

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6633

**AUTHORIZE AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE PORTLAND DEVELOPMENT COMMISSION
AND THE PORTLAND OFFICE OF TRANSPORTATION IN THE
AMOUNT NOT TO EXCEED \$5,287,000 FOR THE PORTLAND
STREETCAR LOOP PROJECT (DESIGN, DESIGN
DEVELOPMENT AND FINAL ENGINEERING PHASES)**

WHEREAS, on June 25, 2003, the City Council adopted the Eastside Streetcar Alignment Study, which proposed a stakeholder-preferred alignment for an extension of the Portland Streetcar ("Project") across the Willamette River to Portland's eastside, and recognized that federal funding would be required for implementation;

WHEREAS, in FY 2003-2005, planning for the Project continued and the City initiated the process through which federal funds could be sought and provided for design and construction of the Project;

WHEREAS, in FY 2005-2006, work on the Project continued, including completion of the federal Alternatives Analysis and the recommended Locally Preferred Alternative ("LPA");

WHEREAS, on July 5, 2006, by Resolution No. 36425, the City Council adopted the Eastside Transit Alternatives LPA;

WHEREAS, on July 20, 2006, following adoption by the City and Multnomah County, and recommendation by TriMet, the Metro Council adopted the LPA;

WHEREAS, the reauthorization of the Surface Transportation Bill (SAFETEA-LU), signed into law on August 10, 2005, established a new federal funding program for Small Starts that provides for fixed-guideway projects not exceeding a total cost of \$250 million with a federal request of no more than \$75 million for which the Project would be eligible;

WHEREAS, TriMet, as the agency eligible to file the Small Starts application for Project Development, prepared the submittal, which was sent to the Federal Transit Administration ("FTA") on February 9, 2007;

WHEREAS, on April 18, 2007, the FTA notified TriMet that they approved entry of the Project into Project Development;

WHEREAS, on July 12, 2007, Governor Kulongoski signed HB 5036 that provides \$20 million in State lottery funds to purchase streetcar vehicles from an Oregon-based and Oregon-owned manufacturer;

WHEREAS, on August 8, 2007, Portland Development Commission ("PDC") staff, representatives from the City of Portland Office of Transportation ("PDOT") and the Office of

Management and Finance, and members of Portland Streetcar, Inc. briefed the PDC Board of Commissioners ("Board") on the Project, including its financing plan, budgetary actions and requirements for upcoming fiscal years, potential project trade-offs within urban renewal areas, and, in some cases, actions required in order for the urban renewal areas to provide the requested amount of tax increment;

WHEREAS, at the August 8, 2007 meeting, the Board also discussed the request from Portland Streetcar, Inc. for PDC to provide approximately \$27 million of the \$75 million required local match to the anticipated federal funding for the Project;

WHEREAS, the total capital cost, with inflation, is currently estimated at \$146,917,000; with \$75,000,000 requested in Small Starts funding;

WHEREAS, the operating finance plan for the Project provides for this new service operational funding to come from farebox revenue, sponsorships, TriMet and the City of Portland (through its parking fund);

WHEREAS, on September 6, 2007, by way of Resolution No. 36531, City Council committed to provide \$27,184,000 in tax increment funds, \$15,000,000 from assessments from property owners in the Portland Streetcar Loop Extension Local Improvement District, \$6,000,000 from Transportation Systems Development Charge funds and \$3,733,000 from regional transportation funds, all in addition to the above-referenced \$20 million in State lottery funds, as the required local match;

WHEREAS, the completion of the design and engineering work provided for under this Intergovernmental Agreement ("IGA") will allow the Project to begin construction, subject to the award of the necessary federal funds to complete the Project; and

WHEREAS, PDC and PDOT desire to enter into the IGA to establish their respective roles and responsibilities in connection with the Project.

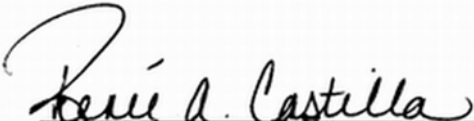
NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the Executive Director to enter into an IGA with PDOT in an amount not to exceed \$5,287,000 and in form substantially similar to that attached hereto as Exhibit A, for the purpose of contributing funds to PDOT for the Development, Design Development and Final Engineering phases of the Portland Streetcar Loop Project, subject to the following conditions:

1. \$863,000 will be funded from existing resources in the FY 2007-2008 Budget for the Oregon Convention Center Urban Renewal Area ("OCC URA") to be effective upon adoption of this resolution, and
2. \$2,047,000 will be funded from the Adopted FY 2008-2009 Budget for the River District Urban Renewal Area and \$1,750,000 will be funded from the Adopted 2008-2009 Budget for the OCC URA subject to the City Council adopting an Ordinance authorizing the issuance of a Notice to Proceed for the Final Engineering contracts, and
3. an additional \$637,000 will be funded from the Adopted FY 2008-2009 Budget for the OCC URA subject to approval of the carryover from the OCC URA FY 2007-2008 Budget to the Adopted FY 2008-2009 Budget;

BE IT FURTHER RESOLVED that the Board hereby authorizes the Executive Director to approve minor amendments and adjustments to the IGA including extension of the IGA termination date, changes in the IGA's scope of work and adjustments to the allocation of TIF funds between urban renewal districts provided that the expenditures do not exceed actual project costs within that district and do not increase the amount of this IGA; and

BE IT FURTHER RESOLVED that this resolution shall become effective thirty days after its adoption.

Adopted by the Portland Development Commission on August 27, 2008.



Renee A. Castilla
Renee A. Castilla, Recording Secretary

INTERGOVERNMENTAL AGREEMENT

Between

Portland Development Commission

And

Portland Office of Transportation

for the

**Portland Streetcar Loop Project: Development Phase, Design Development Phase and
Final Engineering Phase**

This Intergovernmental Agreement (“Agreement”), dated this ____ day of _____, 2008, (“Effective Date”) is made and entered into by and between the **City of Portland, Office of Transportation** (“PDOT” or “Bureau”) and the **Portland Development Commission** (“PDC” or “Commission”).

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. Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between the Commission 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.
5. City Council, through Ordinance 181631, which was duly adopted by City Council on February 27, 2008, delegated to the Director of the Bureau and the City Auditor the authority to enter into intergovernmental agreements with PDC. The form of agreement used for this Agreement is substantially similar to the template that was approved by City Council through the above referenced Ordinance.
6. This form of Agreement is intended for funding project phases, including, but not limited to: Project Development, Project Design, Right-of-Way Acquisition, and Project Management and Engineering. It is not intended for the Bid and Award Phase of construction projects.
7. This Agreement does not provide funding for Construction, Construction Management or Design services during Construction.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. Through a multi-year financial partnership and cooperative working relationship, PDC and PDOT have provided the resources needed to support the Portland Streetcar Loop Project (Project), formerly known as the Eastside Streetcar Project.
2. The Project supports the objectives of the Oregon Convention Center Urban Renewal Area (OCC URA), Lloyd District, by providing the key transportation infrastructure in support of growth of employment and the tourism industry, as well as new housing development. The Lloyd District Development Strategy calls for the development of a “transit hub” in the Lloyd Central Core area, generally between NE Martin Luther King Jr. Blvd. and NE 9th Avenue and NE Halsey and NE Multnomah Streets, through which the Streetcar will travel.
3. The Central Eastside Urban Renewal Area (CES URA) calls for improvements of the conditions and appearance of the area, elimination of blight and blighting influences, expansion and improvement of public facilities and stimulation of private investment and economic growth in the area. Central Eastside stakeholders recognize that the implementation of the Project through the district supports these efforts.
4. The River District Urban Renewal Area (RD URA) calls for the creation of a high-density urban residential neighborhood, fostering a “24-hour” community for residents, visitors and employees. The Project will provide high quality transit access between the River District and Eastside, which will bring people to the many restaurants, galleries, retail stores, theaters and parks in the River District. Conversely, the Project will provide additional access to the Rose Garden, Lloyd District, Oregon Convention Center and OMSI from the River District.
5. The Project supports Regional goals, including those recognizing the Central City as the Region’s premier mixed-use center. It will foster more intensive development promoting greater efficiency in the use of land and provide a major contribution to reducing vehicle miles traveled.
6. The Project supports Central City Plan, the Central City Transportation Management Plan and other City goals for housing and employment.
7. Past work related to the Project includes the following:
 - a. FY 2003-04: Development of the Eastside Streetcar Alignment Study.
 - b. FY 2004-05: Initiated the process through which federal funds could be sought, including the start of an Alternatives Analysis.
 - c. FY 2005-06: Adoption of the Locally Preferred Alternative.
 - d. FY 2006-07: Small Starts Project Development application approved by the Federal Transit Administration and technical work required to meet the federal needs begun.

8. Activities during FY 2007-08 included Project Development work, including the submission of the Environmental Assessment, commitment of the local resources needed to fund the Project, development of Design Development, which roughly translates to preliminary engineering, plans and cost estimates. Reimbursement for the majority of this work will occur in FY 2008-09 under this IGA.
9. Activities during FY 2008-09 include final engineering of the Project, which will lead to construction documents and construction cost estimates. The Notice to Proceed for final engineering will not be issued until the City Council authorizes and the Portland Development Commission has approved this IGA.
10. To the extent that there remain unexpended resources budgeted by PDC for the Project in any given fiscal year, it is agreed that staff will recommend to the Commission that those funds be carried forward into the subsequent fiscal year unless the Project is terminated or the parties otherwise agree that the funds are not needed.
11. It is anticipated that an additional IGA will be developed for the Construction phase of the Project.
12. The Project Capital Budget for the complete Project running from NW Lovejoy and 10th Avenue to OMSI calls for the following sources of funds:

FTA (Small Starts)	\$75,000,000
TIF	\$27,184,000
State Funds for Vehicles	\$20,000,000
Local Improvement District	\$15,000,000
Transportation SDC	\$6,000,000
MTIP	<u>\$3,733,000</u>
TOTAL	\$146,917,000

As identified above, PDC's total contribution to all phases of the Project is anticipated to be \$27,184,000.

13. The current total Project cost estimate of \$126,917,000, excluding the procurement of streetcar vehicles which is not deemed an eligible use of tax increment funds, indicates the following total estimated Project costs in each of the Urban Renewal Areas:

RD URA	\$25,853,000 (20.37%)
OCC URA	\$40,931,000 (32.25%)
CES URA	\$45,728,000 (36.03%)
Non URA (Broadway Bridge)	\$14,405,000 (11.35%)

In no event shall total tax increment expenditures in each Urban Renewal District (URD) exceed the actual Project expenditures within each URD.

14. The total actual budgeted and anticipated future tax increment resources are as follows:

RD URA	\$17,000,000
OCC URA	\$4,250,000
CES URA	<u>\$6,184,000</u>
TOTAL	\$27,434,000

PDC's actual and anticipated tax increment resources of \$27,434,000 are sufficient to cover PDC's anticipated contributions of \$27,184,000.

B. Schedule of Work and Budget

1. Tax Increment Financing (TIF) can only be used within an URA for expenditures and staff costs directly related to the acquisition of necessary land or real property, applicable relocation costs and expenses and construction of real property improvement necessary for the Project, including the costs of planning, engineering and/or design of such improvements. TIF shall not be used for the procurement of streetcar vehicles. PDOT, in consultation with PDC, shall ensure that all expenditures are TIF-eligible.
2. For FY 2007-08, PDC budgeted \$1,500,000 in TIF from the OCC URA. PDC's funding participation is for work performed during FY 2007-08 related to Design and Design Development, but billed in FY 2008-09. It provides for local matching funds for subrecipient grants the City has received from Metro and TriMet plus additional eligible project expenses, but will be limited to 32.25% of total expenditures for Development and Design Development.
3. For FY 2008-09, PDC's Proposed Budget includes \$1,750,000 in TIF from the OCC URA and \$7,500,000 from the River District URA, which will provide a portion of the resources needed for Final Engineering. Additionally, it is anticipated that \$637,000 of unexpended funds from the OCC URA FY 2007-08 Budget will be carried over into FY 2008-09 and the expenditure of those funds on the Project is expressly subject to the PDC Commission amending its FY 2008-2009 Budget and adding those funds to it.
4. The parties acknowledge that the scope of work for FY 2008-09 may change and the Parties will work cooperatively to amend this Agreement as necessary.

Plan			Budget FY 2008-09 TOTAL FY COSTS (majority of work performed in FY 2007-08)				
Work Item	Description	Timeline Completion *	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
	Development and Design Development Phase	6/30/09					
A.	City Project Management services and contract administration and other staff and services related to traffic design, transportation planning, parking operations, signals/streetlights, right-of-way, structures, civil design and sewer and water facilities for design and design review.		\$394,000				
A.1	Overall responsibility for project – administrative and deliverables.						
A.2	Design and design review.						
B.	TriMet IGA #52820 for services related to necessary grant applications to the FTA and other federal requirements.				\$144,000		
B.1	Liaison role with FTA for all Smalls Starts related reporting and requirements.						
C.	Metro IGA #52731 for services related to the Project Environmental Assessment and technical services required by the Small Starts program.				\$310,000		
C.1	Lead agency for Environmental Assessment process.						
C.2	Provide transportation modeling and other information.						
D.	Portland Streetcar, Inc. Contract #37251 for overall Project Management services, public involvement and financial planning. Subcontracting performed by a team led by Shiels Oblatz Johnsen, Inc.				\$725,000		
D.1	Provide staff services for all Boards and Committees.						

D.2	Oversee and coordinate all consultant work at the direction of the City Project Manager.						
D.3	Lead role in developing capital and operating financing plans.						
E.	Portland Streetcar, Inc. Contract No. 37279 for Design and Civil Engineering for all rail and civil elements of the project, including plans and cost estimates. Subcontracting performed by a team led by URS Corp.				\$2,223,000		
E.1	Provide input as needed for the EA.						
E.2	Design plans (approx. 50% level) and cost estimates for civil, rail, structural, electrical system and utilities.						
F.	Portland Streetcar, Inc. Contract No. 37280 for Development and Transportation Management Planning services to identify improvements within the Streetcar service area and integrate them with civil engineering efforts. Subcontracting performed by a team led by PB Consult, Inc.				\$160,000		
F.1	Work with civil engineering firm to integrate strategies to improve pedestrian and bicycle environments.						
F.2	Identify future improvements needed to support redevelopment along the line.						
G.	Portland Streetcar, Inc. Contract No. 37438 for Economic Analysis for services related to providing metrics between streetcars and development. Subcontracting performed by E.D. Hovee and Company.				\$70,000		
G.1	Support and document economic development factors associated with the streetcar.						
G.2	Develop a methodology to measure the relationship between the streetcar and other policies.						

<u>Work Products and/or Milestones for Design and Design Development Phase:</u>							
Complete Concept Design Cost Estimate	07/07						
Secure local funding commitments, including LID formation	09/07						
Submit Small Starts Report to FTA with revised cost estimate and showing financial commitments for construction and operations	09/07						
Assist PDC with information so Phase 1 of the 3 rd Party Risk Assessment can be completed	01/08						
Complete Environmental Assessment so it can be published in the Federal Register	02/08						
Provide information as needed to the FTA and Congressional delegation with the goal of having the Project included in the President's FY 2009 Budget	02/08						
Complete Design Development Plans and Cost Estimates (approx 50% engineering)	03/08						
Council adoption of contract amendments with PSI, in anticipation of beginning Final Engineering	03/08						
Respond to the FTA requests for clarification and additional information in order to gain a "medium" cost effectiveness rating	06/08						
Provide information to PDC, as requested, for Phase 2 of the 3 rd Party Risk Assessment	08/08						
Begin process to exempt the Project from low bid and put in place an alternative selection process to select a CM/GC	10/08						
TOTAL BUDGET – ALL SOURCES			\$394,000		\$3,632,000		
TOTAL BUDGET BY SOURCE:							
PDC – RD URA						\$0	

	PDC – OCC URA (Payment to be made from funds budgeted in OCC’s FY 2007/2008 Adopted Budget)					\$863,000	
	PDC – CES URA					\$0	
	Metro (IGA No. 52731)						\$1,265,000
	Metro (self-financed)						\$248,000
	TriMet (IGA No. 52920)						\$1,650,000
Other	Funding Agency Controlled Contingency					\$0	
TOTAL	AUTHORIZED PDC BUDGET Cost Not To Exceed					\$863,000	

Plan			Budget FY 2008-09				
			TOTAL FY COSTS				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
	Final Engineering Phase	6/30/09					
A.	City Project management services and contract administration and other staff and services related to traffic design, transportation planning, parking operations, signals/streetlights, right-of-way, structures, civil design and sewer and water facilities necessary for final design and final design review.		\$610,000				
A.1	Coordinate activities needed to initiate final engineering.						
A.2	Overall responsibility for project administration and deliverables.						
A.3	Design and design review – PWB design is in-house.						

A.4	Gain approval for all other agency IGAs and other working agreements..						
B.	Portland Streetcar, Inc. Contract No. 37251 (Am. #2) for overall Project Management services, public outreach, budget and schedule control and other actions to assist the City during Final Engineering. Subcontracting performed by a team led by Shields Oblatz Johnsen, Inc.				\$500,000		
B.1	Assist the City Project Manager in work needed to initiate final engineering.						
B.2	Develop necessary IGAs needed for implementation and CM/GC documentation.						
B.3	Oversee and coordinate all consultant work at the direction of the City Project Manager.						
B.4	Resolve remaining design issues.						
C.	Portland Streetcar, Inc. Contract No. 37279 (Am. #2) for Design and Civil Engineering for all rail and civil elements of the project, including plan and estimate submittals up to Final Engineering. Subcontracting performed by a team led by URS Corp.				\$5,160,000		
C.1	Interim design review packages for civil, rail, systems, structures and maintenance facility.						
C.2	Cost estimates for each design review package.						
C.3	Final design documents.						
	<u>Work Products and/or Milestones for Final Engineering::</u>						
	FONSI issued by the FTA	07/08					
	FTA issues pre-award authority for Final Engineering	07/08					
	Submit Construction Grant Application to FTA	01/09					

	Complete procurement process for CM/GC and execute contract for pre-construction services	10/08					
	Begin Final Engineering	09/08					
	Submit 75% plans and cost estimates for City and other agency review	02/09					
	Independent cost estimate of 75% design by CM/GC	03/09					
	Submit 90% plans and cost estimates for City and other agency review	05/09					
	Independent cost estimate of 90% design by CM/GC	05/09					
	Submit final plans and specifications	06/09					
	Finalize all ROW agreements	06/09					
	Secure all permits and/or other agreements needed by outside agencies for construction phase	06/09					
	TOTAL BUDGET – ALL SOURCES		\$610,000		\$5,660,000		
	TOTAL BUDGET BY SOURCE:						
	PDC – FY 08/09 RD URA					\$2,037,000	
	PDC – FY 08/09 OCC URA (Note: \$637,000 of this amount is anticipated to be carry-forward funds from the FY 07/08 OCC Budget and the expenditure of those funds is subject to the PDC Commission amending its FY 08/09 Budget accordingly)					\$2,387,000	
	PDC – FY 08/09 CES URA					\$0	
	MTIP						\$870,000
	Transportation SDC						\$976,000
D.	Change Management – Performing Agency Controlled						\$130,000

Other	Funding Agency Controlled Contingency					\$0	
TOTAL	AUTHORIZED PDC BUDGET Cost Not to Exceed					\$4,424,000	

		Budget Summary FY 2008-09	
		TOTAL FY COSTS	
	PDC Budget	Other Funding Sources	Total Cost
PDC – FY 08/09 RD URA	\$2,037,000		
PDC – FY 07/08 OCC URA	\$863,000		
PDC – FY 08/09 OCC URA	\$1,750,000		
PDC – FY 08/09 OCC URA (anticipated carry-forward)	\$637,000		
PDC – CES URA	\$0		
Metro		\$1,513,000	
TriMet		\$1,650,000	
MTIP		\$870,000	
Transportation SDC		\$976,000	
Change Management		\$130,000	
TOTAL	\$5,287,000	\$5,139,000	\$10,426,000

- C.** 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”.
- D.** The party performing work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”.
- E. Project Staffing – Performing Agency:** The following Performing Agency personnel are being assigned to perform the work described above. Only personnel listed below, or subsequently identified and mutually approved by the Funding Agency Project Manager and the Performing Agency Project Manager shall be reimbursed for authorized work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform work under the Agreement, and that its failure to notify the

Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified personnel to perform work under the Agreement.

1. Vicky L. Diede, Project Manager
2. Lewis Wardrip, Traffic Design
3. Patrick Sweeney, Transportation Planning
4. Ellis McCoy, Parking Operations
5. Bill Kloos, Signals/Streetlights
6. David McEldowney and Eilene Gehrke, Right-of-Way
7. Gary Hopkins, Inspection
8. David O'Longaigh, Bridges and Structures
9. Lola Gailey, Civil Design
10. BES Staff, to be determined
11. PWB Staff, to be determined

F. Project Staffing – Funding Agency: The following Funding Agency personnel are being assigned to perform the work described above.

1. Bruce Allen
2. Irene Bowers
3. Steve Shain

II. CONTRACT MANAGEMENT

A. Commission.

1. Contract Signatory. The Commission Contract Signatory shall be Bruce A. Warner, or such other person as designated in writing by the PDC Executive Director ("PDC Contract Signatory"). The PDC Contract Signatory is authorized to give notices and to carry out other Commission actions referred to herein, including termination of this Agreement as provided in Section V.
2. Contract Manager. The Commission Contract Manager shall be Lois Cortell ("PDC Contract Manager"). The PDC Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

B. Bureau.

1. Bureau Contract Signatory. The Bureau Contract Signatory shall be Susan D. Keil, or such other person as designated in writing by the Director of the Portland Department of Transportation ("Bureau Contract Signatory"). The

2. Bureau Contract Manager. The Bureau Contract Manager shall be Greg Jones (“Bureau Contract Manager”). The Bureau Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

C. Management Staffing.

1. A Project Manager shall be designated by the Bureau ("Bureau Project Manager"), and a Project Manager shall be designated by the Commission ("PDC Project Manager") to carry out designated responsibilities related to the Scope of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be Bruce Allen, or such other persons as designated in writing by the Director of Development.
 - b) The Bureau Project Manager ("Bureau Project Manager") shall be Vicky L. Diede, or such other person as designated in writing by the Director of the Portland Office of Transportation and approved by the PDC Project Manager.
2. If either Project Manager is not performing or is not able to continue performing the responsibilities related to the Scope of Work, 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 the Scope of Work.
3. The PDC Contract Manager and the Bureau Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either the Commission or the Bureau desires to replace a Project Manager, or other key staff identified in the Scope of Work, the party's Contract Manager shall notify the other Contract Manager in writing, and if required, they will meet to discuss and agree on adjusting the Scope of Work accordingly to provide adequate time to make such change.

D. Approvals.

1. No work shall be performed and no funds shall be obligated on a project identified in the Scope of Work 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.

E. Project Management.

1. PDOT's Project Manager is responsible for the day to day oversight of work performed by consultants and City staff. She will verify that charges submitted to PDC are appropriate, correct and verifiable.
2. PDC's Project Manager will assign a representative to participate in design meetings, the Portland Streetcar Loop Project Advisory Committee and others, as required.

F. Public Involvement.

1. Where projects require public involvement, the Bureau and the Commission will collaborate on design of the public involvement plan that is endorsed by both Project Managers.
2. The Bureau and the Commission 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 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..

G. Meeting Participation. The Funding Agency and the Performing Agency Project Managers shall invite each other to attend all regular or significant project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

H. 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.

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

1. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the PDC Project Manager:
 - a) Portland Streetcar, Inc. with work performed by the following:
 - 1) Shiels Oblatz Johnsen, Inc.
 - 2) URS Corporation
 - 3) PB Consult, Inc.
 - 4) E.D. Hovee and Company
 - b) Multnomah County

- c) Oregon Department of Transportation
 - d) Union Pacific Railroad
 - e) TriMet
 - f) Metro
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.

J. Regional Arts & Culture Council (RACC) – 2 Percent for Art Program

1. This IGA is for pre-construction only. Therefore, it is not required to contribute 2% for RACC's Art Program. A separate IGA will be developed for the construction phase of the Project, which will then include the 2% RACC contribution.

K. Minority and Women Owned Businesses, and Emerging Small Businesses

1. This project is funded by the Federal Transit Administration through Intergovernmental Agreements with Metro and TriMet. The City shall operate under the umbrella of and in accordance with Metro's and TriMet's Disadvantaged Business Enterprise (DBE) Program. It is the policy of Metro and TriMet that DBEs, as defined in 49 CFR Part 26, shall be provided with a level playing field to participate in the performance of contracts financed in whole or in part with Federal funds.

L. Special Contract Management Provisions - Information Related to Federal Funding:

1. The President's FY 2009 Budget submitted to Congress in February 2008 includes \$50 million during fiscal year 2009 for the Project, which the FTA noted it would support along with subsequent annual appropriations to a total of \$75 million through a FTA Small Starts grant, subject to the Project meeting their project cost effectiveness measure with a "medium" or higher score by June 30, 2008.
2. The FTA signed the FONSI on July 2, 2008. However, FTA staff notified Metro that the Project could not meet the "medium" cost effectiveness rating, despite repeated and prolonged efforts by Project consultants, Metro and TriMet to provide information to the contrary. The FTA administrator, however, contacted and gave assurances to the Oregon Congressional delegation that he would seek another avenue to provide funding to the Project.
3. Both houses of Congress have completed the mark ups of appropriations for the fiscal year 2009 budget; the House Appropriations Committee is rumored to include funding for the Project, but has not yet released information to the public concerning the results; the Senate Appropriations Committee has issued Report 110-418, which includes the \$50,000,000 for the Portland

Streetcar Loop Project from Small Starts in the Capital Investment Grants account of the FTA.

4. It is highly likely that the Congress will pass a series of continuing resolutions so as not to send the FY 2009 Federal Budget Bill to the President until February or March 2009.
5. Starting Final Engineering by September 1, 2008, will help minimize overall budget impacts due to delays in receiving the federal funding commitment.
6. Project staff and consultants have developed a Plan using local resources for the costs associated with Conceptual Planning, Preliminary Engineering and Final Engineering. It would use the federal earmarked Streetcar Corridor Funds, regional Metropolitan Transportation Improvement Plan (MTIP) funds, Transportation SDC funds and tax increment financing from the RD URA and the OCC URA.
7. On August 20, 2008, the City Council is expected to approve an Ordinance finding that it is highly likely that the federal funds for the Project will be forthcoming and authorizing that a Notice to Proceed be issued for Final Engineering.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A.** The Commission shall pay the Bureau a sum not to exceed **FIVE MILLION TWO HUNDRED AND EIGHTY SEVEN THOUSAND DOLLARS (\$5,287,000)** for accomplishment of the Schedule and Scope of Work.
- B.** The full amount of funds is authorized in the current fiscal year's budget except for \$863,000 which will be paid from PDC's 2007-2008 OCC Budget and \$637,000 which is anticipated to be carried forward from the 2007-2008 OCC Budget to the 2008-2009 OCC Budget and is subject to the PDC Commission approval. If the project funding spans multiple fiscal years, the Commission will encumber the funds as the funds are approved through budget appropriation. All funding is subject to budget appropriation. If funding has been identified in the Portland Development Commission Five-Year Budget Forecast, Commission staff agree to recommend to the Commission Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- C.** The Federal Transit Administration is funding the Project for the phases covered by this IGA and in the following amounts: \$1,265,000 through an IGA with Metro, \$1,650,000 through an IGA with TriMet, \$248,000 from Metro for regional transportation funds they have allocated to the Project and \$870,000 in MTIP finds allocated to the City. Additionally, Transportation SDCs will provide \$976,000.
- D.** Commission 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 being for approved activities in the Scope of 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. Reimbursement for direct wages paid to personnel engaged in authorized work under this Agreement. Such reimbursement shall be calculated at the base hourly rate established in the Scope of Work.
 - b) Benefit Costs. Reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees. The benefit reimbursement shall not exceed FIFTY FOUR PERCENT (54%) of direct wages, which represents the average full benefit load attributable to city employees. The parties acknowledge that Benefit Costs may change and result in an amendment to this Agreement.
 - c) Materials & Services. Actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and Bureau or Commission support staff personal services where the expenditure is for carrying out authorized work under the Scope of Work and within the authorized budget.
 - d) Contracted Services. Reimbursement for contracted professional or construction services in carrying out authorized work under the Scope of Work and within the authorized budget.
 - 2.** Indirect Costs. Because of the federal funding in the project, reimbursement for overhead costs is at the rate established annually by the federal government. For Fiscal Year 07/08 of this Agreement the rate shall not exceed THIRTY AND FORTY TWO HUNDRETHS PERCENT (30.42%) of Personal Services and Benefit Costs. Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including City Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment. The parties acknowledge that the federally approved Indirect Cost rate may change for Fiscal Year 08/09, which will result in an amendment to this Agreement.
 - 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 expenditure rate of the Scope of Work. 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 contract unless mutually agreed to in advance. Out-of-travel will be necessary to provide technical information at the request of the Federal Transit Administration and other federal transit/transportation subcommittees.
- G.** Change Management Controlled by Performing Agency. “Change management” is the process by which the impact of changes is controlled or mitigated and alterations of the project plan are evaluated, approved, and incorporated into the project plan. It is required that funds for change management be identified in Section I B Schedule of Work and Budget. These funds are intended to be used to accommodate such changes within the specific Work Item. 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 Section I B Schedule 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 Contract Manager a separate itemized billing for work performed as described in the Scope of Work for review and approval at least quarterly.
 - 1.** In order to receive timely payment, interim billings must be received no later than forty (40) days following the end of a billing period.
 - 2.** Final billings upon early termination of the 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.
 - 3.** Current City plans include implementation of a new SAP enterprise business system. Both PDOT and PDC acknowledge that this implementation may affect their ability to meet the above described timelines; however, each party shall make reasonable efforts to do so.
- B.** Each billing shall include a Project Status Report and 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.
 5. A template report shall be discussed and agreed to as part of the project's kickoff meeting.
- C. If billings are received with incomplete information or disputed items, the Funding Agency will advise the billing party 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 the Agreement is December 31, 2009.
2. Early Termination of Contract.
 - 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 a project, 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 project's termination will be reimbursed.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the project's scope, schedule and budget for this phase of 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 I, B., 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 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 work under the Agreement, and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified contractors to perform work under the Agreement. 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. Status Reports. Project Status Reports are required to be submitted beginning within 60 days after execution of this Agreement and thereafter with each billing, at least quarterly. A failure to produce Project Status Reports will be brought to the attention of the Contract Manager by the Funding Agency Project Manager. Repeated failure to submit Project Status Reports may result in the Funding Agency withholding payment.

H. Delivery / Maintenance of Records. The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

I. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the Bureau and the Portland Development Commission and, if appropriate, financed by the appropriate URA.

2. For projects involving construction activities funded by the Commission, 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 River District URA, Oregon Convention Center URA and Central Eastside URA. The sign shall remain in place until construction is complete.

VI. Amendments

- A. Except as otherwise provided for in this Agreement, the Bureau or PDC may amend this Agreement only in writing signed by the Contract Signatories.
- B. Changes to the Schedule of Work:
 1. Changes to the Schedule of Work, including changes to scope, schedule, and budget which do not increase the total compensation under this Intergovernmental Agreement, may be made upon written agreement by the Project Managers identified in Section II of this Agreement.
 2. 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.

VIII. Miscellaneous Provisions

None.

[Signature page to follow]

IN WITNESS WHEREOF, the City of Portland, through the Portland Department of Transportation and the Portland Development Commission has executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Susan D. Keil, Director, Portland
Department of Transportation
(Executed under authority delegated by
Ordinance No. 181631, passed by
Council February 27, 2008.)

Bruce A. Warner, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6633

TITLE: AUTHORIZE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE PORTLAND DEVELOPMENT COMMISSION AND THE PORTLAND OFFICE OF TRANSPORTATION IN THE AMOUNT NOT TO EXCEED \$5,287,000 FOR THE PORTLAND STREETCAR LOOP PROJECT (DESIGN, DESIGN DEVELOPMENT AND FINAL ENGINEERING PHASES)

Adopted by the Portland Development Commission on August 27, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	John Mohlis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<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 duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: September 24, 2008