total cost of the Project.
3. ODOT considers PDC a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.319, High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital Assistance Grants.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on April 30, 2015.

PDC OBLIGATIONS

1. PDC shall perform the work described in Exhibit A.
2. PDC agrees to comply with all of the provisions and terms and conditions of the FRA Grant/Cooperative Agreement Number FR-HSR-0094-11-01-00, as identified and incorporated into this Agreement by Recitals, Paragraph 6, above.
3. PDC shall keep accurate cost accounting records, and track the funds expended per task/subtask as outlined in the FRA Grant/Cooperative Agreement. PDC shall prepare, and submit monthly itemized, progress invoices for the work performed under this Agreement directly to ODOT's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize each expenditure associated with a specific task/subtask for which reimbursement is claimed.
4. In consideration of grant administration and technical assistance for the Project, PDC agrees to reimburse twenty (20) percent of ODOT's expenses incurred for work on the Project. ODOT will seek reimbursement from FRA for the remaining eighty (80) percent of eligible expenses. ODOT's expenses are estimated at \$129,372. The

ODOT/PDC
Agreement No. 28209

PDC Project Manager shall be notified of any actual or anticipated variance over this amount within ten (10) business days. ODOT shall prepare and submit itemized invoices directly to PDC's Project Manager for review and approval on a quarterly basis at minimum.

5. PDC acknowledges that work on Tasks 2 and 3 as described in Exhibit A shall not commence until ODOT has issued a Notice to Proceed (NTP). ODOT will issue a NTP after Task 1.1 in Exhibit A is completed and the required documents submitted to FRA, and FRA has approved them in writing.
6. PDC may, at its discretion, choose to contract with a consultant for portions of the work under Exhibit A of this Agreement. In such event, PDC shall remain responsible for the implementation of those portions of work that the consultant performs and the obligations regarding that work under this Agreement.
7. PDC shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, PDC expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
8. PDC shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
9. All employers, including PDC, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. PDC shall ensure that each of its contractors complies with these requirements.
10. PDC shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of PDC's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention

of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.

11. Any such indemnification shall also provide that neither PDC's contractor and subcontractor nor any attorney engaged by PDC's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that PDC's contractor is prohibited from defending the State of Oregon, or that PDC's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against PDC's contractor if the State of Oregon elects to assume its own defense.
12. PDC acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of PDC which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
13. PDC certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of PDC, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind PDC.
14. PDC's Project Manager for this Project is Dave Obern, Project Manager, Portland Development Commission, 222 NW Fifth Avenue, Portland OR 97209, 503-823-3737, obernd@pdc.us, or assigned designee upon individual's absence. PDC shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed, ODOT agrees to reimburse eighty (80) percent of PDC's costs within forty-five (45) days of receipt by ODOT of acceptable Project invoices up to a maximum total amount of \$3,967,243, less the amount of ODOT's costs. Said maximum amount shall include reimbursement for all expenses.
2. ODOT shall not reimburse PDC for any work on Task 2 and Task 3 as described in Exhibit A until ODOT has issued an NTP for those tasks. ODOT shall issue a NTP to PDC after Task 1.1 is complete and the required documents are submitted to FRA, with FRA's approval in writing.

3. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
4. ODOT's Project Manager for this Project is Stacy Snider, Operations Manager, ODOT Rail Division, 555 13th Street NE Suite 3, Salem OR 97301, 503-986-5190, stacy.e.snider@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to PDC, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If PDC fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If PDC fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If PDC fails to provide payment of its share of the cost of the Project.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
3. PDC may terminate this Agreement effective upon delivery of written notice to ODOT, or at such later date as may be established by PDC, if ODOT fails to reimburse PDC in accordance with the terms and conditions of this Agreement.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or PDC with respect to which the other Party may have liability, the notified Party

must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which ODOT is jointly liable with PDC (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by PDC in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of PDC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of PDC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
7. With respect to a Third Party Claim for which PDC is jointly liable with ODOT (or would be if joined in the Third Party Claim), PDC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of PDC on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of PDC on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. PDC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. Once the documents described in Task 1.1 of Exhibit A are finalized and FRA has approved them in writing, the Detailed Work Plan and Budget (described in Exhibit A) shall be incorporated herein as Exhibit B – the detailed scope, schedule, and budget for Tasks 2 and 3.

ODOT/PDC
Agreement No. 28209

10. PDC, as a recipient of federal funds, pursuant to this Agreement with the ODOT, shall assume sole liability for PDC's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon PDC's breach of any such conditions that requires the ODOT to return funds to the Federal Railroad Administration, hold harmless and indemnify the ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of PDC, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
11. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
12. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Portland Development Commission, by
and through its designated officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

PDC Contact:

Dave Obern
222 NW Fifth Avenue
Portland, OR 97209
503-823-3737
Obernd @pdc.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Rail Division Administrator

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Approved by email _____
Assistant Attorney General

Date February 3, 2012

ODOT Contact:

Joseph Denhof, Fiscal Analyst
ODOT - Operations
555 13th Street NE, Suite 3
Salem, OR 97301
503-986-4169
joseph.m.denhof@odot.state.or.us

EXHIBIT A
Statement of Work
Portland Union Station Tracks & Building:
Preliminary Engineering and Environmental Review

BACKGROUND

1. The State of Oregon Department of Transportation (ODOT) provides state funding to support two (2) daily roundtrip **Amtrak Cascades** trains between Eugene/Springfield, Oregon (OR), and Portland, OR, as well as four (4) other **Amtrak Cascades** trains operating between Portland, OR and Seattle, Washington (WA) on the Pacific Northwest Rail Corridor (PNWRC). Additionally, Amtrak operates two (2) intercity passenger trains on the Oregon portion of the PNWRC, the **Coast Starlight**, which runs between Los Angeles, California (CA) and Seattle, WA: via Portland, OR and includes all intermediate Oregon station stops, and the **Empire Builder** which runs between Spokane, WA and Portland, OR.
2. Construction of Portland's Union Station was completed in 1896. The Portland Development Commission (PDC) acquired the station in 1987 from the Portland Terminal Railroad Company. Starting in 2007, the City of Portland initiated a rehabilitation program to repair and restore Portland's Union Station. These repairs are comprised of Phases I, II, and II .b funded from different sources including local funds and Federal Highway Administration and Federal Railroad Administration (FRA) grants. The Phase I, II, and II .b work (none of which are funded by this Agreement) address critically-needed repairs. This Agreement will fund the preliminary engineering (PE) and environmental review work necessary to support supplementation of the station building and adjoining tracks needs, by designing and providing the necessary environmental review for the complete rehabilitation of the assets.
3. This planned investment, the Portland Union Station Tracks & Building Project, is located in Portland, OR at the Portland Union Station and adjacent to the Burlington Northern Santa Fe Railway's (BNSF) Fallbridge Subdivision. This segment of the PNWRC features several large freight yards and rail terminal connections to the Port of Portland's industrial and port facilities, as well as BNSF's main line connections to the port facilities in Vancouver, WA, all of which contribute to high volumes of freight traffic movements through the project area. Passenger rail activity at Portland Union Station is significant: over 672,000 on/offers in 2010 and over 838,000 Cascades passengers passed through in 2010.
4. This Portland Union Station Tracks & Building Project was recommended by the Oregon Rail Advisory Committee in May of 2009, and is consistent with the Oregon Transportation Plan adopted in 2006.

¹ Phase II .b is funded by a \$7.2 million cooperative Agreement (FR-HSR-0010-10-01-00) through the FRA High-Speed Intercity Passenger Rail Program.

OBJECTIVE

1. The objective of this Agreement is for PDC to complete preliminary engineering (PE) and environmental review in compliance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999 [FRA Environmental Procedures]) and the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations (40 CFR 5s 1500-08), of the Portland Union Station Tracks & Building Project. For purposes of this Statement of Work (SOW), the term "Project" means the completion of PE and environmental review work activities for the future construction of the Portland Union Station Tracks & Building Project. Also for the purposes of this SOW, the term "Construction Project" means final design and construction activities for the future construction of the Portland Union Station Tracks & Building Project.
2. Completion of the Project will support the final design and construction of track and building upgrades at Portland Union Station (not funded under this Agreement). The improvements are expected to improve yard ingress/egress speed to clear the main line faster for meet/pass benefits and permit faster crossover between tracks, resulting in improved intercity passenger rail service. The proposed renovations will enable current passenger service to operate more efficiently, and accommodate forecasted increases in passenger service. The future construction of the Portland Union Station Tracks & Building Project will reduce congestion and help to improve intercity passenger service speed, on-time performance and improve passenger safety and accessibility in the station.

PROJECT LIMITS

The Portland Union Station Tracks & Building Project is located in Multnomah County, Portland, OR. The study area begins approximately 2,000 feet northwest of the Union Station at BNSF milepost (MP) 0.31, and extends to the southeast to Union Pacific Railroad (UPRR) MP 0.30 to include all of the station building. The width of the study encompasses the station building, the five existing tracks, and the right of way for a sixth track.

SCOPE OF WORK

1. This Agreement will fund the completion of PE and environmental review and documentation of tracks and building improvements at Union Station, and their respective Project management activities, to support future Final Design (FD) and Construction of the Construction Project.
2. The track portion of the Construction Project may include repairing and/or replacing the existing stormwater system beneath Tracks 1-4 and platforms that arc causing sink holes; installing new crossties and ballast; replacing jointed rail with continuous welded rail for Tracks 1-3; adjusting the track elevations relative to the platforms to be consistent with Americans with Disabilities Act (ADA) standards; installing water line and stanchions between Tracks 2 and 3; power- operating remaining switches north and south of Union Station; and constructing a sixth track that would accommodate through freight traffic now routed via Track 5.

3. The building portion of the Construction Project may include upgrading the passenger waiting facility to comply with the ADA including accessibility to upper floors currently unavailable; fire and life safety improvements such as seismic bracing, new electrical power distribution, and fire detection and protection systems; energy conservations including new lighting, building insulation, and heating, ventilation and air conditioning (HVAC) systems; improvements of the stormwater drainage system; and modernization of the telecommunications system.

Task 1: Project Management

1.1 Detailed Work Plan and Budget

- A. PDC shall submit to ODOT a Detailed Work Plan and Budget for the Project as described in this Task 1 and providing additional detail with respect to Tasks 2 and 3. PDC acknowledges that work on Task 2 and Task 3 shall not commence until this task 1.1 is completed and the required documents are submitted to FRA, and FRA has approved them in writing. Once approved, the Detailed Work Plan and Budget for the Project shall be incorporated herein as the detailed scope, schedule and budget for Task 2 and Task 3.
- B. The Detailed Work Plan will include, but not be limited to, the following information:
 - i. A description of the Project and all activities necessary to complete the scope of work.
 - ii. A recommended class of action for NEPA, environmental analysis methodologies including a description of what will be studied (including the level of screening necessary to determine potential impacts), a detailed description of the anticipated impacts.
 - iii. A revised detailed cost estimate consistent with the scope of the Project.
 - iv. An updated Project schedule outlining all activities and review times for different stakeholders involved in the process.
 - v. An updated Project Management Plan (PMP), Project team organization, team decision making, roles and responsibilities, coordination with FRA and host railroads, communication standards, invoicing and progress reporting methods and procedures, and the scope of work will also be included in the Detailed Work Plan.

1.2 Project Management Activities

PDC will conduct Project management activities associated with the delivery of the Project. Project Management activities will include PDC Project oversight, progress reporting and monitoring, deliverable review, Project coordination meetings, an update to the PMP, consultant procurement and contract administration, invoicing, quality management, and data management and grant close-out. PDC staff will be

provided at a billable rate of \$82.14 an hour for the duration of the Project, per the requirements of allowable costs as set forth in the standards of OMB Circular A-87, Revised "Cost Principles for State and Local Governments." Additional information on Project Management is available in the FRA-accepted PMP (on file with FRA).

Task 2: Preliminary Engineering

PDC will complete, or cause to be completed, PE for the Construction Project. PE will consist of the preparation of all Construction Project development and Construction Project delivery documentation necessary to demonstrate the feasibility of the design of the Construction Project and PDC's plan for implementation such that the work may be advanced to final design. PDC will prepare the following PE documentation in a format and content acceptable to ODOT and FRA:

2.1 Preliminary Building, Track, and Signal Design:

- A. PDC will begin preparation of preliminary building, track, and signal design locations by conducting an "as-is" survey of existing conditions within the Construction Project area, which will result in an updated building and track conditions assessment and a set of "as-is" drawings that provide an accurate representation of the ground terrain, physical features, and existing building, track, and signal locations.
- B. PDC, working from the results of the "as-is" survey, will prepare preliminary building, track, and signal design drawings in accordance with applicable design criteria and standards for the proposed improvements encompassed by the Construction Project, showing both the existing conditions and the proposed new design and including annotations showing how changes to building, track and signals within the Project area are to be implemented.
- C. PDC shall research existing railroad profile plans, and prepare route and aspect charts, signal circuit plans, signal apparatus locations as part of PE. PDC shall develop a signal overview plan/map identifying the existing railroad conditions vs. newly proposed changes for this Construction Project area, and prepare an associated narrative to describe current conditions and proposed changes.

2.2 Revised Project Cost Estimate for Final Design and Construction:

- A. PDC will prepare a revised Construction Project cost estimate for FD and construction consistent with the preliminary building, track, and signal design. The minimum requirements for this cost estimate are listed below.
 - i. The revised Construction Project cost estimate will be presented in a format acceptable to FRA and will encompass all costs that PDC anticipates will be incurred to implement the Construction Project following completion of PE (including all final design and construction costs).
 - ii. The revised Construction Project cost estimate will incorporate an appropriate

allowance for cost risk and uncertainty associated with the Construction Project commensurate with its stage of development, whether through inclusion of a cost contingency (not to exceed 20%) or through another method accepted by FRA.

2.3 Revised Project Implementation Schedule:

1. PDC will prepare a Construction Project implementation schedule consistent with the preliminary building, track, and signal design and commensurate with the level of Construction Project development at PE completion. The minimum requirements for the Construction Project implementation schedule are listed below.
 - i. The Construction Project implementation schedule will be presented in a format acceptable to FRA and will encompass the entire Construction Project following completion of PE (including all final design and construction).
 - ii. The Construction Project implementation schedule will incorporate an appropriate allowance for schedule risk and uncertainty associated with the Construction Project commensurate with its stage of development, whether through inclusion of schedule contingency or through another method accepted by FRA.

2.4 Revised Project Benefits Estimate:

- A. PDC will estimate the type and magnitude of operational benefits to intercity passenger rail service that will result from the Construction Project consistent with the preliminary building, track, and signal design. The minimum requirements for the Construction Project benefits estimate are listed below.
 - i. If applicable, projected reductions in scheduled trip times and/or reductions in delays (measured in delay-minutes by cause) for passenger and freight trains.
 - ii. Estimation of energy consumption reduction.
 - iii. Other benefits

2.5 Project Management Documentation:

- A. PDC will prepare FD and Construction Project Management documentation demonstrating how it plans to manage implementation of the FD and Construction Project following completion of PE. The FD and Construction Project management documentation will address the following minimum requirements:
 - i. Identify the stakeholders involved in the FD and Construction Project's implementation and describe their respective roles, responsibilities, capabilities, capacities, and mechanisms through which these parties will interact with one another.
 - ii. Demonstrate that PDC has the adequate staff organization with well-defined

reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications.

- iii. Describe a Plan for obtaining all necessary permits required for the Construction Project's implementation.

2.6 Financial Planning Documentation:

- A. PDC will prepare financial planning documentation demonstrating how it intends to finance the implementation of the Construction Project following completion of PE. With the revised Construction Project cost estimate, the minimum requirements for the financial planning documentation are listed below.
 - i. A cost-loaded schedule depicting the cash outflow forecast for the FD and Construction Project by calendar year, in both base year and "year of expenditure" (i.e., inflation- adjusted "nominal") dollars.
 - ii. A description of the inflation assumptions used to arrive at the values for the year of expenditure.
 - iii. A forecast by calendar year of the sources of funds that will be used for the FD and Construction Project.
 - iv. A description of the degree to which funding for the implementation of the Construction Project has been committed and a description of the risks associated with the availability of the other sources of funding.
 - v. A description of other financing risks associated with the Construction Project, including, at a minimum, all cost overrun risks.
 - vi. A description of PDC's plan for financing any cost overruns, including addressing the availability of the sources of funding that may be used to finance overruns.
 - vii. A description of how the ongoing maintenance of the Construction Project once completed will be financed.

Task 3: Environmental Review

- A. As described in Task 1.1 above, PDC will submit a Detailed Work Plan and Budget for the Project to ODOT for FRA approval that describes the Project and includes the recommended class of action for NEPA, environmental analysis methodologies, anticipated impacts, including an estimated budget and schedule. The final determination of the appropriate NEPA class of action will be made by FRA prior to PDC commencing further environmental review or analysis.
- B. To the extent appropriate, the required environmental document will use information already collected during completion of Task 1.1. A final list of studies to be conducted by PDC as part of the Project's NEPA evaluation process will be

ODOT/PDC
Agreement No. 28209

determined in conjunction with FRA in the Detailed Work Plan and the Approved Project Budget and may include:

- i. Biological Resources
 - ii. Hazardous Waste
 - iii. Water Quality
 - iv. Cultural Studies
 - v. Community Impact Assessment
 - vi. Air Quality
 - vii. Noise Quality
 - viii. I-hydraulics-Flood Plain Analysis
 - ix. Visual Impact Analysis/Landscape
- C. PDC anticipates that the Construction Project will qualify for a Categorical Exclusion (CE) because it will take place within existing right of way and the area has been in active use as a rail corridor. If FRA determines based upon the information supplied by PDC in the Detailed Work Plan that the appropriate class of action is a CE, PDC will complete, or cause to complete, an FRA CE worksheet in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28546, May 26, 1999) from the Detailed Work Plan, and as follows: PDC will have an environmental specialist screen the Construction Project to determine its impact, including conducting a review of existing literature, contacting relevant agencies and performing field reconnaissance. PDC will then document the findings, prepare a cover letter, and submit a completed CE worksheet, if appropriate, to FRA for review and approval.
- D. If, after review of the Detailed Work Plan, FRA does not concur that a CE is appropriate for this Project, PDC will undertake an Environmental Assessment (EA) in accordance with FRA's Procedures for Considering Environmental Impacts, and as follows: PDC will conduct, or cause to conduct, scoping to determine the key issues and potential effects of the Construction Project and if determined appropriate, develop a public involvement plan that identifies key contacts within agencies, the news media, public officials, the general public, civic and business groups, relevant interest groups, present and potential riders/users, and private service providers/shippers. This public involvement plan will also identify how public involvement activities will be linked to key milestones in the planning/engineering and environmental process. PDC, in coordination with ODOT and the FRA, shall prepare an EA to include, but not limited to, the following: definition of the Construction Project and existing conditions, identification of the purpose of and need for the Construction Project, identification and analysis of all reasonable Construction Project build alternatives as well as a no-action alternative, and an

analysis of existing conditions in comparison to the impacts of the proposed action. PDC will submit a Draft Environmental Assessment to ODOT and the FRA for review and comment. Through consultation with ODOT and the FRA and confirmation that no significant impacts are anticipated, PDC will produce a draft finding of No Significant Impact (FONSI) and submit it to ODOT and the FRA for review and completion.

- E. If there is an indication of potential for significant impact that cannot be mitigated and FRA determines that a draft Environmental Impact Statement (EIS) is required, PDC will establish scopes and costs for the preparation of an EIS as well as concomitant additional public outreach activities.
- F. In addition, PDC is responsible for obtaining all necessary permits required for the Construction Project's implementation. A plan for obtaining all necessary permits will be included in the Project Management Planning information for the FD and Construction Project as required in Task 2 above.

PROJECT SCHEDULE

Schedule of Work: The period of performance for the above work shall be approximately twenty-six (26) months beginning approximately March 2013 and ending approximately April 30, 2015, assuming a four month review period of Task 1 by FRA.

Task #/Description	Start Date	Completion Date
1 – Project Management	March 2013	April 2015
2 – Preliminary Engineering	December 2013	April 2015
3 – Environmental Review	December 2013	April 2015

DELIVERABLES

The deliverables associated with this Cooperative Agreement are listed below. PDC will achieve these deliverables to be authorized for reimbursement of Project components, and for the Project to be considered complete. All deliverables will be considered complete only after FRA review and approval in writing.

Task 1: Project Management		
#		Due Date
1.1	Detailed Work Plan and Budget	8/31/13
1.2	Project Management Activities, including Grant Close-Out	4/30/15
Task 2: Preliminary Engineering		
#		Due Date
2.1	Preliminary Building, Track, and Signal Design	3/31/15

ODOT/PDC
 Agreement No. 28209

2.2	Revised Construction Project Cost Estimate for Final Design and Construction	3/31/15
2.3	<u>Revised Construction Project Implementation Schedule</u>	3/31/15
2.4	Revised Construction Project Benefits Estimate	3/31/15
2.5	Project Management Documentation	3/31/15
2.6	Financial Planning Documentation	3/31/15
Task 3: Environmental Review		
#		Due Date
3.1	Draft Environmental Review Document or CE Worksheet	12/31/14
3.2	Final Environmental Document	3/31/15

PREREQUISITE - The following additional prerequisite is applicable to the Project, unless ODOT determines otherwise in writing:

Prior to commencement of any work associated with Task 2 or Task 3 and prior to the reimbursement of any cost associated with any Task 1, PDC shall submit and ODOT must accept, in writing, a Detailed Work plan and Budget (Deliverable 1.1).

PROJECT ESTIMATE/BUDGET

The total estimated cost of the Project is \$4,959,051 for which Federal funding under this Agreement will be up to 80%, but not more than \$3,967,243. Any additional expense required beyond that provided in this Agreement to complete the Project will be borne by PDC.

Project Cost Details:

<u>Task Description</u>		<u>Cost</u>
<u>Task 1 – Project Management</u>		\$817,163
<u>Task 2 – Preliminary Engineering</u>		\$3,468,608
<u>Task 3 – Environmental Review</u>		\$350,000
<u>Contingency</u>		\$323,285
Total Project Cost:		\$4,959,051

Project Sources of Funding:

FRA Grant funding	\$3,967,243	80%
PDC	\$991,808	20%
Total	\$4,959,051	100%

Once a detailed Project Budget is submitted by PDC and approved by the FRA as part of the Detailed Work Plan described under Prerequisite 1 above, it shall constitute the Approved Project Budget for this Agreement.

PROJECT COORDINATION

1. PDC will perform all tasks required for the Project through a coordinated process, including all railroad owners, operators, stakeholders, property owners/agents and funding partners within the Project area. PDC will include Amtrak as part of the Project team to facilitate design approvals and as the operator of the service.
2. The affected railroads are: Portland Terminal Railroad (PTRR), owner of Track 5 and right-of-way for a future Track 6, BNSF, tenant; UPRR, tenant; Portland & Western Railroad (PNWR), tenant; and Amtrak, provider of intercity rail passenger service. PDC will coordinate with other stakeholders as defined in the PMP.
 - a. Host Railroad:
 - i. PTRR: UPRR MP 0.30 to BNSF MP 0.31
 - b. Freight/Passenger Rail Operators:
 - i. UPRR
 - ii. PTRR
 - iii. Amtrak
 - iv. Portland & Western Railroad (for BNSF)
 - c. Funding Partners: FRA (80% funded with FY 2010 Department of Transportation Appropriations Act High-Speed Intercity Passenger Rail Funding)
 - d. Portland Development Commission (property owner providing 20% local match)
 - e. Other Stakeholders
 - i. Washington Department of Transportation

PROJECT MANAGEMENT

1. PDC will perform, or cause to be performed, Project management activities for all activities covered in this Agreement. This includes coordination with Federal agencies, railroads, State and local agency stakeholders, and design and environmental consultants. PDC's Project Manager is responsible for facilitating the coordination of all activities among the City of Portland, PTRR, ODOT, and FRA for implementation of the Portland Union Station Tracks and Building Project through completion. Upon award of the Project, PDC will monitor and evaluate the Project's progress through the administration of regular progress meetings scheduled throughout the Project's duration. Additional information on Project Management is available in the latest FRA-accepted PMP.
2. PDC shall prepare, submit, and implement, a best practices plan for Disadvantaged Business Enterprises (DBE) utilization for the project, to ODOT, within thirty (30)

ODOT/PDC
Agreement No. 28209

days. Once received ODOT will review and concur with the DBE best practices plan submission.

SUBSTANTIAL FEDERAL INVOLVEMENT

PDC may choose to use a subgrantee and/or third-party consultant for portions of this work; however, PDC will be responsible for implementation of the Project and all obligations under the terms of this Agreement. Under this Agreement, FRA will participate in the Project, as described in the SOW, through review and approval of the task deliverables. Oversight of any consultants will be conducted or caused to be conducted, by PDC and there will be no modifications permitted to the funding under this cooperative agreement for cost overruns. All Federal progress reporting requirements will be handled by PDC. FRA retains the right to audit or inspect all documentation and planning work progress throughout the term of this Agreement.

RESOLUTION NO. 6991

RESOLUTION TITLE:

APPROVING THE INTERGOVERNMENTAL AGREEMENT PORTLAND UNION STATION TRACKS AND BUILDING PE/NEPA BETWEEN THE PORTLAND DEVELOPMENT COMMISSION AND THE OREGON DEPARTMENT OF TRANSPORTATION


Adopted by the Portland Development Commission on March 13, 2013

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 checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" 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>Date:</p> <p>March 14, 2013</p>
<p>Gina Wiedrick, Recording Secretary</p>	