

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6653

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE BUREAU OF ENVIRONMENTAL SERVICES TO PROVIDE CONSTRUCTION SERVICES FOR ODOR CONTROL CIVIL WORK AT THE ANKENY PUMP STATION; AND AN AMENDMENT TO THE CONTRACT WITH BROWN CONTRACTING, INC. INCREASING THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$1,624,916

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 dated June 23, 2008, between PDC and the City of Portland Parks and Recreation Bureau, approved by the Board through Resolution No. 6593 (the “Parks IGA”);

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 Parks & 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, in May 2008, the Board through Resolution No. 6593 authorized a competitively bid contract for the construction of the Project;

WHEREAS, pursuant to the authorization provided by Resolution No. 6593, PDC entered that certain Construction Agreement (No. 307009) for Waterfront Park Improvements with Brown Contracting, Inc. dated May 30, 2008 (the “Waterfront Park Contract”), to undertake construction of the Project; and

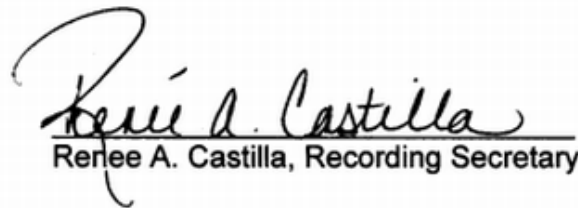
WHEREAS, the Bureau of Environmental Services requested assistance from PDC staff to undertake the completion of the odor control civil work (the “Odor Control Facility”) at Ankeny Pump Station located within the Waterfront Park project to ensure this work was completed prior to opening of the Portland Saturday Market and to minimize impacts to the Greenway Trail.

NOW, THEREFORE, BE IT RESOLVED that the Board authorizes the Executive Director to enter into an Intergovernmental Agreement with the Bureau of Environmental Services (“BES”) to provide construction services for odor control civil work at the Ankeny Pump Station, with total BES payments to PDC in an amount not to exceed \$1,793,575, substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that the Board authorizes the Executive Director to negotiate, execute, and deliver an amendment to the Waterfront Park Contract for the construction of the Odor Control Facility and to increase the contract by an amount up to \$1,624,916 for a total contract amount not to exceed \$10,261,236;

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

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



Renee A. Castilla
Renee A. Castilla, Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Bureau of Environmental Services
For the
Ankeny Wastewater Odor Control Civil Work Project

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

RECITALS

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. The Bureau of Environmental Services is responsible for protecting public health, water quality and the environment.
3. A cooperative partnership between the Commission and the Bureau will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.
5. City Council, through Ordinance No. 181373, which was duly adopted by City Council on October 24, 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. PDC is implementing improvements in Waterfront Park (the “Waterfront Park Project”) which are direct recommendations from the Ankeny / Burnside Development Framework (2006), and the Portland Saturday Market Permanent Home Study (2006). The decision to locate Portland Saturday Market (“PSM”) into a combination of Waterfront Park and Ankeny Plaza from March to December ongoing starting in 2009. A license agreement has been negotiated between Portland Parks and Recreation (“PP&R”) and PSM to outline the rights and obligations of both parties as it pertains to the use of the new space.
7. PDC in cooperation with PP&R, is undertaking the construction of the Waterfront Park Project, commencing in July 2008. PDC is diligently working to achieve a move in date for PSM of March 2009, with substantial completion of improvements relevant to the PSM’s successful operation on or around February 25, 2009. PP&R Director is in concurrence on the work outlined in this IGA.
8. Since early 2007, BES has been engaged in the planning and design of a proposed Ankeny Odor Treatment Facility (the “Odor Control Project”). The BES Ankeny

Wastewater pump station and the West Willamette CSO Tunnel Ankeny access shaft are within the Waterfront Park Project area.

9. In a subsequent consultation with PDC and PP&R in August 2008, the engineering consultant for BES, West Yost Associates, was directed by BES to complete the civil portions, as indicated in section I.A 1 below, of the Odor Control Project in order to least disrupt the Waterfront Park Project and economize on the use of the Waterfront Park Project contractor, Brown Contracting (the “Contractor”), already on-site under contract by PDC. The BES Project is on a similar schedule as the Waterfront Park Project, with the Odor Control Project reaching substantial completion on February 26, 2009. It is not practicable to have BES bid out a separate contract for the construction portion of the Odor Control Project and meet the critical time constraints.
10. Final drawings for the Odor Control Project were completed on September 12, 2008 by West Yost Associates, and PDC has requested a price proposal from the Contractor to perform the Odor Control Project construction work (the “Work”). It is envisioned that upon successful negotiation of cost with the Contractor, and approval by PDC and BES of this Agreement, that the Work will be added to the existing contract between PDC and the Contractor by amendment, subject to PDC LCRB Exemption and Board approval.
11. The Parties desire to enter into this Agreement to describe the respective roles and responsibilities of each of the Parties in implementation of the Odor Control Project.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. The Odor Control Civil Work consists generally of the following: All civil and structural work related to the vaults, foul air ductwork, water supply pipelines, electrical conduits and sewer work and related work, including all excavation, shoring, backfill, and dewatering. Specifically excluded is any electrical wiring, mechanical and/or other operational, control equipment within or related to the functions within the vaults. See Attached Plan View Drawing.
2. The Work will be performed under BES permit and will require compliance with all City of Portland COP Standard Specifications as well as compliance with all PDC requirements and specifications. BES will pay for and issue the permit for the BES Project. In coordination with BES, dewatering discharge into the main pump station will be permitted.
3. The Work shall comply with existing terms and conditions of the Waterfront Park Project Contract, including all General and Supplemental Conditions.
4. PDC will provide all Construction Project Management services, including management of the Work, make payments to the Contractor and provide other

services in consultation and coordination with BES. Except as noted in paragraph 5 below, PDC will retain any and all special inspection services and other geotechnical services as may be required. BES will reimburse PDC for these costs as set forth in the budget.

5. BES will provide all Engineering Services by separate PTE contract with West Yost Associates during construction of the Odor Control Project. BES will provide all inspection services required under the BES permit.
6. BES, by separate contract, will complete all other mechanical, electrical and other operating systems for the Ankeny Odor Treatment Facility upon successful completion of the Odor Control Civil Work.
7. BES will obtain and pay for any and all necessary entry permits and approvals from PP&R and/or Multnomah County Bridge. BES will obtain and pay for any permits required by the Water Bureau for the reroute of the 4” water main that is impacted by the Work. PDC will retain the engineer for the water main reroute and be reimbursed by BES.
8. BES agrees to pay any other BES Project costs to include, but not be limited to, project staff, the RACC Percent for Art program, System Development Charges or other permits, utility connection or other fees.
9. BES agrees to be the lead with any public involvement regarding the Odor Control Project in cooperation with PDC & PP&R.
10. The parties agree to coordinate all work with PP&R to ensure minimal disruption of Waterfront Park and obtain PP&R agreement to final location of all structures.
11. PDC agrees to enforce the Contractor’s two years of warranty work obligations under the terms of the Waterfront Park Project Contract. PDC will obtain the necessary contract insurance, payment and performance bonds from the Contractor. Insurance certificate will name the City of Portland as an additional insured.
12. The Odor Control Project timeline covered by this Agreement includes FY 2008/09. Key construction milestones include:

Cost Proposal Requested:	September 19, 2008
Cost Proposal Negotiated:	November 5, 2008
Anticipated Notice to Proceed:	December 3, 2008
Substantial Completion:	February 26, 2009
Final Completion:	March 28, 2009
Project Closeout:	June 1, 2009
13. A project budget has been established prior to the execution of this agreement and will include a base budget plus a 15% contingency for hard costs and 10%

contingency for soft costs. Soft costs are defined as any cost over and above direct construction costs as set forth in the budget.

14. The parties acknowledge that time is of the essence in all aspects of the Odor Control Project, and the parties agree to promptly communicate and resolve all issues, cooperate with each other and with their respective contractors and consultants, perform their respective responsibilities, obligations and services in a timely manner to facilitate the timely and efficient performance of the Work and so as not to delay or interfere with the other party's performance of its obligations under this Agreement.

B. Schedule of Work and Budget

PDC is not obligated to perform, and BES is not obligated to pay, for any work not outlined in the Schedule of Work.

1. As part of the Odor Control Project, PDC shall cause the Contractor to 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.
2. Including causing the performance of the Work, PDC agrees to perform additional services and activities, generally described as follows:
 - a) Obtain cost proposal and perform other procurement actions to include: negotiation of the final terms and conditions for the Work, and in coordination with BES, amending the Waterfront Park Project Contract to include the Work.
 - b) Perform all construction project management functions to include weekly meetings, payments, closeout and warranty activities.
 - c) Manage all construction project management consultants necessary to complete the Work, including but not limited to construction project management, special inspections and other required technical assistance related to the completion of the Work.

Plan			Budget FY 2008-09				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total Budget	Other Funding Sources
A	Direct Construction Costs						
A.1	Brown Contracting			1,412,970			
Other	Hard Cost Contingency @ 15%			211,946			
B	Administrative & Consultants						
B.1	PDC Project Staff Hours		31,970				
B.2	PDC Reimbursable Expenses			32,498			
B.3	Construction Project Management Services		38,860				
B.4	Other PTE Services, Special Inspections etc.			32,498	17,500		
Other	Soft Cost Contingency @ 10%		15,333				
TOTAL	AUTHORIZED BUDGET Cost Not To Exceed		86,163	1,689,912	17,500	1,793,575	1,793,575

- B.** 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”. BES is the Funding Agency.
- C.** The party performing work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. PDC is the Performing Agency.
- D. Project Staffing – Performing Agency:** The following Performing Agency personnel are being assigned to perform the work described above. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for authorized work. The Funding Agency Project Manager will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform work under the Agreement. Failure of the Funding Agency 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 the identified personnel to perform work under the Agreement.
1. Dave Obern, Construction Services Manager
 2. Kevin Brake, Senior Project / Program Coordinator
 3. Wendy Wilcox, Sr. Project Program Specialist
- E. Project Staffing – Funding Agency:**

1. Dan Hebert, Wastewater PS Engineering Design Manager
2. Blair Bean, BES Construction Manager

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 Dean Marriott, or such other person as designated in writing by the Director of the Portland Bureau of Environmental Services ("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 IV.
2. **Bureau Contract Manager.** The Bureau Contract Manager shall be Andi Gresh ("Bureau Contract Manager"). The Bureau Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

C. Management Staffing.

1. A Project Manager shall be designated by the Bureau ("Bureau Project Manager"), and a Project Manager shall be designated by the Commission ("PDC Project Manager") to carry out designated responsibilities related to the Scope of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be 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 Dan Hebert, or such other person as designated in writing by the Director of the Bureau of Environmental Services and approved by the PDC Project Manager.
2. If either Project Manager is not performing or is not able to continue performing the responsibilities related to the Scope of Work, then the respective Contract Manager shall designate a replacement Project Manager.

If a replacement Project Manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in the Scope of Work.

3. The PDC Contract Manager and the Bureau Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either the Commission or the Bureau desires to replace a Project Manager, or other key staff identified in the Scope of Work, the party's Contract Manager shall notify the other Contract Manager in writing, and if required, they will meet to discuss and agree on adjusting the Scope of Work accordingly to provide adequate time to make such change.

D. Approvals.

1. No work shall be performed and no funds shall be obligated on a project identified in the Scope of Work until this Agreement is executed.
2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work.

E. Project Management.

1. An executed agreement between BES and PP&R must be in place prior to PDC issuing Notice to Proceed for commencement of the Work.
2. BES must provide PDC all required BES permits and other permit approvals prior to PDC issuing Notice to Proceed for commencement of the Work.
3. BES and PDC agree that cooperation, streamlining and avoiding duplication of services is critical to move the BES 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. BES and PDC agree to the following:
 - a) PDC may make minor decisions to handle urgent, unforeseen and other issues related to construction of the Odor Control Project with follow-up notice to BES. 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.
 - b) PDC shall be the lead to initiate all procurement of the Construction Contract and shall be the lead party during the duration of the construction phases of the Odor Control Project. BES shall provide PDC with support and assistance during the construction phases of the Odor Control Project.

- c) PDC will provide Odor Control Project manager (Dan Hebert) and construction manager (Karen Karllson) 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. The parties agree that all contracts entered into to implement the Odor Control Project shall have insurance coverage that includes naming BES, PDC and the City of Portland as additional insureds with appropriate endorsements.
- d) Upon reaching completion of the Project, PDC will close out the Odor Control Project and BES will be responsible for final completion of all operational features of the Odor Control Project and further be responsible for all maintenance and operation of the Ankeny Odor Treatment Facility, except any Construction Warranty Work related to the Odor Control Civil which will be managed by PDC as part of the construction contract.

F. Public Involvement.

1. Where projects require public involvement, the Bureau and the Commission will collaborate on design of the public involvement plan that is endorsed by both Project Managers.
2. The Bureau and the Commission will keep each other informed of written material (e.g., news releases, brochures, news letters, reports) produced for the project that are intended for public distribution and will provide adequate time for review and discussion prior to distribution.
3. Each Project Manager will inform the other of inquiry from a media or press representative and make reasonable efforts to consult with the other Project Manager prior to any verbal or written information on the project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

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

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

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

1. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the BES Project Manager:
 - a) *KLK Consultants – Construction Project Manager*
 - b) *PSI – Special Inspection Testing Agency.*
 - c) *Other Subconsultants TBD as necessary to complete the work*
2. The Performing Agency and/or any approved subcontractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work.

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

1. This project is not RACC eligible as per City Code and Charter Title 5 Revenue and Finance 5.74.020(C):

“Eligible Funds means a Participating Bureau’s monetary contribution to an Improvement Project. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure.”

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. Identify any specific goals or other information, for example, for outreach, for design and for construction.

L. Special Contract Management Provisions

1. The PDC Contract Manager may make individual changes to the Odor Control Project within the authorized budget line items for work and utilize authorized contingency funds without concurrent approval by BES, provided there are no material changes made to design, scope or schedule. PDC Contract Manager shall promptly advise Odor Control Project Manager of any changes. Any changes that are material changes to the design, scope or schedule will require BES prior written approval.
2. Throughout the entire project, both Parties shall strive to achieve consensus final decisions related to design will be made by BES.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The *Bureau* shall pay the *Commission* a sum not to exceed **One Million Seven Hundred Ninety Three Thousand and Five Hundred Seventy Five DOLLARS (\$1,793,575)** for accomplishment of the Schedule of Work, subject to budget authorization by the *City Council / Commission*. The increase in contract award for Brown Construction will be 1,624,916, with an additional \$168,659 to cover project management and administration expenses to implement the Odor Control Facility.
- B. *Identify the Source of Funds applicable.*
- Funds are available in the Sewer System Operating Fund, FY 2008-09 Budget, Bureau of Environmental Services, Center Code 145-22-110, Project Number 8830, Account No. 521000.
- C. The full amount of funds *is* authorized in the current fiscal year's budget. If the project funding spans multiple fiscal years, the *City Council* 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.
- D. Commission funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and construction of improvements. Costs for operations, maintenance, and moving transit stock are not typically eligible for Tax Increment Financing.
- E. The Performing Agency may seek reimbursement from the Funding Agency for the following costs, subject to the expenditure of these funds being for approved activities in the Scope of Work and within the authorized budget. In certain circumstances, such as advance payment to RACC, the Funding Agency Project Manager may authorize a prepayment of future expense obligations.
1. Direct Costs
 - a) Personal Services. Reimbursement for direct wages paid to personnel engaged in authorized work under this Agreement. Such reimbursement shall be calculated at the base hourly rate established in the Scope of Work.
 - b) Benefit Costs. Reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees. The benefit reimbursement shall be FIFTY FOUR PERCENT (54%) of direct wages, which represents the average full benefit load attributable to city 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 Scope of Work and within the authorized budget.

- d) Contracted Services. Reimbursement for contracted professional or construction services in carrying out authorized work under the Scope of Work and within the authorized budget.
2. Indirect Costs. 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 TWENTY FIVE PERCENT (25%) of Personal Services and Benefit Costs. Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including City Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment
 3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditure rate of the Scope of Work. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.
- F.** Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this contract unless mutually agreed to in advance.

IV. BILLING AND PAYMENT PROCEDURE

- A.** The Performing Agency shall submit to the Funding Agency Contract Manager a separate itemized billing for work performed as described in the Scope of Work for review and approval at least quarterly.
1. In order to receive timely payment, interim billings must be received no later than 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, the Funding Agency will have no obligation to honor late billings.
 3. Current City plans include implementation of a new SAP enterprise business system in fall 2007 and Fall 2008. Both BES and PDC acknowledge that this implementation may affect their ability to meet the above described timelines; however, each party shall make reasonable efforts to do so.
- B.** Each billing shall include a Project Status Report and a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
1. a description of the nature and cost of work accomplished;

2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as desired by the Funding Agency Contract Manager.
 5. A template report shall be discussed and agreed to as part of the project's kickoff meeting.
- C. If billings are received with incomplete information or disputed items, the Funding Agency will advise the billing party in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

V. GENERAL

A. Termination.

1. The Termination Date of the Agreement is 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 a project, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the project's termination will be reimbursed.

B. Conflict Resolution. 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.

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 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 Funding Agency Project Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing Agency to perform work under the Agreement. Failure of the Funding Agency 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 work under the Agreement. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.
- F. Ownership of Work Product.** 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 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.
1. Promptly after the effective date of this Agreement, BES shall transfer ownership of all Engineering Work Product it owns to PDC, and PDC shall own all Work Products created during the procurement and construction phases of the Odor Control Project.
 2. Upon satisfactory completion of the project, PDC shall transfer ownership of the Work Product to BES. If the project is not completed, BES shall retain ownership of the Work Product.

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

G. Project Closeout.

1. Final acceptance of the Ankeny Odor Treatment Facility will not occur until both PDC and BES have agreed to it.
2. Upon acceptance, PDC shall transfer ownership of improvements comprising the Odor Treatment Facility to BES except for any outstanding obligations by the construction contract to include any warranty work.

H. Project Warranties. All manufacturer warranties arising from the Odor Control Project shall be made to BES.

I. Status Reports. Project Status Reports are required to be submitted beginning within 60 days after execution of this Agreement and thereafter with each billing, at least quarterly. A failure to produce Project Status Reports will be brought to the attention of the Contract Manager by the Funding Agency Project Manager. Repeated failure to submit Project Status Reports may result in the Funding Agency withholding payment.

J. 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.

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 Public Realm Improvements Urban Renewal Project*”.
2. For projects involving construction activities funded by the Commission, the Bureau shall display a sign near the construction site and readily visible to the public, specifying that the project is being “*funded by the Portland Development Commission’s Ankeny Burnside Public Realm Improvements Urban Renewal Project*”. The sign shall remain in place until construction is complete.

VI. AMENDMENTS

A. Except as otherwise provided for in this Agreement, the Bureau or PDC may amend this Agreement only in writing signed by the Contract Signatories.

B. Changes to the Schedule of Work:

1. Changes to the Schedule of Work, including changes to scope, schedule, and budget which do not increase the total compensation under this Intergovernmental Agreement, may be made upon written agreement by the Project Managers identified in Section II of this Agreement.
2. Changes will not take effect or be binding on either party until agreed to in writing.

VII. MERGER CLAUSE

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

VIII. MISCELLANEOUS PROVISIONS

- A. 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 BES if there are any impacts to Project Budget or schedule based on any claims or any settlement of any claims.
- B. BES 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 Environmental Services and the Portland Development Commission has executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Dean Marriott, Director, Portland
Bureau of Environmental Services
(Executed under authority delegated by
Ordinance No. 181373, passed by
Council October 24, 2007.)

Bruce A. Warner, Executive Director

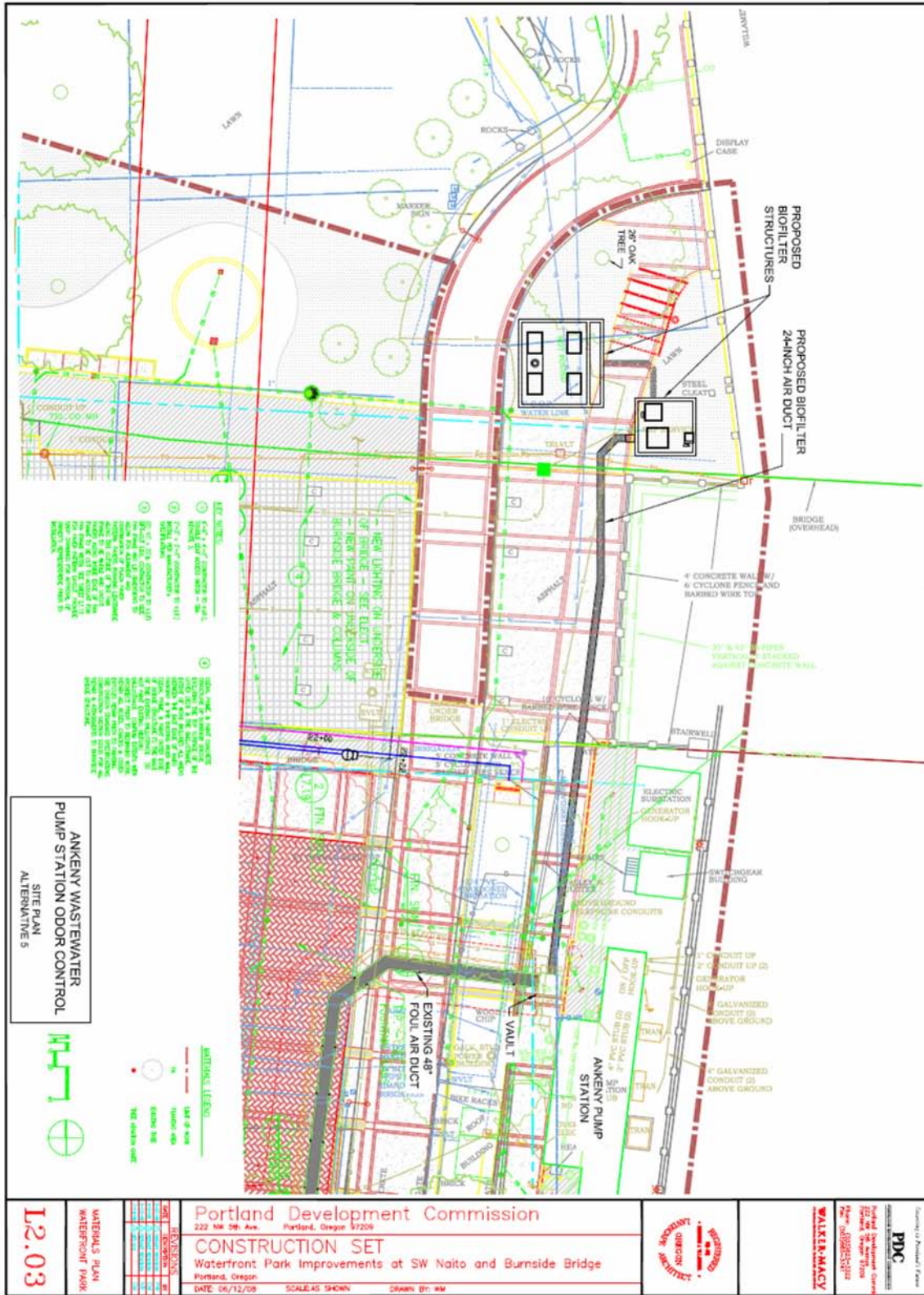
Gary Blackmer, City Auditor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

PDC Legal Counsel

City Attorney



PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6653

TITLE: AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE BUREAU OF ENVIRONMENTAL SERVICES TO PROVIDE CONSTRUCTION SERVICES FOR ODOR CONTROL CIVIL WORK AT THE ANKENY PUMP STATION; AND AN AMENDMENT TO THE CONTRACT WITH BROWN CONTRACTING, INC. INCREASING THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$1,624,916

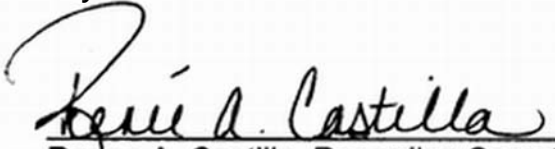
Adopted by the Portland Development Commission on December 1, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: December 10, 2008