

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND CITY OF PORTLAND
FOR PORTLAND STREETCAR LOOP PROJECT
CONSTRUCTION SUPPORT SERVICES**

TriMet Contract No. _____
City Contract No. _____

THIS PORTLAND STREETCAR LOOP PROJECT CONSTRUCTION SUPPORT SERVICES AGREEMENT ("Agreement") is between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON ("TriMet") and the CITY OF PORTLAND ("City") (collectively hereinafter referred to as "the Parties"), effective this _____ day of _____, 2010.

RECITALS

A. The City owns, and since July 2001 has operated, the Portland Streetcar system ("Streetcar") with assistance from TriMet and Portland Streetcar, Inc., a private 501(c)(3) non-profit corporation.

B. The City is currently constructing the Portland Streetcar Loop Project ("Project"), which will extend Streetcar service across the Broadway Bridge and south to the Oregon Museum of Science and Industry.

C. City desires TriMet's support and expertise on various matters, including but not limited to right-of-way acquisition; quality assurance/quality control; DBE program management; coordinating vehicle testing, start-up activities, operations planning and revenue service; program management; grants management and processing; before and after study; and assignment of outside Project Management Oversight as needed. TriMet is willing to participate in the construction phase of the Project in accordance with the terms and conditions set forth below.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows.

AGREEMENT

ARTICLE I – TERM

The term of this Agreement shall be effective from March 1, 2009 through December 31, 2014 unless terminated or extended under the provisions of this Agreement.

ARTICLE II – TRIMET OBLIGATIONS

1. **TriMet Services.** TriMet shall make available during construction the persons and resources identified in the service plan attached as Exhibit A, to perform the scopes of work generally described herein.

- a. **Right-of-Way Acquisition.** As requested on a case-by-case basis, provide appraisal and property acquisition services, including negotiations and suggested settlement.
- b. **Quality Assurance/Quality Control.** As needed, perform quality assurance audits of project documents and procedures. Coordinate audit and discussion of findings with City of Portland and construction contractors.
- c. **DBE Program Management.** Review and comment on solicitation documents for various contracts to be procured for the Project; participate in contractor selection; attend meetings (including contract performance and outreach activities); assist with scoping of DBE opportunities and evaluation of DBE capacity; assist with development of contractor internship and mentorship opportunities; perform site visits as needed; perform DBE monitoring, compliance and troubleshooting activities; reporting as needed.
- d. **Coordinate Vehicle Testing, Start-up Activities, Operations Planning and Revenue Service** As needed, provide appropriate staff to review proposed testing, burn-in and start-up plans, review results of procedures, assist with diagnosis of issues and propose alternatives. Assign appropriate staff to integrate TriMet operations (current and planned) requirements, particularly at tie-ins to existing or planned light rail service. Coordinate streetcar stop locations with existing or planned bus stop locations.
- e. **Program Management** Coordinate this Project with design and construction work related to or required by other TriMet projects within or near this Project's contract limits.
- f. **Grants Management.** Using standard FTA systems and TriMet procedures, submit reports and other documentation as requested or required in the Project Construction Grant Agreement.

- g. **Before and After Study.** In accordance with published guidelines and current practice, develop and conduct study required by the Project Construction Grant Agreement. Study is expected to include field surveys and analysis of data, documentation of prior existing conditions, preparation of draft reports, coordination of reviewer comments and responses, and submission of final report.
 - h. **Project Management Oversight.** Assign outside consultant services as needed to ensure that all federal regulations are addressed and best practices are used in the construction and testing of the Project.
2. **TriMet Staff.** TriMet shall assign personnel and other resources as needed to the Project.
3. **Compensation.**
- a. TriMet's compensation for services provided under this Agreement shall not exceed the amounts listed in subsection 3.c. below, without prior written authorization from City. This amount is based upon the service plan for construction support and estimated consultant services attached as Exhibit A. In the event any or all of TriMet's actual costs reach these maximum amounts, TriMet shall be released from performing further services under this Agreement to the extent that the City fails to approve an increase in the maximum costs.
 - b. City recognizes that the amounts listed in Exhibit A below are initial budget amounts and may change due to the preliminary nature of the data on which they are based. City agrees not to withhold the timely approval of additional resources without cause, subject to available budget. Additionally, the Parties agree that line item budgets may be reallocated within this Agreement when approved by the TriMet and City Project Managers, so long as the overall approved budget amount of this Agreement is not exceeded.
 - c. Estimated maximum costs for TriMet Services. The services provided by TriMet and the costs to the City under this Agreement shall not exceed \$600,000 unless the Parties execute a modification signed by authorized representatives. Such services shall be provided on a reimbursable cost basis as outlined in Exhibit A.
4. **Invoices.** TriMet shall submit to the City monthly billings for reimbursable costs incurred since the previous billings. Financial reports accompanying requests for reimbursement shall be in accordance with FTA requirements.
- a. Invoices shall be supported by current time sheets for each month. The Project Managers shall review the invoices and billings against the Project budget to provide real time cost tracking and budget management.
 - b. The TriMet Project Manager shall oversee the work of the various TriMet staff to the end that their work is completed within the staffing budget for that work.

c. Overtime premium pay (pay in excess of straight time) shall not be invoiced to the City unless the City's Project Manager has specifically authorized overtime in advance of the work, or in the event of an emergency.

d. The fringe rate applied to overtime hours shall be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by the City.

4. **Additional Services.** City will not pay any claim for additional services not specifically provided for herein, unless agreed to mutually by written modification of this Agreement.

ARTICLE III – CITY OBLIGATIONS

1. **Responsibility for the Project.** Except as otherwise provided herein, the City shall design, construct, operate and pay all costs for the Project, in accordance with the Project's funding arrangements. In the execution of the Project construction, except as otherwise provided herein, the City shall provide for the public's health, safety, and welfare by providing the proper construction, reconstruction, and modifications to those existing public facilities in the City's public right-of-way which are affected by the Project.

2. **Payment.** Subject to the limitations stated in this Agreement, the City agrees to pay TriMet's actual costs for the performance of the services required herein. These costs are identified in Exhibit A, attached. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead to be determined as follows:

a. **Direct Salary Costs and Fringe Benefits.** The cost of salaries, wages, and fringe benefits are determined as follows:

- i. Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time.
- ii. Charges in addition to (i) above for vacation, sick leave, holiday, jury duty, and bereavement leave are authorized but shall be charged to the Project only in proportion to the time devoted to the Project.

b. **Direct Non-Salary.** Those reasonable costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to, reproduction, telephone long distance, equipment rentals, and purchase of outside services requested by City.

c. **General Overhead.** TriMet shall charge for general overhead ten percent (10%) of TriMet project costs, excluding oversight consultant services. An estimate is included in Exhibit A.

3. **Invoices.** The City shall pay TriMet the balance due within thirty (30) days of receipt of a TriMet invoice.

ARTICLE IV - GENERAL PROVISIONS

1. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

Sandy Bradley
TriMet
710 NE Holladay St.
Portland, OR 97232
Phone: (503) 962-2132
Fax: (503) 962-2288
Email: bradleys@trimet.org

Vicky Diede
Portland Bureau of Transportation
1120 SW Fifth Ave, Suite 800
Portland, OR 97204
Phone: (503) 823-7137
Fax: (503)-823-4532
Email: vicky.diede@pdxtrans.org

2. **Relationship of the Parties.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be an employee, agent or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

3. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof, and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

4. **Indemnification.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

5. **Effective and Termination Dates.** This Agreement shall be effective for the term set forth in Article I above, unless earlier terminated or extended by mutual agreement of the Parties. Upon termination, the Parties shall make their best efforts to resolve any issues arising from termination.

6. **Remedies.** The remedies provided under this Agreement shall not be exclusive. The Parties also shall be entitled to any other equitable and legal remedies that are available.

7. **Oregon Law, Dispute Resolution and Forum.**

a. This Agreement shall be construed according to the laws of the State of Oregon.

b. TriMet and the City shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the Parties are unable to resolve any dispute within sixty (60) days, the Parties are free to pursue any legal remedies that may be available.

c. Any litigation between the City and TriMet arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

8. **Interest of Members of Congress.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

9. **Interest of Public Officials.** No member, officer, or employee of the City or TriMet during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

10. **Disadvantaged Business Enterprise.** In connection with the performance of this Agreement, TriMet will cooperate with the City in meeting the Project's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

11. **Equal Employment Opportunity.** In connection with the execution of this Agreement, neither the City nor TriMet shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; and selection for training, including apprenticeship.

12. **Termination for Convenience.** The City or TriMet may terminate this Agreement in whole or in part at any time by written notice to the other party. In the event of such termination, the

City shall pay TriMet's costs, including any costs necessarily incurred by TriMet in terminating its work or the work of others under contract to TriMet. TriMet promptly shall submit its termination claim to be paid by the City. If, either party has any property in its possession belonging to the other party (Owner), the party having possession will account for it and dispose of it in the manner as the Owner directs.

13. Termination for Default. If TriMet fails to perform in the manner called for in the Agreement, or if TriMet fails to comply with any other provisions of the Agreement, the City may terminate this Agreement for default. Termination for default shall be effected by serving a notice of termination on TriMet setting forth the manner in which TriMet is in default. TriMet will be paid only the Agreement price for authorized services performed prior to termination in accordance with the manner of performance set forth in this Agreement.

If it is later determined by the City that TriMet has an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of TriMet, the City shall establish a new performance schedule, and allow TriMet to continue work, or treat the termination as a termination for convenience.

In the event the City fails to pay TriMet for its services provided under this Agreement, such failure shall be deemed a material breach for which TriMet may seek any remedy available to it under the law, including but not limited to, termination of contract or suspension of its services.

14. Maintenance of Records. TriMet shall maintain records to show actual time involved in accomplishment of the Project and the cost incurred for the period of time specified. TriMet shall cooperate in good faith with the City and the FTA to provide records in a form satisfactory to FTA.

15. Audit and Inspection of Records. TriMet shall permit the authorized representatives of the City, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of TriMet relating to its performance under this Agreement. The City shall be responsible for all auditing costs incurred by the City to conduct its audits under this Agreement.

16. Documents. All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with this Project shall become public property. All design drawings and documents prepared by TriMet staff under this Agreement shall be property of the City. Nothing herein shall prevent TriMet from retaining original design drawings and providing reproducible copies to the City.

17. Successors; No Assignment. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each party under this Agreement may not be assigned in whole or in part without the prior written consent of the other party.

18. No Third Party Beneficiaries. The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement, either express or implied.

19. Severability/Survivability. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

20. Interpretation of Agreement. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.

21. Compliance with Law. Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.

22. Public Contracting Requirements. To the extent applicable, the provisions of ORS Chapter 279 are incorporated by this reference as though fully set forth.

23. No Partnership. Each party is an independent contractor with regard to each other party. No party is an agent or employee of any other party.

24. No Participation. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

[Signature page to follow]

Pursuant to Ordinance No. _____

APPROVALS:

City of Portland

**Tri-County Metropolitan Transportation
District of Oregon**

By: _____
Office of the Mayor

By: _____
General Manager


Dated: _____

Dated: _____

By: _____
Office of the City Auditor

Dated: _____

Approved as to Form:

By:  _____
Office of the City Attorney

By: _____
TriMet Deputy General Counsel

Exhibit A – TriMet Services Plan

Right of Way Acquisition	\$ 14,000
Quality Assurance/Quality Control	\$ 14,000
Disadvantaged Business Outreach	\$ 47,000
Testing, Start Up, Operations	\$ 40,000
Program Management	\$ 46,636
Grants Management	\$ 12,000
Before and After Study	<u>\$100,000</u>
Subtotal	\$273,636
General Overhead 10%	\$ 27,364
Oversight Consultant	<u>\$299,000</u>
Total	\$600,000