

**INTERGOVERNMENTAL AGREEMENT  
FOR MT. SCOTT RADIO TOWER DETUNING**

**TriMet Contract No. GC160882LE**

THIS AGREEMENT is 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. TriMet owns the Mt. Scott radio tower ("Tower") in the City of Happy Valley, Oregon. The City leases space from TriMet on the Tower in order to place radio communications equipment there.
2. The City has hired a contractor (Motorola) to structurally reinforce the Tower in order to permit the placement of additional City communications equipment. Motorola was selected pursuant to the RFP process conducted by the City.
3. TriMet has a need to perform detuning work on the Tower. Mastec Network Solutions ("Mastec"), a subcontractor to Motorola, is capable of performing such detuning work. The Parties agree that the City will direct Motorola to have Mastec perform the Tower detuning work needed by TriMet, and TriMet will reimburse the City for the cost of such work, in accordance with the terms and conditions set out in this Agreement.

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

**TERMS OF AGREEMENT**

1. City will direct Motorola to design and install the Tower detuning equipment through its subcontractor Mastec. All work performed by Mastec will be in accordance with FCC detuning requirements.
2. TriMet agrees that, upon submission of sufficient documentation by the City of the amount paid for the detuning work, it will reimburse City the cost of the detuning work. The Parties understand that the estimated cost for the detuning work is \$44,132.38, but that TriMet will pay City the actual cost of the work.

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3. Each Party has designated a project manager as its formal representative for purposes of this Project:

Chris Conner  
TriMet  
1800 SW 1<sup>st</sup> Avenue, Ste. 300  
Portland, OR 97201  
Phone: (503) 962-5654  
Email: connerc@trimet.org

Karl Larson  
City of Portland  
1900 SW 4<sup>th</sup> Avenue, Ste. 3600  
Portland, OR 97201  
Phone: (503) 823-5882  
Email: karl.larson@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.

4. **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.
5. **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.
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. **Indemnification.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

13. **Effective and Termination Dates.** This Agreement shall be effective as of August 25, 2015, 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.
14. **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.
15. **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. If the Parties are unable to resolve any dispute within fourteen calendar days, the Parties are free to pursue any legal remedies that may be available. 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.
16. **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.
17. **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.
18. **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.
19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. 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.

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20. **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 Party as it deems necessary for review of the other Party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting Party.

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

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

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

By   
J. Douglas Kelsey, Chief Operating Officer

By \_\_\_\_\_

Date Feb. 10, 2017

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR TRIMET**

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR CITY**

By:   
Lance Erz, Deputy General Counsel

By: \_\_\_\_\_  
City Attorney

Date 2/6/17

Date \_\_\_\_\_