

**INTERGOVERNMENTAL AGREEMENT FOR STUDENT TRANSIT
PASS PROJECT
AMONG THE CITY OF PORTLAND, PORTLAND PUBLIC SCHOOLS
AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

This Intergovernmental Agreement for a Student Transit Pass Project commonly referred to as YouthPASS (hereinafter "Agreement") is entered into by and among the City of Portland, a municipal corporation, acting by and through its City Council (hereinafter "City"), Multnomah County School District 1J, Portland Public Schools (hereinafter "PPS"), and the Tri-County Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the state of Oregon (hereinafter "TriMet"), (all jointly referred to herein as "the Parties").

RECITALS

- A. Oregon Department of Energy has a Business Energy Tax Credit (BETC) Program under which State of Oregon funds are available for funding of certain transportation projects that decrease environmental impacts and otherwise meet BETC program requirements, including funding of free student transit passes.
- B. The Parties desire to implement a Student Transit Pass Project that would provide free transportation on regular TriMet service routes and Portland Streetcar to 9th through 12th grade students enrolled at PPS High Schools including designated programs within the Education Options Department (hereinafter "Schools") for the period of September 1, through December 31, 2010 (hereinafter "Project").
- C. The Parties intend that application will be made to the Oregon Department of Energy to obtain BETC funding for the Project, and that the parties will endeavor to pursue further application to the Oregon Department of Energy for BETC funding so that the Project can be extended through June 30, 2011 pursuant to subsequent agreement among the parties.
- D. The Parties desire to set forth their agreements as to their respective roles and responsibilities for implementation of the Project.

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 - TOTAL PROJECT COSTS

For purposes of this project, the Total Project Costs are determined as follows:

A. Transit Pass Costs

Transit Pass Costs are equal to student enrollment multiplied by the cost of monthly

transit passes multiplied by four (4) months, adjusted to reduce the student enrollment by the number of students that report never riding transit, according to in-class surveys conducted during the Project period. Student enrollment will be based on October 1 ADM report to the Oregon Department of Education. The monthly transit pass cost will be based on the TriMet Youth monthly pass fare in effect September 1, 2010.

B. Incurred Costs

Incurred Costs are comprised of costs associated for data collection/ analysis, research and data entry, accountant services and staff administration necessary to successful implementation of the Project.

TriMet staff administration includes costs to: (1) Coordinate all elements of the BETC application, including analysis/preparation of data, provide cost documentation and prepare for accountant certification; (2) Serve as TriMet's primary contact for Oregon Department of Energy) for the Project; (3) Coordinate BETC procedural process with selected pass through partner; (4) Serve as TriMet's primary point of contact for City and PPS on all elements of Project with each participating school to: (i) provide point of contact for questions and troubleshooting related to the Project; (ii) develop information to inform parents and students about the Project; (iii) coordinate with contractor that produces student ID and TriMet internal staff regarding development of fare instrument; (iv) coordinate outreach and school safety programs; (v) work with students to develop materials on how to ride, safety and Code of Conduct; (5) Coordinate a research plan and develop survey instrument; and (6) Create and implement an internal communication plan for TriMet fare inspectors and operators regarding the Project..

TriMet staff administration shall be billed at the affected employee's fully burdened hourly rate. TriMet will track staff time to the nearest half hour, which shall be detailed per employee and included on annual reconciliation to the Parties.

C. Application Fee

The cost of filing the BETC application(s) as needed to sustain the Project.

ARTICLE II - DIVISION OF RESPONSIBILITIES

A. City Shall:

1. Assign a Project Manager for City's work under this Agreement who will serve as City's Project contact.
2. Record meeting notes and distribute action items to the parties for follow-up.
3. Work to secure a BETC pass-through partner to facilitate funding of the Project.
4. Research and seek out other regional, state and federal sources for long-term funding for extension of the Project.

5. Provide payment to TriMet upon the occurrence of either of the events described in (A) or (B) below:
 - (A) In the event that the Oregon Department of Energy issues approval of the Project application for BETC Preliminary Certification for the period of September 1 through December 31, 2010, but subsequently denies approval of the Project application for BETC Final Certification, the City will pay TriMet one-third (1/3) of the amount of the Total Project Costs as defined in Article I (A) through (C). Payment will be made to TriMet within sixty (60) days of the date the Oregon Department of Energy issues notification that the application is not approved.
 - (B) In the event that after six (6) months from the date of the Oregon Department of Energy's issuance of its "Certified Project Amount on the Tax Credit Certificate" letter for the Final Certification application there remain unsold tax credits, the City will pay TriMet for the amount of all unsold tax credits, based on the total Project pass-through payment amount as determined by the Oregon Department of Energy's pass-through rate formula applicable to the Project.
6. Authorize free travel on all regular Portland Streetcar service routes for students enrolled at Schools, for the period of September 1 through December 31, 2010. City shall recognize a TriMet Youth monthly pass issued pursuant to this Agreement, and a PPS-issued, high-school student, photo ID card, as valid proof of fare payment on City's Portland Streetcar for such time period. Photo ID card is non-transferrable and may be used as proof of payment on Portland Streetcar only by the individual whose name and photo appear on the front of the card.

B. PPS Shall:

1. Assign a Project Manager for PPS's work under this Agreement who will serve as the PPS Project contact.
2. PPS will produce a student photo ID card with embedded TriMet fare media design which shall be distributed to participating students. Prior to distribution of photo IDs or TriMet passes for this Project, PPS shall provide TriMet with a list of participating schools with student enrollment and whether the school will issue photo identification or TriMet passes (see Article II (D)(4)) below.
3. Provide TriMet with a written procedure for distribution and tracking of TriMet monthly passes to be delivered as part of the Project. TriMet will not provide any monthly passes to PPS until the procedure is agreed to by TriMet. The terms and conditions of the procedure shall be deemed to be incorporated into and made part of this Agreement upon written approval issued by TriMet.
4. Assist TriMet in filing applications for BETC funding for the Project, including providing information necessary for the preliminary and final Project applications,

- and providing ongoing support and data to meet BETC program monitoring/reporting requirements.
5. Pay TriMet a total of \$400,000 for Project costs not reimbursed by the BETC including the cost of transit passes, BETC application fees, TriMet staff administrative time, and survey/analysis and accountant services. PPS shall make payment to TriMet in the amount of \$400,000 within sixty (60) days after the start of school (Fall 2010).
 6. Provide in-class student data collection and data summary required for the BETC program at PPS's cost, including data collection provided for under Article II (D)(3)(c). Design and cost of the student data collection and summary shall be mutually agreed to by all parties before the data collection commences.
 7. Work with Schools to develop and implement reasonable strategies to reduce crowding on TriMet transit vehicles. Such strategies must be cost-neutral to PPS and not negatively impact student achievement.
 8. Develop an "opt-out" notification form to students and families that will include the TriMet developed "Code of Conduct" guidelines and inform parents/guardians that they may notify their student's school if they do not want their student to receive a Youth Pass. The notification form will include a statement that the student's use of their photo ID as proof of fare payment and use of the TriMet transit system is subject to TriMet Code regulations.
 9. Distribute the TriMet developed "How to Ride" materials and the TriMet Code of Conduct guidelines to each student.
 10. During the project period, at a minimum PPS will survey all participating students not surveyed as part of BETC requirements to determine the number of students that never ride transit.
 11. Make every effort to provide school start times for participating schools to TriMet for transit service planning purposes.
 12. In the event that the Oregon Department of Energy issues approval of the Project application for BETC Preliminary Certification for the period of September 1 through December 31, 2010, but subsequently denies approval of the Project application for BETC Final Certification, PPS will pay TriMet one-third (1/3) of the amount of the Total Project Costs as defined in Article I (A) through (C), not to exceed \$500,000. If PPS has made payment in full to TriMet of \$400,000 as provided in Article II (B)(5), that amount will be deducted from the amount due from PPS to TriMet for Total Project Costs. Payment will be made to TriMet within sixty (60) days of the date the Oregon Department of Energy issues notification that the application is not approved.

C. TriMet Shall:

1. Assign a Project Manager for TriMet's work under this Agreement who will serve as TriMet's Project contact.
2. Submit an application to Oregon Department of Energy for preliminary approval of BETC funding for the Project and provide preliminary Project cost estimates to be submitted with the application.
3. Authorize free all-zone travel on regular TriMet service routes for students enrolled at participating Schools, for the period of September 1 through December 31, 2010. In addition to a TriMet Youth monthly pass issued pursuant to this Agreement, TriMet shall recognize a PPS-issued, high-school student, photo ID card, with embedded TriMet fare media design as valid proof of fare payment for such time period. Photo ID card is non-transferable and may be used as proof of fare payment on TriMet transit system only by individual whose name and photo appears on the front of the card.
4. Design the fare media design to be embedded on the student photo ID card, and deliver the design to the PPS printing vendor.
5. Develop "How to Ride" materials for the Project and deliver them to PPS with TriMet Code of Conduct guidelines materials.
6. Submit the final BETC application to the Oregon Department of Energy, TriMet will determine the cost per ride and engage a CPA to certify costs prior to submitting the final application.
7. Track TriMet staff administrative time expended on the Project.
8. In the event that there remain unsold tax credits after six (6) months from the date of the Oregon Department of Energy's issuance of its "Certified Project Amount on the Tax Credit Certificate" letter for the final certification application, and the City has paid TriMet for the unsold tax credits (See Article II(A)(5) (B))), and the City subsequently identifies a pass-through partner for the Project within an eligible period of time as defined by BETC guidelines and BETC funding is approved for payment to TriMet of the total pass-through amount for the Project as determined by the Oregon Department of Energy's applicable pass-through rate formula, , TriMet will forward to City the amount of the BETC funding received from the pass-through partner within one (1) month of receiving payment from the pass-through partner.

D. General Agreements/Obligations of the Parties

1. The Parties agree to make decisions and act quickly to pursue the development of the Project and to provide resources and personnel necessary to implement the Project and to fulfill their obligations under this Agreement in a timely manner.

2. The Parties agree that except as otherwise expressly provided in this Agreement, TriMet is not responsible for any costs or expenses associated with the Project, and that any costs or expenses incurred by TriMet for the Project will be paid to TriMet either through BETC funding or by the City and/or PPS. The Parties further agree that in the event the Department of Energy approves BETC funding for extension of the Project, BETC funding will be managed such that all revenue in excess of the Total Project Costs will be carried forward to the next fiscal year to be used for future Project extensions. Specific obligations as between City and PPS to pay TriMet for Project costs and expenses are set forth in this Agreement. In no event shall the City's obligation for TriMet's costs or expenses exceed the amounts set out in Article II (A) (5) of this Agreement. In no event shall PPS's obligations under this Agreement for TriMet's costs or expenses exceed \$400,000 plus any additional amounts due TriMet pursuant to Article II (B)(12) .
3. The Parties agree that the following conditions apply with respect to the Project:
 - (a) The Project will proceed only if pre-approval of the BETC application is secured from the Oregon Department of Energy.
 - (b) The Project will be in effect from September 1 through December 31, 2010.
 - (c) The BETC program will require "before and after" surveys/assessments/data collection/analysis of the Project as follows, the costs of which will be paid as provided by this Agreement (see Article II (B)(6)):
 - TriMet will develop a survey and data collection methodology in cooperation with PPS' research department that will include implementation of an in-class survey to determine ridership.
 - PPS to achieve 75% response rate from in-class survey.
4. To be eligible for participation in the Project, Schools should be able to issue student photo ID cards with an embedded TriMet fare media design. If at any time a participating school does not issue student photo IDs, the school will issue each student a TriMet monthly Youth pass. To be eligible to receive a TriMet monthly Youth pass, the student must show photo identification and any Youth pass issued for the previous month.
5. The Parties agree that any extension of the Project beyond December 31, 2010 would be subject to the following conditions:
 - (a) Resolution to TriMet's satisfaction of transit system overcrowding issues, to be based on application of TriMet's standard Achievable Capacity criteria of: 133 people per MAX car (64 seated and 69 standing) and 51 people per bus (39 seats for low-floor bus with 12 standing) and a reasonable demonstration that extending the Project to a given school will

not cause transit system ridership to increase beyond manageable levels.

- (b) Satisfactory completion of in-class surveys/data analysis at participating Schools, and other surveys as needed to meet the Oregon Department of Energy BETC application requirements. PPS to pay all in-class survey/data analysis costs.
 - (c) Sufficient information in the Plan to permit a timely application to the Oregon Department of Energy for BETC funding beyond December 31, 2010.
 - (d) The Project extension would be terminated if BETC funds were not available or the BETC program were modified to not apply.
 - (e) Agreement by all of the Parties to the terms and conditions of a Project Extension Agreement through a subsequent Intergovernmental Agreement.
6. The Parties agree to include long-term sustainability of BETC funding for extension of the Project on their respective legislative agendas every year until it is renewed.
 7. The Parties agree that PPS will convene monthly stakeholder meetings to monitor the success of the Program and develop plans for extension.

E. Project Managers

1. TriMet hereby appoints the person identified below to act as its Project Manager with regard to this Agreement:

Tom Strader
 Senior Fare Policy Analyst
 TriMet
 4012 S.E. 17th Avenue
 Portland OR 97232
 Telephone: (503) 962-7562
 Facsimile: (503) 962-6451

TriMet may, from time to time, designate another person to act as the TriMet Project Manager and may specify other contact information for its Project Manager by means of a writing delivered to PPS' and City's Project Managers.

2. The City hereby appoints the person identified below to act as its Project Manager with regard to this Agreement:

Reese Lord, Youth Education Strategies Program Coordinator
 Office of the Mayor
 City of Portland
 1221 S.W. 4th Avenue, Suite 340
 Portland, OR 97076
 Telephone: (503) 823-4027
 Facsimile: (503) 823 -3588

City may, from time to time, designate another person to act as the City Project Manager and may specify other contact information for its Project Manager by means of a writing delivered to TriMet's and PPS' Project Managers.

3. PPS hereby appoints the person identified below to act as its Project Manager with regard to this Agreement:

Andy Leibenguth, Interim Transportation Director
 Portland Public Schools
 Portland, OR 97123
 Telephone: (503) 916-6901 ext. 77272
 Facsimile: (503) 916-2707

PPS may, from time to time, designate another person to act as the PPS Project Manager and may specify other contact information for its Project Manager by means of a writing delivered to TriMet's and City's Project Managers.

ARTICLE II I- GENERAL PROVISIONS

A. 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.

B. Liability

Within the provisions and limits of liability set forth in the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall indemnify and defend the others and their directors, officers, employees, and agents from and against all claims, demands, penalties, and causes of action of any kind or character arising from this Agreement on account of personal injury, death or damage to property, which arises out of the acts or omissions of the indemnitor, its directors, officers, employees or agents. The obligations assumed hereunder shall survive

the termination or expiration of this Agreement.

C. Termination

1. This Agreement may be terminated by mutual agreement of the Parties.
2. In addition to the rights afforded under subparagraph C (1) above, this Agreement may be terminated by a Party as a result of a material breach of an obligation by another Party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the Project Managers of the other parties with thirty (30) calendar days written notice of the material breach, including a detailed explanation of the breach during which period the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the default, the terminating party may terminate this Agreement for default.

D. Inspection of Records

Each of the Parties shall have the right to inspect, at any reasonable time, such records in the possession, custody or control of the other Parties necessary for review of the other Parties' obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting Party. This right is does not extend to records privileged or otherwise exempt from disclosure under applicable law. Any party required under this Agreement to create or develop records must maintain those records for inspection pursuant to this Paragraph D.

E. 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 Parties.

F. Choice of Law; Place of Enforcement

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. The venue for any litigation relating to interpretation or enforcement of this Agreement shall be in Multnomah County, Oregon.

G. Amendments

This Agreement (including the exhibits hereto) may only be amended by means of a writing signed by an authorized representative of each of the Parties hereto. No amendment to any provision of this Agreement shall be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to the other Parties' performance or failure to perform, or any failure or delay by any Party to enforce its rights hereunder.

H. Integration

This document 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. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement.

I. 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. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

J. 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.

K. Laws and Regulations

The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.

L. Waivers

No waiver by any Party of any provision of this Agreement shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of another Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Parties not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.

M. Notice

Any notice or communication under this Agreement shall be deemed received by the addressee on the earliest to occur of:

1. The date such notice is hand-delivered to the notice address of the addressee; or
2. If such notice is transmitted by telecopy or facsimile machine to the fax number of the addressee specified as part of the notice address, then:
 - a. If such notice is transmitted during regular business hours, 8:00 a.m. to 5:00 p.m. Pacific Time, on a mail delivery day, such notice shall be deemed to be delivered on the date it is so transmitted; and

- b. If such notice is not transmitted during such regular business hours, or is transmitted on a date that is not a mail delivery date, such notice shall be deemed delivered on the next mail delivery day following the date upon which the same was transmitted; or
- c. If sent to the addressee's notice address through the United States Postal Service, postage prepaid, the third mail delivery day following the date upon which the envelope containing such notice is postmarked.

The notice address of each Party is set forth above in ARTICLE II, Paragraph (E) Project Managers. Any Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

N. Headings

Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

O. 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.

P. Mediation

The Parties shall negotiate in good faith to resolve any dispute arising under this Agreement. If the Parties are not able to resolve a dispute within forty-five (45) days after such dispute has arisen, they shall submit the matter to mediation. The mediation shall be conducted in Portland, Oregon, in accordance with such procedures, and on such time schedules as the Parties shall mutually agree. The mediator shall be selected by mutual agreement of the Parties, or if the Parties cannot agree, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Mediators' fees shall be shared equally between the Parties. Each Party shall bear its own costs and expenses in connection with the mediation. Each Party shall participate in such mediation in good faith, but nothing in this Agreement shall preclude a Party from exercising its rights as provided by law in the event mediation is unsuccessful. The Parties shall continue in the performance of their respective obligations under this Agreement notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the Parties.

Q. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

R. Term

This Agreement shall be in effect from the date of execution by all of the Parties through December 31, 2011, unless extended by agreement of the parties, or terminated earlier in accordance with the provisions hereof.

The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

CITY OF PORTLAND

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON (TRIMET)**

By: _____

By: _____

Approved as to Form:

Approved as to Form:

By:  _____
City Attorney

By: _____
TriMet Legal Department

PORTLAND PUBLIC SCHOOLS

By: _____

Date: _____

Approved as to Form:

By: _____
Legal Counsel