

**INTERGOVERNMENTAL AGREEMENT BETWEEN
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
AND CITY OF PORTLAND
TO DISBURSE FEDERAL GRANT FUNDS FOR
THE SW MOODY STREET & STREETCAR RECONSTRUCTION PROJECT
(SW Moody Avenue: SW River Parkway – SW Gibbs Street)**

PARTIES:

1. The Tri-County Metropolitan Transportation District of Oregon ("TriMet")
2. The City of Portland ("City" or "the City")

RECITALS:

- A. In September 2009, the City and TriMet submitted an application for federal funds under the Transportation Investment Generating Economic Recovery ("TIGER") program, part of the American Recovery and Reinvestment Act ("ARRA"). The application proposed to realign a section of streetcar track and a station off SW 4th and 5th avenues in downtown Portland, rebuild SW Moody Avenue, and realign and rebuild a portion of SE Water Avenue. The application proposed a total project budget of \$77,600,000, with the TIGER program supplying \$44,521,436.
- B. The FTA awarded \$23,203,988 in TIGER funding for the SW Moody Avenue portion of the application (approximately \$15 million less than requested) and required that the full scope of the original project be constructed. Through design refinement and reduced soft costs, the City has met this requirement.
- C. The resulting SW Moody Street & Streetcar Reconstruction Project (SW Moody Avenue: SW River Parkway – SW Gibbs Street) ("Project") includes the final design and construction of approximately 3,200 feet of roadway elevated on fill in the heart of the South Waterfront District. SW Moody Avenue will include three traffic lanes, dual streetcar tracks, and pedestrian and bike facilities. Fiber optic, sewer, storm water and water infrastructure will support future development.
- D. In May 2010, TriMet, the City, and the Federal Transit Administration (FTA) entered into a Memorandum of Understanding (MOU) (authorized by City Ordinance 183782) for the purpose of disbursing federal grant funds for the Project.
- E. The City desires to proceed with the Project. Toward that end, TriMet is the recipient of the federal TIGER grant funding in the amount of \$23,203,988 (the "TIGER Funds"). Additional FTA project funds that TriMet is receiving are a 2006 federal Congressional Earmark from the Surface Transportation Program ("STP") in the amount of \$1,806,454 and a 2008 federal Congressional Earmark from the Transportation, Community, and System Preservation ("TCSP") Program in the amount of \$339,203 (the "Earmark Funds"). The City desires to become a subrecipient of the TIGER Funds and the Earmark Funds. The City anticipates that FTA will approve a Documented Categorical Exclusion for the Project in July 2010 and will award the TIGER grant including Earmark funds in August 2010.

- F. TriMet and the City desire to jointly support the Project in accordance with FTA requirements. The parties desire for the City to oversee and carry out the Project, including but not limited to (1) providing a City Project Manager and other necessary City personnel and services, (2) providing final design and construction services, (3) providing project management services during construction, and (4) providing design and engineering services during construction. The approved Project is set forth in Exhibit A, funded in the cumulative amount of \$51,278,209, comprised of (i) \$23,203,988 in TIGER Funds, (ii) \$2,145,657 in Earmark Funds, and (iii) \$25,928,564 in local funds as described in Exhibit A.
- G. TriMet and the City enter into this subrecipient agreement for the purpose of disbursing the TIGER Funds and the Earmark Funds to the City for the City's accomplishment of the Project.
- H. TriMet and the City are authorized to enter in this agreement by ORS Chapter 190.

AGREEMENTS:

1. General

A. This Agreement consists of this document and the following documents, which are, by this reference, incorporated herein:

(1) United States of America Department of Transportation Federal Transit Administration Master Agreement for Federal Transit Administration Agreements authorized by 49 USC chapter 53, Title 23, United States Code (Highways), the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, or other Federal laws that FTA administers ("MA").

(2) The TriMet Disadvantaged Business Enterprise Program Description and Guidelines ("DBE Program").

B. In addition to the foregoing subparagraph (A), this Agreement is subject to a financial assistance agreement between TriMet and the FTA. As subrecipient, the City shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the FTA Master Grant Agreement ("MA") between TriMet and FTA; (2) 49 CFR Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; (3) OMB Circular A-87, Cost Principles Applicable to Grants and Agreements with State and Local Governments; (4) FTA Circular 4220.1F regarding third party contracting; (5) FTA Circular 5010.1D, regarding grant administration, (6) Federal Fiscal Year Certifications and Assurances for Federal Transit Administration Assistance Programs; and any subsequent FTA grant awards providing federal grant funding.

C. City agrees that it is under a continuing obligation to comply with the foregoing requirements, as they may be modified or amended from time to time. City further

agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of the MOU between FTA, TriMet and the City, or any other agreement between the FTA and TriMet and/or the City, and shall be amended to incorporate those changes.

In addition to the foregoing, City as "Recipient" hereinafter in this subparagraph (C) agrees that TriMet rights of audit and review under Paragraph 2 of this Agreement specifically include Recipient's financial records, management and program systems and any associated records. Recipient shall comply with any Agreement monitoring and audit requirements established by TriMet pertaining to this Agreement.

D. City shall not enter into subcontracts for performance of work under this Agreement except as may be specifically authorized by this Agreement in Exhibit A. City shall not be relieved of any responsibility for performance of City's duties under this Agreement, regardless of any subcontract entered into. City agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier.

E. (1) City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the work under this Agreement. Upon execution of this Agreement, City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement or the FTA-assisted project for which this work is performed. In addition to other penalties that may be applicable, City acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on City to the extent the Federal Government deems appropriate.

(2) City also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on City, to the extent the Federal Government deems appropriate.

(3) City agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds or non-federal funds provided to match the FTA grant funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

F. City and TriMet acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to City, TriMet or any other party (whether or not a party to this Agreement or

any Agreement awarded pursuant hereto) pertaining to any matter resulting from this Agreement.

G. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, City is required to verify that none of City, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, City makes a material representation of fact relied upon by TriMet that City has complied with 49 CFR Part 29. If it is later determined that City knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to TriMet, the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, City is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

H. The Lobbying Certificate attached hereto as Exhibit B and Non-Discrimination Assurance set forth as Exhibit C are incorporated into and made part of this Agreement.

2. Subsequent Agreement(s)

TriMet and City shall enter into one or more subsequent agreements to memorialize their respective responsibilities arising from Project oversight requirements set by the FTA's Project Management Oversight Contractor.

3. Inspection of Records and Services

A. (1) City shall maintain intact and readily accessible a complete set of records relating to this Agreement for six years after the date of transmission of the final expenditure report for the Project (three years for federal retention requirements and an additional three years for State retention requirements) or if expiration is later, upon expiration of the Agreement, including but not limited to all data, documents, reports, records, contracts and supporting materials as the Federal government or TriMet may require. City shall permit TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States, and all of their respective authorized representatives, to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this Agreement until the expiration of six (6) years after the date of transmission of the final expenditure report for the Project or expiration of the Agreement, if expiration is later. Upon request by TriMet, City shall provide TriMet access to and shall provide a copy of records maintained by City under this Agreement.

(2) City shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If City expends Federal funds in excess of \$500,000 from all sources in its fiscal year, City is subject to audit conducted in accordance with OMB Circular A-133, Audits of States, Local governments, Non-profit Institutions. City shall, at City's own expense, submit to TriMet Accounting, 4012 S.E. 17th Avenue, Portland, OR 97202, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of City responsible for the financial management of funds received under this Agreement.

(3) City shall at City's expense, submit to TriMet Accounting, 4012 S.E. 17th Avenue, Portland, OR 97202, a copy of any annual audit covering the funds expended under this Agreement by City or any subcontractor of City receiving funds as a result of this Agreement that is performed due to state law or regulation or conducted as an independent activity. City shall also at its expense, submit to TriMet Accounting at the foregoing address, a copy of the management letter that accompanies an annual audit covering the funds expended under this Agreement by City or any subcontractor of City receiving funds as a result of this Agreement.

B. City further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.

C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and City, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. City agrees to include in any third party contract under this Agreement a provision to this effect.

D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. City agrees to include in any third party contract under this Agreement a provision to this effect.

4. Reporting Requirements

The parties recognize that the Project is a "major capital project" and as such, TriMet will be required to submit a monthly report to FTA with current cost forecast and trends, as well as an updated schedule. Accordingly, City shall submit monthly reports to TriMet's Project Manager, Sandy Bradley, TriMet, 710 NE Holladay Street, Portland, Oregon 97232.

Reports shall include complete information required by FTA Circular 5010.1D, Chapter III, Section 3 Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. TriMet may require additional reporting information from the City.

In addition, ARRA monthly and quarterly reporting requirements apply to TIGER grants. TriMet and the City of Portland will agree upon the dates by which the City must submit reports to TriMet to ensure that TriMet can comply with federal deadlines.

5. Withholding of Funds

TriMet may withhold payment of funds if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the City's performance. City shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require TriMet to reimburse funds to FTA or otherwise incur costs from FTA withholding of funds, hold harmless and indemnify TriMet for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by TriMet.

6. Independent Contractor/Indemnification

A. City is an independent contractor for all purposes under this Agreement, and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. City shall have sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. Neither City, nor its officers, directors, employees, subcontractors or drivers, are officers, employees or agents of TriMet as those terms are used in ORS 30.265. City, its directors, officers, employees, subcontractors or drivers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

B. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, City agrees to fully indemnify, hold harmless and defend TriMet, 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.

C. Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, TriMet agrees to fully 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 TriMet, its directors, employees or agents under this Agreement.

D. City agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend TriMet, 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 investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between City and such subcontractor procured pursuant to this Agreement.

7. **Workers Compensation**

City, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers, or employers that are exempt under ORS 656.126(2).

8. **Insurance**

A. While this Agreement is in effect, City agrees that it shall require any subcontractors it uses to agree to comply with the insurance requirements provided below. Prior to commencement of work under this Agreement, City shall furnish to TriMet a certificate(s) of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements below. Failure of TriMet to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of TriMet to identify a deficiency from evidence that is provided shall not be construed as a waiver of City's obligation to require such insurance from its subcontractors.

B. City's subcontractors shall be responsible for payment of all premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below:

- (1) Commercial General Liability (CGL) Insurance with a limit of not less than \$1,000,000 each occurrence.
- (2) Business Auto Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
- (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$500,000 each accident for bodily injury by an accident and \$500,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.

- (4) The insurance required under this Paragraph shall:

Include TriMet, the Federal Transit Administration, the City and each of their respective directors, officers, agents, and employees as additional insureds with respect to work or operations connected with the Agreement, and

Require the insurer to give TriMet and the City not less than thirty (30) days notice prior to termination or cancellation of coverage.

9. **Termination**

TriMet may terminate this Agreement, in whole or in part, effective upon delivery of written notice to City, or at such later date as may be established by TriMet, under any of the following conditions:

- (a) City fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- (b) City fails to comply with or perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from TriMet fails to correct such failures within 10 days or such longer period as TriMet may authorize;
- (c) TriMet fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if TriMet determines to terminate for its own convenience;
- (d) Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- (e) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- (f) City takes any action pertaining to this Agreement without the approval of TriMet and which under the provisions of this Agreement would have required the approval of TriMet.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

10. Compliance with Laws

City shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under the Oregon Public Contracting Code.

11. Funding

City shall submit monthly bills to TriMet for project expenses incurred. The maximum funding to be disbursed to City is estimated to be \$25,349,645, but will be determined by the actual appropriation as called for in the Grant.

12. Term

This Agreement shall begin on the last date of signature below and shall remain in effect through December 31, 2012.

13. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

TriMet:

Sandy Bradley
TriMet
710 NE Holladay Street
Portland, Oregon 97232
TEL: (503) 962-2132
FAX: (503) 962-2288

City:

Chris Armes
City of Portland
1120 SW 5th Avenue, Suite 800
Portland, Oregon 97204
TEL: (503) 823-7051
FAX: (503) 823-7371

14. No Third Party Beneficiary

TriMet and City are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

15. Assignment

City may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by TriMet.

16. Jurisdiction

This Agreement shall be governed by the laws of the State of Oregon, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon and the venue of the Multnomah County Circuit Court.

17. Mediation

Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties.

18. Entire Agreement/Authority

This Agreement and the Attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding 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 and all necessary approvals have been obtained. 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 TriMet to enforce any provision of this Agreement shall not constitute a waiver by TriMet of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

APPROVALS:

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

City of Portland

By: _____
Neil McFarlane
General Manager

By: _____
Sam Adams
Mayor

By: _____
LaVonne Griffin-Valade
City Auditor

Approved as to Form:

By: _____
Tamara H. Lesh
Deputy General Counsel

APPROVED AS TO FORM
Linda Meng
By: _____
Linda Meng
CITY ATTORNEY
City Attorney

EXHIBIT A**A. FUNDING INFORMATION**

The information below will assist auditors to prepare a report in compliance with the requirements of the Office of Management and Budget (OMB) Circular A-133.

This agreement is financed by the funding source indicated below:

Federal Program or Title: (Federal funds available through)

Transportation Investment Generating Economic Recovery (TIGER) -	\$23,203,988
Section 112 Surface Transportation Program Earmark (06OR177) -	\$1,806,454
Transportation, Community and System Preservation Earmark (08OR001) -	\$339,203

Federal Catalogue Number: 20.932

Federal Grant Number: OR-78-0001

Expected Federal Funding:TIGER Funds

Federal fiscal year 2009 - \$23,203,988

Section 112 STP Earmark Funds

Federal fiscal year 2006 - \$1,806,454

Transportation, Community & System Preservation Earmark Funds

Federal fiscal year 2008 - \$339,203

Federal Funding Agency:

U.S. Department of Transportation
Federal Transit Administration
1200 New Jersey Ave SE
4th floor – East Building
Washington, D.C. 20590

U.S. Department of Transportation
Federal Transit Administration
Region X
Suite 3142
Federal Building
915 Second Avenue
Seattle, WA 98174

B. PROJECT SCOPE OF SERVICES**1. City Obligations:**

- a. City shall procure the Construction Manager/General Contractor ("CM/GC") to provide services for final design and construction of the SW Moody

Street & Streetcar Reconstruction Project ("Project"), in conformance with City, State and federal requirements, including applicable FTA rules and requirements.

b. City shall manage and implement the Project by preparing a detailed schedule, requesting proposals, amending contracts for professional services, scheduling, budgeting, conducting regular coordination meetings, preparing expenditure and progress reports, reviewing and approving subcontractor documents and submittals, making payments and taking other actions necessary to complete the Project in conformance with City, TriMet and FTA procedures and requirements.

c. City shall carry out its management functions in conformity with all FTA requirements. In order to assist TriMet in its administration of the Grant, City will keep TriMet informed about and obtain TriMet approval of all actions, decisions and documents related to administration of the Project.

d. TriMet and City acknowledge that to implement the Project, and in accordance with FTA and TriMet procedures, the City will conduct a competitive process to select a CM/GC.

e. City shall bill TriMet monthly for work completed. An itemized invoice will be required in order for TriMet to release TIGER and Earmark funds.

f. City shall make arrangements for any interim financing as necessary to make payments to subcontractors, if such payments are due before TIGER and Earmark funds become available to TriMet.

g. Disadvantaged Business Enterprise. Pursuant to Section XVIII.A.1. of the TriMet DBE Program, City shall operate under the umbrella of and in accordance with the provisions of the TriMet DBE Program for purposes of this Agreement.

h. TriMet and City shall enter into one or more subsequent agreements to memorialize their respective responsibilities arising from Project oversight requirements set by the FTA's Project Management Oversight Contractor.

i. City acknowledges that by entering into this Agreement, TriMet shall have no liability for the Project.

2. TriMet Obligations:

a. TriMet shall pay Project costs in an amount not to exceed Twenty-five million, three hundred forty-nine thousand, six hundred forty-five dollars (\$25,349,645) over the life of and in accordance with this Agreement, and shall manage the Grant. Provided that TriMet has received Grant funds, TriMet shall pay City's invoices monthly, within thirty (30) days from the date of receipt.

3. Local Match:

City shall provide local matching funds required for the Transportation, Community & System Preservation ("TCSP") Earmark Funds at a rate of 10.27% of the total amount, estimated to be \$38,823.

City will not be required to provide local matching funds for the TIGER Funds or the Surface Transportation Program ("STP") Earmark Funds.

City shall be responsible for all costs in excess of the combined TIGER, STP and TCSP funds, currently estimated in the amount of \$25,928,564.

EXHIBIT B

Contract No. _____

LOBBYING CERTIFICATE

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) **The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

City of Portland (City)

Signature: _____

Name:(print) _____

Title: _____

Date: _____

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

EXHIBIT C

Contract No. _____

NON-DISCRIMINATION ASSURANCE

City certifies compliance with the following nondiscrimination requirements:

Nondiscrimination

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the City assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the City receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the City retains ownership or possession of the project property, whichever is longer, the City assures that:

- (1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
- (2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the City assures that it will submit the required information pertaining to its compliance with these provisions.
- (3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.
- (4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the

provision of similar services or benefits.

- (5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.
- (6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

City acknowledges that it is subject to the requirements of FTA Circular 4702.1A "*Title VI and Title VI-Dependent Guidelines for FTA Recipients*" as a subrecipient of federal funds under this Agreement. Further, City shall provide Title VI compliance information and measures as may be determined by TriMet pursuant to the Circular.

Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the City assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The City assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.