

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6593

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE BUREAU OF PARKS AND RECREATION FOR THE WATERFRONT PARK, ANKENY PLAZA, AND STREET IMPROVEMENTS PROJECT; AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE PUBLIC IMPROVEMENT AND OTHER NECESSARY CONTRACTS IN AN AMOUNT NOT TO EXCEED \$9,587,534

WHEREAS, the Portland Development Commission (“PDC”) is undertaking the Waterfront Park, Ankeny Plaza, and Street Improvements Project (“Project”) as recommended by the Ankeny / Burnside Development Framework Plan (“Framework”) adopted by the PDC Board of Commissioners (“Board”) on December 13, 2006 (Resolution No. 6420), and as further described in the Intergovernmental Agreement between PDC and the City of Portland Parks and Recreation Bureau attached hereto as Exhibit A (the “Intergovernmental Agreement”);

WHEREAS, the Framework provides for and supports improvements to the public realm to support developments currently underway in the district and to create a new home for the Portland Saturday Market;

WHEREAS, the Portland Park & Recreation Waterfront Park Master Plan identified Waterfront Park at Ankeny Plaza as a location for market activity and an active water feature to provide an attractive, multi-functional open space that serves the Portland Saturday Market and other users’ needs;

WHEREAS, the Burnside Bridge MAX Station and the underside of the Burnside Bridge have been identified as severely blighted and unsafe, and improvements have been prioritized as a key component of these public realm improvements in order to activate this space and change the perception of this area;

WHEREAS, Portland Parks & Recreation has engaged the services of Walker Macy and TVA Architects to complete the design work for the Project and has provided PDC with Construction Documents for the Project;

WHEREAS, PDC publicly bid the Project and received 4 bids on April 24, 2008, which have been deemed responsive;

WHEREAS, PDC’s bid package for the Project included a number of bid alternates to be bid separately to allow the greatest degree of flexibility in awarding a contract;

WHEREAS, based on the bids received, the base portion of the Project will require an additional \$2,197,402 beyond that contemplated at the time the Board adopted Resolution No. 6557, originally authorizing the Project; and

WHEREAS, the Old Town/Chinatown Neighborhood Association, Visions Committee, and area stakeholders have requested that PDC contribute additional Tax Increment resources to the Project in the amount of \$2,197,402 to cover the base portion of the Project, in the further amount of \$1,299,054 to cover the costs to include the prioritized bid alternates in the Project, as described in the Report accompanying this Resolution, and in the further amount of \$200,000 to cover a portion of Portland Saturday Market's transition costs.

NOW, THEREFORE, BE IT RESOLVED that the Board authorizes the Executive Director to enter into the Intergovernmental Agreement with the Portland Bureau of Parks & Recreation for fiscal years 2007-08 and 2008-09, with total PDC payments to Portland Bureau of Parks & Recreation in an amount not to exceed \$1,989,300, substantially in the form of Exhibit A attached hereto;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the Intergovernmental Agreement prior to and subsequent to execution, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change the PDC's obligations or risks;

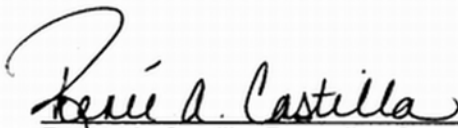
BE IT FURTHER RESOLVED that the Board authorizes the Executive Director to enter into contracts necessary for the construction of the Project in a total amount not to exceed \$9,587,534 for hard construction cost, and \$3,404,757 in soft cost, as described in the budget attached hereto as Exhibit A-1 to the Intergovernmental Agreement;

BE IT FURTHER RESOLVED that this Resolution supersedes and replaces, in its entirety, Resolution No. 6557 adopted by the Board on April 9, 2008, and re-adopted on April 23, 2008;

BE IT FURTHER RESOLVED that the Project include \$47,300 funded from the Project contingency for lights under the Burnside Bridge in Waterfront Park, that the Intergovernmental Agreement be revised accordingly, and that the Public Improvement Contracts awarded pursuant to the resolution include this lighting component; and

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

Adopted by the Portland Development Commission on May 28, 2008.



Renee A. Castilla, Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
and
Portland Parks & Recreation
for the
Waterfront Park, Ankeny Plaza, and Street Improvements Project

This Intergovernmental Agreement (“Agreement”), dated this ____ day of _____, 2008, (“Effective Date”) is made and entered into by and between the **City of Portland, Parks & Recreation Bureau** (“PP&R” or “Bureau”) and the **Portland Development Commission** (“PDC” or “Commission”). PP&R and PDC may be referred to individually as a “Party” and collectively as the “Parties”.

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 parks, open space, and recreation operations, services and improvements within the City.
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 to design, construct, and fund certain improvements and perform other specific services in Waterfront Park (the “Park”) and the surrounding area, as further described in Section I(A)(1) below (the “Project”). The Project consists of two elements, the Waterfront Park Element [and the MAX/Retail Element, each as defined in Section I\(A\)\(1\) below.](#) The work under this IGA is based on the conceptual and schematic design work conducted under the prior FY 06-07 IGA between PDC and PP&R (the “Prior IGA”) and is intended, in part, to accommodate the needs of Portland Saturday Market (“PSM”).
5. City Council, through Ordinance No. 181232, which was duly adopted by City Council on August 29, 2007, 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. PP&R owns and is responsible for the operation and maintenance of the Park, including the improvements to be constructed in the Park as part of the Waterfront Park Element. [PDC is entering into agreements with PDOT on responsibility for ownership and future operations and maintenance for the improvements to be constructed as part of the MAX/Retail Element.](#)
7. On or about June 2006, PP&R requested PDC retain the services of the consulting firm EDAW, the consultant who developed the Waterfront Park Master Plan (the “Master

- Plan”), to evaluate how improvements to the Park would impact the Master Plan vision and accommodate Portland Saturday Market operating in the Park and Ankeny Plaza (the “Plaza”) on weekends. Parametrix was also engaged by PDC to consult PSM on the space requirements needed to successfully operate in the Park. EDAW prepared a diagram in consultation with Parametrix that helped evaluate the fit of PSM into the Park.
8. Mercy Corps wishes to build a new world headquarters in the Old Town/Chinatown neighborhood. Mercy Corps selected the Skidmore Fountain Building (SFB) block as their preferred site with plans to begin construction by March of 2008. In order to accommodate Mercy Corps’ construction timetable, it is necessary to provide PSM a sufficient interim site by March of 2008 for the duration of construction of the Park site.
 9. The PSM craft vendors currently set up their booths on a variety of leased public and private properties, but need to establish a new home because those sites will no longer be available due to redevelopment plans for the neighborhood. The PSM Board has voted that it prefers a new site that includes the Park and the Plaza.
 10. The Parties understand, based on conversations with the Bureau of Development Services and Bureau of Planning, that given current zoning regulations, PSM will need to be classified as a temporary/intermittent user (2 days per week during 10 months of the year, and up to the entire last two full weeks before Christmas) of the new Park and Plaza facilities. The facilities are intended to be great public spaces to accommodate a variety of festival activities and should be designed for multiple uses, but should address PSM’s anticipation of a multi-year lease with PP&R for use of space in the Park and the improvements in the Park to be constructed as part of the Waterfront Park Element of the Project. The permanent improvements to the Park to be constructed as part of the Waterfront Park Element are for the public, not exclusively for PSM. All the facilities that are designed and constructed as part of the Waterfront Park Element should be available to other users of the Park when PSM is not in operation.
 11. The successful completion of the Project will require extraordinary cooperation between many of the City’s bureaus. To help accomplish this, the Bureau Directors Planning & Development Group agreed to support and actively participate in decision making when necessary to expedite the process of implementing the Project. PP&R and PDC staff will attend the regular Bureau Directors Planning & Development Group meetings to provide Project updates and make requests for assistance with expediting decisions and permitting.
 12. PDC is working in partnership with PSM, Nevue Ngan, and Parametrix to develop a viable solution for an interim site for PSM. The interim site must be available for the entire market season from March – December 2008 or until such time as the location for PSM is completed in Waterfront Park. In addition, options for a temporary by-pass esplanade trail around the site for the Waterfront Park Element of the Project will be [implemented as part of the Waterfront Park Element until that element is completed.](#)

13. The timeline for the Project is on an extremely fast-track, and the shared desired outcome between PP&R and PDC is to complete the work to relocate PSM to the Park in the most expeditious manner possible. Both Parties will make every reasonable effort to complete the Waterfront Park Element of the Project and ready the Park site for PSM's use by March 2009. PP&R accepts no responsibility for losses or costs to PDC or PSM in the event that the site is not ready by March 2009. Design and construction of an interim PSM site is not a part of this IGA, with the exception of a temporary esplanade re-route to be integrated into the site for the Waterfront Park Element for the duration of the construction of that element.
14. The Parties intend to enter into a separate Permit of Entry to enable PDC's construction contractors and other designated parties entry to the Park to complete the construction of the Waterfront Park Element of the Project as described in the IGA.
15. The Parties desire to enter into this Agreement to describe the respective roles and responsibilities of each of the Parties in the implementation of the Project.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. The Project consists of the following two elements:
 - a) Waterfront Park Element. Improvements to Waterfront Park based on the professional, technical and engineering work completed by Walker Macy and described in Section 3 below, including but not limited to the Construction Documents referenced therein, consisting of hardscape, landscape, lighting, and utilities; podium shade structure; riverwall infill; seatwalls; open plaza; water feature together with in-ground lighting; use of stone pavers on the stairs to the shade structure, the stairs to the overlook adjacent to the seawall and on the stadium stairs at the lower water feature; use of concrete unit pavers under the shade structure; expansion joint gutters on the underside of the Burnside Bridge in Waterfront Park; extend seawall viewing platform with a curved cantilevered deck; and temporary esplanade re-route, all in the vicinity of the Burnside Bridge.
 - b) MAX/Retail Element. Burnside Bridge and MAX Station ("MAX/Retail") improvements, based on the professional, technical and engineering work completed by Walker Macy as described in Section 3 below, including but not limited to the Construction

Documents referenced therein, consisting of hardscape, under-bridge lighting for the Burnside Bridge from west side of First to Naito, and utilities; Burnside Bridge stairways safety improvements; [relocation of equipment and other improvements to the MAX Station in cooperation with TriMet](#); and retail space improvements. PDC's obligation to construct the MAX/Retail Element is conditioned on PDC reaching an agreement with PDOT, which is reasonably satisfactory to PDC, for construction of the MAX/Retail Element and ownership, operation and maintenance of the improvements constructed as part thereof.

The Project does not include a restroom building, and \$286,346 in funding for a restroom building has been removed from the \$8,500,000 in PDC funding originally proposed for the Project. The parties currently anticipate that a restroom building will be sited adjacent to Fire Station No. 1 at the southern edge of Ankeny Plaza. The construction of such a restroom is subject to, among other things, land use review, detailed design, permitting, and reaching agreement with third parties who control the site, all of which will be handled outside the scope of this Agreement. Nor does the Project include the following optional features which were taken through land use approval but not included in the final Project: improvements to Ankeny Plaza, Ankeny St (Naito to First), and Naito crossing, all consisting of hardscape only; district lighting upgrade from high pressure sodium to QL induction lamps; and Ankeny dock, gangway and pier extension. The design work for the foregoing features is, however, covered by this Agreement and the cost thereof is included within the Authorized Budget for the work of PP&R under this Agreement and will be reimbursed subject to and in accordance with the terms and conditions of this Agreement.

2. The Parties determined the original desired Project completion date of March, 2008 was unachievable due to a range of Project constraints and challenges. It therefore is necessary to provide an interim site for the entire 2008 PSM market season. PDC is working with all Project stakeholders, with the help of consultants Parametrix and Nevue Ngan, to determine a feasible interim site that is under the Burnside Bridge west of Naito, within the southbound lanes of Naito Parkway from northern edge of Burnside Bridge to just south of the northern edge of the Fire Station, in Ankeny Street from First to Naito, and Ankeny Plaza. PDC, PSM, and the consultant team are working with all Project stakeholders and bureau partners to find solutions to individual event, pedestrian, bicycle, and traffic conflicts for March through December, 2008.
3. PP&R retained the firm of Walker Macy (the "A/E Firm") on or about March, 2007 to perform Professional, Technical, and Engineering ("PTE") services for the Project. PP&R is managing and overseeing the A/E Firm work. PTE services generally consist of preparation of Schematic Design, Design Development Drawings sufficient for Land Use Review, Construction Documents sufficient to initiate permits, procurement and construction of the Waterfront Park Element

and the MAX/Retail Element. In addition, the A/E Firm is providing construction cost estimating services, assistance with obtaining permits, and construction administration services. The PTE work was completed by the A/E Firm as follows:

100% Schematic Design Complete	June 20, 2007
100% Design Development Complete	September 14, 2007
100% Construction Documents Complete	January 31, 2008

4. PP&R shall obtain any and all permits necessary for the Project. The parties agree to mutually cooperate and facilitate obtaining all permits.
5. PSM needs to be operational in Waterfront Park by the first weekend in March 2009. In order to meet the critical procurement, permitting and construction deadlines and best facilitate and accommodate PSM's use of the new site in Waterfront Park and the improvements therein to be constructed as part of the Waterfront Park Element of the Project, the Parties agree that PP&R will transfer management of the procurement and construction of the Project to PDC on the Effective Date, although PP&R will manage the permitting process until Project completion. PDC will solicit, award, manage and oversee the construction contract(s) and perform other related services for the Project necessary to meet the critical timelines and constrained funding for the Project. PDC currently intends to implement the Project through the award of two construction contracts in order to best meet key milestones, permits, bid opportunities to M/W/ESB, weather and other constraints. Key indicative construction milestones include:

Waterfront Park Element

Waterfront Park Out to Bid	<u>Feb 26, 2008</u>
Permits Obtained	<u>Jun 8, 2008</u>
Contractor Selected & NTP	<u>Jun 9, 2008</u>
<u>Final Completion</u>	<u>Mar 9, 2009</u>

MAX/Retail Element

MAX/Retail Out to Bid	<u>Mar 11, 2008</u>
<u>Permits Obtained</u>	<u>Jun 8, 2008</u>
Contractor Selected & NTP	<u>Jun 9, 2008</u>
Final Completion	<u>Jan 22, 2009</u>

The Project shall be completed no later than March 9, 2009. Refer to Attachment C – Project Schedule, which is incorporated herein by this reference.

6. The Project timeline, covered by this IGA, will extend over two fiscal years in order to complete construction in 2009.

FY 07/08 Design development, construction documents, permitting, procurement, and commencement of construction

FY 08/09 Complete construction

Designs for the improvements to be constructed as part of the Project, began during the Prior IGA in FY 06/07 and have been completed during FY 07/08 under this Agreement. The improvements will be constructed in Fiscal Years 07/08 and 08/09. Funds to construct a portion of the improvements are included in PDC's FY 07/08 budget. PDC will seek authorization to complete construction of the improvements as part of PDC's FY 08/09 budget. Refer to Attachment A - Project Budget.

7. At each Project milestone (e.g., development of base bid and bid alternates and phasing packages; and prior to bid award) decisions as to alignment of Project scope with budget shall be made jointly by PP&R and PDC. The scope of the Project was significantly reduced and agreed to at the end of Schematic Design due to the limitation in available Project funding. The scope has continued to be refined based on neighborhood and user needs, Project constraints, and more detailed designs and cost estimates.

8. The Parties in cooperation with the A/E Firm have pursued every opportunity during final design to perform value engineering and reduce overall costs in efforts to best meet the original Project objectives. The construction budget carries a 10% contingency and soft cost 5% contingency.

9. The Parties acknowledge that PDC included the following bid alternates in its procurement process, but, based on the agreement of the Parties, will not award construction contracts for these alternates because of budget constraints:

- a) Bid Alternates Waterfront Park Element (work east of Naito)

(1) Lighting and painting on the underside of the Burnside Bridge in Waterfront Park.

- b) Bid Alternates MAX/Retail Element (work west of Naito)

(1) Construction of a screen wall along the east platform of the MAX Station.

10. Relevant Policies and Plans

- a) The Central City Plan (1988) guides planning in Portland's downtown and close-in neighborhoods, including the area around Ankeny Plaza.
- b) The Old Town/China Town Visions Plan (1997) – and – Development Plan (1999) and the Visions/Development Plan Update are the

neighborhood stakeholders' vision of development desired in the district.

- c) The Downtown Waterfront Development Opportunities Study, adopted by the PDC Board in November 2003, highlights the development potential for Portland's downtown waterfront blocks.
- d) The Waterfront Park Master Plan (2003), developed by PP&R, provides direction for the park's renovation, and addresses related land use and environmental issues.
- e) The Ankeny/Burnside Development Framework, adopted by the PDC Board in December 2006, was a joint PDC and Bureau of Planning project to create an urban design framework and development strategy for the Skidmore / Old Town Historic District.

11. PDC 2006-07 Revised Budget and Amendment One to the 2006-07 Master Inter-Agency Agreement with Portland Parks & Recreation, allocated funds for the design of the improvements to the Park, Plaza, the underside of the Burnside Bridge and MAX Station, Ankeny Street, and 1st Avenue. The recommendations for these specific improvements were a direct recommendation of the Ankeny / Burnside Development Framework.

B. Schedule of Work and Budget

PP&R is not obligated to perform, and PDC is not obligated to pay for, any work not identified in the Schedule of Work.

1. As part of the Project, PP&R shall perform the work as set forth in the following tables and further denoted in Attachment A "Project Budget," which is incorporated herein by this reference, and as generally described as follows:
- a) Manage all consultants necessary to complete Design and Engineering for Project, including but not limited to design development, construction documents, and required technical assistance during construction of the Project.
 - b) Obtain Permits for the Project to include all required permits for the proposed improvements except any lease or other property agreements necessary for the MAX/Retail Element.
 - c) Obtain and pass through to PDC all donated funds for the water feature and curved cantilevered deck, which are part of the Waterfront Park Element.
 - d) Comply with all other obligations of PP&R as set forth under this IGA.

Plan			Budget FY 2007-08				
Work Item	Description	Timeline Completion	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
All	Design Development, Construction Documents, Procurement, Permitting, and beginning of Construction Phases	6/30/2008					
A.	Administrative		\$ 187,000	\$ 1,300	\$ -	\$ 188,300	\$ -
A.1	PPR Project Management & Staff Hours	6/30/2008	\$ 187,000			\$ 187,000	
A.2	PPR Reimbursable Expenses	6/30/2008		\$ 1,300		\$ 1,300	
B.	Reviews, Permitting, City Reqmts		\$ -	\$ 300,500	\$ -	\$ 300,500	\$ -
B.1	Permitting Expenses	6/30/2008		\$ 178,000		\$ 178,000	
B.2	Water Bureau Plan Review for Water Feature	6/30/2008		\$ 33,100		\$ 33,100	
B.3	SDC Fees	6/30/2008		\$ 10,800		\$ 10,800	
B.4	Urban Forestry- Consult, monitor and inspect during constr, prune oaks	6/30/2008		\$ 8,600		\$ 8,600	
B.5	Stormwater Mitigation (off-site)	6/30/2008		\$ 70,000		\$ 70,000	
C.	Consultants		\$ -	\$ -	\$ 974,800	\$ 974,800	\$ -
C.1	Topo Survey/As-Builts Add Services	6/30/2008			\$ 6,300	\$ 6,300	
C.2	Design & Engineering (Approved contract + Contract amendments #1-7)	6/30/2008			\$ 880,900	\$ 880,900	
C.3	Design & Engineering Reimbursable Expenses (Approved contract + Contract amendments #1-7)	6/30/2008			\$ 71,900	\$ 71,900	
C.5	Design and Engineering CSO Vault Lid	6/30/2008			\$ 15,700	\$ 15,700	
Other	Contingency (5%)		\$ 9,400	\$ 15,100	\$ 48,700	\$ 73,200	\$ -
TOTAL	AUTHORIZED BUDGET Cost Not To Exceed		\$ 196,400	\$ 316,900	\$ 1,023,500	\$ 1,536,800	\$ -

Plan			Budget FY 2008-09				
Work Item	Description	Timeline Completion	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
All	Construction and Close-Out Phases	6/30/2009					
A.	Administrative		\$ 106,000	\$ 150,600	\$ -	\$ 256,600	\$ -
A.1	PPR Project Management & Staff Hours	6/30/2009	\$ 106,000			\$ 106,000	
A.2	PPR Reimbursable Expenses	6/30/2009		\$ 600		\$ 600	
A.3	Post-Occupancy Problem Solving	6/30/2008		\$ 145,000		\$ 145,000	
A.4	Park Dedication	6/30/2008		\$ 5,000		\$ 5,000	
B.	Consultants		\$ -	\$ -	\$ 174,400	\$ 174,400	\$ -
B.1	Design & Engineering (Approved contract + Contract amendments #1-7)	6/30/2009			\$ 149,200	\$ 149,200	
B.2	Design & Engineering Reimbursable Expenses (Approved Contract + Contract amendments #1-7)	6/30/2009			\$ 20,200	\$ 20,200	
B.3	Design and Engineering CSO Vault Lid	6/30/2009			\$ 5,000	\$ 5,000	
Other	Contingency (5%)		\$ 5,300	\$ 7,500	\$ 8,700	\$ 21,500	
TOTAL	AUTHORIZED BUDGET Cost Not To Exceed		\$ 111,300	\$ 158,100	\$ 183,100	\$ 452,500	\$ -

2. As part of the Project, PDC shall perform the work as identified in Attachment A “Project Budget” and as generally described as follows:

- a) Obtain bids to include all procurement actions for the Waterfront Park Element and MAX/Retail Element to include: assemble bid package, advertise, award and enter into all construction contracts necessary to complete the work.
- b) Manage all construction project management consultants to complete Construction Project Management of the Waterfront Park Element and the MAX/Retail Element.
- c) Manage all construction contracts in coordination and consultation with PP&R to include: preconstruction, weekly meetings, payments, substantial, final completion, closeout and warranty.
- d) Comply with all other obligations of PDC as set forth under this IGA.

C. Project Staffing – PP&R: The following PP&R personnel are being assigned to perform the work described in Section I(B)(1) above. Only personnel listed below, or subsequently identified and authorized by the PDC Project Manager, shall be reimbursed for authorized work. Personnel costs shall be those direct payroll and benefits costs that are actually charged through payroll to the project, plus the agreed upon indirect overhead costs, as described in III(I.)(1). The PDC Project Manager will not unreasonably delay or withhold subsequent authorization for personnel

identified by PP&R to perform work under the Agreement. Failure of PDC to notify PP&R in writing of denial of authorization within 10 business days after the PDC Project Manager's receipt of a written request for authorization from PP&R shall be deemed as authorizing the identified personnel to perform work under the Agreement.

1. Sandra Burtzos, Capital Project Manager III
2. Richard Bosch, Architectural Project Manager
3. Liz Moorhead, Capital Projects Manager
4. Susan Watt, Construction Supervisor
5. Vann Starr, Construction Manager
6. Sarah Coates, Assistant Program Specialist
7. Kip Wadden, Senior Management Analyst
8. Barbara Hart, Community Engagement & Public Involvement Manager
9. Leslie Chayer, Public Involvement Assistant

D. Project Staffing – PDC: The following PDC personnel are being assigned to perform the work described in Section I(B)(2) above.

1. Kevin Brake, Senior Project / Program Coordinator
2. Dave Obern, Construction Services Manager
3. Irene Bowers, Senior Project / Program Coordinator

E. Communication Protocol: In connection with the Project, each Party will comply with and perform its obligations under the Communication Protocol set forth in Attachment B hereto, which is incorporated herein by this reference.

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 Zari Santner, or such other person as designated in writing by the Director of the Portland Parks and Recreation Bureau ("Bureau Contract Signatory"). The Bureau Contract Signatory is authorized to give notices and to carry out other Bureau actions referred to herein, including termination of this Agreement as provided in Section V.
2. Bureau Contract Manager. The Bureau Contract Manager shall be Liz Moorhead ("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 of that party related to the Schedule of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be Kevin Brake, or such other person as designated in writing by the Director of Development.
 - b) The Bureau Project Manager ("Bureau Project Manager") shall be Sandra Burtzos, or such other person as designated in writing by the Director of Portland Parks and Recreation 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 Schedule 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 Schedule 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 Schedule 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 Schedule of Work accordingly to provide adequate time to make such change.

D. [Section Intentionally Blank]

E. Project Management.

1. An executed license agreement between PP&R and PSM must be in place prior to PDC issuing Notice to Proceed for the construction of improvements in Waterfront Park.
2. PP&R and PDC acknowledge the need for bid alternates, potential phasing options, and bid package preparation in connection with the construction phase of the Project.
3. PP&R and PDC agree that cooperation, streamlining and avoiding duplication of services is critical to move this Project to completion. The Parties shall make every reasonable effort to respond in a timely manner to review deadlines, critical design issues, permits, funding, schedule and unforeseen construction matters.
4. PDC and PP&R agree to the following:
 - a) PP&R shall obtain Land Use approvals necessary for the Project and will initiate all necessary permits and other bridge, utility and other street permits or approvals necessary for the Project. PP&R shall obtain all internal approvals necessary for the Project to include Disability Advisory Committee and other internal operation reviews. PP&R shall enter into any agreements with other bureaus required for the Project to include but not limited to Water Bureau for water feature and other Project permit requirements.
 - b) PP&R may make minor decisions to handle urgent, unforeseen and other issues related to design of the Project with follow-up notice to PDC. The Parties agree that a minor decision is considered to be a decision that does not substantially alter or impact Project scope, budget or schedule. Failure to respond in a timely manner by specified deadlines waives the right to afford input to the issue.
 - c) PDC shall initiate solicitation and procurement of the Construction Contract(s) and shall be the lead Party during the duration of the construction phases of the Project. PP&R shall provide PDC with support and assistance during the construction phases of the Project.
 - d) PDC will provide PP&R project manager and construction manager copies of all RFIs, submittals, shop drawings, substitution requests, field change directives, clarifications, supplemental instructions, stop work orders, change order requests and all other construction related correspondence, as they are generated. PDC may make minor decisions to handle urgent, unforeseen and other issues related to construction of the Project with follow-up notice to PP&R. The Parties agree that a minor decision is considered to be a decision that does not substantially alter or impact Project scope, design, budget or schedule. Failure to respond in a timely manner by specified deadlines

waives the right to afford input to the issue. PP&R and PDC will establish an agreed upon communication protocol, response process, and decision making process, as shown in Attachment B – Project Communication Coordination Protocol.

- e) The Parties agree that all contracts entered into to implement the Project shall have insurance coverage satisfactory to the Parties that includes naming PP&R, PDC and the City of Portland as additional insureds with appropriate endorsements.
- f) Upon completion of both elements of the Project, PDC will close out the Project. Upon reaching Substantial Completion or beneficial use and occupancy of the Project, PP&R and/or other Bureaus will be responsible for all maintenance and operation for Waterfront Park Element of the Project, except any Construction Warranty and Plant Establishment Work which will be managed by PDC as part of the construction contract.
- g) Upon completion of both elements of the Project, PP&R will close out the A/E Firm Contract and any other bureau agreements as may be necessary.
- h) A 3-way MOU between PP&R, PDC, and the Water Bureau shall be executed prior to issuance of a notice to proceed to the construction contractor and will establish the relationship between these parties moving from design phase into construction relative to the interactive water feature. Refer to Attachment D, which is incorporated herein by this reference.

F. Public Involvement.

- 1. If the Project Advisory Committee needs to be re-engaged, PDC and PP&R project managers will work together to conduct meetings and prepare information to present.
- 2. The Bureau and the Commission 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 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.

4. PDC will ensure, through its construction contract General Conditions and by emphasizing verbally with construction contractor, the requirements for contractor to not communicate with the press.

G. Meeting Participation.

1. The PDC and the PP&R 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.
2. PDC will convene weekly construction progress meetings and invite PP&R to attend and participate; the purpose will be to update the Project team on construction issues, schedule, and cost. In the event decisions cannot be made at these meetings, the issue shall be elevated to Lew Bowers and Robin Grimwade for decision.
3. During the Design Phase, PDC will be invited to attend all critical coordination meetings and provided a meaningful opportunity to review and comment in a timely manner on all key Project documents, major design features, issues, schedule, funding, Project sequencing and other significant design issues.
4. During the Construction Phase, PP&R will be invited to attend all critical coordination meetings and all construction related meetings, in addition to weekly project meetings, and will be provided a meaningful opportunity to review and comment in a timely manner on all changes in work, submittals, requests for information and other significant construction related issues.

H. Work Product Access.

1. The Project Manager for each Party will, upon his or her respective 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 a Party contracts with to carry out all or part of the Schedule of Work that is the responsibility of that Party.

1. PP&R initiated procurement of PTE services for the A/E Firm, and PP&R will be the lead agency to manage and direct the work under the A/E Firm contract. PP&R shall have the sole authority to direct the work of any authorized and approved subcontractors providing PTE services.
2. Subcontractors approved by the PDC Project Manager:
 - a) Prime Design Consultant: Walker Macy
 - b) Topographic and Boundary Survey: KPFF Consulting Engineers (from PP&R Flexible Services Contract)

- c) [Other subcontractors TBD as necessary to complete the work.](#)
3. PDC shall contract for any necessary professional or other services during Construction Phase, including, but not limited to, Construction Project Management, Special Inspections, Testing Lab, Utility Service Connections, Construction Survey, etc. Those firms include:
 - a) [Construction Project Management – KLK Consulting](#)
 - b) [Construction Documents and Technical Assistance – Hill International](#)
 - c) [Other subcontractors TBD as necessary to complete the work.](#)

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

1. The work listed above will be eligible for RACC percent for art program.
2. The approximate amount of the RACC obligation is set forth in the Project Budget and will be paid by PDC, once approved by RACC, and used solely to cover the artist's fees for art fabrication and installation (the artist's design fees are included as part of the PTE contract, a portion of which was paid under the 06-07 Work Order and the remainder of which will be paid for under this Agreement). RACC will contract directly with the artist. RACC will invoice PDC for reimbursement. Art selection and process will be dictated by RACC policies, and coordinated by PP&R.
3. Of the total RACC Obligation in the Project Budget, PDC will pay \$91,865 by directing RACC to allocate credit in that amount that PDC currently has with RACC;
4. In addition to the RACC Obligation set forth in the Project Budget, PDC will direct RACC to utilize for additional Project art, funds from the Naito Parkway improvements, in the amount of \$34,978, that were not used for artwork on that project and that RACC still has in its possession.

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

1. When the Bureau is performing work for the Commission, the Bureau will employ its best efforts to meet or exceed the PDC utilization goals for Emerging Small Businesses and Women and Minority owned-businesses.
2. PDC Commission indicated in the adoption of the Ankeny / Burnside Development Framework that the Project shall endeavor to exceed the PDC M/W/ESB utilization goals when practicable.

L. Special Contract Management Provisions.

1. The PP&R Contract Manager may make individual changes to the Project within the authorized budget line items for work to be performed by PP&R and utilize authorized contingency funds without concurrent approval by PDC, provided there are no material changes made to design, scope or

schedule. PP&R Contract Manager shall promptly advise PDC Project Manager of any changes. All changes that are material changes to the design, scope or schedule will require PDC prior written approval.

2. The PDC Contract Manager may make individual changes to the Project within the authorized budget line items for work to be performed by PDC and utilize authorized contingency funds without concurrent approval by PP&R, provided there are no material changes made to design, scope or schedule. PDC Contract Manager shall promptly advise PP&R Project Manager of any changes. Any changes that are material changes to the design, scope or schedule will require PP&R prior written approval.
3. Throughout the entire project, both Parties shall strive to achieve consensus. The Project Advisory Committee will make recommendations on Project direction. Final decisions related to design will be made by the Bureau of Parks & Recreation Director.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A.** The Commission shall pay PP&R a sum not to exceed **One million, nine hundred, eighty-nine thousand, three hundred DOLLARS (\$1,989,300)** for accomplishment of the work required of PP&R as set forth in the Schedule of Work for Fiscal Years 07-08 and 08-09, subject to budget authorization by the Commission. PP&R is not obligated to perform and Commission is not obligated to pay PP&R for any work on the Project not described in the Schedule of Work.
- B.** Total Project Budget including all sources and uses is set forth in Attachment A.
- C.** The full amount of funds is not authorized in the current fiscal year's budget. 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 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, Commission staff agrees to recommend to the Commission Budget Committee that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- D.** The Parties recognize that the overall Project Budget is limited to funding that is authorized for the Project and may include other public and private funds that have not been fully secured. The Parties further agree to make every effort to optimize the use of the authorized funds and may need to establish bid alternates, sequence work and take other actions to best meet the Project objectives. Upon mutual agreement, the Parties shall update the Project Budget and individual line items.
- E. Total Project Funding.**

1. PDC DTWF TIF \$8,213,355 (Fire Station Restroom deducted from original \$8.5M for future project)
 2. PPR \$215,712 (from BES payment for CSO project site)
 3. PPR \$53,867 (to close gap on paving enhancements alternate)
 4. PPR \$44,600 (for curved cantilevered deck alternate)
 5. TriMet \$150,000
 6. Portland Parks Foundation Private Fundraising \$700,000 (for water feature)
 7. Portland Parks Foundation Private Fundraising \$50,000 (for curved cantilevered deck alternate).
 8. RACC Credit \$91,865
- F.** The above mentioned “Total Project Funding” Items 2, 3, 4, 6 and 7 shall be secured by PP&R. After PP&R has secured such funds it shall transfer them to PDC for construction purposes. PDC shall secure “Total Project Funding” Items 1, 5, and 8 above.
- G.** Portland Parks Foundation is working to raise \$700,000 toward the cost of the Waterfront Park Element water feature and \$50,000 toward the cost of the curved cantilevered deck. Prior to PDC’s issuance of a notice to proceed to the contractor for the Waterfront Park Element of the Project, PP&R and the Portland Parks Foundation shall enter into agreement(s) that guarantees the availability of these funds. If (1) such an agreement is not in place prior to PDC’s issuance of a notice to proceed to the contractor for the Waterfront Park Element, (2) the agreement(s) guarantees less than \$700,000 toward the cost of the water feature and \$50,000 toward the cost of the curved cantilevered deck, or (3) for any reason the full \$700,000 is not made available by the Portland Parks Foundation to PDC for the water feature, then PP&R shall cover from its own funds two-thirds of the shortfall (the difference between \$700,000 and the funds actually made available by the Portland Parks Foundation for the water feature) and PDC shall cover the remaining one-third of the shortfall. Or (4), in the case of the curved cantilevered deck, if for any reason the full \$50,000 is not made available by the Portland Parks Foundation to PDC for the curved cantilevered deck, then PP&R shall cover from its own funds the entire shortfall (the difference between \$50,000 and the funds actually made available by the Portland Parks Foundation for the curved cantilevered deck). Additionally, PP&R shall supply from its own funds the remainder of the bid alternate price for the curved cantilevered deck plus 10% construction contingency for that feature which total \$94,600, less \$50,000 from Portland Parks Foundation, for a net PP&R payment of \$44,600 for the curved cantilevered deck. PP&R shall transfer its portion of any shortfall described in 3 or 4 above to PDC as requested by PDC to finance construction of the water feature. PDC shall cover its portion of the water feature shortfall, at its option, from the Project contingency, by reducing the scope of other elements of the Project, or by

requesting additional funding from the PDC Board of Commissioners. If PDC elects to reduce the scope of other elements of the Project in order to cover its share of the water feature shortfall, it shall consult with PP&R. Any dispute between PDC and PP&R regarding the reduction of the scope of the Project shall be resolved in accordance with Section V. B. of this Agreement. .

- H.** 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.
- I.** PP&R may seek reimbursement from PDC for the following costs, subject to the expenditure of these funds being for approved activities in the Schedule of Work that are the responsibility of PP&R and within the authorized budget. In certain circumstances, such as advance payment to RACC, the PDC 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 that is the responsibility of PP&R. Such reimbursement shall be calculated at the actual base payroll hourly rates determined in accordance with the standard procedures of the Office of Management and Finance. The base payroll hourly rates shall be exclusive of benefit costs and indirect costs which are addressed separately below.
 - 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.
 - 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 Schedule of Work that is the responsibility of PP&R and within the authorized budget.
 - d) Contracted Services. Reimbursement for contracted professional or construction services in carrying out authorized work under the Schedule of Work that is the responsibility of PP&R and within the authorized budget.
 - 2. Indirect Costs. Reimbursement for overhead costs shall be at the rate established annually by the Commissioner in charge of the Bureau. For Fiscal Year 07/08 of this Agreement the rate is NINETY EIGHT PERCENT (98%) of Personal Services and Benefit Costs. Indirect costs pay for administrative time and generally fixed costs related to program management costs including

City Council charges, central administration costs, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.

3. The PDC 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 Schedule 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, PDC shall not be obligated to make payments for costs that exceed the authorized budget set forth in Attachment A.

J. 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.

IV. BILLING AND PAYMENT PROCEDURE

A. PP&R shall submit to the PDC Contract Manager a separate itemized billing for work performed by PP&R as described in the Schedule of Work 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 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, PDC will have no obligation to honor late billings.
3. Current City plans include implementation of a new SAP enterprise business system in fall 2008 and spring 2009. Both parties 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 PDC. 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 PDC Contract Manager.

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, PDC will advise the billing party in writing what specific information is missing or disputed. PDC will proceed to process payment for items not in dispute.

V. GENERAL

A. Termination.

1. The Termination Date of the Agreement is June 30, 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 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. Conflict Resolution. If a dispute arises regarding performance, cost, schedule, scope, quality or other terms and conditions of this Agreement, the Parties agree to exercise good faith in expeditiously resolving said conflict in the following manner.

1. All conflicts should first be discussed and resolved if at all possible by the Project Managers specified in Section II.
2. 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.
3. Any conflicts not resolved by the Contract Managers shall be elevated to Lew Bowers and Robin Grimwade and then, if still unresolved, 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.

1. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, Bureau 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 Bureau, its officers, employees or agents under this Agreement.

2. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, Bureau, 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 Project Manager of the non-subcontracting Party. A subcontractor is any other entity that a Party contracts with to carry out all or part of the Schedule of Work. The non-subcontracting Party will not unreasonably delay or withhold subsequent authorization for contractors identified by the subcontracting Party to perform work under the Agreement. Failure of the non-subcontracting Party to notify the subcontracting Party in writing of denial of authorization within 10 business days after the non-subcontracting Party's Project Manager's receipt of a written request for authorization from the subcontracting Party shall be deemed as authorizing those identified contractors to perform work under the Agreement. The subcontracting Party shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the subcontracting Party as specified in this Agreement. Notwithstanding approval by the non-subcontracting Party Project Manager of a subcontractor, the subcontracting Party shall remain obligated for full performance hereunder, and the non-subcontracting Party shall incur no obligation to the subcontractor hereunder. The subcontracting Party shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product. Unless otherwise agreed to in writing by both parties, ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced, including the improvements, in connection with this Agreement or the Project, whether before or after the Effective Date (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.

1. Promptly after the Effective Date of this Agreement PP&R shall transfer ownership of all Work Product it owns to PDC, and PDC shall own all Work Products created during the procurement and construction phases of the Project.
2. Upon satisfactory completion of the Project, PDC shall transfer ownership of the Work Products to PP&R, except to the extent PDC or a third party retains

ownership of the underlying real property or the improvements, in which case PDC or the third party will have ownership of the Work Product related to that real property or those improvements. If ownership of the real property or improvements transfers to PP&R, upon completion of such transfer PDC shall transfer ownership of the Work Product related to that real property or those improvements.

3. Regardless of ownership of the Work Product, both Parties shall have reasonable access to the Work Product.

G. Project Closeout.

1. Acceptance of the Waterfront Park Element of the Project and Final Completion of the Waterfront Park Element of the Project will not occur until both PDC and PP&R have agreed to it.
2. Upon acceptance by PP&R by written notice, PDC shall transfer ownership of improvements comprising the Waterfront Park Element of the Project to PP&R except for any outstanding obligations of the contractor under the construction contract to include any warranty work.
3. Any dispute between PDC and PP&R regarding Final Completion of the Waterfront Park Element of the Project shall be resolved in accordance with Section V. B. of this Agreement.

H. Project Warranties. All manufacturer warranties arising from the Project shall be made in the name of the owner of the real property or improvement to which the warranty relates.

I. Status Reports. Project Status Reports are required to be submitted in accordance with the Communication Protocol set forth in Attachment B. A failure to produce Project Status Reports will be brought to the attention of the Contract Managers by the Project Managers.

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

K. 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 Ankeny Burnside Urban Renewal Project”.

2. The Bureau shall display a sign near the construction site of the Project and readily visible to the public, specifying that the Project is being "funded by the Portland Development Commission's Ankeny Burnside Urban Renewal Project" and listing PP&R and PDC as project partners. 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.
 1. Changes to the Schedule of Work, including changes to scope, schedule, and budget 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.
 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

- A. PP&R agrees to enter into a Permit of Entry to enable PDC and its Contractors to access the Waterfront Park site, establish staging area, and complete the Project.
- B. PP&R agrees to manage and resolve any and all claims tendered by the A/E Firm under the PTE or other contracts by the City related to this Project (if any) following the City's procurement rules and process. PP&R will immediately consult with PDC if there are any impacts to Project Budget or schedule based on any claims or any settlement of any claims.
- C. PDC agrees to manage and resolve any and all claims tendered by the Construction Contract or other contracts by PDC related to this Project (if any) following the PDC's procurement rules and process. PDC will immediately consult with PP&R if there are any impacts to Project Budget or schedule based on any claims or any settlement of any claims.
- D. PP&R and PDC mutually agree to jointly coordinate and resolve any other issues to include, but not limited to, resolving permit issues, utility issues, stakeholder or other public involvement issues relating to this Project.

[Signature page to follow]

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

CITY OF PORTLAND _____		PORTLAND DEVELOPMENT COMMISSION _____
Zari Santner, Director, Portland Parks and Recreation Bureau (Executed under authority delegated by Ordinance No. 181232, passed by Council on August 29, 2007.)		Bruce A. Warner, Executive Director
Gary Blackmer, City Auditor		APPROVED AS TO FORM:
_____		_____
		PDC Legal Counsel
APPROVED AS TO FORM:		

City Attorney		

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6593

TITLE: AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE BUREAU OF PARKS AND RECREATION FOR THE WATERFRONT PARK, ANKENY PLAZA, AND STREET IMPROVEMENTS PROJECT; AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE PUBLIC IMPROVEMENT AND OTHER NECESSARY CONTRACTS IN AN AMOUNT NOT TO EXCEED \$9,587,534

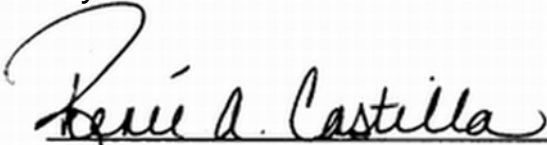
Adopted by the Portland Development Commission on May 28, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Mark Rosenbaum, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sal Kadri	<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 checked="" type="checkbox"/>	Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: June 12, 2008