

Amendment No. 7

**Intergovernmental Agreement Related to the
Operations & Maintenance of the Portland Streetcar System
between the Tri-County Metropolitan Transportation District of Oregon
and the City of Portland**

This Amendment No. 7 to the Intergovernmental Agreement Related to the Operations & Maintenance of the Portland Streetcar System ("Agreement"), is made and entered into between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the City of Portland (City), (collectively referred to as "the Parties"), effective July 1, 2017.

RECITALS:

- (A) The Parties executed the Agreement on August 8, 2012, with effective date of September 1, 2012.
- (B) The Agreement is amended annually to set forth specific TriMet funding to City for Streetcar operations for the upcoming fiscal year. The Agreement has been amended 6 times since initial execution August 8, 2012, and execution of Amendment 6 on June 29, 2016.
- (C) This Amendment No. 7 to the Agreement includes the following updates and revisions to the Agreement:
 - 1. Section II of the Agreement, Funding for Streetcar Operations & Maintenance, is revised:
 - a. to specify TriMet funding to City for Streetcar operations for FY17/18 (July 1, 2017 through June 30, 2018); and
 - b. to specify a revised methodology of calculating TriMet operating funding annual amounts, beginning in FY18/19, based on net operating cost per vehicle hour, as per Amendment 1 to the Parties' Master Agreement on Streetcar.
 - 2. Section III of the Agreement, TriMet Personnel for Streetcar Operations, is revised by restating the entirety of its Exhibit A, Terms and Conditions, TriMet Personnel for Streetcar Operations. The re-stated Exhibit A clarifies that while City supervises and directs TriMet personnel for Streetcar operations, these personnel at all times remain TriMet employees, and that TriMet retains employer management responsibilities for these personnel.

AGREEMENT:

- (A) Section II of the Agreement, Funding for Streetcar Operations & Maintenance, Subsection A, Funding Process and Amounts, is revised as follows:

- 1. by inserting the following provisions prior to the last three paragraphs of Subsection A:

Total FY17/18 TriMet funding to City for Streetcar operations will be \$7,675,379 reflecting TriMet's share of Streetcar's net operating cost (after fares) for FY17/18, as determined by a joint decision-making process between TriMet and City originally defined in the August 8, 2012 Streetcar Master Agreement between TriMet and City, as set forth below and in the attached Exhibit 1 to this Amendment No. 7. From July 2017 through June 2018, TriMet will make equal monthly payments to the City for Streetcar operations in the amount of \$639,614.91.

| | | |
|---|--|---------------|
| A. | Streetcar Operating Cost Net of Fares, to Allocate Between City and TriMet | \$ 11,039,045 |
| B. | NS Line Portion of (A) | 4,731,019 |
| C. | A/B Loops Portion of (A) | 6,308,026 |
| D. | TriMet Funding Share of (B) for FY17/18: 85.00% per Master Agreement | 4,021,366 |
| E. | TriMet Funding Share of (C) for FY15/16: 50.00% per Master Agreement | 3,154,013 |
| F. | TriMet Fare Revenue Applicable to Streetcar in FY17/18* | 500,000 |
| G. | Total TriMet Funding to Streetcar in FY15/16 (D+E+F) | \$ 7,675,379 |
| H. | TriMet equal monthly payments to City, July 2015 through June 2016 | \$ 639,614.91 |
| * on or about 1/1/18, all fare revenue applicable to Streetcar is to be collected by the City, via the "e-fare" system. | | |

Beginning in FY18-19, the TriMet operating funding share will be determined by applying the operating funding threshold measures applicable to TriMet set forth in the Streetcar Master Agreement to the product of the Parties' agreed-upon Streetcar system annual vehicle revenue hours for the upcoming fiscal year, and the FY17-18 net operating cost (net of fare and sponsor revenues) per Streetcar revenue vehicle hour, adjusted to the upcoming fiscal year in proportion to the change in TriMet's represented employees' wage rates from FY17-18 to the upcoming fiscal year, as per TriMet's Working & Wage Agreement with the Amalgamated Transit Union. If the Parties agree to increase the number of TriMet or City Streetcar maintenance personnel for the upcoming fiscal year, more than proportionate to the increase (if any) in revenue vehicle hours for that year, the net operating cost per Streetcar revenue vehicle hour will be adjusted accordingly for that reason as well. For FY17-18, the net operating cost per Streetcar revenue vehicle hour is \$149.60, based on \$11,039,045 divided by the sum of 31,475.6 NS Line annual vehicle revenue hours and 42,317.6 A/B Loop annual vehicle revenue hours.

2. and by replacing the last three paragraphs of Subsection A, with the following four paragraphs:

Through FY17/18, on an annual basis following June 30 of each year, the City and TriMet shall conduct an annual review and reconciliation of actual Streetcar operating costs and budgeted operating revenues for the fiscal year just ended. If the results show that the actual Streetcar operating cost net of fares, to allocate between City and TriMet as per the Master Agreement cost responsibility process, is less than was projected for that fiscal year at the time the TriMet funding to City for Streetcar operations was determined for that fiscal year, then such TriMet funding amount shall be reduced accordingly. Such reduction shall be credited against the amount of TriMet funding to City for Streetcar operations that was determined for the subsequent fiscal year.

Beginning in FY18/19, if the City reduces the scheduled level of Streetcar service during a fiscal year below the level that was projected for that fiscal year at the time the TriMet funding amount to City for Streetcar operations was determined for that fiscal year, then following the June 30 end of that fiscal year, a reduction adjustment to the TriMet funding amount for that year will be determined, proportionate to such reduction in the scheduled Streetcar vehicle revenue hours, and the portion of that fiscal year that the level of Streetcar service was reduced. For the purpose of this provision, any days in which Streetcar service was interrupted, for any reason, will be disregarded when considering the scheduled level of Streetcar service. If a reduction adjustment to the TriMet funding amount for a given fiscal year is determined due to a City reduction in the scheduled level of Streetcar service during that fiscal year, such TriMet funding reduction shall be credited against the amount of TriMet funding to City for Streetcar operations determined for the subsequent fiscal year.

Any consideration of increased funding for Streetcar service improvements will occur at the Permanent Executive Group, as set forth under the Master Agreement on Streetcar.

The City and TriMet agree that TriMet will retain federal Urbanized Area Formula (5307), State of Good Repair (5337), and Enhanced Mobility for Seniors and Individuals with Disabilities (5310) funds that are attributable to the Portland Streetcar system.

(B) Section III of the Agreement, TriMet Personnel for Streetcar Operations, is revised as follows:

1. by replacing the first paragraph of Section III, with the following paragraph:

Except for those Streetcar/MAX Track Crossing Facilities Maintained by TriMet as set forth in Exhibit B, the City is responsible for the operation and maintenance of the Streetcar system, including but not limited to the supervision and direction of personnel provided to the City by TriMet under this IGA, in accordance with the terms and conditions set forth in Exhibit A.

2. and by replacing Exhibit A of Section III, Terms and Conditions, TriMet Personnel for Streetcar Operations in its entirety, with the revised Exhibit A attached as Exhibit 2 to this Amendment No. 7.

(C) ALL OTHER PROVISIONS OF THE AGREEMENT, AS PREVIOUSLY AMENDED THROUGH AMENDMENT 6, REMAIN UNCHANGED.

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

By: _____
Dan Saltzman, Commissioner-in-Charge

By: _____
Neil McFarlane, General Manager

Dated: _____

Dated: _____

Approved as to Form:

By: _____
Tracy Reeve, City Attorney

By: _____
Shelley Devine, General Counsel

**Amendment 7 - Exhibit 1
PORTLAND STREETCAR
Master Agreement Cost Responsibility**

| 1 | Number of Operators | 56 | 56 | 56 | 56 | 56 | 56 |
|------------------------------|--|---------------------|--|---|-------------------------|-------------------------|--|
| | | | | Projected | Projected | Projected | Projected |
| | Included Assumptions about HOP | | 3% infl. CoP staff; 0% infl. TM staff; NS Line Full Maturity | 3% infl. CoP & TM staff; Loops reach 1/3 of Maturity Target | 3% infl. CoP & TM staff | 3% infl. CoP & TM staff | 3% Inflation (Loops reach 2/3 of Maturity Target) |
| | | FY 16-17 | FY 17-18 | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 |
| 2 | City Staff Costs | 2,478,091 | 2,591,141 | 2,668,875 | 2,748,941 | 2,831,409 | 2,916,352 |
| 3 | City M&S (less PSI and TriMet) | 2,597,497 | 2,623,472 | 2,649,706 | 2,676,204 | 2,702,966 | 2,729,995 |
| 4 | City Internal Services | 334,789 | 344,833 | 355,178 | 365,833 | 376,808 | 388,112 |
| 5 | E-Fare Capital Payments (\$1.3m) ¹ | 0 | 433,333 | 433,333 | 433,333 | 0 | 0 |
| 6 | E- Fare Operating Costs ¹ | 120,000 | 240,000 | 240,000 | 240,000 | 240,000 | 240,000 |
| 7 | TriMet Staff Costs | 7,750,305 | 7,800,409 | 8,034,422 | 8,275,454 | 8,523,718 | 8,779,430 |
| 8 | TriMet Other Services | 53,045 | 53,708 | 55,319 | 56,979 | 58,688 | 60,449 |
| 9 | PSI Operating Budget (per Contract) | 955,142 | 980,796 | 1,007,220 | 1,034,437 | 1,065,470 | 1,097,434 |
| 10 | Total Streetcar Operating Budget | 14,505,536 | 15,067,692 | 15,444,053 | 15,831,181 | 15,799,059 | 16,211,772 |
| 11 | (City Asset Mgmt Offset) | (705,868) | (727,044) | (748,855) | (771,321) | (794,461) | (818,294) |
| 12 | Net City Operating Budget | 13,799,668 | 14,340,648 | 14,695,198 | 15,059,860 | 15,004,599 | 15,393,477 |
| Allocation of Service | | | | | | | |
| 13 | NS Op Percentage | 6 | 42.86% | 6 | 42.86% | 6 | 42.86% |
| 14 | A/B Loop Op Percentage | 8 | 57.14% | 8 | 57.14% | 8 | 57.14% |
| 15 | PSI/City Streetcar Sponsors | 309,000 | 318,270 | 327,818 | 337,653 | 347,782 | 358,216 |
| 16 | City Streetcar Revenues (Fares) | 1,000,000 | 750,000 | 500,000 | 250,000 | 250,000 | 250,000 |
| 17 | Fare Reciprocity (per E-Fare adoption rate) | 1,000,000 | 500,000 | 0 | 0 | 0 | 0 |
| 18 | Est. E-Fare Gross Revenue to City ² | 400,000 | 1,300,000 | 2,000,000 | 2,250,000 | 2,250,000 | 2,250,000 |
| 19 | Total Fares and Sponsors | 2,709,000 | 2,868,270 | 2,827,818 | 2,837,653 | 2,847,782 | 2,858,216 |
| 20 | Net to City after E-Fare Capital Costs | 2,492,333 | 2,434,937 | 2,394,485 | 2,404,320 | 2,847,782 | 2,858,216 |
| 21 | Total Net to Allocate³ | \$10,874,001 | \$11,039,045 | \$11,434,047 | \$11,788,874 | \$12,156,816 | \$12,535,262 |
| | | | | | | | |
| 22 | NS Line | 4,660,286 | 4,731,019 | 4,900,306 | 5,052,375 | 5,210,064 | 5,372,255 |
| 23 | TriMet Share | 73.33% | 3,417,388 | 85.00% | 4,165,260 | 85.00% | 4,428,555 |
| 24 | City Share | 26.67% | 1,242,898 | 15.00% | 735,046 | 15.00% | 781,510 |
| | | | | | | | |
| 25 | A/B Loops | 6,213,715 | 6,308,026 | 6,533,741 | 6,736,500 | 6,946,752 | 7,163,007 |
| 26 | TriMet Share | 50.00% | 3,106,857 | 50.00% | 3,154,013 | 61.67% | 4,284,062 |
| 27 | City Share | 50.00% | 3,106,857 | 50.00% | 3,154,013 | 38.33% | 2,662,690 |
| 28 | TriMet Master Agreement Contribution | 6,524,245 | 7,175,379 | 8,194,618 | 8,448,918 | 8,712,617 | 9,819,050 |
| 29 | Fare Reciprocity/E-Fares | 1,000,000 | 500,000 | 0 | 0 | 0 | 0 |
| 30 | Total TriMet Contribution | 7,524,245 | 7,675,379 | 8,194,618 | 8,448,918 | 8,712,617 | 9,819,050 |
| 31 | City Master Agreement Contribution | 4,349,756 | 3,863,666 | 3,239,429 | 3,339,957 | 3,444,200 | 2,716,212 |
| 32 | City Payments and Fares⁴ | 6,275,423 | 6,665,269 | 6,500,580 | 6,610,942 | 6,291,982 | 5,574,428 |
| 33 | Total City and TriMet Contributions | 13,799,668 | 14,340,648 | 14,695,198 | 15,059,860 | 15,004,599 | 15,393,477 |
| 34 | Funds Remaining for Capital (City) | 150,244 | 636,334 | 1,260,571 | 1,295,043 | 1,329,850 | 2,201,059 |
| 35 | Total City Contribution (Ops + Capital) | 4,500,000 | 4,500,000 | 4,500,000 | 4,635,000 | 4,774,050 | 4,917,272 |

1. E-Fare capital payment and operating cost assumptions: 3 fiscal years of equal capital payments FYs18-20); \$20,000 per month in on-going operating costs.
2. FY 17-18 assumes migration of fares from TVM and on-board machines to E-Fare cards, and matches the adoption rate provided by TriMet for Jan. 1 2017 launch
3. Total Net to Allocate removes the capital cost of E-Fare.
4. City E-Fare capital costs added back in so that row 33 total matches row 12 total.

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Amendment 7 - Exhibit 2

Section III.A - Exhibit A
Terms and Conditions - TriMet Personnel for Streetcar Operations

1. Streetcar Department - TriMet will establish a separate Streetcar department within its Operations Division and designate personnel to work in the Streetcar Department, in accordance with Section III. TriMet Personnel for Streetcar Operations of this IGA and the Supplemental Working and Wage Agreement Relating to Portland Streetcar Special Project ("Supplemental WWA") between TriMet and the Amalgamated Transit Union ("ATU"). TriMet will only provide personnel in the classifications of TriMet's on-site manager, Streetcar Operator, Streetcar Maintenance Technician, Streetcar Track Maintainer, Streetcar Signals Maintainer, and Streetcar Superintendent. The personnel required by the City will be assigned to the City from the Streetcar Department.
2. Employee Status - The City will reimburse TriMet for its direct and indirect cost of providing personnel, as negotiated. The personnel of TriMet who perform services hereunder, however, will at all times remain TriMet employees. TriMet will be responsible for tax withholdings, salaries, unemployment insurance, workers compensation coverage, social security contributions, and employee benefits such as vacation, sick pay, disability, insurance, and pensions of the TriMet personnel.
3. Personnel Subject to Direction of the City - The personnel provided by TriMet and assigned to Streetcar pursuant to the IGA will be subject to the direction of City Streetcar managers for any and all work performed by them. The City will supply and provide the personnel with access to all facilities, equipment, and tools necessary for the personnel to perform their duties for the City. The City will also obtain all consents and approvals from third parties required to enable the personnel to perform work and have access to needed facilities, equipment, and tools. The City will establish work rules and standard operating procedures in consultation with TriMet. TriMet will remain responsible for its personnel assigned to Streetcar with respect to terms and conditions of employment, including wages, benefits, discipline, and hiring and separation from employment.

TriMet personnel assigned to Streetcar shall at all times remain subject to personnel policies and standards of performance and conduct generally applicable to TriMet employees. A consistent level of performance and conduct are necessary for the City to maintain efficient operations, a safe, cooperative, and respectful workplace, and positive customer relations for the Streetcar brand. City will provide assigned personnel with the following rules and standards, and TriMet will hold assigned personnel accountable to same:

| City of Portland Work Rules | Corresponding TriMet Work Rules (as applicable) |
|---|--|
| Streetcar Operating Rulebook | |
| Streetcar Standard Operating Procedures Manual | |
| § 2.02 Prohibition Against Workplace Harassment, Discrimination and Retaliation | HR 4.1, 6.2, 6.3 |
| § 4.01 Drug and Alcohol Use Prohibited | HR 5.3 |
| § 4.08 Information Technologies (4.08A Social Media) | HR 8.1, 8.2, 8.3 |
| § 4.09 Use of City Resources | HR 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7 |
| § 4.12 Workplace Violence Prohibited | HR 5.2 |
| § 11.01 Statement of Ethical Conduct | HR 6.9 |
| § 11.02 Prohibited Conduct | HR 6.2 |

If, during the term of this IGA, the City has a specific reasonable belief that a TriMet employee assigned to Streetcar has failed to comply with one of the City's standards of conduct listed above, or of TriMet's own standards of performance or conduct, City shall promptly give notice to TriMet of its desire to have discipline considered or to have the employee reassigned from Streetcar. Subject to fact finding and a good faith belief by TriMet that the alleged conduct took place and that it violates one of the City's standards of conduct or of TriMet's own standards of performance or conduct, TriMet shall either take disciplinary action or reassign the employee immediately. TriMet will replace the employee as soon as practicable, if reassigned. The parties further agree that if discipline is warranted, it will be issued by TriMet. Discipline may be imposed for violations of TriMet's standards of performance or conduct, as well as applicable Streetcar Operating Rules acknowledged by TriMet personnel as applicable upon assignment or as a condition of continued assignment to Streetcar. City agrees to cooperate in any fact finding conducted pursuant to requests for reassignment from Streetcar or discipline of assigned personnel.

TriMet operations managers and City's Streetcar managers will collaborate during transfers of TriMet personnel to and from the Streetcar Department to maintain consistent employee performance standards and supervision and continuity of employee records documenting performance, corrective actions taken, and coaching/counseling sessions.

For significant Streetcar incidents, including collisions and derailments, Streetcar's investigation team will include TriMet safety and operations managers, and Streetcar managers will consult with TriMet safety and operations managers to include relevant consideration of the Streetcar Department employee's combined TriMet/Streetcar work record in determination of corrective actions and/or consequences.

4. Number of Personnel Supplied; Budget - On or before each January 1 during the term of the Agreement, the City and TriMet will agree on the number of personnel to be provided to the City for the following fiscal year.
5. Additional Personnel - In the event the City notifies TriMet that the City requires more personnel during the year than initially determined under paragraph 4 above, TriMet will use its best efforts to provide the additional personnel to the City, and the City will reimburse TriMet for its direct and indirect cost of supplying the additional personnel.
6. Selection of Personnel - On agreement on the number of personnel for the following fiscal year as set out in Paragraphs 4 and 5 above, TriMet will offer the openings in the Streetcar Department to its employees. TriMet will offer the openings, at the next regularly scheduled workforce sign-up to those eligible TriMet employees who apply and meet the job qualifications established by the Supplemental WWA and the City. The employees selected will be designated to work in the Streetcar Department and will be assigned work by the City.
7. Training - The City will provide training to Streetcar Department personnel on Streetcar operations. Any training provided by TriMet will be the subject of separate cost reimbursement agreements between the City and TriMet as set out in Section IV. Other TriMet Services for Streetcar Operations and Maintenance of this IGA.
8. Work Assignments - On completion of Streetcar Department training, the City will assign Streetcar department personnel to Streetcar Department work and schedules in accordance with a sign-up system developed by the City in consultation with TriMet. The work to be performed by Streetcar

Department personnel will be as set out in job descriptions developed by the City and provided by the City to TriMet. When TriMet personnel are in Streetcar Department training or assigned to Streetcar Department work, they will be supervised by and subject to directions (including designation of their place of work, schedule assignments and reporting) of the City's Streetcar Manager of Operations, Manager of Maintenance, or their designees.

9. Work Hours - The City may schedule five (5) 9-hour day or four (4) 10-hour day workweeks, or such other shift durations and workweeks as may be agreed to by the City and TriMet. If the City schedules 10 hour shifts, it may abandon the 10 hour shifts at its discretion.
10. Overtime - The City will reimburse TriMet at a rate of time and one half for employee hours worked in excess of 10 hours on any one 4/10 shift and in excess of 8 hours on any one 5/8 shift.
11. Extra Board - The TriMet Extra Board will not be used for Streetcar Department work.
12. Grievances - Pursuant to the WWA, specifically including the Supplemental WWA, grievances arising from TriMet personnel assigned to the Streetcar Department will be adjusted pursuant to the contractual grievance and arbitration procedure contained in the WWA, except that the TriMet on-site manager (or his/her designee) shall hear grievances at each step of the grievance process. As subject matter experts, the City's Streetcar managers or designees shall be responsible for providing timely written input and responses to TriMet's on-site manager regarding Streetcar Department personnel issues and grievances. TriMet's on-site manager will lead all grievance responses, in accordance with the timelines stated in the WWA's grievance process. TriMet shall have final authority to deny, settle or sustain grievances, subject to notice and consultation with the City. No grievance adjustment under this paragraph will be deemed to establish a practice or any precedent for non-Streetcar Department operations, and no grievance adjustment for non-Streetcar Department operations will be deemed to establish a practice or any precedent for Streetcar Department operations.