

**INTERGOVERNMENTAL AGREEMENT FOR CONSTRUCTION PHASE SCOPE
TRANSFERS BETWEEN SW MOODY IMPROVEMENT PROJECT, SW HARBOR
DRIVE/SW RIVER PARKWAY PROJECT, AND PORTLAND-MILWAUKIE LIGHT
RAIL PROJECT**

THIS AGREEMENT is made this _____ day of _____, 2011, by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district of the state of Oregon, hereinafter referred to as "TriMet", and THE CITY OF PORTLAND, a municipal corporation of the state of Oregon acting by and through its Elected Officials, hereinafter referred to as "City".

RECITALS

1. 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 Federal Transit Administration (FTA) awarded \$23,203,988 in TIGER funding for the SW Moody Avenue portion of the application.
2. The resulting SW Moody Street & Streetcar Reconstruction Project (SW Moody Avenue: SW River Parkway – SW Gibbs Street), (Moody Project) includes the final design and construction of approximately 3,200 feet of roadway elevated on 14 feet of fill in the heart of the South Waterfront District to facilitate intense urban redevelopment of the area as planned by the City and nearby property owners. SW Moody 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.
3. In April 2010, the City accepted a grant in the amount of \$3,000,000 from the Oregon Department of Transportation for improvements to the SW Harbor Drive/SW River Parkway intersection.
4. The resulting SW Harbor Drive/SW River Parkway Project (Harbor Project) includes the final design and construction of an additional southbound left turn lane from Harbor Drive to SW River Parkway, a lengthened taper to the existing northbound right turn lane from SW Harbor Drive to SW River Parkway, and an additional eastbound lane along SW River Parkway to SW Moody. This intersection improvement will serve as the primary North Portal into the South Waterfront District.
5. Currently, TriMet is in the preliminary engineering phase of the Portland to Milwaukie Light Rail Project (PMLR Project), which will extend high capacity transit service from downtown Portland to unincorporated Clackamas County, ending just south of the City of Milwaukie. The PMLR Project will include the construction of a new bridge across the Willamette River in the South Waterfront District. The bridge will provide for a shared transitway that will serve light rail, buses, bicycles, pedestrians and, eventually, streetcars. This shared transitway will continue west after crossing the bridge in a transit

only street called SW Porter Street. The shared transitway in SW Porter Street will cross SW Moody Street at the Moody/Porter intersection.

6. In August, 2010, the parties entered into an Intergovernmental Agreement To Disburse Federal Grant Funds for the SW Moody Street and Streetcar Reconstruction Project (Subrecipient Agreement) (TriMet Contract No. GH110219TL). Pursuant to the Subrecipient Agreement, the City became the subrecipient of federal TIGER grant funding in the amount of \$23,203,988. The parties are also partners in TriMet's PMLR Project.
7. The Moody Project, Harbor Project, and PMLR Project have overlapping scopes of work, primarily at the Moody/Porter intersection, and the Harbor Drive/River Parkway intersection. These projects also have some schedule concurrency, but generally the Moody Project and Harbor Project will start construction earlier than PMLR Project, and be complete prior to PMLR Project completion.
8. In order to maximize efficiency and minimize situations in which one project would remove improvements built by the other in order to construct its subsequent scope of work, the Parties will monitor and track a list of potential "construction phase scope transfers" that would move certain construction services scopes of work and funds from one project to the other.
9. TriMet and the City are authorized to enter into this Agreement by ORS Chapter 190.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. TriMet and City agree to jointly identify areas where construction phase work is needed on one project in order to accommodate the scope of work of the other in as efficient a manner as possible, and to jointly identify the best resources in order to advance such additional work. Currently identified construction services are set forth in Exhibit A, which is attached hereto and incorporated by this reference herein.
2. If the preferred construction resource to perform such work is the City's contractor, City will negotiate a price with its contractor for the additional construction work and will manage the additional work. If the preferred construction resource is TriMet's contractor, TriMet will negotiate a price with its contractor for the additional construction work and will manage the additional work. The Parties will be responsible for payment of additional work as set forth below.
3. Once the responsible Party has negotiated a price with its contractor for additional construction work, the other Party shall review and approve the proposed scope of work and budget. Upon approval, the Parties shall document the scope of work and budget in a Task Order, to be signed by an authorized representative of both parties.
4. Each Party agrees to assist the other by being responsive to questions regarding any

additional work, and by providing prompt review and comments related to any negotiations or work product.

5. The Party performing construction work shall invoice the other Party for such work not more than once per month. Invoices to TriMet shall be sent to the following address: TriMet Finance Department, Attn: Accounts Payable, 4012 SE 17th Avenue, Portland, OR 97202, and shall contain the TriMet contract number, the date(s) services were furnished, a detailed description of the services furnished, and a price breakdown showing prices and units for the work performed. TriMet shall make payment within thirty days of receipt of a proper invoice. Invoices to City of Portland shall be sent to the following address: attn: Chris Armes, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204 and shall contain the contract number, the date(s) services were furnished, a detailed description of the services furnished, and a price breakdown showing prices and units for the work performed. City shall make payment within thirty days of receipt of a proper invoice.
6. Payment:
 - 6.1 For construction scope transfers from the PMLR Project to the Moody Project: TriMet agrees to pay the City's actual costs incurred for the work performed as authorized by Task Order under this Agreement, not to exceed \$1,010,000 for the services set forth in Exhibit A. This amount will consist of actual amounts invoiced by City contractors for the work. City will not charge for its staff time, and will not add any additional overhead or markup to the amount billed by its contractors.
 - 6.2 For construction scope transfers from the Harbor Project to the PMLR Project: TriMet agrees to pay the City's actual costs incurred for the work performed as authorized by Task Order under this Agreement, not to exceed \$50,000 for the services set forth in Exhibit A. This amount will consist of actual amounts invoiced by City contractors for the work. City will not charge for its staff time, and will not add any additional overhead or markup to the amount billed by its contractors.
 - 6.3 For construction scope transfers from the Moody Project to the PMLR Project: The City agrees to pay TriMet's actual costs incurred for the work performed as authorized by Task Order under this agreement, not to exceed \$550,000 for the services set forth in Exhibit A. This amount will consist of actual amounts invoiced by TriMet contractors for the work. TriMet will not charge for its staff time, and will not add any additional overhead or markup to the amount billed by its contractors.
7. Each party has designated a project manager as its formal representative for purposes of this Project:

Sandy Bradley
TriMet
710 NE Holladay Street
Portland, OR 97232
Phone: (503) 962-2132

Chris Armes
City of Portland
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
Phone: (503) 823-7051

Fax: (503) 962-3042
Email: bradleys@trimet.org

Fax: (503) 823-7371
Email: chris.armes@portlandoregon.gov

The Project Managers are authorized to approve work and billings, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement and to carry out any other act referred to herein.

Either party may designate a different Project Manager by giving written notification to the other party as provided in this paragraph.

8. **Subrecipient Agreement.** The Subrecipient Agreement is the overarching agreement between the Parties regarding the design and construction of the Moody Project, and the terms of the Subrecipient Agreement shall apply to all work performed by the City under this Agreement. In the event of a conflict between this Agreement and the Subrecipient Agreement, the Subrecipient Agreement shall govern. All work performed by TriMet under this Agreement will be subject to the terms of the Master Agreement and any other financial assistance agreements between TriMet and FTA related to the Moody Project, as well as all other applicable state, federal and local laws.
9. **Federal Funding Limitation.** The Parties understand that federal funds will be used to pay for a portion of the Project. To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for the third-party contracts by the federal grant agreement. Both Parties agree to require their third party contractors and consultants to comply with the provisions of Exhibit B, Federal Requirements, which is attached hereto and incorporated by this reference herein.
10. **Compliance with Laws.** The parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. If a Party is not in compliance with any law, regulation, executive order or ordinance, it shall take immediate steps to gain compliance.
11. **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.
12. **No Third-Party Beneficiary.** Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.
14. **Indemnification.** Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, each of the Parties shall hold harmless, indemnify and defend the other and 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 defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of the indemnitor, its officers, employees, or agents under this Agreement.

15. **Effective and Termination Dates.** This Agreement shall be effective on the date set forth above, and shall remain in effect until the completion of all obligations created by this Agreement, unless the parties both agree in writing to extend it.

15.1 Early Termination of Agreement.

15.1.1 City and TriMet, by mutual written agreement, may terminate this Agreement at any time.

15.1.2 Either City or TriMet may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within thirty days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

16. **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.
17. **Oregon Law, Dispute Resolution and Forum.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and City shall negotiate in good faith to resolve any dispute arising out of this Agreement. Any litigation between 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 City Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
18. **Assignment.** Neither TriMet nor City shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.
19. **Severability/Survivability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. 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. The Section headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
21. **Modification; Waiver.** 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.

22. **Audit and Inspection of Records.** The Parties agree to comply with Paragraph 3, Inspection of Records and Services, in the Subrecipient Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement.

**TRI-MET METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**

By _____
Daniel W. Blocher, P.E., Executive Director

Date _____

**CITY OF PORTLAND, by
and through its elected officials**

By _____

Date _____

By _____
Auditor

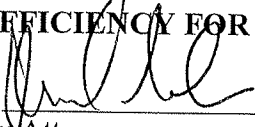
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR TRIMET**

By: _____
Lance Erz, Deputy General Counsel

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR CITY**

By:  _____
City Attorney

Date 5/9/2011

EXHIBIT A

POTENTIAL CONSTRUCTION PHASE SCOPE TRANSFERS

For construction scope transfers from the Portland-Milwaukie Light Rail (PMLR) Project to the Moody Project –Work To Be Performed By City

1. ODOT Sheridan Driveway
Estimated Budget - \$75,000
Construct driveway, fence, and gate on Sheridan Street.
2. Storm Drain
Estimated Budget - \$250,000
Install storm drain pipe and appurtenances where it crosses and connects Moody Ave. Also includes upsizing of Moody storm system to accommodate additional load from PMLR.
3. Waterline Casing & Service Connections
Estimated Budget - \$125,000
Provide casing under future PMLR trackway on 16" waterline, and connections for water services at Porter.
4. Private Utilities
Estimated Budget - \$50,000
Install and stub conduit for anticipated PGE connection to the Willamette River Transit Bridge crossing
5. Train Signals and Systems Components and Conduit Runs
Estimated Budget - \$475,000
Install Signals and electrification components required for the full build out condition of the Moody-Porter intersection
6. Signal Communication Maintenance Access
Estimated Budget - \$2,000
Install curb cut for driveway that will provide access to the Sig-Comm building in the southwest corner of the Moody/Porter intersection.
7. 12" storm lateral for storm water quality facility at the NW corner of Moody Ave and Sheridan St
Estimated Budget - \$30,000
Install a storm lateral and appurtenances to connect a 12" storm line to the existing 36" RCP storm main in Moody Ave, which will provide a drainage path for a storm water

quality facility at the NW corner of Moody Avenue and Sheridan Street that will be built by PMLR.

For construction scope transfers from Moody Project to the Portland-Milwaukie Light Rail (PMLR) Project –Work To Be Performed By TriMet

1. Two Turnouts
Estimated Budget - \$550,000
Furnish and install two turnouts for streetcar operations on SW Moody at SW Porter including drainage of turnouts and demolition of track installed by Moody; to facilitate westbound to northbound and southbound to eastbound streetcar access.

For construction scope transfers from Harbor Project to the Portland-Milwaukie Light Rail (PMLR) Project –Work To Be Performed By TriMet

1. Harbor/River Parkway Intersection Improvements
Estimated Budget - \$50,000
Construct curb and gutter, asphalt path, concrete pedestrian bus stop, stormwater facilities.