

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7118

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE
PORTLAND BUREAU OF TRANSPORTATION FOR DESIGN OF BOND
AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA;
PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$500,000**

WHEREAS, pursuant to the Charter of the City of Portland and Oregon Revised Statutes Chapter 457, the Portland City Council (“City Council”) adopted the North Macadam Urban Renewal Plan on August 11, 1999, by Ordinance No. 173651 (including all amendments thereto, the “Plan”). The Plan established the North Macadam Urban Renewal Area (“URA”) within which the Portland Development Commission (“PDC”) has focused efforts to encourage private development, cure blight, and enhance economic development opportunities;

WHEREAS, City Council passed Ordinance 187072 amending the Plan and the North Macadam URA and identified the construction of SW Bond Avenue as a priority project for funding;

WHEREAS, the Innovation Quadrant (“IQ”) includes the North District of the South Waterfront sub-area in the North Macadam URA and a district connection via Bond Avenue furthers the IQ by providing access to Oregon Health & Science University’s Schnitzer Campus and the Zidell Yards master planned development, both of which are within the IQ;

WHEREAS, the design and construction of SW Bond Avenue supports the Knight Cancer Challenge by providing street access to the Knight Cancer Research Building;

WHEREAS, Bond Avenue is identified in the North Macadam Transportation Development Strategy, approved by City Council by Resolution 36696, as a critical component to the circulation in South Waterfront and is identified as a top priority project for all modes of transportation; and

WHEREAS, Bond Avenue is identified on the citywide Transportation System Development Charges (“TSDC”) Capital Improvement Project list, adopted by City Council by Ordinance 181322, and the North Macadam TSDC Overlay Capital Improvement Project list, adopted by City Council by Ordinance 182652.

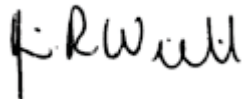
NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to enter into an Intergovernmental Agreement (“IGA”) with the Portland Bureau of Transportation substantially in the form attached hereto as Exhibit A, under which PDC will provide funding for the design and construction of street improvements on Bond Avenue, from River Parkway to Grover Street, in an amount not to exceed \$500,000;

BE IT FURTHER RESOLVED, that entering into this IGA is contingent upon approval of the South Waterfront North District Development Agreement by City Council;

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 General Counsel, do not materially change PDC's obligations or risks; and

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

Adopted by the Portland Development Commission on June 10, 2015

A handwritten signature in black ink, appearing to read "Gina Wiedrick". The signature is written in a cursive, somewhat stylized font.

Gina Wiedrick, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7118

EXHIBIT A

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE
PORTLAND BUREAU OF TRANSPORTATION FOR DESIGN OF BOND
AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA;
PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$500,000**

Exhibit A includes this cover page and contains 16 pages:

- Intergovernmental Agreement between Portland Development Commission and Portland Bureau of Transportation for the SW Bond Avenue 30% Design and Final Design from SW River Parkway to SW Grover Street

INTERGOVERNMENTAL AGREEMENT

Between

Portland Development Commission

And

Portland Bureau of Transportation

For the

SW Bond Avenue 30% Design and Final Design from SW River Parkway to SW Grover Street

This Intergovernmental Agreement (this “Agreement”), dated this ____ day of _____, 2015, (“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”).

1. **RECITALS** The Innovation Quadrant (“IQ”) is an important contributor to Portland’s economic health and includes the North District of the South Waterfront sub-area in the North Macadam Urban Renewal Area, and a district connection via Bond Avenue furthers the IQ by providing access to Oregon Health Science University (“OHSU”)s Schnitzer Campus and the Zidell Yards master planned development;
2. The design and construction of SW Bond Avenue supports the Knight Cancer Challenge by providing street access to the Knight Cancer Research Building and other OHSU research related expansion;
3. Bond Avenue is identified in the North Macadam Transportation Development Strategy, approved by City Council Ordinance _____ on _____ as a critical component to the circulation in South Waterfront and is identified as a Top Priority project for all modes of transportation;
4. City Council Ordinance _____, amending the North Macadam Urban Renewal Area, identified the construction of SW Bond Avenue as a priority project for funding;
5. The North District South Waterfront Development Agreement, between PDC and ZRZ Realty, anticipated for approval on June 10, 2015 concurrent with this agreement, identifies the design and construction of segments of Bond Avenue as City of Portland obligations based on triggers related to Zidell Yards design and construction projects;
6. 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.
7. The Bureau is responsible for transportation operations and improvements within the City public rights of way.
8. 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.

9. 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.
10. The Portland City Council (“Council”), through Ordinance 181631, which was duly adopted by Council on February 27, 2008, and amended by Ordinance No. 183429, passed by Council on January 6, 2010, 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 last above referenced Ordinance.
11. This form of Agreement is intended for funding project phases, including, but not limited to: Project Development, Project Design, Right-of-Way Acquisition, and Construction Management and Engineering. It is not intended for the Bid and Award Phase of construction projects.

Now therefore, the parties agree as follows:

AGREEMENT

I. The Project

1. Background

The Bureau and PDC have partnered on several efforts to develop the South Waterfront District. This Agreement covers the preliminary 30% design for SW Bond Avenue from SW River Parkway at the Marquam Bridge to SW Whitaker Street, and the preparation of construction drawings for portions of that length of SW Bond Avenue pursuant to adjacent development by private partners and more particularity approved in the North District South Waterfront Development Agreement and the identification of funding for construction of those said portions of SW Bond Avenue (“the Project”).

The design and construction of SW Bond Avenue will be phased to correspond with the opening of adjacent private and public development scheduled to occur in the district. The three segments of roadway to be eventually completed under this agreement are.

- Segment 1: Bond Avenue North: SW Bond Avenue from SW River Parkway at the Marquam Bridge to SW Porter to be completed on OHSU’s property, concurrent with OHSU’s Knight Cancer Building, anticipated to be open fall 2018.
- Segment 2: Bond Avenue Moody Connector: SW Bond Avenue from SW Porter to SW Woods Street and Woods Street from SW Bond Avenue to SW Moody Avenue to be completed on ZRZ’s property under the North District South Waterfront Development Agreement, concurrent with ZRZ Realty’s Block 6 project, anticipated to be completed summer 2017.

- Segment 3: Bond Avenue Grover: SW Bond Avenue from SW Woods Street to SW Grover Street to be completed on ZRZ 's property under the North District South Waterfront Development Agreement, concurrent with ZRZ Realty's Block 4 project, but only if Block 6 is also initiated concurrently, anticipated to be completed summer 2018.

2. Summary of Work and Budget

This IGA covers 30% design of the Bond Avenue complete alignment from SW River Parkway to SW Whitaker Street, and full design of Segments 1, 2, and 3 as triggered by OHSU development and the North District South Waterfront Development Agreement with ZRZ Realty. Construction of Bond Avenue are anticipated to be covered under a separate IGA once full construction costs have been determined thru Phase I and II (see below) and triggered as identified in the North District South Waterfront Development Agreement.

Budget: \$500,000 in Fiscal Year 2015-16.

Phase I: The Bureau will prepare a 30% design for the Bond Avenue alignment from SW River Parkway at the Marquam Bridge to SW Whitaker Street. The 30% plans will include the following elements.

Tasks:

1. Horizontal alignments for SW Bond Avenue, street intersections and any anticipated driveways.
2. Elevation data consistent with the needs of private development to the extent possible.
3. Develop graphic centerlines for use in describing and referencing major components of the Project.
4. Confirm typical sections for each component of the Project, including dimensioning of current and proposed cross-sections.
5. Develop general layout sheets for the Project, identifying fill and wall locations, major infrastructure improvements, proposed right of ways, street configuration and proposed rail alignment.
6. Identify major public utilities (water, sanitary, storm sewer), along with relocations and identified major adjustments required.
7. Identify stormwater design and capacity requirements in coordination with Zidell Yards District Stormwater System,
8. Update planning level concept estimate by Project segment to include confirmed horizontal and vertical alignments, typical sections, and other infrastructure proposed to date (traffic signals, lighting, etc.).
9. Provide cost comparison of fill versus retaining walls at significant locations.

10. Provide the Project Estimate Report: Development Phase for the Project.
This Report provides a summary of issues identified during the previous tasks, including utility and right of way issues, a summary of the cost estimate and assumptions used to develop the estimate
11. Detailed Funding Plan: The project estimate will provide a detailed funding plan, including the identification of additional sources of revenue, or if necessary, value engineering to keep the cost within the funds committed by the PDC and the Bureau.
12. Estimate RACC Contribution: Based on estimated construction costs, estimate RACC contribution for future IGA's as described in City Code Section 5.74.020.
13. Deliver a Technical Memorandum which provides a listing of design and constructability issues to resolve for final design, considerations for reducing construction costs and traffic/livability impacts during construction, and at least three (3) stage construction approaches for further evaluation.
14. Provide an overview of geotechnical considerations of the Project will be provided along with the general opinion of the geotechnical engineer for use in further refinements of the Project.
15. If necessary the Bureau will prepare a separate bid package for pre-loading of fill for segment 1.

Phase II: Plans, specifications and refined cost estimates for construction of Segment 1, 2 and 3.

Tasks:

1. PBOT will prepare final drawings stamped by a registered professional engineer for construction of Segments 1, 2, and 3.
2. If necessary, PBOT will prepare or consult out preparation of construction plans for pre-loading of fill structures,
3. PBOT will prepare specifications for construction of Segments 1, 2 and 3 using City of Portland Standard specifications for construction.
4. PBOT will prepare a final engineers estimate for construction of Segments 1, 2 and 3, PDC will provide authorization to bid the project before the project is bid by the City of Portland purchases.
5. PBOT will provide overall coordination of the design of Segments 1, 2 and 3 with property owners and other affected interests.

Assumptions:

This scope of work assumes:

- that real property necessary for construction of all segments will be dedicated and assigned as public right of way

- that SW Bond Avenue is designed and constructed to accommodate the future installation of streetcar; however streetcar will not be part of the cost estimates, construction drawings or construction.
- a planning level cost estimate, as contemplated under the North District South Waterfront Development Agreement, and upon refinement, a separate IGA for the Bond Avenue segment construction will reflect participation from both bureaus.

I. CONTRACT MANAGEMENT

1. 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.
2. 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.
3. **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.
4. **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 Dan Layden (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.
5. **Management Staffing.**

1. A project manager shall be designated by Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.
 - a) The Funding Agency Project Manager shall be Geraldene Moyle or such other person as designated in writing by Lisa Abuaf.
 - b) The Performing Agency Project Manager shall be Dan Layden or such other person as designated in writing by Dan Layden 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.
- 6. 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. Richard Browning, Project Manager
 2. Eva Huntsinger, Senior Engineer
 3. Linda Williams, Engineer
 4. Cedar Nolte, Structural Engineer
 5. PBOT Survey Crew
 6. Traffic Design Section
 7. Geotechnical Consultant

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

1. Geraldene Moyle, Senior Project Manager

8. 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.

9. Project Management.

1. Project Status Reports are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter at a frequency of monthly. A template report shall be discussed and agreed to as part of the Project's kickoff meeting.

10. 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.

11. 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.

12. 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.

13. 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 must be approved by the Funding Agency Project Manager: There are no currently identified subcontractors for this Agreement.
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.

14. Regional Arts & Culture Council (RACC) – Percent for Art Program. City Code Section 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art.

15. This Agreement does not include Eligible Costs for work conducted by the Bureau. 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, prime contractor and all subcontractors with 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 ___. 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 above.

16. Special Contract Management Provisions

None

II. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed **Five Hundred Thousand Dollars (\$500,000)** for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from North Macadam URA.
- C. The full amount of funds is authorized over one year in the current fiscal year 2015-2016 budget. If the Project funding spans multiple fiscal years, 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 agree to recommend to the PDC Budget Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D. There are non-PDC funds in this Agreement, as follows:
 - 1. PBOT City-wide and North Macadam Overlay Transportation System Development Charges.
- E. 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.
- F. 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 2014-15, in preparation for FY 2015-2016. For that Fiscal Year, the Bureau's rate 73.35% (Seventy-Three and Thirty-Five 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 Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
 - b) This Agreement was originated in Fiscal Year 2015-16. For that Fiscal Year, the PDC rate is \$17.00 per labor hour (Seventeen Dollars and Zero Cents) 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.
- G.** 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.
- H.** 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.

- I. 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.

III. BILLING AND PAYMENT PROCEDURE

- A. The Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at least quarterly.
 1. In order to receive timely payment, interim billings must be received no later than thirty (30) days following the end of a billing period.
 2. Final billings upon termination or early termination of this Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings.
- B. Each billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
 1. a description of the nature and cost of work accomplished;
 2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as desired by the Funding Agency Contract Manager, which can be reasonably provided by the Performing Agency.
- C. If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

IV. GENERAL

A. Termination.

1. The Termination Date of this Agreement is June 30, 2016.
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 North Macadam Urban Renewal Project*".
2. This Agreement does not involve construction activities.

V. 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

RESOLUTION NO. 7118

RESOLUTION TITLE:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR DESIGN OF BOND AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$500,000

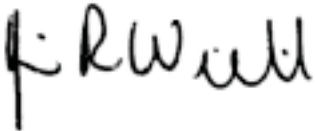
Adopted by the Portland Development Commission on June 10, 2015

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Tom Kelly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Mark Edlen	<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>Date:</p> <p>June 11, 2015</p>
<p>Gina Wiedrick, Recording Secretary</p>	