

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6697

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH PORTLAND BUREAU OF TRANSPORTATION IN THE
AMOUNT OF \$2,847,545 FOR THE CONSTRUCTION OF
STREETSCAPE IMPROVEMENTS OF DENVER AVENUE IN
THE INTERSTATE CORRIDOR URBAN RENEWAL AREA**

WHEREAS, streetscape improvements to N. Denver Avenue in Kenton (the "Project"), which forms the Kenton Business District, have been identified as a priority in the *Downtown Kenton Plan* and the *Kenton Neighborhood Plan*;

WHEREAS, the Project supports multiple goals and objectives of the *Interstate Corridor Urban Renewal Plan* (the "Plan"), including the urban form goal, "*Target street improvements to complement light rail use and to leverage appropriate private investment*;"

WHEREAS, construction of the Project will implement the *Downtown Kenton-Denver Avenue Streetscape Plan* adopted by the Portland Development Commission ("PDC") Board of Commissioners (the "Board") on February 13, 2008 (Resolution No. 6556), and by City Council on February 27, 2008;

WHEREAS, the Interstate Corridor Urban Renewal Advisory Committee has recommended approval of the *Streetscape Plan* and expressed support for funding construction of the Project;

WHEREAS, the Project is a part of the larger Downtown Kenton Redevelopment Project that began in the fall of 2005 to help revitalize the Denver commercial corridor, create a safer and more attractive retail environment, create a stronger district identity and better visibility, and strengthen the connection between Denver Avenue, the Interstate MAX light rail line and the surrounding community;

WHEREAS, there has been an extensive public review and input process to advise on the creation of the Project designs, dating from 2005 to the present;

WHEREAS, the Project is consistent with the Interstate Corridor Urban Renewal Area goals, previous neighborhood plans and the *Streetscape Plan*, and will include the installation of trees, sidewalk improvements and curb extensions, storm water management, art, ornamental streetlights, and pedestrian crossings;

WHEREAS, \$492,000 of Project funding is included in the adopted FY 2008-09 PDC Budget; and \$3,413,000 of Project funding is included in the proposed FY 2009-10 PDC Budget, which is subject to final budget appropriation;

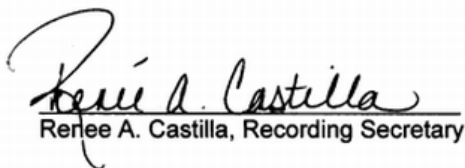
WHEREAS, PDC initiated the Project because of its importance as a revitalization tool for a key commercial corridor and to strengthen the pedestrian connection between the Kenton MAX Station and the Denver Avenue Business District; and

WHEREAS, the Portland Bureau of Transportation is providing construction design and engineering services for the Project and will supervise construction as outlined in the attached Intergovernmental Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the Executive Director to enter into an Intergovernmental Agreement with the Portland Bureau of Transportation, substantially in the form attached hereto as Exhibit A, for an amount not to exceed \$2,847,545, subject to budget appropriation, to construct the Project; and

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

Adopted by the Portland Development Commission on April 23, 2009.



Renee A. Castilla, Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Bureau of Transportation
For the
Downtown Kenton Streetscape Project -
Construction Phase

This Intergovernmental Agreement (“Agreement”), dated this _____ day of _____, 2009, (“Effective Date”) is made and entered into by and between the **City of Portland, Bureau of Transportation** (“PBOT” or “Bureau”) and the **Portland Development Commission** (“PDC” or “Commission”).

RECITALS

1. PDC, as the duly-designated Urban Renewal agency of the City of Portland, is granted broad powers under ORS 457.170 for the planning and implementation of urban renewal projects.
2. Bureau is responsible for transportation operations and improvements within the City public rights of way.
3. A cooperative partnership between the Commission and the Bureau will be beneficial to the implementation of urban renewal plans and the development of other public policies, plans and capital projects.
4. Both parties desire to enter into an agreement that will establish terms and conditions by which one party will engage and compensate the other party for performing specific services.
5. This Agreement covers the anticipated Bid and Award phase of the Downtown Kenton Streetscape Project as well as actual project construction. Both the Commission and the City Council will be asked to approve this Agreement, as the authority to enter into such Agreement has not been delegated to the Executive Director or Director of the Bureau.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. Denver Avenue is identified in the *Kenton Downtown Plan* and the *Kenton Neighborhood Plan* as a key commercial corridor containing neighborhood services and destinations. Denver Avenue has been identified as an important commercial and residential corridor serving North and Northeast Portland; it is also a transit and pedestrian route connecting to the Interstate MAX light rail line, which opened in May 2004.
2. The Denver Streetscape Improvements Project will contribute to the revitalization in the area by improving the quality of the street for local businesses and residents, and by strengthening the connection between Denver Ave, the Interstate MAX light rail line and the surrounding community. The Interstate Corridor Urban Renewal Advisory Committee has expressed support for funding the Denver Avenue Streetscape Improvements Project.
3. Residents, business owners and area institutions have been working with the City of Portland and the Portland Development Commission to create a revitalized community Main Street. Initial designs for a new streetscape design along Denver were created in June 2005 as part of the Downtown Kenton Redevelopment Project. The conceptual design for streetscape was completed in January 2008 and the *Downtown Kenton Denver Avenue Streetscape Plan* was adopted by the Portland Development Commission and City Council in February 2008.
4. Pedestrian level street lighting, new street trees, stormwater planters, decorative pavers, public art and stone benches will be added to the new streetscape. Currently, N Denver Avenue has 10' wide sidewalks, on-street parking, two bike lanes, two travel lanes, and a center turn lane. The streetscape plan calls for widening the sidewalks to 15', retaining the on-street parking and travel lanes, widening the bike lanes, and eliminating the center turn lane. The street will be resurfaced with concrete, using an innovative technique called ultra-thin white topping, which is quick setting and cost competitive with asphalt. Parking lanes and intersections will be distinctively colored to visually narrow the street. Final design engineering for the Downtown Kenton Streetscape Project, also known as the N Denver Avenue Project (the "Project"), is being completed under an existing Agreement No. 507032, City Contract No. 53089. Final plans and specifications are expected to be completed in early April 2009.
5. The Project is expected to advertise for bid in mid April with bid opening anticipated in May, contract award in June, and a "Notice to Proceed" issued in July. Construction is expected to be completed in calendar year 2009.
6. PDC is prepared for PBOT to start the Bid and Award phase of the Project in April 2009. Approximately, \$530,000 of PDC funding was allocated for design of the Denver Streetscape Project and the related parking and loading Demonstration Project over fiscal years 2008 and 2009. Of that,

approximately \$200,000 will be available for bid and award expenses during fiscal year 2009.

7. Construction of the Project is currently estimated at Two million eight hundred forty-seven thousand, five hundred forty five dollars (\$2,847,545) based upon the 60% engineer's cost estimate. PDC's proposed budget for fiscal year 2009 – 10 includes the estimated cost of construction plus ten percent. PDC's budget is expected to be approved by City Council no later than May 27, 2009, prior to bid award.

8. Seventy-five thousand dollars was previously awarded by the Oregon Department of Transportation (ODOT) to support traffic calming improvements along N Denver Avenue. This agreement assumes that this project is eligible for that funding. Should ODOT funds not be provided, PDC and PBOT may amend this IGA to increase PDC funding by a commensurate amount.

9. PBOT shall provide the final engineer's cost estimate in early April 2009 for review by PDC. PBOT shall put the Project out to bid only with PDC's written acceptance of the Project scope and estimated cost, and approval to move forward to the Bid and Award phase.

10. PBOT shall manage the construction contract according to City standards and keep PDC informed of significant cost variances and construction issues.

11. In order to be responsive to the needs of local businesses during project construction and maintain ready communications, PBOT will obtain public outreach services from one of its flexible services contractors. This targeted public outreach will provide a) a single point of contact for receiving construction related concerns, and making referrals to PDC business assistance programs, b) written updates to businesses on construction coordination and scheduling, and c) wider communications with the neighborhood during construction, including organization and publicity for two milestone events, including an "Open for Business" promotion and a Grand Opening Celebration. The first activity would occur at approximately the midpoint of project construction and include hard copy and e-mail notices to the neighborhood, focusing on an "Open for Business" message. The second activity would occur with substantial completion of construction of the Project and include hard copy and e-mail notices to the neighborhood for a Grand Opening Celebration with the local businesses.

12. As part of this construction project, the Regional Arts and Culture Council will provide public art. The proposed art piece is a granite sculpture that RACC will install on one of the new, centrally located curb extensions. In addition to the sculpture, RACC is expected to provide and maintain unique stone benches (no more than eight) along the Project corridor. This Agreement includes estimated payments to RACC for all of these public art pieces.

B. Schedule of Work and Budget

Plan			Budget FY 2008-09			
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget
A	Construction Bid and Award: Note: Project will not be awarded until PDC's budget is approved by City Council. Budget Approval: May 27, 2009	June 30, 2009		0	0	
A.1	Project Management		\$5,000			\$5,000
A.2	Public Outreach in preparation for construction				\$5,000	\$5,000
A.3	Design & Purchasing Services <ul style="list-style-type: none"> Potential assistance from subcontractors listed in Section II. "T" with responses to questions from bidders. 				\$4,000	\$9,000
A.4	Change Management-Performing Agency				\$1,800	\$3,800
A.5	Work Product: Construction Contract Awarded. Written notices to businesses along the Project corridor					
Other	Funding Agency Controlled Contingency [Required]					
TOTAL FY 08/09	AUTHORIZED BUDGET Cost Not To Exceed		\$12,000	\$0	\$10,800	\$22,800

Plan			Proposed Budget FY 2009-10			
Work Item	Description	Timeline Completion	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget
A	Construction	December 31, 2009				
A.1	Project Management		\$61,600			\$61,600

A.2	Construction Engineering <ul style="list-style-type: none"> Includes subcontractor assistance with submittals, construction issue resolution 		\$293,500		\$12,000	\$305,500
A.3	Construction Contract				\$1,637,000	\$1,637,000
A.4	Construction anticipated items		\$10,000	\$40,000	\$150,000	\$200,000
A.5	Change Management – Performing Agency		\$36,510	\$4,000	\$179,900	\$220,410
A.6	<u>Work Product</u> : Completion of Construction					
B	Public Outreach	December 31, 2009			\$50,000	
B.1	A single point of contact for receiving construction related concerns , and making referrals to PDC business assistance programs,					
B.2	Written updates to businesses on construction coordination and scheduling					
B.3	Wider communications with the neighborhood during construction, including organization and publication of two milestone events. .					
B.4	Change Management – Performing Agency				\$5,000	

Plan			Proposed Budget FY 2009-10			
Work Item	Description	Timeline Completion	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget
B.5	Work Product: Log of in-person visits to businesses and phone calls received, issues list provided to construction and project manager, written flyers, door hangers, e-mail updates, milestone event invitations, summary of events.					\$55,000
D	Public Art	December 31, 2009				
D.1	RACC Contract - Sculpture				\$29,590	
D.2	RACC Contract - Benches				\$50,000	
D.3	Work Product: RACC contract					\$79,590
Other	Funding Agency Controlled Contingency					\$340,645
TOTAL FY 09/10	AUTHORIZED BUDGET Cost Not To Exceed		\$401,610	\$44,000	\$2,113,490	\$2,899,745
	Less anticipated funding from the Oregon Department of Transportation				\$75,000	
Adjusted TOTAL FY 09/10	AUTHORIZED BUDGET Cost Not to Exceed					\$2,824,745
TOTAL all FY's						\$2,847,545

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

D. The party performing work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”.

E. Project Staffing – Performing Agency: The following Performing Agency personnel are being assigned to perform the work described above. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for authorized work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform work under the Agreement, and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after

the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified personnel to perform work under the Agreement.

- a) Kathryn Levine, PBOT Project Manager
- b) Hollie Berry, PBOT Construction Manager
- c) Construction Inspector
- d) Construction Technicians
- e) Brett Kesterson, Engineer of Record
- f) Neal Robinson, Civil Design Engineer
- g) Kathy Mulder, Traffic Design Engineer
- h) BES Design and Inspection Services
- i) BWW Design and Inspection Services
- j) Drafter
- k) Structures Engineer
- l) Street Lighting/Signals Support
- m) Urban Forester
- n) Right-of-Way Agent, if needed
- o) Survey
- p) Project Management Support
- q) Parking Control
- r) Traffic Operations
- s) Maintenance Staff, city installed signage, striping, etc

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

- 1. Carol Herzberg, Project Manager
- Stephen Green, Business Assistance
- Neal Fitzgerald, Business Finance
- Steve Szigethy, Technical Assistance
- Sarah King, N/NE Neighborhood 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 Susan D. Keil, or such other person as designated in writing by the Director of the Portland Department of Transportation ("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 Greg Jones ("Bureau Contract Manager"). The Bureau Contract Manager is responsible for the day-to-day management of the Agreement as provided herein and serves as the first level of conflict resolution.

C. Management Staffing.

1. A Project Manager shall be designated by the Bureau ("Bureau Project Manager"), and a Project Manager shall be designated by the Commission ("PDC Project Manager") to carry out designated responsibilities related to the Scope of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be Carol Herzberg, or such other person as designated in writing by the Director of Development.
 - b) The Bureau Project Manager ("Bureau Project Manager") shall be Kathryn Levine, or such other person as designated in writing by the Director of the Portland Office of Transportation and approved by the PDC Project Manager.
2. If either Project Manager is not performing or is not able to continue performing the responsibilities related to the Scope of Work, then the respective Contract Manager shall designate a replacement Project Manager. If a replacement Project Manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in the Scope of Work.
3. The PDC Contract Manager and the Bureau Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either the Commission or the Bureau desires to replace a Project Manager, or other key staff identified in the Scope

of Work, the party's Contract Manager shall notify the other Contract Manager in writing, and if required, they will meet to discuss and agree on adjusting the Scope of Work accordingly to provide adequate time to make such change.

D. Approvals.

1. No work shall be performed and no funds shall be obligated on the 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. Bureau Project Manager shall provide an updated narrative of the Project status each month, highlighting construction change orders, anticipated cost overruns, and potential Project issues.
2. PBOT will provide and post Project signage, including identifying PDC and other project funders, and adequate "business open" signs during construction.

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, 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..

G. Meeting Participation. The Funding Agency and the Performing Agency Project Managers shall invite each other to attend all regular construction meetings organized for the Project.

H. Work Product. The Funding Agency Project Manager will, upon his or her request, have access to all construction files, including, but not limited to, drawings, specifications, designs, and draft and final copies of technical and consultant analysis and reports prepared or received during the course of the Project.

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

1. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the PDC Project Manager:
 - a) Street Lighting Bid Phase and Construction Administration services will be performed by PAE under a work order on flexible services contract no. 36805-1 that expires on December 31, 2009.
 - b) Public Outreach services are expected to be performed by Berger ABAM/J.D. White, under a work order on flexible services contract that would expire on June 30, 2010.
 - c) Construction Issue Advice may be provided by SERA and Greenworks under work orders on flexible services contract nos. 37673 and 36730.
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. RACC Percent for Art Program requirements apply to the construction of this project.
2. PBOT will be responsible for complying with the Regional Arts & Culture Council (RACC) as per requirements outlined in Chapter 5.74 Acquisition of Public Art of Resolution No. 36308. Two percent of the total Eligible Costs will be dedicated through this Project. Estimated construction costs for FY 09-10 are approximately \$1,837,000. The required total contribution to RACC will be approximately \$36,740 of which PDC has already provided \$7,150. The project anticipates an additional cost of \$29,590 for a public art sculpture. PDC will provide funding for this requirement and has allocated funds in its budget; PBOT will implement requirements.
3. In addition to the art sculpture planned for this project, RACC is expected to provide unique stone benches (no more than eight along the project corridor) at an estimated cost of \$50,000. These will replace benches that could have been provided as a construction contract expense. PDC will provide funding for these additional art pieces and has allocated funds in its budget. PBOT will provide payment to RACC under the terms of this Agreement.

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.

L. Special Contract Management Provisions

The Project will include funds for change management and an additional Funding Agency Contingency. The Project will implement City of Portland approved construction plans. Potential construction risks include: known and unknown underground vaults, stormwater planter design and placement, street light foundation placement, contaminated media management, and the curb-to-curb cross

section of existing improvements. Risk is mitigated for this Project through the following actions and agreements:

- Due diligence has been completed under the design and engineering phase to identify and locate underground vaults, core samples have been taken to identify the existing curb-to-curb cross section, and soil samples have been obtained to identify contaminated media and determine where stormwater planters should be lined.
- PBOT shall provide the final engineer's cost estimate in early April 2009 for review by PDC. PBOT shall put the Project out to bid only with PDC's written acceptance of the Project scope and estimated cost, and approval to move forward to the Bid and Award phase.
- PBOT may choose not award the construction contract if bids exceed the engineer's final cost estimates by more than 10%
- PBOT shall not award the construction contract until PDC and PBOT are in agreement regarding the acceptability of the bids based on final cost estimates, the amount of the bids, and the status of PDC's FY 2009-2010 budget and PBOT has received written approval from PDC to proceed.
- The PBOT Project Manager shall communicate with the PDC Project Manager immediately upon the discovery of any issue that may have a significant impact on the Project scope, schedule, or budget
- The PBOT Project Manager shall provide the PDC Project Manager with written notice of all change orders over \$15,000 as they are received.
- All change orders over \$15,000 shall be subject to review and comment by the PDC Project Manager. The PBOT Project Manager shall review the change order and provide a written recommendation to the PDC Project Manager. The PDC Project Manager shall provide any comments on the change order to the PBOT Project Manager within five (5) business days after receipt of the recommendation from the PBOT Project Manager. If PBOT Project Manager does not receive PDC comments on the change orders within the five (5) business days, the change order will be automatically approved by the PBOT Project Manager.
- PBOT shall not approve any change order that requires the use of the Funding Agency Contingency without the prior written approval of the PDC Project Manager.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A.** The Commission shall pay the Bureau a sum not to exceed **Two MILLION Eight HUNDRED Forty-Seven THOUSAND Five HUNDRED AND Forty-five DOLLARS (\$2,847,545)** for accomplishment of the Schedule and Scope of Work.
- B.** PDC funding for this Project shall be from the Interstate Corridor Urban Renewal Area fund 370-10-19020.

- 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 Workgroup that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.
- 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 has authorized 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.
- 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 was at the rate established annually by the Commissioner in charge of the Bureau; written notice of any changes will be promptly provided to the PDC project manager and contract manager. For Fiscal Year 08/09 of this Agreement the rate is SIXTY EIGHT AND FORTY SIX HUNDRETHS PERCENT (68.46%) of Personal Services and Benefit Costs, except that work performed by the Bureau of Maintenance (BOM) will be billed at the BOM overhead rate of EIGHTY AND FORTY TWO HUNDRETHS PERCENT (80.42%). 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^[KL15]

Reimbursement for overhead costs is at the rate established annually, in accordance with City Code Section 5.48; written notice of any changes will be promptly provided to the PDC project manager and contract manager. For Fiscal Year 09/10 of this Agreement the rate is SIXTY FIVE AND EIGHTY-EIGHT HUNDRETHS PERCENT (65.88%) 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 total 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.
- G.** Change Management Controlled by Performing Agency. “Change Management” is the process by which the impact of changes is controlled or mitigated and alterations of the Project plan are evaluated, approved, and incorporated into the Project plan. It is required that funds for Change Management be identified above in Section I B, These funds are intended to be used to accommodate such changes within the specific Work Item. Change Management funds shall be managed by the Performing Agency. Communications regarding usage of Change Management are described in Section V. of this Agreement.
- H.** Contingency Controlled by Funding Agency. It is required that an amount for Project contingency be identified above in Section I B. The expected communications regarding events that may lead to the usage of the contingency are described in Section V of this Agreement. Any use of the contingency must be approved in writing by the Funding Agency.

IV. BILLING AND PAYMENT PROCEDURE

- A.** The Performing Agency shall submit to the Funding Agency Contract Manager a separate itemized billing for work performed as described in the Scope of Work for review and approval at least quarterly.
 - 1.** In order to receive timely payment, interim billings must be received no later than forty (40) days following the end of a billing period.

2. Final billings upon early termination of the Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings.
 3. Currently, the City is implementing a new SAP enterprise business system. Both PBOT 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, 2010.
2. Early Termination of Contract.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - c) In the event of early termination of a project, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the project's termination will be reimbursed.

B. Change and Conflict Resolution.

1. Every effort has been made to accurately identify the Project scope, schedule and budget for this phase of work. The Performing Agency and the Funding Agency recognize that events and conditions may arise that significantly impact the Project. A “significant impact” is one that may require expenditure of the Funding Agency controlled contingency, increase the budget beyond the total authorized budget amount shown in I, B., or delay completion of this phase of the project more than one year. Should either party identify or foresee such a circumstance, both parties agree to the following:

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

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

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

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

D. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, City agrees to indemnify, hold harmless and defend, PDC, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, PDC agrees to indemnify, hold harmless and defend, City, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of PDC, its directors, employees or agents under this Agreement.

E. Subcontracting. Work under this Agreement shall not be subcontracted in whole or in part to other than City agencies, without the prior written approval of the Funding Agency Project Manager. The Funding Agency will not unreasonably delay or withhold subsequent authorization for contractors identified by the Performing Agency to perform work under the Agreement, and that its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency would be deemed as authorizing those identified contractors to perform work under the Agreement. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product.

Ownership of any and all plan sets, technical data, documents, plans, designs, drawings, technical data reports, specifications, working papers and other materials produced in connection with this Agreement (the "Work Product") will be handled as described below. Ownership of the Work Product includes all rights, title and interest, including but not limited to copyright rights of specified Work Products. Notwithstanding anything to the contrary contained herein, the parties acknowledge that section 17.24.085 of the City Code may require that all or part of the Work Product will become the property of the City and be transferred to the City Engineer upon completion of the Project.

1. Except as described in paragraph 2 below, the Performing Agency shall own all Work Product.
2. If the parties determine that the Performing Agency is unable or unwilling to complete the Project, and the Funding Agency determines that a transfer of ownership of the Work Product is necessary in order to effect completion of the Project, upon the Funding Agency's written request the Performing Agency shall assign ownership of the Work Product to the Funding Agency.
3. Regardless of ownership of the Work Product, both parties shall have reasonable access to the Work Product.

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

H. Delivery / Maintenance of Records. The Performing Agency shall maintain records on a current basis to support its billings to the Funding Agency. The Funding Agency or its authorized representative shall have the authority to inspect, audit and copy, on

reasonable notice and from time to time, any records of the Performing Agency regarding its billings or its work hereunder, for a period of 3 years after completion or termination of this Agreement.

I. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the Bureau and the Portland Development Commission and, if appropriate, financed by “*the Interstate Corridor 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 Interstate Corridor Urban Renewal Project*”. The sign shall remain in place until construction is complete.

VI. Amendments

1. Except as otherwise provided for in this Agreement, the Bureau or PDC may amend this Agreement only in writing signed by the Contract Signatories.
2. Changes to the Schedule of Work:
 - a) 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.
 - b) Changes will not take effect or be binding on either party until agreed to in writing.

VII. Merger Clause

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

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

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Susan D. Keil, Director, Portland
Department of Transportation

Bruce A. Warner, Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel

City Auditor

Date

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6697

Title:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH PORTLAND BUREAU OF TRANSPORTATION IN THE AMOUNT OF \$2,847,545 FOR THE CONSTRUCTION OF STREETScape IMPROVEMENTS OF DENVER AVENUE IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA

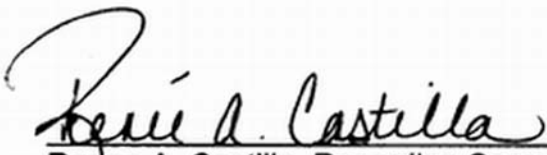
Adopted by the Portland Development Commission on April 23, 2009.

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 type="checkbox"/>	Scott Andrews	<input 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 checked="" type="checkbox"/>	Steven Straus	<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: May 1, 2009