

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7225

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE FINAL DESIGN AND CONSTRUCTION OF THE FOSTER STREETScape PROJECT IN THE LENTS TOWN CENTER URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,453,956

WHEREAS, beginning in 2003, the City of Portland Bureau of Transportation (“PBOT”) Portland Development Commission (“PDC”) staff and the worked with public and community partners to develop a streetscape concept for the SE Foster Road corridor (“Streetscape Plan”);

WHEREAS, SE Foster Road has consistently ranked as one of the highest crash corridors in the city of Portland and as of 2014, there have been over 1,200 crashes and eight fatalities;

WHEREAS, SE Foster Road has also emerged as a key commercial corridor in southeast Portland and is identified as a priority area for business development in the Lents Action Plan;

WHEREAS, in 2014 PBOT completed a public outreach process and updated the Streetscape Plan;

WHEREAS, on June 11, 2014, through Resolution No. 36158, Portland City Council unanimously adopted the Streetscape Plan;

WHEREAS, the PDC and PBOT entered into an Intergovernmental Agreement (“IGA”) dated June 19, 2015, whereby PDC provided \$486,200 to PBOT to complete 30 percent design and engineering;

WHEREAS, PDC recognizes the strategic importance of the Streetscape Plan in supporting businesses along SE Foster and connecting inner Portland to the Lents Town Center;

NOW, THEREFORE, BE IT RESOLVED, that the PDC Executive Director is hereby authorized to enter into an IGA substantially in the form attached hereto as Exhibit A under which PDC will provide funding for the Foster Road Transportation and Streetscape East Project in an amount not to exceed \$1,453,956;

BE IT FURTHER RESOLVED, that the PDC Executive Director may approve changes to the IGA if such changes, in the opinion of the Executive Director in consultation with the General Counsel, do not materially change PDC’s obligations or risk; and

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

Adopted by the Portland Development Commission on December 14, 2016

A handwritten signature in black ink that reads "Pam Micek". The signature is written in a cursive, flowing style.

Pam Micek, Recording Secretary

RESOLUTION NO. 7225

RESOLUTION TITLE:

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE PORTLAND BUREAU OF TRANSPORTATION FOR THE FINAL DESIGN AND CONSTRUCTION OF THE FOSTER STREETScape PROJECT IN THE LENTS TOWN CENTER URBAN RENEWAL AREA; PROVIDING FUNDING IN AN AMOUNT NOT TO EXCEED \$1,453,956


Adopted by the Portland Development Commission on December 14, 2016

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Tom Kelly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Mark Edlen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capuia MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Gustavo J. Cruz, Jr.	<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 as duly recorded in the official minutes of the meeting.

	Date: December 20, 2016
Pam Micek, Recording Secretary	

INTERGOVERNMENTAL AGREEMENT
Between
Portland Development Commission
And
Portland Bureau of Transportation
For the
Foster Streetscape Project Final Design and Construction –

This Intergovernmental Agreement (this “Agreement”), dated this ____ day of _____, 2016, (“Effective Date”) is made and entered into by and between the **City of Portland, Bureau of Transportation (“PBOT”)** and the **Portland Development Commission (“PDC”)**.

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. PBOT is responsible for transportation operations and improvements within City public rights of way, while the Oregon Department of Transportation (“ODOT”) is responsible for transportation operations and improvements on particular roadways including North Lombard Street.
3. A cooperative partnership between PDC and PBOT is 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. The Portland City Council (“Council”), through Ordinance 181631, which was duly adopted by Council on February 27, 2008, and amended by Ordinance No. 183429, passed by Council on January 6, 2010, delegated to the Director of PBOT and the City Auditor the authority to enter into intergovernmental agreements with PDC. The form of agreement used for this Agreement is substantially similar to the template that was approved by City Council through the last above referenced Ordinance.
6. This form of Agreement is intended for funding project phases, including, but not limited to: Project Design, Right-of-Way Acquisition, Construction and Construction Management and Engineering.

Now therefore, the parties agree as follows:

AGREEMENT

1. The Project

A. Background

In 2003 the Portland Bureau of Transportation (PBOT) developed *the Foster Road Transportation and Streetscape Plan* via a public process to improve safety along Foster Road and support neighborhood businesses and residents. West Foster (50th to 79th) was added to the Lents Town Center URA as part of a 2008 URA boundary expansion; and PBOT, Portland Development Commission (PDC) and partners began an extensive community outreach process to update the 2003 Foster Road Transportation and Streetscape Plan. In 2014, Portland City Council adopted the recommendations of the revised Foster Road Transportation and Streetscape Plan (Streetscape Plan). The Streetscape Plan is identified as a priority in PDC's *5-Year Lents Action Plan*.

Among the Streetscape Plan goals:

- Enhance the safety of the Foster corridor.
- Transform Foster Road into a multimodal and complete street by enhancing pedestrian and transit amenities and accommodating cyclists.
- Help turn Foster into a successful commercial corridor by providing greater accessibility, increasing safety and attractiveness to support local businesses and neighborhoods.

In total PDC has committed \$2,000,736 in urban renewal resources for the implementation of the Streetscape Plan. PDC has already funded \$60,580 for the installation of a rapid flash beacon at 80th and Foster and has also funded the preliminary design and engineering phase of the project through an Intergovernmental Agreement in the amount of \$486,200. The terms of the Design and Engineering IGA required PBOT to complete 30% design engineering, execute a project prospectus and Intergovernmental Agreement (IGA) with the Oregon Department of Transportation required to release federal funds for the project, and securing a local match of \$379,239. PBOT has met all of these obligations.

In May of 2016 voters passed Ballot Measure 26-173 which resulted in a temporary 10 cent gas tax designated for road maintenance and street safety. These resources are prioritized and spent through PBOT's Fixing our Streets Program. The paving of Foster Road from 82nd Avenue to 91st Avenue was identified as a priority project for the Fixing our Streets program and includes an allocation of \$3,000,000 for the design and construction of the paving project which includes a complete repaving of Foster Road east of 82nd to 90th avenue and will also include enhancement of all curbs within this area to meet ADA standards. The timing of the Fixing our Streets Foster Paving Project and the implementation of the Streetscape Plan improvements necessitate coordinated implementation as many of the improvements east of 82nd

Portland Development Commission ♦ Portland Bureau of Transportation
Intergovernmental Agreement – *Foster Streetscape Project*

avenue for the Streetscape Plan will be impacted by the Fixing our Streets Foster Paving Project. In order to effectively achieve project coordination and to execute both projects within a timely manner PBOT will be combining elements of the Streetscape Plan east of 82nd avenue with the Fixing our Streets Paving project to create the “Foster Streetscape Project”. A separate project will be created to use a combination of local and federal funds to implement improvements associated with the Streetscape Plan west of 82nd avenue. While considered separate projects for funding and timing purposes, the two projects from a planning, design and construction perspective will combine to implement the Streetscape Plan

This Agreement memorializes the remaining \$1,453,956 to complete design and construction for Foster Streetscape Project which shall be completed in coordination with the construction of improvements west of 82nd avenue associated with the Streetscape Plan. PDC resources will be used to complete the design and construction of the improvements east of 82nd avenue associated with the Streetscape Plan.

B. Summary of Work and Budget

This agreement is intended to implement the final design and construction of the Streetscape Plan improvements east of 82nd avenue, with work in FY 2016-17 and FY 2017-18. Improvements east and west of 82nd avenue associated with the Streetscape Plan will be coordinated. A detailed scope of work that includes funding, timing and implementation of improvements east and west of 82nd avenue is included as part of attachment A.

The scope of work for the Foster Streetscape Project primarily includes widening of the sidewalks on both sides of the street to 9 ft in width with street trees, a median island with rapid flash beacon at SE 84th Ave to improve pedestrian crossing safety, reconstruction and paving of the roadway, along with changed striping that provides three travel lanes and bike lanes, consistent with the adopted Streetscape Plan.

The funds committed by PDC are intended to cover costs associated with improvements from the Streetscape Plan east of 82nd avenue. However, it is PDC’s expectation that the funds will complement completion of improvements from the Streetscape Plan west of 82nd avenue. Consequently, if completion of any element of scope of work for improvements completed either east or west of 82nd avenue or if the project is put at risk by reason of cost over run or any other reason then PDC shall be consulted before any scope item is reduced or eliminated.

2. CONTRACT MANAGEMENT

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

B. The party performing the Work for the Funding Agency shall be referred to in this Agreement as the “Performing Agency”. *PBOT* shall be referred to herein as the Performing Agency.

C. Funding Agency.

1. Contract Signatory. The Funding Agency Contract Signatory shall be *Kimberly Branam*, or such other person as designated in writing by the Funding Agency Director (the "Funding Agency Contract Signatory"). The Funding Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.

2. Contract Manager. The Funding Agency Contract Manager shall be *Daniel Spero* (the “Funding Agency Contract Manager”). The Funding Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

D. Performing Agency.

1. Contract Signatory. The Performing Agency Contract Signatory shall be *Leah Treat*, or such other person as designated in writing by the Director (the "Performing Agency Contract Signatory"). The Performing Agency Contract Signatory is authorized to give notices and to carry out other actions referred to herein, including termination of this Agreement as provided in Section V.

2. Contract Manager. The Performing Agency Contract Manager shall be *Dan Layden* (the “Performing Agency Contract Manager”). The Performing Agency Contract Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

E. Management Staffing.

1. A project manager shall be designated by the Performing Agency (the "Performing Agency Project Manager"), and a project manager shall be designated by the Funding Agency (the "Funding Agency Project Manager") to carry out the responsibilities designated in this Agreement.

a) The Funding Agency Project Manager shall be *Leila Aman*, or such other person as designated in writing by Jillian Detweiler.

b) The Performing Agency Project Manager shall be *Rich Newlands*, or such other person as designated in writing by Dan Layden.

2. If either project manager is not performing or is not able to continue performing the responsibilities designated in this Agreement, then the respective contract manager shall designate a replacement project manager. If a replacement project manager is not available, then upon written agreement of the parties, the other party may take on all project management responsibilities designated in this Agreement.

3. The Funding Agency Contract Manager and the Performing Agency Contract Manager will confer quarterly to review project management and staffing needs and performance, and identify desired changes, if any. If either PDC or PBOT desires to replace a project manager, or other key staff identified in section II.F. or section II.G. of this Agreement, the party's contract manager shall notify the other contract manager in writing, and if required, they will meet to discuss and agree on any necessary adjustments to provide adequate time to make such change.

F. Project Staffing – Performing Agency: The following Performing Agency personnel are being assigned to perform the Work. Only personnel listed below, or subsequently identified and authorized by the Funding Agency Project Manager, shall be reimbursed for performance of the Work. The Funding Agency will not unreasonably delay or withhold subsequent authorization for personnel identified by the Performing Agency to perform the Work, and its failure to notify the Performing Agency in writing of denial of authorization within 10 business days after the Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified personnel to perform the Work.

1. Rich Newlands, Project Manager
2. Jimi Joe, Engineer of Record
3. Raphael Haou, Design Engineer
4. Ty Reynolds, Signal and Street Lighting Engineer
5. Jamie Jeffrey, Traffic Engineer
6. PBOT Survey Group

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

1. Leila Aman, Project Manager

H. Approvals.

1. No work shall be performed and no funds shall be obligated until this Agreement is executed.

2. The Performing Agency is not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.

I. Project Management.

1. The Performing Agency Project Manager will be responsible for coordination and management of the Design/Engineering of both the West and East projects. Any changes to the Scope of Work and Budget for either project are to be reviewed by the Funding Agency Project Manager.
2. The Performing Agency Project Manager will coordinate needs with other bureaus and/or agencies as necessary to complete the Project;
3. The Performing Agency Project Manager will provide Project Status Report summaries in bi-weekly in-person meetings, or scheduled as agreed to by Performing Agency Project Manager and Funding Agency Project Manager.
4. Project Status Reports, including those that may be required in connection with the Business and Workforce Equity Policy, are required to be submitted beginning within 60 days after the Effective Date of this Agreement and thereafter on a monthly basis. A template report shall be discussed and agreed to as part of the Project's kickoff meeting. Project Status Reports are required to be submitted with each invoice describing work completed to date.

J. Public Involvement.

1. Where projects require public involvement, PBOT and PDC will collaborate on design of the public involvement plan that is endorsed by both project managers.
2. PBOT and PDC 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 project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information on the Project being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.

K. Meeting Participation. Each project manager will invite the other to attend all regular or significant Project meetings and to participate in steering, management, or technical advisory committees organized for the Project.

L. 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.

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

1. The Performing Agency will have the sole authority to direct the work of any authorized and approved subcontractors. Subcontractors approved by the Funding Agency Project Manager:
2. The Performing Agency and/or any approved subcontractors are not obligated to perform, and the Funding Agency is not authorized to pay for, any work not identified in the Scope of Work and Budget.

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

1. This Agreement does have Eligible Costs for the Percent for Art Program, as described in City Code Section 5.74.020. This cost is budgeted at \$21,800.

O. Business and Workforce Equity

1. The Business Equity Program of PDC’s Business and Workforce Equity Policy (the “Policy”) shall apply if the Project is anticipated to have hard construction costs greater than \$200,000 and PDC’s compensation under this Agreement is more than \$100,000. If the Business Equity Program applies, PDC’s utilization goal for Emerging Small Businesses and Women and Minority owned-businesses (collectively, “M/W/ESBs”) is twenty percent (20%) of the hard construction costs (“PDC’s Goal”) of the Project (the “Utilization Goal”). The Workforce Equity Program of the Policy shall apply if the Project is anticipated to have hard construction costs greater than \$200,000. If the Workforce Equity Program applies, prime contractor and all subcontractors with subcontracts greater than \$100,000 must comply with the Policy’s Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors on the Project are worked by state-registered apprentices and to work toward achieving certain Workforce Goals, as such terms and requirements are further described in the Policy attached hereto as Exhibit C. The Utilization and Workforce Goals described in the Policy are aspirational only. There will be no legal consequence, including but not limited to termination, damages or

liquidated damages, on account of the Performing Agency's failure to realize the goals described in the Policy. Nothing in this Agreement shall require the Performing Agency to discriminate in the award of contracts on the basis of race, sex or other impermissible criterion, or otherwise to violate the law. If the Policy applies, information on utilization will be included in monthly Project Status Reports, as described in Section II above.

3. FUNDING / COMPENSATION / ALLOWABLE COSTS

- A. The Funding Agency shall pay the Performing Agency a sum not to exceed 1,453,956 for accomplishment of the Work, subject to budget authorization by the Funding Agency.
- B. The funding is from the Lents Town Center Urban Renewal Area .
- C. Funds are authorized for FY2016-17 and FY 2017-18. If the Project funding spans multiple fiscal years, PDC will encumber the funds as the funds are approved through budget appropriation.

Source	Total
FY 2016-17 PDC TIF	\$275,340
FY 2017-18 PDC TIF	\$1,224,660

All funding is subject to budget appropriation. If the full amount of funds is not authorized in the FY 2016-17 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 PDC Five-Year Budget Forecast, PDC staff agrees to recommend to the PDC Board of Commissioners that the funds identified in the Five-Year Budget Forecast be appropriated in subsequent budgets.

- D. PDC funds shall only be expended on Tax Increment Financing eligible uses, for example, planning for improvements, design and engineering for improvements, and (under a subsequent agreement) 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 for performance of the Work and within the authorized budget. In certain circumstances, such as advance payment to RACC, the Funding Agency Project Manager may authorize a prepayment of future expense obligations.

1. Direct Costs

- a) Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.

- b) Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.
 - c) Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and PBOT or PDC support staff personal services where the expenditure is for performance of the Work and within the authorized budget.
 - d) Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.
2. Indirect Costs. Covers reimbursement for overhead costs at the rate established annually, for PBOT in accordance with City Code Section 5.48 and for PDC in accordance with Cost Recovery Policy through Resolution 6560.
- a) This Agreement was originated in Fiscal Year 2015-16. For that Fiscal Year, PBOT's rate is 79.27% (SEVENTY-NINE and TWENTY-SEVEN One Hundredths Percent) of Personal Services and Benefit Costs. PBOT Indirect costs pay for generally fixed costs related to the administration and operation, as well as program management costs including Council charges, executive management staff, rent, telephone, power, insurance, office supplies, and equipment.
 - b) This Agreement was originated in Fiscal Year 2015-16. For that Fiscal Year, the PDC rate is \$17.00 per labor hour [SEVENTEEN DOLLARS AND ZERO CENTS] of Personal Services and Benefit Costs billed under this Agreement. PDC Indirect costs pay for generally fixed costs related to the administration and operation of an organization, as well as program management costs including administrative staff, rent, telephone, power, insurance, office supplies and equipment.
 - c) If this Agreement extends to a new Fiscal Year, the Performing Agency Contract Manager shall provide written notification to the Funding Agency Contract Manager of the new Fiscal Year rate.
3. The Funding Agency Project Manager shall be immediately notified of any actual or anticipated variance between the authorized budget and the estimated cost or expenditures described in the Scope of Work and Budget. The parties shall then make a good faith effort to negotiate for a successful modification to this Agreement. Unless this Agreement is modified, the Funding Agency shall not be obligated to make payments for costs that exceed the authorized budget.

- F.** Expense Costs. Expenses, including personal services, incurred for out of town travel, training, educational expenses and equipment purchase are not reimbursable under this Agreement unless mutually agreed to in advance.
- G.** Change Management Controlled by Performing Agency. “Change management” is the process by which the impact of changes is controlled or mitigated and alterations are evaluated, approved, and incorporated into the Scope of Work and Budget. It is required that funds for change management be identified in the Scope of Work and Budget. These funds are intended to be used to accommodate such changes within the specific task or fiscal year. The funds shall be managed by the Performing Agency, which shall notify the project manager and contract manager of the Funding Agency in writing of their use.
- H.** Contingency Controlled by Funding Agency. It is required that an amount for project contingency be identified in the Scope of Work and Budget. Communications regarding events that may lead to the usage of the contingency are described in Section V. B. Use of all or part of the contingency must be approved in writing by the Funding Agency, including underlying change orders.
- I.** Savings. If the actual costs to complete the Project are less than the Budget attached hereto then the difference between the two shall be deemed Savings. Savings shall also include any unused aspect of change management budget and contingency budget. 73% of any Savings identified shall be recognized as a reduction in the amount Funding Agency reimburses Performing Agency.

4. BILLING AND PAYMENT PROCEDURE

- A.** The Performing Agency shall submit to the Funding Agency Project Manager a separate itemized billing for work performed as described in the Scope of Work and Budget for review and approval at least quarterly.
 - 1. In order to receive timely payment, interim billings must be received no later than thirty (30) days following the end of a billing period.
 - 2. The dedication of funds to the project shall be as follows: Funding Agency shall make available the full amount authorized by this agreement on or shortly after January 1, 2017
 - 3. Final billings upon termination or early termination of this Agreement need to be received within sixty (60) days of the date of termination. If no bill or interim Project Status Report is received within this time period, the Funding Agency will have no obligation to honor late billings. Payment in response to the final billing shall also be contingent upon Project compliance with the Business and Workforce Equity Guidance and adjustment for Savings.

- B.** Each billing shall include a Billing Detail Report in a format created and/or approved by the Funding Agency. At a minimum, each billing shall include:
1. a description of the nature and cost of work accomplished;
 2. the names, rates and hours worked of personnel;
 3. disbursements to consultants, contractors and outside vendors for materials and services; and
 4. any other specific detail or documentation as desired by the Funding Agency Contract Manager, including Equity Guidance compliance, which can be reasonably provided by the Performing Agency.
- C.** If billings are received with incomplete information or disputed items, the Funding Agency will advise the Performing Agency in writing what specific information is missing or disputed. The Funding Agency will proceed to process payment for items not in dispute.

5. GENERAL

A. Termination.

1. The Termination Date of this Agreement is June 30, 2018.
2. Early Termination of Agreement.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) Upon thirty (30) days written notice, either party may terminate this Agreement where the public interest requires work to cease.
 - c) In the event of early termination of this Agreement, the work shall cease promptly and a final billing request submitted within sixty (60) days of the effective date of termination. In the event of early termination, eligible costs incurred through the date of the Agreement's termination will be reimbursed.

B. Change and Conflict Resolution.

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

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

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

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

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

D. Indemnification.

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

Performing Agency in writing of denial of authorization within 10 business days after the Funding Agency Project Manager's receipt of a written request for authorization from the Performing Agency shall be deemed as authorizing those identified contractors to perform the Work. The Performing Agency shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Performing Agency as specified in this Agreement. Notwithstanding approval by the Funding Agency Project Manager of a subcontractor, the Performing Agency shall remain obligated for full performance hereunder, and the Funding Agency shall incur no obligation to the subcontractor hereunder. The Performing Agency shall have the sole authority to direct the work of any authorized and approved subcontractors.

F. Ownership of Work Product.

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

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

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

H. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between PBOT and PDC and, if appropriate, financed by “*the Lents Town Center Urban Renewal Project*”.

2. For projects involving construction activities funded by PDC, PBOT shall display a sign near the construction site(s) and readily visible to the public, specifying that the Project is being "*funded by the Portland Development Commission's Lents Town Center Urban Renewal Project*". The sign shall remain in place until construction is complete.

6. Amendments

1. Except as otherwise provided for in this Agreement, PBOT or PDC may amend this Agreement only in writing signed by the contract signatories.
2. Changes to the Scope of Work and Budget:
 - a) Changes to the Scope of Work and Budget, including changes to scope, schedule, and budget identified in Section I, which do not increase the total compensation under this Agreement, may be made upon written agreement by the project managers identified in Section II of this Agreement.
 - b) Changes will not take effect or be binding on either party until agreed to in writing.

VII. Merger Clause

This Agreement contains the entire agreement between PDC and PBOT. 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, PBOT and PDC have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

PORTLAND DEVELOPMENT COMMISSION

Leah Treat, Director, Portland Bureau of Transportation

Kimberly Branam Executive Director

(Executed under authority delegated by Ordinance No. 181631, passed by Council February 27, 2008, and amended by Ordinance No. 183429, passed by Council on January 6, 2010.)

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Legal Counsel