

**INTERGOVERNMENTAL AGREEMENT AMONG THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON (TRIMET), THE CITY OF PORTLAND
AND THE CITY OF PORTLAND, OREGON**

10-0809, AMENDMENT NO. 1

This Amendment No. 1 amends the July 1, 2010 Intergovernmental Agreement ("Agreement"), among the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), the City of Portland ("Portland") and the City of Portland ("Portland") (collectively referred to as the "Parties") for provision of Transit Police Division ("Transit Police") services, effective September 1, 2011.

The Parties agree as follows:

1. This Agreement is funded in part by a U.S. Department of Homeland Security Transit Security Grant between TriMet and the U.S. Department of Homeland Security. This Agreement is subject to all provisions prescribed for third party contracts by that financial assistance agreement as set forth in the attached and incorporated Exhibit A.
2. All other terms and conditions of the Agreement shall remain in full force and effect.

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

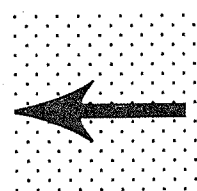
CITY OF PORTLAND

TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON (TRIMET)

By: _____
Sam Adams Date
Mayor

By: Harry Saporta 24 APR 12 2012
Harry Saporta Date
Safet & Security Executive

By: _____
Lavonne Griffin-Valade Date
Auditor



Approved as to form:
APPROVED AS TO FORM

Approved as to form:

By: James H. Van Dyke 4/23/12
City Attorney Date
CITY ATTORNEY

TriMet Legal Department 4/24/12
TriMet Legal Department Date

EXHIBIT A
U.S. DEPARTMENT OF HOMELAND SECURITY TRANSIT SECURITY GRANT CONTRACT
REQUIREMENTS

As used below, the term "Contractor" shall mean the City of Portland, Oregon

I. DEFINITIONS

- A. Homeland Security Directive includes any Homeland Security circular, notice, order or guidance providing information about Homeland Security programs, application processing procedures, and Project management guidelines.
- B. Government means the United States of America and any executive department or agency thereof.
- C. Homeland Security means the United States Department of Homeland Security (DHS) or it's Office of Domestic Preparedness.
- D. Third Party Subcontract means a subcontract at any tier entered into by Contractor or a subcontractor, financed in whole or in part with Federal assistance originally derived from Homeland Security.

II. FEDERAL REQUIREMENTS

- A. Homeland Security requires that a grant recipient require that any contractor employed in completion of a DHS grant project comply with the following standard requirements, the terms and conditions of which are incorporated herein by reference. In addition, any such contractor shall require each of its subcontractors employed in the completion of the project to comply with these requirements:

Administrative Requirements:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including the provisions set forth in this Exhibit A
- 44 CFR part 10, Environmental Considerations

Cost Principles:

- 2 CFR Part 225, Cost Principles for State, Local, and Indian tribal Governments (formerly OMB Circular A-87)

Audit Requirements:

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

- B. Contractor shall at all times comply with all applicable regulations, policies, procedures and Homeland Security Directives, including without limitation those listed directly or by reference in the Transit Security financial assistance agreement between TriMet and the Homeland Security, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement. Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

- C. All Homeland Security mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause TriMet to be in violation of the Homeland Security terms and conditions.

III. ACCESS TO RECORDS

- A. Contractor agrees to provide TriMet, Homeland Security, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than six years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date Contractor receives final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until TriMet, Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- D. Contractor agrees to include paragraphs A, B, and C above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

IV. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of Contractor, 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, Contractor makes a material representation of fact relied upon by TriMet that Contractor has complied with 49 CFR Part 29. If it is later determined that Contractor 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, Contractor 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.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A. TriMet and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

- B. Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (applicable to non-construction contracts in excess of \$2,500 that employ laborers or mechanics)

- A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as amended and as supplemented by Department of Labor regulations (29 C.F.R. Part 5), which are incorporated herein.
- B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause in Paragraph B of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph B of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph B of this section.
- D. **Withholding for unpaid wages and liquidated damages** - TriMet shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C of this section.
- E. **Subcontracts** - The contractor or subcontractor shall include in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

VII. **NOTICE OF REPORTING REQUIREMENTS**

Contractor shall comply with the reporting requirements of Homeland Security stated in 44 C.F.R. §§ 13.40 et seq. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VIII. COPYRIGHTS

- A. Contractor agrees that Homeland Security shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
1. The copyright in any work developed with the assistance of funds provided under this Agreement;
 2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B. Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

IX. PATENT RIGHTS

- A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, TriMet and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Homeland Security. Unless the Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), TriMet and Contractor agree to take the necessary actions to provide, through Homeland Security, those rights in that invention due the Government in accordance with 44 CFR Part 13.36(i) (8).
- B. The Contractor also agrees to include paragraph A above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Homeland Security.

X. ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94-163, 89 Stat.871). Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI. ENVIRONMENTAL REQUIREMENTS

- A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA regional office.

- B. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq. Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA Regional Office.
- C. Contractor will comply with Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- D. Contractor agrees to include the requirements at paragraphs A, B and C above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security.

CERTIFICATION

REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 an 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients 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.

The Contractor, the City of Portland, Or., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Executed this ____ day of ____, 20 ____

By: _____
(Signature of authorized official)

(Title of authorized official)

APPROVED AS TO FORM

James H. Van Dyke
8/23/12
CITY ATTORNEY

