

**INTERGOVERNMENTAL AGREEMENT FOR STUDENT TRANSIT
PASS PROGRAM
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 Program 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. The Parties previously entered into student transit pass project(s) agreements supported by funding from the Oregon Department of Energy Business Energy Tax Credit (BETC) Program. In 2011, the Oregon Legislature eliminated BETC Program funding for student transit passes.
- B. The Parties desire to implement a new Student Transit Pass project under revised funding terms 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 January 1 through June 15, 2012 (hereinafter "Program").
- C. The Parties desire to set forth their agreements as to their respective roles and responsibilities for implementation of the Program.

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 PROGRAM COSTS

For purposes of this Program, the Total Program Cost (for period January 1 to June 15, 2012) is \$1,645,000, based on revenue that TriMet estimates it would receive for the 2011-2012 school year if the Student Pass Program were not in place (approximately 6/10s of the school year total of \$2,741,000). The Program will be funded through a combination of contributions from PPS and the City as set forth in this Agreement (based on a per pass 10% discount consistent with the discount provided to other multi-month prepaid pass purchasers), and reserve Program funds.

ARTICLE II - DIVISION OF RESPONSIBILITIES

A. City Shall:

1. Assign a Program Manager for City's work under this Agreement who will serve as City's Program contact.
2. Attend meetings and distribute action items to the parties for follow-up.
3. Work with the partners to research and seek out additional regional, state and federal sources for long-term funding for extension of the Program.
4. Pay TriMet a total of \$225,000 for its share of the Total Program Cost. City shall make payment to TriMet within sixty (60) days from the Parties' execution of this Agreement. City's obligation to pay TriMet \$225,000 shall survive termination or expiration of this Agreement.
5. Authorize free travel on all regular Portland Streetcar service routes for students enrolled at Schools, for the period of January 1 through June 15, 2012. City shall recognize a TriMet Youth monthly pass issued pursuant to this Agreement, and a PPS-issued, high-school student, photo ID card affixed with a TriMet issued sticker, as valid proof of fare payment on City's Portland Streetcar for such time period. Photo ID cards are 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.
6. Work with the partners to coordinate distribution of TriMet developed safety materials, "How to Ride" materials and the TriMet Code of Conduct Guidelines to each student, at badge or sticker distribution events.

B. PPS Shall:

1. Assign a Program Manager for PPS's work under this Agreement who will serve as the PPS Program contact.
2. PPS will produce a student photo ID card affixed with a TriMet issued fare sticker which shall be distributed to each participating student. PPS shall pay the costs of producing the photo ID cards, including production costs of stickers. Prior to distribution of photo IDs or TriMet passes for this Program, PPS shall provide TriMet with a list of participating schools with student enrollment and whether the school will issue photo identification cards or TriMet passes (see Article II (D)(3)) below. PPS will provide to Schools written procedures and recording forms for tracking sticker serial numbers.
3. Provide TriMet with a written procedure for distribution and tracking of TriMet monthly passes to be delivered as part of the Program. 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. Pay TriMet a total of \$475,000 for its share of the Total Program Cost. PPS shall make payment to TriMet within sixty (60) days from the Parties' execution of this Agreement. PPS's obligation to pay TriMet \$475,000 shall survive termination or expiration of this Agreement.
5. 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.
6. 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.
7. Distribute the TriMet developed "How to Ride" materials and the TriMet Code of Conduct guidelines to each student.
8. Make every effort to provide school start times for participating schools to TriMet for transit service planning purposes.

C. TriMet Shall:

1. Assign a Program Manager for TriMet's work under this Agreement who will serve as TriMet's Program contact.
2. Authorize free all-zone travel on regular TriMet service routes for students enrolled at participating Schools, for the period of January 1 through June 15, 2012. 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 affixed TriMet issued sticker as valid proof of fare payment for such time period. Photo ID cards are 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.
3. Design stickers to be affixed to the student photo ID cards, and deliver stickers to PPS. PPS will pay the cost of sticker production.
4. Develop "How to Ride" materials for the Program and deliver them to PPS with TriMet Code of Conduct guidelines materials.

D. General Agreements/Obligations of the Parties

1. The Parties agree to make decisions and act as quickly as possible to pursue the development of the Program and to provide resources and personnel necessary to implement the Program 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 Program, and that any costs or expenses incurred by TriMet for the Program will be paid to TriMet by the City and/or PPS. Specific obligations as between City and PPS to pay TriMet for Program costs and expenses are set forth in this Agreement.
3. To be eligible for participation in the Program, Schools should be able to issue student photo ID cards with affixed TriMet issued sticker. 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.
4. The Parties agree that after expiration of the Program any future student transit pass program would be subject to agreement by all of the Parties to the terms and conditions of a future student transit pass program through a subsequent Intergovernmental Agreement.
5. The Parties agree to include additional funding for the student transit pass programs on their respective legislative agendas.

E. Program Managers

1. TriMet hereby appoints the person identified below to act as its Program 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 Program Manager and may specify other contact information for its Program Manager by means of a writing delivered to PPS' and City's Program Managers.

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

Samir Raad, Youth Strategies Coordinator
 Office of the Mayor
 City of Portland
 1221 S.W. 4th Avenue, Suite 340
 Portland, OR 97076
 Telephone:(503) 823-2855
 Facsimile: (503) 823 -3588

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

3. PPS hereby appoints the person identified below to act as its Program 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 Program Manager and may specify other contact information for its Program Manager by means of a writing delivered to TriMet's and City's Program 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 Program 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. The Mayor or the Mayor's designee is authorized to execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase City's financial risk. Increases to the grant amount must be approved by the City Council unless the City Council delegated authority to amend the grant amount in the ordinance authorizing this Agreement. Amendments to this Agreement, including any increase or decrease in the grant amount, must be in writing and executed by the authorized representatives of the Parties and approved to form by the City Attorney.

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) Program 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 January 1, 2012 through June 15, 2012, 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

By: _____
Date: _____

Approved **APPROVED AS TO FORM**

By: James H. Van Dyke
City Attorney
CITY ATTORNEY 4/26/12

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

By: _____
Date: _____

Approved as to Form:

By: _____
TriMet Legal Department

PORTLAND PUBLIC SCHOOLS

By: _____
Date: _____

Approved as to Form:

By: _____
Legal Counsel