

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6733

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH PORTLAND PARKS & RECREATION FOR THE DESIGN
OF THE FIELDS NEIGHBORHOOD PARK IN THE RIVER
DISTRICT URBAN RENEWAL AREA; PROVIDING FUNDING IN
AN AMOUNT NOT TO EXCEED \$593,586.**

WHEREAS, the Portland Development Commission (“PDC”) is undertaking the River District Urban Renewal Plan, adopted September 25, 1998 (the “Plan”);

WHEREAS, the Plan promotes the provision of services and amenities that support housing; creating and enhancing connections between the neighborhood and the Willamette River, including the extension of the North Park Blocks through the River District; and creating open spaces that provide an attractive setting for area residents;

WHEREAS, on October 21, 1998, City Council adopted the Tanner Creek Park and Water Feature Steering Committee Report, which identified the basic size, configuration, location and programming for four River District public parks, including The Fields Neighborhood Park (the “Park”) located north of NW Overton Street between NW 10th Avenue and NW 11th Avenue; and directed PDC and Portland Parks & Recreation (“PP&R”) to work with Hoyt Street Properties (“HSP”) to implement the River District parks;

WHEREAS, on March 2, 1999, the City of Portland and HSP entered into an Amended and Restated Agreement for Development, which called for the acquisition of approximately 90,198 square feet (2.1 acres) of property owned by HSP for the development of the Park;

WHEREAS, the site was purchased by PDC and conveyed to PP&R for park use on February 1, 2005;

WHEREAS, in March 2006, HSP completed the Hoyt Street Properties Master Plan which proposed to include HSP-owned Blocks 22 and 25 as part of the Park, thereby increasing the size of the Park to approximately 144,423 square feet (3.3 acres);

WHEREAS, HSP has indicated a willingness to dedicate Blocks 22 and 25 to the City and is continuing to negotiate the terms of that dedication with PDC and PP&R;

WHEREAS, PP&R is the City of Portland’s designated bureau for parks, open space, and recreation operations, services and improvements;

WHEREAS, PDC and PP&R entered into Interagency Agreement Work Order No. 506008-11 dated June 29, 2007, for the design and development of the Park whereby PDC provided \$179,749 to PP&R to prepare a Concept Plan for the Park;

WHEREAS, this action will build off of, refine, and enhance the 2007 Concept Plan and will result in the completion of the Park design and construction documents;

WHEREAS, this action will improve the livability and attractiveness of a high-density, transit-oriented Central City neighborhood for residents, employers, employees, and visitors;

WHEREAS, this expenditure is included in the River District Urban Renewal Area adopted FY 2009-10 budget for the design and development of The Fields Neighborhood Park; and

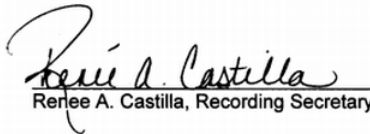
WHEREAS, the design and development of the Park is included in the January 13, 2009, "Portland Job Creation and Business Stimulus Package."

NOW, THEREFORE, BE IT RESOLVED that the PDC Board of Commissioners authorizes the Executive Director to execute an Intergovernmental Agreement ("IGA") with PP&R for FY 2009-10 and FY 2010-11 substantially in the form attached hereto as Exhibit A specifying PDC to provide \$593,586 to PP&R for the design of The Fields Neighborhood Park;

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

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

Adopted by the Portland Development Commission on August 26, 2009.


Rerlee A. Castilla, Recording Secretary

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Parks & Recreation
For
The Fields Neighborhood Park 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** (“Parks” 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 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 by which one party will engage and compensate the other party for performing specific services.
5. City Council, through Ordinance 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.

Now therefore, the parties agree as follows:

AGREEMENT

I. SCOPE OF WORK

A. Background

1. The planning for The Fields Neighborhood Park was developed by Parks and the PDC along with the Tanner Creek Park and Water Feature Steering Committee and documented in a report dated October 1998 (the “Report”).

The Report describes the basic size, configuration, location and programming for four River District parks (the “River District Parks”) located between NW 10th and 11th Avenue in a discontinuous line from NW Johnson Street to the Willamette River to the North.

2. On October 21, 1998, City Council Resolution #35736 adopted the Report and directed the PDC and Parks to jointly manage the design and construction of the River District Parks, including The Fields Neighborhood Park.
3. The Amended and Restated Agreement for Development between the City of Portland and Hoyt Street Properties, L.L.C. (“HSP”), dated March 12, 1999 includes a provision for the conveyance of The Fields Neighborhood Park property to the City of Portland. The property was purchased by PDC and conveyed to Parks for park use on February 1, 2005. The property is approximately 90,198 square feet (2.07 acres) in size and is located north of NW Overton Street between NW 10th Avenue and NW 11th Avenue and just south of NW Quimby Street.
4. In 2001, the Portland River District Park System Urban Design Framework Study (the “River District Park Study”) was commissioned by Parks and the PDC to elaborate on earlier recommendations regarding park development within the Tanner Creek design sub-area. The River District Park Study included a recommendation to create four connected parks (the “River District Park System”), which would provide a venue for the recreational needs of the neighborhood.
5. Jamison Square, the first park, opened in June 2002, and Tanner Springs Park, the second park, opened in August 2005.
6. HSP completed the Hoyt Street Properties Master Plan (the “Master Plan”) in March 2006. The Master Plan proposed to increase the size of The Fields Neighborhood Park by including HSP-owned Blocks 22 and 25 as part of the park. Blocks 22 and 25 total 54,234 square feet and will increase the size of The Fields Neighborhood Park to 144,432 square feet (3.32 acres).
7. Parks and PDC subsequently initiated the design and development process for The Fields Neighborhood Park. Parks and PDC entered into an Interagency Agreement (“IAA”) Work Order 5006008-11 dated June 29, 2007 for \$295,000.
8. Parks issued a Request for Proposals (“RFP”) dated March 16, 2007 to select a design and construction administration services consultant for The Fields Neighborhood Park. As a result of that solicitation, Parks selected a consultant team led by the Office of Cheryl Barton (“OCB”). Parks entered into a contract with OCB for \$519,288 that became effective May 7, 2007.
9. During the fiscal year 2006-2007, OCB began the design process, which included collecting background information, public involvement, site programming, and developing conceptual alternatives.

10. In fiscal year 2007-2008, the project team completed conceptual design, which incorporated Blocks 22 and 25 into the park design and also included a bridge between The Fields Neighborhood Park and the Centennial Mills site. The project was put on hold in FY 2007-08 to allow HSP time to amend the Block 22 and 25 property boundaries to prepare the properties to be dedicated to Parks and also to allow Centennial Mills designers time to develop conceptual plans and evaluate the bridge connection.
11. In fiscal year 2008-2009, the project team reinitiated the project including coordination with the advisory committee and consultants. PDC hired AMEC to conduct a Phase 1 and Focused Phase 2 environmental assessment of Blocks 22 and 25 and provide recommendations for remediation of environmental issues as part of the park design and construction.
12. PDC and Parks have continued negotiating the dedication of Blocks 22 and 25 with HSP with the expectation these properties will be dedicated by HSP to Parks.
13. The adopted PDC budget includes \$5.25 million for The Fields Neighborhood Park, including \$350,000 in FY08/09, \$2.45 million for FY 09/10, and \$2.45 million for FY 10/11. Based upon the construction cost estimate Parks listed in the RFP, approximately \$3.15 million of these budgeted funds are intended to be available to construct The Fields. At the present time, the \$5.25 million budgeted by PDC are the only funds available to fund the design and construction of The Fields Neighborhood Park.

B. Project Scope

1. Parks is the lead City agency responsible for the scope, schedule and budget of The Fields Neighborhood Park. The scope includes: administration of consultant contracts, public involvement, completion of the park design, construction documents and necessary permitting (collectively, the “Project”). The Project does not include environmental assessment and remediation.
2. PDC is the lead agency on environmental assessment and remediation issues for the Fields Neighborhood Park. PDC’s responsibilities include coordinating with the Department of Environmental Quality (“DEQ”) and Bureau of Environmental Services (“BES”), and preparing a Contaminated Media Management Plan (“CMMP”). Following construction of The Fields Neighborhood Park, PDC will preparing a Closure Report and Easement and Equitable Servitudes Agreement (“EES”) between the City and DEQ, which are required in order to receive a No Further Action (“NFA”) decision from DEQ.
3. It is recognized that the environmental condition of The Fields Neighborhood Park property needs to be considered and addressed in the design and construction of the park. Parks and PDC staff will jointly work to further investigate the environmental conditions of the property and to cooperatively design and

construct The Fields Neighborhood Park to address environmental remediation issues in a cost-effective manner with the intention of receiving a No Further Action notification from DEQ. Parks and PDC will coordinate the preparation of the construction documents and the CMMP to address environmental remediation issues. It is understood that additional environmental remediation costs were not included in the original \$3.15 million construction cost estimate cited by Parks in the RFP and relied upon by PDC for budgeting purposes.

4. The Concept Plan (the “Concept Plan”) for The Fields Neighborhood Park dated October 15, 2007 and prepared by OCB shall be the starting point for reinitiating the Project in July 2009. It is understood, however, that the construction cost estimate prepared by OCB for the Concept Plan totaled \$4.9 million. This cost estimate exceeds the \$3.15 million construction cost estimate cited in the RFP and budgeted by PDC for construction. To bring the park design into alignment with the construction budget for The Fields Neighborhood Park, Parks and OCB shall, in coordination with PDC and the citizen advisory committee: (1) evaluate and refine the quantity and quality of materials in the Concept Plan; and (2) prioritize design elements that exceed the construction budget. The prioritized design elements will then be identified as construction contract alternates. These items will be added to the contract if bids are below the consultant estimated construction cost. Design elements not identified as alternates may be designed into the final construction documents but identified as a ‘future phased item’ not included in the construction contract but built at a later time.

5. The RFP called for OCB to develop a conceptual design for a future pedestrian bridge connection to Centennial Mill that was compatible with the Concept Plan. The Concept Plan was developed such that the design would be successful with or without the pedestrian bridge connection in place. This work was completed and provided to PDC and LAB, the developer of Centennial Mills. As design work has progressed on Centennial Mills, LAB has identified a preferred landing point for the pedestrian bridge on the Centennial Mills property. This preferred landing point was provided by LAB to PDC and Parks in June 2009. The preferred landing point on the Centennial Mills property is different from the one proposed by OCB in the Concept Plan. It is unclear if the preferred landing point proposed by LAB is consistent with the Concept Plan or to what extent either the bridge alignment, landing/take-off point, and/or the Concept Plan would need to be revised to accommodate the new Centennial Mill landing point. Parks and PDC will evaluate whether the preferred Centennial Mill landing point can be reasonably accommodated within the 2007 Concept Plan that includes the preferred Park landing point. If the new Centennial Mill landing point is compatible with the 2007 Concept Plan with only minor revision to that Plan, then Parks will refine the Concept Plan accordingly. If, however, the new landing point cannot be accommodated without major revision to the Concept Plan, then the parties, in coordination with the citizen advisory committee, will explore other options and determine alternative landing points that are acceptable to Parks. If

alternatives must be explored, the parties acknowledge that the work schedule and budget outlined herein may need to be amended, which may be authorized by the written consent of both Project Managers. This change will require OCB, in coordination with the citizen advisory committee, to evaluate the new bridge location and alignment and refine the park Concept Plan accordingly. The design work and construction documents included in this Agreement will anticipate and provide for a bridge connection acceptable to PDC and LAB but will not result in further design of the bridge structure.

6. Construction of The Fields Neighborhood Park and construction administration are not included in the scope of this Agreement. It is anticipated that Parks and PDC will enter into a subsequent IGA whereby PDC will provide funding for construction and construction administration and other project costs.

C. Schedule of Work and Budget

Plan			Proposed Budget FY 2009-10				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
	The Fields Neighborhood Park	June '10	\$35,000	5,500	\$305,150	\$345,650	
A	Project Management and Coordination	June '10	35,000			\$35,000	
A.1	Manage project scope, schedule, budget for consultant design.	June '10					
A.2	Administer consultant contract for design .	June '10					

A.3	Coordinate with PDC, City Bureaus, other consultants, land owners, agencies and public as required.	June '10					
A.4	Work Product: Completed public involvement, Concept bridge refinement, Concept Plan refinement, schematic design, design development. Begin construction documents, and cost estimates.	June '10					
B	Consultant Design Services.				\$305,150	\$305,150	
B.1	Negotiate Contract	Oct '09					
B.2	Updated topographic survey	Oct '09					
B.3	Concept Bridge Refinement: Assess and coordinate bridge alignment between Centennial Mills and The Fields Neighborhood Park with LAB.	Nov '09					
B.4	Concept plan refinement, review and update concept plan and design approach based on code evaluation, and update meetings	Dec. '09					
B.5	Schematic design and associated cost estimates	Feb. '10					
B.6	Design development and associated cost estimates	June '10					

B.7	Begin construction documents and associated cost estimates	June '10					
B.8	Work Product: Amended contract, completed topographic survey, concept bridge refinement, concept plan refinement, schematic design, and design development, construction documents in progress	June '10					
C	Public Involvement	June '10		\$5,500		\$5,500	
C.1	Public Involvement Plan Coordination and Oversight	June '10					
C.2	Work Product: Updated public participation plan, CAC and public meetings, Design Commission Review, newsletters, meeting notes from meetings and events.						
Other	Contingency (5 percent)					\$17,282	
TOTAL	AUTHORIZED BUDGET		\$35,000	\$5,500	\$305,150	\$362,932	

Plan			Proposed Budget FY 2010-11				
Work Item	Description	Timeline Completion*	Personal Services	Materials & Services	Outside Contracts	Total PDC Budget	Other Funding Sources
	The Fields Neighborhood Park	Dec. '10	\$25,000	\$50,000	\$144,670	\$219,670	
A	Project Management and Coordination	Dec '10	\$25,000			\$25,000	

A.1	Manage project scope, schedule, budget for consultant design and technical services.	Dec '10					
A.2	Administer consultant contract for design.	Dec '10					
A.3	Coordinate with PDC, City Bureaus, other consultants, land owners, agencies and public as required.	Dec '10					
A.4	Work Product: Completed construction documents and cost estimates. Construction documents submitted to Bureau of Development Services	Dec '10					
B	Consultant Design Services.				\$144,670	\$144,670	
B.1	Construction Documents and associated cost estimates	Dec '10					
B.2	Work Product: Completed construction documents and permits.	Dec '10					
C	Public Involvement						
C.1	Public Involvement Plan Coordination and Oversight	Dec '10		\$5,000			
C.2	Work Product: Public information as required.						
D	Permits						
D.1	Bureau Development Services - Permits	Dec. '10		\$45,000			

D.2	Work Product: BDS Permit						
Other	Contingency (5 percent)					\$10,984	
TOTAL	AUTHORIZED BUDGET		\$25,000	\$50,000	\$144,670	\$230,654	
	<u>FY 2009-11 Grand Total</u>					\$593,586	

D. 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.”

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

F. 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. George Lozovoy, Landscape Architect - Project Manager
2. Liz Moorhead, CIP Manager
3. Colleen Keyes, Public Involvement
4. Elizabeth Kennedy Wong, Public Involvement
5. Sarah Coates, Management Assistant
6. Susan Watt, Construction Manager

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

1. Eric Jacobson, Project Manager
2. Steven Shain, Development Manager
3. Dave Obern, Construction Services Manager
4. Bob VanVickle, Construction Services

5. Nixie Stark, Administrative Services

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 IV.
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 related to the Scope of Work.
 - a) The Commission Project Manager ("PDC Project Manager") shall be Eric Jacobson, or such other person as designated in writing by the Director of Development.
 - b) The Bureau Project Manager ("Bureau Project Manager") shall be George Lozovoy, 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 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. Project Managers will notify each other of any issues, problems or costs which significantly affect the Project.

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 PDC Project Manager:
 - a) *The Office of Cheryl Barton*
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. The Bureau will be responsible for complying with the Regional Arts & Culture Council (RACC) as outlined in Chapter 5.74 Acquisition of Public Art of Resolution No. 36308. It will dedicate two percent of the total Eligible Costs. PDC will provide funding for this requirement and has allocated funds in its budget and Parks will implement it.
2. With estimated park construction costs of approximately \$3,157,000, the expected RACC Percent for Art Program contribution will be approximately \$63,140. These funds will go to an art project within The Fields Neighborhood Park or to a fund for future art in the River District Urban Renewal Area.
3. This IGA includes planning and design work only which is not subject to the Percent for Art Program. Therefore, the estimated RACC fund contribution has not been included in this IGA. It is anticipated that Parks and PDC will enter into a subsequent IGA whereby PDC will provide funding for construction and approximately \$63,140 for the RACC contribution.

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

1. The Bureau Project Manager will approve all change orders.
2. All change orders that are reviewed by PDC shall be approved by the PDC Project Manager within 3 days of submittal by the Bureau.

III. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Commission shall pay the Bureau a sum not to exceed **FIVE HUNDRED NINETY THREE THOUSAND FIVE HUNDRED EIGHTY SIX DOLLARS AND NO/100 DOLLARS (\$593,586)** for accomplishment of the Schedule of Work, subject to budget authorization by the Commission.
- B. PDC funding for this project is from the River District Urban Renewal Area.
- 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 agree to recommend to the Commission Budget Committee that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets. The Performing Agency is not obligated to perform any work for which the Commission has not authorized and appropriated funding.
- 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.
 - 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 FORTY-EIGHT POINT TWENTY PERCENT (48.20%) 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 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.
- 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 February 28, 2011.
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. Prior to completion of the project, the Funding Agency shall own all Work Product.
2. Upon satisfactory completion of the project, the Funding Agency shall transfer ownership of the Work Product to the Performing Agency, unless the Funding Agency retains ownership of the underlying real property or the improvements, in which case the Funding Agency will retain ownership of the Work Product after completion of the project. If ownership of the real property or improvements transfers to the Performing Agency, upon

completion of such transfer the Funding Agency shall transfer ownership of the Work Product. If a project is not completed, the Funding Agency 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. Status Reports. Project Status Reports are required to be submitted 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 River District_ 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 River District_ 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 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.

[Signature page to follow]

IN WITNESS WHEREOF, the City of Portland, through the Portland Parks and Recreation Bureau 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 August 29, 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 6733

Title:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH PORTLAND PARKS & RECREATION FOR THE DESIGN OF THE FIELDS NEIGHBORHOOD PARK IN THE RIVER DISTRICT URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$593,586.


Adopted by the Portland Development Commission on August 26, 2009.

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

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: August 31, 2009