

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7037**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF THE PORTLAND STREETCAR ALIGNMENT ALONG SW MONTGOMERY STREET BETWEEN SW 4TH AND 5TH AVENUES; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,524,546 FROM THE EDUCATION, SOUTH PARK BLOCKS, AND NORTH MACADAM URBAN RENEWAL AREAS**

**WHEREAS**, the Portland Development Commission (“PDC”), as the duly-designated urban renewal agency of the City of Portland (City), is granted broad powers under Oregon Revised Statutes 457.170 for the planning and implementation of urban renewal projects;

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

**WHEREAS**, a cooperative partnership between PDC and PBOT will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans, and capital projects;

**WHEREAS**, design and construction of a new alignment for the Portland Streetcar along SW Montgomery Street between SW 4th and 5th Avenues will decrease bottlenecks and improve vehicular and pedestrian traffic;

**WHEREAS**, investments in transit have a system-wide effect in creating links to where people want to go, thereby creating equity and access for all;

**WHEREAS**, construction is anticipated to begin in spring 2014 and to be completed in fall 2014;  
and

**WHEREAS**, both parties desire to enter into an Intergovernmental Agreement (“IGA”) that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.

**NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director is hereby authorized to execute an IGA with PBOT in substantially the form attached hereto as Exhibit A, in an amount not to exceed \$1,524,546 for the construction of the new Portland Streetcar alignment;

**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 30 days after its adoption.

**Adopted by Portland Development Commission on January 9, 2014**



---

Gina Wiedrick, Recording Secretary

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7037**

**EXHIBIT A**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF THE PORTLAND STREETCAR ALIGNMENT ALONG SW MONTGOMERY STREET BETWEEN SW 4TH AND 5TH AVENUES; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,524,546 FROM THE EDUCATION, SOUTH PARK BLOCKS, AND NORTH MACADAM URBAN RENEWAL AREAS**

Exhibit A includes this cover page and contains 16 pages:

- Intergovernmental Agreement between Portland Development Commission and Portland Bureau of Transportation for the SW Montgomery and 4th Avenue Streetcar Relocation Project: Design through Construction

**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**Portland Development Commission**  
**And**  
**Portland Bureau of Transportation**  
**For the**  
**SW Montgomery & 4<sup>th</sup> Avenue Streetcar Relocation Project:**  
**Design through Construction**

This Intergovernmental Agreement (this “Agreement”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013, (“Effective Date”) is made and entered into by and between the **City of Portland, Bureau of Transportation** (the “Bureau”) and the **Portland Development Commission** (“PDC”).

**RECITALS**

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. The Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between PDC and the Bureau will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.

Now therefore, the parties agree as follows:

## **AGREEMENT**

### **I. The Project**

#### **A. Background**

1. The reintroduction of modern streetcar service in Portland emerged as part of the 1988 Central City Plan. Among the key goals for streetcar service was “encouraging infill...and serving as a catalyst for housing development.”
2. The initial 2.4 mile streetcar alignment was selected to connect major ridership generators and employment centers: Legacy Good Samaritan Hospital and Portland State University. Service began in 2001.
3. In 2002, the City of Portland Transportation System Plan (“TSP”) was adopted. The TSP included the proposed extension of the Portland Streetcar from the terminus at SW 4<sup>th</sup> Avenue and SW Montgomery Street to a new terminus of SW River Parkway just west of SW Moody Avenue (“RiverPlace Extension”).
4. In 2003, PDC and the Bureau entered into an agreement for purposes of funding the engineering and construction of the RiverPlace Extension. The RiverPlace Extension was built to provide new service and access to the multi-family housing units close to SW Harrison and existing housing in RiverPlace, as well as to new development planned in the RiverPlace area.
5. At the time the RiverPlace Extension was being designed and constructed, approximately \$90,000 of funding from the South Park Blocks Urban Renewal Area was used to provide for the inclusion of a revised temporary alignment track, electrification and civil engineering work around Block 153. Construction of a permanent alignment diagonally through Block 153 was delayed so as to support future development of the block by PDC. Funding for the temporary and permanent alignments was determined to come from a partnership between PDC and the Bureau. Construction began on the RiverPlace Extension in 2004 and passenger service began in March 2005.
6. Over the next several years PDC and the Bureau reviewed multiple options for the permanent alignment in conjunction with the redevelopment of PDC’s Block 153 properties, including housing and in 2009 a commercial use project called the Oregon Sustainability Center (“OSC”).
7. On November 20, 2009, the Bureau applied to the Oregon Department of Transportation (“ODOT”) for a ConnectOregon III grant in the amount of \$1,958,651 for the OSC Streetcar Access Project to build a dual streetcar track and improve the substandard pedestrian and bicycle environment. The grant application was submitted in partnership with Portland State University, PDC, TriMet, Oregon University System, Portland+Oregon Sustainability Institute, Oregon BEST, Portland Business Alliance, Earth Advantage, and Oregon State University.

8. In 2010, the Bureau was awarded and Portland City Council accepted an ODOT ConnectOregon grant in the amount of \$1,958,641, including from PDC matching funding in the amount of \$1,500,000.

9. In 2011, PDC and the Bureau entered in to and Intergovernmental Agreement (“IGA”) for the Oregon Sustainability Center Streetcar Relocation Project: Preliminary and Final Design. The Project entailed two phases of which only Phase I – Preliminary Design was completed. For that work PDC compensated the Bureau in the amount of \$70,461.

10. In 2012, with development of the PDC properties at Block 153 not moving forward with the Oregon Sustainability Center, PDC and the Bureau renewed discussion regarding the permanent alignment that could accommodate future new development for Block 153.

11. PDC and the Bureau are working to complete (the “Project”) to rebuild the streetcar alignment from the temporary alignment to a permanent alignment that will run on SW Montgomery and SW 4<sup>th</sup> Avenue. The Project entails design and construction of the following improvements and benefits:

- a) Eliminate the single track bottleneck in the streetcar system;
- b) Provide a double-track on SW Montgomery and SW 4<sup>th</sup> Avenues;
- c) Minimize streetcar queuing in the travel lane that results in motor vehicles entering the transit lane;
- d) Minimize pedestrian conflicts with the streetcar at SW 4<sup>th</sup> Avenue and SW Montgomery Street;

A detailed description of the scope of work and the budget is set forth in Exhibit A (the “Scope of Work and Budget”) to this Agreement. The tasks, activities, and deliverables described in this Section B and detailed in the Scope of Work and Budget shall be referred to in this Agreement as the “Work”.

## **II. CONTRACT MANAGEMENT**

**A.** The party for whom the Work is being performed, and who will be compensating the other party for performing the Work, shall be referred to in this Agreement as the “Funding Agency”. PDC shall be referred to herein as the Funding Agency.

**B.** The party performing the Work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. The Bureau shall be referred to herein as the Performing Agency.

### **C. Funding Agency.**

1. Contract Signatory. The Funding Agency Contract Signatory shall be Patrick Quinton, or such other person as designated in writing by the Funding Agency Director (the "Funding Agency Contract Signatory"). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions

referred to herein, including termination of this Agreement as provided in Section V.

2. Contract Manager. The Funding Agency Contract Manager shall be Dan Spero (the "Funding Agency Contract Manager"). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

#### **D. Performing Agency.**

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

#### **E. Management Staffing.**

1. A project manager shall be designated by the Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by the Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
  - a) The Funding Agency Project Manager shall be Irene Bowers or such other person as designated in writing by the Funding Agency Contract Manager.
  - b) The Performing Agency Project Manager shall be Chris Armes or such other person as designated in writing by Performing Agency Contract Manager 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.

1. Chris Armes, Project Manager
2. Ross Swanson, Project Manager
3. Lewis Wardrip, Traffic Engineer

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

1. Irene Bowers, Sr. Project Manager
2. Brian Lord, Sr. Administrative Specialist
3. Lisa Abuaf, Central City 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.
3. The Performing Agency shall not initiate Tasks 3 and 4 without the prior written authorization of the Funding Agency Project Manager.

**I. Project Management.**

1. The Funding Agency Project Manager will provide guidance, prioritization and oversight of PDC's interests involving project scope, schedule, and budget.
2. The Performing Agency Project Manager will oversee the day to day operations associated with the Project. Operations include design oversight, schedule, budget, invoicing, and coordination with regulatory agencies, management of subconsultants, and contract management.
3. Project management between PDC and the Bureau is to be a collaborative effort where all major decisions will be reviewed and discussed between the Funding Agency and Performing Agency Project Managers. Regular coordination meetings with the Project Managers will be scheduled to review budgets, schedule, design, public involvement, and design issues.



4. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter with each invoice and at a minimum frequency of four times per year (quarterly). A template report shall be discussed and agreed to as part of the Project's kickoff meeting.

**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, newsletters, reports) produced for the Project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information on the Project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

**K. Meeting Participation.** Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

**L. Work Product.** The Funding Agency Project Manager will, upon his or her request, receive timely copies of all work products, including drawings, specifications, designs, draft and final copies of technical and consultant analysis and reports, construction progress reports, and key correspondence prepared or received during the course of the Project.

**M. Subcontractors.** A subcontractor is any other entity that the Performing Agency uses to carry out all or part of the Work.

1. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the Funding Agency Project Manager will be selected through a competitive process. Subcontractors approved by the Funding Agency Project Manager include:
  - a) URS Corporation
  - b) Shiels Oblatz Johnsen
  - c) DKS Associates
  - d) Bluedot Group
  - e) Convergent Pacific
  - f) LTK Engineering Services

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.** Payments to RACC will be calculated based on the Eligible Costs of an Improvement Project payment in full upon issuance of the construction contract. 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. Payments to RACC will be calculated based on the Eligible Costs of an Improvement Project and will be made according to one of three options: payment in full upon signing of this Agreement; payment in full upon issuance of the construction contract; or installation payments upon signing of this Agreement and the construction contract. The parties elect to make payment in full upon issuance of the construction contract. The RACC amount listed in Exhibit A is an estimate for budget purposes. The Bureau will determine full payment calculated on the construction contract which is to be awarded through the construction bid process. A Funding Agency representative will 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.

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

- A.** The Funding Agency shall pay the Performing Agency a sum not to exceed **ONE MILLION NINETY-EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$1,098,680) in FY 2013-14 and FOUR HUNDRED TWENTY-FIVE THOUSAND EIGHT HUNDRED SIXTY-SIX DOLLARS (\$425,866) IN FY 2014-15 FOR A TOTAL OF ONE MILLION FIVE HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FORTY-SIX DOLLARS (\$1,524,546)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B.** The funding is from multiple urban renewal areas. PDC reserves the right to adjust amount(s) contributed to the Project from each contributing URA via future amendment to this IGA, and provided the total IGA amount does not exceed the PDC's stated total contribution as shown above.
- C.** If the Project funding spans multiple fiscal years, the PDC will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If the full amount of funds is not authorized in the current fiscal year's budget, it is acknowledged that contract amounts identified for expenditure in future

fiscal years have not been appropriated in the current year budget. If funding has been identified in the Portland Development Commission Five-Year Budget Forecast, PDC staff agrees to recommend to the PDC Budget Committee that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.

- D. Bureau has accepted a ConnectOregon III grant in the amount of \$1,958,641 for the Project. The Bureau shall be responsible for grant compliance.
- E. The Bureau has received a \$230,000 General Fund commitment in the City's current FY 2013-14 budget. The total Project is estimated at \$3,810,660.
- F. 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.
- G. 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.

- a) This Agreement was originated in Fiscal Year 2013-14. For that Fiscal Year, the Bureau's rate is 72.13% (Seventy-Two and Thirteen - One Hundredths Percent) 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 executive management staff, rent, telephone, power, insurance, office supplies, and equipment.

b) This Agreement was originated in Fiscal Year 2013-14. *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.

c) 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.

3. 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.

**H. 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.

**I. 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.

**J. 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.

#### **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. Reconciliation of the Project Account.** In the event the Project is completed or terminated prior to completion and there remains a balance of funds, such funds shall be allocated pro rata based on the proportion of total Project funds contributed by PDC.
- D.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

## **V. GENERAL**

### **A. Termination.**

1. The Termination Date of this Agreement is June 30, 2015.
2. Early Termination of Agreement.
  - a) This Agreement may be terminated at any time by mutual written consent.
  - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
  - c) In the event of early termination of this Agreement, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the Agreement's termination will be reimbursed.

### **B. Change and Conflict Resolution.**

1. Every effort has been made to accurately identify the scope, schedule and budget for the Work. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A "significant" impact is one that may require expenditure of the Funding Agency controlled contingency, increase the budget beyond the total authorized budget

amount shown in the Scope of Work and Budget, or delay completion of this phase of the Project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:

- a) As soon as practicable, notify both the project manager and contract manager of the other party in writing of the circumstance, its origin and anticipated or confirmed impact.
- b) Both project managers shall make reasonable efforts to meet within 14 days to identify anticipated or confirmed affects to the Project's scope, schedule and budget.
- c) Both parties shall seek to reach agreement on any necessary revisions to this IGA as described below in Section V. B. 2.

2. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, all parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

- a) All conflicts should first be discussed and resolved if at all possible by the project managers specified in Section II.
- b) If the conflict cannot be resolved by the project managers, or involves one of the project managers, then the conflict should be elevated to the contract managers specified in Section II for discussion and resolution.
- c) Any conflicts not resolved by the contract managers shall be elevated to the contract signatories for discussion and resolution.

**C. Compliance with Laws.** In connection with its activities under this Agreement, the parties shall comply with all applicable federal, state and local laws and regulations.

**D. Indemnification.**

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, 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 attorney's 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 attorney's 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 Portland Development Commission*".

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*". The sign shall remain in place until construction is complete.

### **I. Business and Workforce Equity**

1. The Business Equity Program of 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 Business Equity Program 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 (the "Utilization Goal"). The Workforce Equity Program of the Policy shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Workforce Equity Program applies, all subcontracts greater than \$100,000 must comply with the Policy's Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors on the Project are worked by state-registered apprentices and to work toward achieving certain Workforce Goals, as such terms and requirements are further described in the Policy attached hereto as Exhibit C. The Utilization and Workforce 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.I.4 above.
2. Identify any specific goals or other information, for example, for outreach, for design and for construction.

### **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.
2. Changes to the Scope of Work and Budget:
  - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in Section II of this Agreement.



- b) Changes will not take effect or be binding on either party until agreed to in writing.

**VII. Merger Clause**

This Agreement contains the entire agreement between PDC and the Bureau. It supersedes all prior written or oral discussions or agreements concerning work to be performed by either party.

[Signature page to follow]

IN WITNESS WHEREOF, the Bureau and PDC have executed this Agreement as of the Effective Date.

**CITY OF PORTLAND**

**PORTLAND DEVELOPMENT COMMISSION**

\_\_\_\_\_  
Leah Treat, Director, Portland Bureau of Transportation

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

(Executed under authority delegated by Ordinance No. 181631, passed by Council February 27, 2008, and amended by Ordinance No. 183429, passed by Council on January 6, 2010.)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

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

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

\_\_\_\_\_  
Date

**RESOLUTION NO. 7037**

**RESOLUTION TITLE:**

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF THE PORTLAND STREETCAR ALIGNMENT ALONG SW MONTGOMERY STREET BETWEEN SW 4TH AND 5TH AVENUES; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,524,546 FROM THE EDUCATION, SOUTH PARK BLOCKS, AND NORTH MACADAM URBAN RENEWAL AREAS


Adopted by the Portland Development Commission on January 9, 2014

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 type="checkbox"/>	Commissioner Aneshka Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Tom Kelly	<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 Charles Wilhoite	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

**CERTIFICATION**

The undersigned hereby certifies that:

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

	<p><b>Date:</b></p> <p>January 10, 2014</p>
<p><b>Gina Wiedrick, Recording Secretary</b></p>	