

**INTERGOVERNMENTAL GRANT AGREEMENT FOR THE DIVISION TRANSIT
PROJECT BETWEEN TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON AND CITY OF PORTLAND, OREGON**

THIS INTERGOVERNMENTAL GRANT AGREEMENT FOR THE DIVISION TRANSIT PROJECT (“Agreement”) is between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district organized under the laws of the State of Oregon and the City of Portland (“City”), a municipal corporation organized under the laws of the State of Oregon. TriMet and City are hereunder referred to as the “Parties.”

RECITALS

1. TriMet is created and operated under ORS Chapter 267, and owns and operates the public mass transit system serving the tri-county area of Multnomah, Washington, and Clackamas counties. The City is a municipal corporation organized under the laws of the State of Oregon.
2. Pursuant to ORS Chapter 190, the Parties have the authority to enter into this Agreement.
3. The Division Transit Project (Project) plans to bring bus rapid transit (BRT) to SE Division Street between downtown Portland and Gresham, creating more reliable and faster service for riders to get to school, home, work, worship, shopping, and services.
4. On May 13, 2015, the Portland City Council voted unanimously to support entering the Project Development phase of the Project and declare its intent to provide \$2 million of Transportation System Development Charge (TSDC) funds for Project Development in Fiscal Years 2015/16 and 2016/17. (Resolution 37123).
5. On August 19, 2015, TriMet executed the Powell-Division Transit and Development Project (Phase 2) Intergovernmental Agreement with Metro (TriMet IGA No. GP160813LG) committing \$3,050,000 toward Project Development activities for the Project.
6. On July 27, 2016, Portland City Council adopted Resolution No. 37224 to adopt the *Powell-Division Transit and Development Project - Portland Local Action Plan* for land use concepts, affordable housing investments, and community development actions for the portion of the Powell-Division transit corridor within the City of Portland.
7. On December 7, 2016, the City of Portland adopted Resolution No. 37254 accepting a bus rapid transit alignment primarily along SE Division Street as the *Locally Preferred Alternative* for the Project and the associated *Locally Preferred Alternative Conditions of Approval*.
8. On December 14, 2016, the TriMet Board adopted Resolution No. 16-12-70 recommending the proposed Division Transit Project Locally Preferred Alternative for Metro Council adoption; and describing TriMet’s (i) intent to reallocate Line 4 (Division Street) service hours within and intersecting the Powell-Division corridor and (ii) design and construction programs for mitigating impacts on adjacent business and residences.

9. On June 7, 2017, pursuant to the allocation of certain regional flexible funds from the Metropolitan Improvement Program (MTIP) under Metro Resolution No. 17-4800, Metro and TriMet entered an intergovernmental agreement wherein TriMet committed to provide \$25,000,000 for the design and construction of the Project.
10. The Parties plan to fund the Project, in part, with a grant of Small Starts Funds from FTA; receipt of such grant funds is conditioned on receipt of a Construction Grant Agreement ("CGA") between TriMet and FTA.
11. Among other requirements, to be eligible to receive a CGA from FTA (i) the Project must achieve a sufficient rating under FTA regulations and (ii) TriMet must demonstrate to FTA that it has all required funding for the Project, other than the Small Starts funds, fully committed.
12. In February 2018, FTA released its *Annual Report on Funding Recommendations for the FY 2019 Capital Investment Grants Program*, wherein FTA rated the Project as Medium-High; making a Division Transit Project of less than \$175 million eligible for a Small Starts grant of up to 50% of eligible project costs, subject to certain requirements.
13. The Parties desire to (i) complete the funding plan for the design and construction of the Project by each committing additional funds to the amounts committed in 2015 and (ii) document each Party's additional funding commitment in a manner acceptable to FTA and consistent with the requirements for receipt of a CGA for the Project.

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties as follows:

AGREEMENT

ARTICLE I. GENERAL CONVENTIONS AND SCOPE OF AGREEMENT

1.1 General Conventions

1.1.1 This Agreement is effective as of the date on which this Agreement is executed by both Parties and shall terminate upon Project Close-out, as described in subsection 4.2, unless terminated earlier pursuant to subsection 5.4.

1.1.2 The capitalized terms used herein shall have the meaning set forth in Exhibit A.

1.1.3 Whenever either Party's decision, determination, approval or consent (each a "decision") is required on the subject matter in this Agreement, the Party will promptly exercise reasonable judgment in granting or denying the matter for which a decision was requested. Consent or approval under this Agreement shall not be unreasonably withheld, delayed, or conditioned. The following shall apply to such decisions:

(a) Whenever this Agreement allows or requires a decision by the City, the decision shall be made by the City in its role as a grantor under this Agreement and not as an exercise of the City's regulatory authority.

(b) The approvals of the City required or allowed by this Agreement shall be given by the City Project Manager, unless such authority is specifically reserved to the City Council or other City official. The approvals of TriMet required or allowed by this Agreement shall be given by the TriMet Project Manager, unless such authority is reserved to the TriMet Board or other TriMet official.

(c) Any consent or approval granted by a party shall not constitute a waiver of the requirement for consent or approval in subsequent cases. No change in the rights of the Parties or the terms of this Agreement shall be required as a condition to the granting of approval or consent.

(d) Project Managers. TriMet designates Michael Kiser as its Project Manager and the City designates Caitlin Reff as its Project Manager. These roles can be re-assigned at the direction of the TriMet Capital Projects and Construction Division Executive Director or the City's PBOT Major Projects & Partnerships Section Manager, respectively.

1.2 Scope of Agreement

1.2.1 This Agreement establishes certain rights and obligations of the Parties regarding the contribution of additional Local Matching Funds for the Project by the City, pursuant to subsection 2.3.1, and by TriMet, pursuant to subsection 2.4.1. These additional Local Matching Funds supplement previous Local Matching Funds contributed to the Project in 2015 by the City, TriMet, and other funding partners through a series of intergovernmental agreements with Metro. The Local Matching Funds in concert with an anticipated grant of Small Starts funds from FTA will be used to pay the Project Costs of:

(a) Project Development: TriMet began Project Development in 2015 and under this Agreement will complete the Project Development activities required for receipt of a Construction Grant Agreement ("CGA") from FTA. These Project Development activities will be undertaken in conformance with (a) FTA requirements, (b) this Agreement, and (c) the Design and Construction Services Agreement (the "DCSA") separately executed by the Parties.

(b) Construction: Construction will commence at the earlier of (a) when a Letter of No Prejudice ("LONP") for the Project or similar approval is issued by FTA or (b) when a CGA for the Project is executed by FTA. Immediately upon issuance of a LONP or, in the absence of a LONP, execution of a CGA, TriMet is authorized under this Agreement to incur costs and disburse Project Funds, including Local Matching Funds, for Construction. Construction shall be undertaken in conformance with (a) the LONP or CGA, as applicable, (b) this Agreement, and (c) the DCSA.

1.2.2 The City's rights and obligations under this Agreement are intended to be those of a grantor. By this Agreement, the City grants an amount of funds for the Project, subject the terms and conditions described in this Agreement, and retains certain review rights to assure expenditure of the of those funding amounts is in accordance with the governmental purpose of the grant. The City shall not be entitled to any interest in, or lien on, the revenues from the operations of the Project or to any compensation solely by virtue of having entered into this Agreement.

1.2.3 TriMet rights and obligations under this Agreement are intended to be those of a lead agency, including (a) undertaking all activities (not otherwise expressly assigned to others) that are necessary or desirable to complete Project Development and Construction in accordance with the Project Schedule, FTA and other legal requirements, and TriMet processes and procedures, (b) providing project management services, (c) administering the Project Budget and the Project Account, (d) providing certain funding for the Project, and (e) being the Grantee for all federal grants.

1.3 Project Scope

1.3.1 The preliminary Project Scope is described in Exhibit B to this Agreement. Subject to the review processes in the DCSA, TriMet may amend the Project Scope from time to time to reflect additional engineering and design, revised estimates of funding availability, and/or additional requirements or guidance of FTA; provided, however, the estimated total cost of the Project Scope shall not exceed the total amount of Project Funds described in subsection 2.1.1.

1.3.2 The Project Scope will incorporate the Vision zero Project elements described in Exhibit C, attached hereto. Subject to review processes set forth in the DCSA, the elements described in Exhibit B may, from time, be revised due to further engineering and design, revised cost estimates, or additional guidance from FTA.

1.3.3 The Project will be constructed and operated in large part on City rights-of-way or real property that the City will make available to TriMet at no cost. The City shall, as reasonably requested by TriMet, provide to TriMet at no cost any permanent or temporary easements, rights of entry, or similar documents allowing for such construction and operation on City rights-of-way or real property, including the Continuing Control Agreement described in subsection 3.2.3.

1.3.4 Betterments may be undertaken in conjunction with construction of the Project if (a) the Party requesting the Betterments pays the cost of such Betterments from funds that are not included in the Project Finance Plan, (b) the Project Manager of the Party requesting the Betterments obtains the written approval of the Project Manager of the other Party, and (c) the Parties agree on the ownership of the Betterment and the Party responsible for operating and maintaining the Betterment. The requesting Party may require that such Betterments be bid or otherwise priced as a separate schedule or cost item before making a final decision on inclusion, provided that the requesting Party pays the cost of soliciting such pricings with funds not included in the Project Finance Plan. If practical, the requesting Party shall be named on the contractor's performance and payment bond and expressly authorized to enforce any warranty as relates to the Betterments.

ARTICLE II. PROJECT BUDGET, FINANCE PLAN, AND FUNDING OBLIGATIONS

2.1 Project Budget

2.1.1 The preliminary Project Budget shown in Exhibit D, attached hereto and incorporated herein, shows the planned Project Funds and estimated Project Cost.

2.1.2 TriMet shall, from time to time, adjust the Project Budget to reflect the latest information on Project Scope, Project Costs, Project Schedule, and funding availability, including adjustments that may be required by FTA; provided that the estimated total Project Cost shall not exceed the total amount of Project Funds shown in the Project Budget.

2.1.3 The Project Budget shall be reviewed with the Project Managers periodically, but no less frequently than the design milestones set forth in the DCSA. If at any time during the development and construction of the Project, it is estimated that the Project Cost exceed the total amount of Project Funds, the Parties shall undertake the following actions:

(a) The TriMet Project Manager shall prepare and deliver to the City Project Manager a writing that (i) identifies reductions in Project Scope and any other steps it will undertake, subject to FTA approval (if applicable), to eliminate Project Costs in excess of the Project Budget, and/or (ii) proposes a plan for supplemental contributions by one or more of the Parties to pay for improvements eliminated from the Project Scope but constructed in conjunction with the Project.

(b) The Parties agree that, when and if requested by a Project Manager, their respective Project Managers will promptly begin and thereafter diligently prosecute good faith negotiations with each other to develop an agreement on reductions to the Project Scope and/or supplemental funding contributions. In undertaking these negotiations, the Parties shall comply with any policies, options, or standards for resolving the imbalance of Project Costs and Project Funds set by the Policy and Budget Committee described in the DCSA.

(c) If the negotiations described in paragraph (b), above, result in an agreement the Parties shall take all appropriate actions to implement the agreement. If the negotiations described in paragraph (b) do not result in an agreement, the Parties shall follow the Dispute Resolution process described in subsection 5.20.

2.2 Project Finance Plan

2.2.1 The preliminary Project Finance Plan is based on achieving the Project Schedule shown in Exhibit E, attached hereto and incorporated herein, and the underlying assumptions in the Project Finance Plan, including:

(a) 50% of Project Costs, or about \$87,300,000, will be paid with FTA Small Start Funds, which must be committed to the Project by a CGA between TriMet and FTA. If the amount of Small Start Funds committed or anticipated to be committed to the Project is less than the amount assumed in the Project Budget, TriMet shall amend the Project Scope and Project Budget to reflect the revised estimate of Small Start funding that may be available for the Project.

(b) One-half of the assumed Small Starts grant for the Project is assumed to be appropriated in each of federal fiscal year 2019 and 2020. If federal appropriations are slower than assumed, interim borrowing may be required to keep to the Project Schedule. If required, TriMet shall amend the Project Budget, Project Finance Plan, and Project Scope to account for the interim borrowing costs.

(c) About \$6,200,000 of local revenue will be used to pay Construction-Period Finance Cost. The actual amount may differ from the estimate shown in the Project Finance Plan, and will depend on the borrowings undertaken by TriMet and the City and the amounts approved by FTA. TriMet shall amend the Project Scope and Project Finance Plan to reflect any revised estimates of the local revenues used to pay Construction-Period Finance Costs.

(d) Project Funds will be used to pay Project Costs prior to receipt of a CGA and without any assurance that the Project will receive a CGA and proceed into Construction. If the Project terminates before Construction, Project Funds used to pay Project Costs will not be repaid or reimbursed by TriMet, FTA, City, or any other party.

2.2.2 The Parties acknowledge and agree that modifications to the underlying assumptions in the Project Finance Plan or Project Schedule may require reductions in Project Scope to rebalance Project Costs and Project Funds.

2.3 City Grant of Local Matching Funds

2.3.1 The City grants the total of \$17,730,000 as its share of Local Matching Funds to develop and construct the Project as follows:

(a) Prior to execution of this Agreement, pursuant to IGA No 933686 between Metro and the City (dated October 19, 2015), the City contributed a total of \$2 million (consisting of \$1,000,000 in funds and \$1,000,000 in in-kind services) to pay the costs and expenses Project Development; and

(b) Under this Agreement, City hereby grants TriMet, \$15,730,000 million in additional Local Matching Funds, subject only to: (i) execution of a CGA for the Project by FTA; (ii) delivery of said CGA by TriMet to City; and (iii) the terms and conditions of this Agreement.

2.3.2 Subject to the conditions described in subsection 2.3.1(b), City shall transfer to TriMet the amount of \$15,730,000 as follows:

(a) City shall transfer to TriMet as its first installment payment the amount of \$7,865,000 by no later than thirty (30) days following the date on which the City receives from TriMet delivery of an executed CGA for the Project (the “First Installment Date”); and

(b) City shall transfer to TriMet as its final installment payment the amount of \$7,865,000 by no later than the date that is one year later than the First Installment Date.

2.3.3 It is anticipated that the City’s additional contribution to Local Matching Funds under subsection 2.3.1(b) will be from System Development Charge revenues; provided, however, the City reserves the right to provide its contribution from other sources that are (i) eligible to pay Project Costs and (ii) comply with the terms and conditions in this Agreement.

2.3.4 If a portion of the City’s additional contribution under subsection 2.3.1(b) is provided as an In-Kind Contribution, the value of the In-Kind Contribution shall be its fair market value calculated as that amount (a) determined by an appraisal prepared in compliance with FTA requirements, and (b) approved by FTA. TriMet shall prepare or cause to be prepared and shall

pay as a Project Cost the expenses of all environmental reports, appraisals, surveys, legal instruments, and other documentation required to fulfill FTA requirements and to convey any donated property interests. The City shall use its best efforts to assist TriMet to prepare and, where applicable, shall execute such documents reasonably requested by TriMet to effectuate the In-Kind Contribution and obtain FTA approval. Any property interests comprising the In-Kind Contribution shall be conveyed to TriMet no later than thirty (30) days after the date on which a CGA for the Project is executed by FTA.

2.3.5 In addition to making the contribution described in subsection 2.3.1, City shall pay any Construction-Period Finance Costs for City borrowings used to provide its Local Matching Funds. To qualify such City expenditures as Local Matching Funds, the City agrees to provide any documentation TriMet may reasonably require to receive FTA approval of the amount of City funds used to pay Construction-Period Finance Costs. Any amounts of City funds used to pay its Construction-Period Finance Costs allowed as Local Matching Funds are in addition to, and do not reduce the amount of, City's grant of Local Matching Funds under subsection 2.3.1.

2.4 TriMet Commitment of Local Matching Funds

2.4.1 Subject to the terms and conditions of this Agreement, TriMet shall contribute the total of \$59,570,000 as its share of Local Matching Funds for Project Development and Construction as follows:

(a) Prior to execution of this Agreement, pursuant to TriMet IGA No GP160813LG between Metro and the TriMet (dated August 19, 2015), TriMet contributed a total of \$3,050,000 (consisting of \$2,600,000 in funding and \$450,000 in in-kind services) to pay the costs and expenses of Project Development;

(b) Pursuant to the First Amendment to Intergovernmental Agreement No. 934681 between TriMet and Metro (the "MTIP IGA"), TriMet committed to provide \$25,000,000 from bond proceeds issued by TriMet and secured in part by the pledge of regional flexible funds in the MTIP IGA (the MTIP IGA Contribution) to pay Project Costs; and

(c) Under this Agreement, TriMet hereby commits an additional \$31,250,000 from net proceeds of one or more bond issues secured by TriMet's general fund and/or formula grant funds to pay Project Costs, subject to execution of a CGA for the Project by FTA and the terms and conditions of this Agreement.

2.4.2 Subject to the conditions under this Agreement and the MTIP IGA, TriMet shall make its contributions under subsection 2.4.1 (b) and (c) as follows:

(a) Prior to this Agreement TriMet provided \$25 million in Local Matching Funds as the MTIP IGA Contribution. All or a portion of the MTIP IGA Contribution will be expended prior to executing a CGA with FTA. The Parties acknowledge and agree that, pursuant to the MTIP IGA, TriMet shall not be required to reimburse Metro or the City for any such funds disbursed to pay Project Costs in the event the Project terminates for any reason; and

(b) No later than 30 days after executing a CGA with FTA, TriMet shall provide the additional amount of its share of Local Matching Funds described in subsection 2.4.1(c). In TriMet's sole discretion, TriMet may contribute all or a portion of these funds prior to the execution of the CGA; provided, however, TriMet will not receive any reimbursement for any of these funds expended prior to the execution of the CGA if the Project terminates for any reason other than a default by the City.

2.4.3 While TriMet anticipates providing its share of Local Matching Funds under subsection 2.4.1(c) from its general fund sources, TriMet reserves the right to provide its contribution from other sources, provided the source(s) of the TriMet's contribution shall be eligible to pay Project Costs. If a portion of its share is contributed as in-kind services or property, the provisions of subsection 2.3.4 shall apply.

2.4.4 In addition to making the contribution described in subsection 2.4.1, TriMet shall pay all Construction-Period Finance Costs associated with TriMet borrowings used to provide its share of Local Matching Funds. Subject to FTA approval, the amount of TriMet funds, including any MTIP Funds, used to pay Construction-Period Finance Costs may be used as Local Matching Funds. Any amounts of City funds used to pay its Construction-Period Finance Costs allowed as Local Matching Funds are in addition to, and do not reduce the amount of, City's grant of Local Matching Funds under subsection 2.4.1.

ARTICLE III. ADDITIONAL TERMS BETWEEN THE PARTIES

3.1 Additional Obligations of the Parties

3.1.1 TriMet agrees to:

(a) Design and construct the Gideon Pedestrian Overcrossing Project (Transportation System Plan Project No. 20185) spanning the Union Pacific Railroad tracks in the vicinity of SE 14th Avenue, SW 13th Place, and SE Gideon Street; which upon final completion and subject to FTA approval shall be transferred to City ownership, and is covered under a separate agreement;

(b) Relocate approximately 1400 weekly vehicle hours (made available by replacing Line 4-Division with the Project) to new or existing transit lines within or intersecting with the Project corridor (such as new north-south bus service on 148th and 162nd and additional service on Line 87), subject to analysis under Title VI of the Civil Rights Act of 1964 and TriMet's Service Guidelines Policy, and barring unforeseen economic or financing circumstances. TriMet will consult with the community to determine the best opportunities to reallocate these vehicle hours; and

(c) Lead an effort to secure federal funding for the Project that includes requesting an appropriation of Small Starts funds for the Project in the FY2019 appropriation bill.

3.1.2 City agrees to:

(a) City Bureaus and Prosper Portland will work collaboratively with TriMet, Metro and community stakeholders to implement actions identified in the Powell-Division

Corridor-Wide Strategy (Exhibit D of Resolution No. 37254 adopted December 7, 2016), which represents a coordinated set of actions that improve transit, safety, bicycle and pedestrian access, housing and equitable development on Division Street, on Powell Boulevard and on connecting north/south streets.

(b) To the extent permitted by law, and as further described in the Design and Construction Services Agreement (DCSA), City shall cause the owners of privately-owned utility conduits, lines, poles, mains, pipes, and other facilities in or on City rights-of-way and/or property to relocate their facilities, as necessary to conform to the Project, at the expense of the privately-owned utility; and

(c) Support and assist TriMet's efforts to seek federal funding for the Project, including giving City priority to TriMet's request for an appropriation of Small Starts funds in the 2019 appropriations bill.

3.1.3 Both TriMet and the City agree to:

(a) Use best efforts to ensure the Project is planned, designed, and constructed in accordance with the provisions of this Agreement.

(b) Use best efforts to ensure that the Project Schedule milestones shown in Exhibit A are met.

(c) Act reasonably and in good faith and fully cooperate and coordinate with the other Party in fulfilling their responsibilities for the design, permitting, construction, and financing of the Project.

(d) Comply with all requirements of law that apply to the development, financing, and construction of the Project, including but not limited to FTA regulations, rules, and procedures.

3.2 Related Agreements

3.2.1 By execution of this Agreement, the Parties agree to negotiate in good faith the terms and conditions of all other agreements, approvals, authorizations, attestations, and similar writings that may be reasonably required or desired to design, construct, operate, maintain, and own the Project.

3.2.2 In conjunction with this Agreement, the Parties have prepared a Project Design and Construction Services Agreement (DCSA) delineating the design and construction responsibilities, governance structure, and review procedures for the Project. The DCSA shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

3.2.3 The Parties acknowledge and agree that the Project must comply with FTA requirements regarding the continuing control by TriMet of roadways, sidewalks, streets, signals, and similar property and infrastructure owned by the City on which the Project is constructed and/or operated. The Parties agree to negotiate in good faith such Continuing Control Agreements

as may be required by FTA. No less than sixty (60) calendar days prior to the date on which a fully executed Continuing Control Agreement is required or desired, the TriMet Project Manager shall notify the City Project Manager to start negotiations on the Continuing Control Agreement, and thereafter both Parties shall diligently prosecute the required negotiations.

3.2.4 The Parties acknowledge and agree to negotiate in good faith an Ownership Agreement that delineates the ownership of each element of the Project. No less than sixty (60) calendar days prior to the date on which a fully executed Ownership Agreement is required or desired, the TriMet Project Manager shall notify the City Project Manager to start negotiations on the Ownership Agreement, and thereafter both Parties shall diligently prosecute the required negotiations. In general, the Ownership Agreement is anticipated to generally provide that:

(a) All transit facilities, transit signage, communication systems, transit-only structures, landscaping of real property owned by TriMet, lighting on transit stations (but not street lights), vehicles, stations, system improvements, fare collection equipment, platform drainage facilities, and other transit facilities shall be owned by TriMet.

(b) All roadways, sidewalks, streets, structures (other than transit-only structures) signals, bikeways, street lighting, utilities owned by or under the control of the City that are improved as part of the Project shall remain owned by or under control of the City, provided that certain portions of the Project owned by the City shall be subject to FTA's continuing control requirements.

3.2.5 The Parties agree to negotiate in good faith the terms and conditions of an Operations and Maintenance Agreement that sets forth the obligations of the Parties for operating and maintaining and funding the operations and maintenance of the Project. No less than sixty (60) calendar days prior to the date on which a fully executed Operations and Maintenance Agreement is required or desired, the TriMet Project Manager shall notify the City Project Manager to start negotiations on the Operations and Maintenance Agreement, and thereafter both Parties shall diligently prosecute the required negotiations. In general, the Operations and Maintenance Agreement is anticipated to generally provide that the Party that owns an element of the Project is obligated to operate, maintain, and pay for the operations and maintenance of such Project element.

ARTICLE IV. PROJECT ACCOUNT, PROJECT CLOSE-OUT, PROJECT BUDGET RECONCILIATION

4.1 Project Account

4.1.1 TriMet shall administer the Local Matching Funds by establishing Project Account in compliance with TriMet and FTA requirements. The Project Account will hold Local Matching Funds received by TriMet under this Agreement and will be used to document all receipts and disbursements of Local Matching Funds. TriMet shall disburse funds from the Project Account as required to pay Project Costs without regard to the sources or uses of such funds, unless such sources are limited to certain uses as set forth in a writing by the contributor (in which case the use will be limited to the use(s) described in the writing).

4.1.2 TriMet shall prepare all materials and undertake all activities required by FTA for receipt of federal funds for the Project. TriMet shall maintain all records and undertake all audits regarding the use of federal funds, as may be required by FTA. The costs of (i) preparing such materials and undertaking such activities as may be required for receipt of federal funds and (ii) such audits as may be required by FTA shall be Project Costs.

4.1.3 If required, TriMet shall prepare all materials and undertake all activities required to establish and maintain an interim borrowing program for the Project. The costs of (i) preparing such materials and undertaking such activities, and (ii) all issuance costs, administrative fees, legal expenses, interest payments, and all other costs or fees of the interim borrowing program shall be Project Costs.

4.1.4 TriMet shall make available to the City within a reasonable time period all financial, billing, and accounting records concerning the Project reasonably requested by the City. The City Project Manager may dispute charges to or disbursements from the Project Account that it reasonably determines are inconsistent with the terms and conditions of this Agreement. If the City Project Manager disputes one or more charges or disbursements, the City Project Manager shall provide the TriMet Project Manager with a detailed explanation of its reasons for the disputed charge(s) or disbursement(s). If a dispute as to a charge or disbursement arises, the Parties shall follow the Dispute Resolution procedures described subsection 5.20. The Parties shall continue in the performance of their respective obligations notwithstanding the dispute. Within fifteen (15) calendar days of settling a disputed charge or disbursement, TriMet shall take the necessary actions to implement the settlement.

4.2 City Sign-Off of Project Close-Out

4.2.1 Following notification by the TriMet that the Project has been completed, the City shall make a final determination that the Project is in conformance with the terms and conditions of this Agreement in accordance with this subsection 4.2. TriMet shall fully satisfy its obligation to document that the City's contribution to Local Matching Funds was properly spent by providing the City an accounting pursuant to subsection 4.2.2 that demonstrates that the amount TriMet paid to design, construct, acquire, install, or manage transit, street, and pedestrian improvements within the City of Portland limits, excluding any sums paid for vehicles, equals or exceeds the difference of (i) the amount of such City contribution provided to the Project Account minus (ii) the amount of any City funds repaid to the City due to the reconciliation of the Project Account described in subsection 4.3.

4.2.2 At least thirty (30) calendar days prior to the anticipated date of closing the Project Account, the TriMet Project Manager shall provide the City Project Manager, in a form acceptable to the City and TriMet, an accounting of actual Project Costs for improvements within the City of Portland limits.

4.2.3 Within fifteen (15) calendar days of receipt of the accounting provided under Section 4.2.2, the City Project Manager shall determine if the accounting complies with the criterion set forth in subsection 4.2.1, and notify, in writing, the TriMet Project Manager of its determination. If the City Project Manager determines that the criterion in subsection 4.2.1 has

been met, the writing shall expressly state that City's Local Matching Funds were properly spent in compliance with this Agreement. If the City Project Manager determines that the criterion in subsection 4.2.1 has not been met, the writing shall detail the specific discrepancies causing such a determination, and a proposed method for resolving the discrepancies.

4.2.4 If the City Project Manager notifies the TriMet Project Manager that the accounting meets the criterion in subsection 4.2.1, no further action shall be required of the TriMet Project Manager with regard to the accounting. If the City Project Manager notifies the TriMet Project Manager that the accounting does not meet the criterion in subsection 4.2.1 and if the TriMet Project Manager:

(a) Agrees, then the TriMet Project Manager shall take the required corrective measures; or

(b) Disagrees, then either Party may commence Dispute Resolution under subsection 5.20.

4.3 Reconciliation of the Project Account

4.3.1 If following Project Close-Out (including resolution of all claims) any Local Matching Funds remain unexpended, the unexpended Local Matching Funds shall be distributed among the Parties as follows: 66.1% to TriMet and 33.9% to the City.

4.3.2 Any payments due to the City shall be documented in a writing prepared by TriMet and paid to the City within ninety (90) calendar days from the date of Project Close-out or, if later than Project Close-out, from the date on which all outstanding claims are resolved.

ARTICLE V. GENERAL PROVISIONS

5.1 Relationship of the Parties.

5.1.1 Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. Each of the Parties possess substantial taxing, eminent domain and police powers so that Parties are not considered part of the same "controlled group" as defined in 26 CFR §1.150-1(e). No representative, agent, employee, or contractor of one Party shall be deemed to be an employee, agent, representative, or contractor of the other Party for any purpose, except to the extent specifically provided herein.

5.1.2 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. Each Party represents and warrants that, except for the representations as set forth in Section 5.2 below, it has not relied upon any acts, omissions, representations or statements of, or information provided by, the other Party in deciding to enter into and perform its obligations under this Agreement.

5.1.3 This Agreement is the result of an arms-length negotiation between the Parties in which each Party has been exclusively responsible for advancing its own interest, and each Party

has had full opportunity to consult with its own attorneys and advisors, perform its own due diligence, and fully inform itself concerning the risks and benefits of the transactions contemplated by this Agreement.

5.2 Representations and Warranties of the Parties.

As of the date of execution and delivery of this Agreement, each of the Parties makes the following representations for the benefit of and reliance by the other Party: (1) by proper corporate action, it has duly authorized the execution and delivery of this Agreement and the performance of its respective obligations hereunder; (2) it has full power and authority to execute and deliver this Agreement and perform its respective obligations hereunder; (3) this Agreement has been duly executed and delivered by it; and (4) to its actual knowledge, there is no litigation pending against it or threatened against it, challenging its authority to enter into this Agreement or perform its obligations hereunder, or challenging the validity of its proceedings authorizing the execution and delivery of this Agreement, or seeking to restrain or enjoin the execution and delivery of this Agreement by it or the performance of its obligations hereunder.

5.3 Liability.

5.3.1 Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, City agrees to indemnify, hold harmless and defend TriMet, its officers, employees and agents from and against all claims, suits, actions, or whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney fees, resulting from or arising out of the acts or omissions of City, its officers, employees or agents under this Agreement.

5.3.2 Subject to the limitation of the Oregon Tort Claims Act and the Oregon Constitution, TriMet agrees to indemnify, hold harmless and defend City, its 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 investigation and defense thereof including reasonable attorney fees, resulting from or arising out of the acts or omissions of TriMet, its officers, employees or agents under this Agreement.

5.3.3 Each Party's indemnification obligations under this subsection 5.3 shall survive termination of this Agreement.

5.4 Termination.

5.4.1 This Agreement shall terminate at Project Close-out or prior to Project Close-out if: (1) the Parties sign a written agreement, terminating this Agreement; (2) a CGA is not executed by December 31, 2021, or (3) a Party exercises its legal or equitable rights of termination as provided by law. If the Project terminates prior to Project Close-Out:

(a) The Parties shall cease any activity that furthers the advancement of the Project and shall proceed to wind up and close out the Project activities;

(b) The TriMet Project Manager shall prepare a close-out report and plan that details the information and status of the Project. If neither Party objects to the proposed close-out plan, the Project shall be closed out in accordance with such plan. If there is a dispute regarding the close-out plan, the Dispute Resolution process in subsection 5.20 shall be followed.

(c) The Parties' contributions of Local Matching Funds shall be reconciled as follows: (1) the first \$25 million of Local Matching Funds used to pay Project Costs shall be attributed to the MTIP IGA Contribution; (2) any amount of the MTIP IGA Contribution remaining shall be disbursed to TriMet, (3) any Local Matching Funds, other than from the MTIP IGA Contribution, remaining in the Project Account shall be divided between the Parties in proportion to the cumulative amount of Local Matching Funds it had transferred to the Project Account. Local Matching Funds expended prior to termination or as a result of termination shall not be reimbursed.

5.4.2 This Agreement may also be terminated by either Party as a result of a material breach of an obligation of the other Party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating Party must provide the Project Managers sixty (60) 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 and/or seek all remedies available at law or in equity.

5.4.3 Disputes regarding termination shall be resolved pursuant to the Dispute Resolution process set forth in subsection 5.20.

5.5 Inspection of Records.

5.5.1 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.

5.5.2 The City and TriMet shall cooperate in good faith with FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and provide assistance to the City as necessary for compliance with FTA requirements. The Parties shall permit the other Party and the authorized representatives of the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit data and records relating to its performance under this Agreement. All auditing costs incurred by TriMet to conduct its audits under this Agreement shall be Project Costs.

5.6 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 Party.

5.7 Time is of the Essence.

Time is of the essence of each and every provision and covenant of this Agreement.

5.8 Choice of Law; Place of Enforcement.

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

5.9 Amendments.

This Agreement (including the exhibits attached hereto) may only be amended by means of a writing signed by the Project Managers, unless otherwise reserved for the governing body or other official of the Party. 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 Party's performance or failure to perform, or any failure or delay by either Party to enforce its rights hereunder.

5.10 Integration.

This document constitutes the entire agreement between the Parties 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. This Agreement may only be modified in writing by a modification that has been signed by individuals authorized to bind each of the Parties contractually. The Parties shall not make changes to this Agreement through the issuance of permits, approvals, or other administrative requirements or processes.

5.11 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.

5.12 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.

5.13 Compliance with Laws and Regulations.

The parties recognize that funds provided by the Federal Transit Administration (“FTA”) will be used to pay for a portion of the Project. Each party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements of FTA.

5.14 Waivers.

No waiver by either 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 the other 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 Party not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.

5.15 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.

5.16 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.

5.17 Non-Exclusive Remedies

Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

5.18 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.

5.19 Attorneys’ Fees.

In the event a suit, action, mediation or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement by a Party, or with respect to any dispute by a Party relating to this Agreement, including, without limitation, any action in which a declaration

of rights is sought or an action for rescission, each Party shall pay its own attorneys', paralegals', accountants' and other expert fees and all other fees, costs and expenses, without recovery from the other Party.

5.20 Dispute Resolution.

5.20.1 It is understood by the Parties that a project of this size and complexity will raise issues requiring speedy resolution. In the event of any disputes between the City and TriMet under this Agreement, the dispute shall be referred for resolution as follows:

- a. First refer the dispute to the City Project Manager and TriMet's Project Manager, who shall make a good faith effort to resolve the dispute within fifteen (15) days, unless extended by mutual agreement of the Project Managers.
- b. If unresolved by the Project Managers, refer the dispute to the City's Transportation Director or designee and to TriMet's Executive Director of Capital Projects and Construction, who shall make a good faith effort to resolve the dispute within fifteen (15) days, unless extended by mutual agreement of the Directors.
- c. If unresolved by the Directors, refer the dispute to the City's Commissioner-in-Charge of Transportation and TriMet's General Manager who shall make a good faith effort to resolve the dispute within fifteen (15) days, unless extended by mutual agreement of the Commissioner and General Manager.
- d. In the event a dispute relates to facilities owned and maintained by City bureaus other than the Bureau of Transportation, the corresponding Bureau Project Manager, Bureau Director, and/or Commissioner-in-Charge will be invited to participate in resolving the dispute.
- e. In the event that a dispute involves jurisdictions on the Policy and Budget Committee other than the Parties, the corresponding officials from those jurisdictions will be invited to participate in resolving the dispute.

5.20.2 In the event a dispute arising under this Agreement is not resolved pursuant to subsection 5.20.1, above, either Party may initiate formal mediation by transmitting written notice to the Project Manager of the other Party. 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, by the Presiding Judge of the Multnomah City Circuit Court. 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.

5.21 Notice

A notice under this Agreement by a Party to another Party shall be sufficiently given or delivered by: (a) personal delivery; (b) sending an email copy with confirmation of delivery, if simultaneously sent via a another means in this subsection 5.21; (c) registered or certified mail, postage prepaid, return receipt requested; or (d) delivery service or “overnight delivery” service that provides a written confirmation of delivery, each addressed to a Party as follows:

If to the City: Portland Bureau of Transportation
City of Portland
1120 S.W. Fifth Avenue
Suite 800
Portland, Oregon 97204
Attn: Division Transit Project Manager
Email:
Confirmation No.

With a Copy to: Office of the City Attorney
City of Portland
1221 S.W. Fourth Avenue, 4th Floor
Portland, Oregon 97204
Attn: City Attorney
Email:
Confirmation No.

And a Copy to: Portland Bureau of Transportation
City of Portland
1120 S.W. Fifth Avenue
Suite 800
Portland, Oregon 97204
Attn: Division Director
Email:
Confirmation No.

If to TriMet: TriMet
Capital Projects Department
1800 SW 1st Avenue
Suite 300
Portland, OR 97201
Attn: Division Transit Project Manager
Email:
Confirmation No.

With a copy to: TriMet

Legal Department
1800 SW 1st Avenue
Suite 300
Portland, OR 97201
Attn: General Counsel
Email:
Confirmation No.

And a Copy to: TriMet
Capital Projects Department
1800 SW 1st Avenue
Suite 300
Portland, OR 97201
Attn: Executive Director
Email:
Confirmation No.

Each party may by notice to the other Party, specify a different address for subsequent notice purposes. Notices may be sent by counsel for a Party. Notice shall be deemed effective on the earlier of actual delivery or refusal of a Party to accept delivery. For a notice to be effective, the copied persons must also be given notice.

City of Portland

**Tri-City Metropolitan Transportation
District of Oregon**

By: _____
Dan Saltzman, Commissioner in Charge of
Transportation

By: _____
Doug Kelsey, General Manager

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

By: _____
City Attorney

By: _____
TriMet, General Counsel

Date: _____

Date: _____

EXHIBIT A
DEFINITIONS

- a. "Agreement" means this entire Intergovernmental Grant Agreement, or any modification hereof executed by the Parties.
- b. "Betterment" means replacement of existing infrastructure with new where the infrastructure is beyond its useful life; or replacement with a kind, size or type of infrastructure facility that differs from that existing as of the commencement of this Agreement. If the facility is near the end of its useful life, "Betterment" includes that portion of the cost associated with replacing new that is equivalent to the portion of the expended useful life when compared to the entire useful life.
- c. "City" means City of Portland, a political subdivision of the State of Oregon.
- d. "City Project Manager" means the person designated by the City as such under the DCSA, as may be re-designated by the City from time to time.
- e. "Construction" means, without limitation, all acquisition of real property, procurement of vehicles and equipment, installation of signals, communications systems, and mitigation treatments, civil work (including construction and equipping of stations and facilities), structural work, project administration, project financing and other activities required to implement the Project.
- f. "Construction Grant Agreement" or "CGA" means the agreement between FTA and TriMet required for receipt of Small Starts Funds.
- g. "Construction-Period Finance Costs" means, for a borrowing used to fund a Party's contribution of Local Matching Funds, the total of issuance, administrative, and interest costs incurred during the Project's construction period, as such factors are defined and to the extent that such costs qualify as a Project Cost under FTA rules, policies, and guidance. The amount of Construction-Period Finance Costs shown in the Project Budget is an estimate; the actual amount depends on the actual borrowings by the Parties, and must be approved by FTA.
- h. "Continuing Control Agreement" means an agreement entered into and between TriMet and City, providing TriMet with perpetual continuing control rights, complying with such rights required of federal grantees by FTA, to operate and maintain roadways and other improvements owned by the City on which Project improvements are placed of the Project operates.
- i. "Cure Period" means a sixty (60) calendar day period following a written notice by a Party seeking to terminate this Agreement due to a material breach, during which period the breaching party may cure the material breach and, thereby, preclude termination of this Agreement.

- j. “DCSA” or “Design and Construction Services Agreement” means the agreement, separate from this Agreement, between the City and TriMet regarding the roles and responsibilities of the Parties with respect to specific engineering, design, and construction documents and reviews.
- k. “Dispute Resolution” means the process and procedures for resolving disputes between the City and TriMet regarding the Project that is undertaken under subsection 5.20 before initiating legal action.
- l. “Final Design” means the design, engineering and technical work necessary to progress the Preliminary Engineering to a point that the drawings and specifications describe sufficient detail to construct the Project and satisfy FTA requirements for grants of Small Start funds.
- m. “FTA” means the Federal Transit Administration within the U.S. Department of Transportation.
- n. “Full Funding Grant Agreement” or “FFGA” means a contract anticipated to be entered into and between FTA and TriMet, wherein federal funds are committed to pay Project Costs, subject to specific terms and conditions, including a commitment by TriMet of local funds to match federal funds committed by FTA.
- o. “In-Kind Contribution” means those services and real property interests contributed to the Project at no cost that are approved by FTA as eligible Local Matching Funds.
- p. “JPACT” means the Joint Policy Advisory Committee on Transportation, a committee of Metro responsible for endorsing actions regarding regional transportation policy and funding.
- q. “Local Matching Funds” means the contributions to pay Project Costs from sources other than Small Starts Funds, including formula federal funds and In-Kind Contributions. Under the Project Finance Plan, Local Matching Funds are intended to pay 50% of Project Costs pursuant to Small Starts regulations; and must include funds from state and local sources (excluding any formula federal funds) in the approximate amount of 20% of Project costs to comply with statutory local match requirements.
- r. “LONP” or “Letter of No Prejudice” means a document issued by FTA prior to a CGA that allows certain Construction costs to be later reimbursed with Small Starts Funds if and when a CGA is executed for the Project.
- s. “MTIP” means the Metropolitan Transportation Improvement Program administered by Metro in compliance with federal transportation funding regulations.
- t. “MTIP IGA” means the First Amendment to Intergovernmental Agreement No. 934681 between TriMet and Metro wherein regional flexible funds are pledged for the Project.
- u. “MTIP IGA Contribution” means the \$25,000,000 million in Local Matching Funds provided by TriMet pursuant to the MTIP IGA.

- v. “Operations and Maintenance Agreement” means the agreement between the Parties described in subsection 3.2.5 delineating the Party responsible for performing operations and maintenance and/or funding the operations and maintenance of various elements of the Project.
- w. “Ownership Agreement” means the agreement between the Parties described in subsection 3.2.4 delineating the ownership of various elements of the Project.
- x. “Parties/Party” means the City and TriMet. Party means City or TriMet.
- y. “PE” or “Preliminary Engineering” means stage of Project Development during which engineering, environmental, financial, and other technical studies are undertaken in support of preparing and publishing an Environmental Impact Statement and the continuing engineering and design activities undertaken prior to Final Design.
- z. “Project” means the Project Development, and Construction of the Division Transit Project, as described in Exhibit B, as may be amended from time to time.
- aa. “Project Account” means the account or accounts established by TriMet pursuant to Section 4.1 of this Agreement for depositing Local Matching Funds received by TriMet and disbursing Local Matching Funds to pay Project Costs.
- bb. “Project Budget” means a line item breakdown of Project Costs and Project Funds shown in Exhibit D, as may be amended from time to time under this Agreement.
- cc. “Project Close-Out” means the activities undertaken after Construction is determined to be substantially complete to secure City and Other Regional Partner sign-off on the Project and use of its share of Local Matching Funds.
- dd. “Project Costs” means the cost of any and all elements of Project Development and Construction of the Project shown in the Project Budget (Exhibit D), as it may be amended from time to time, and approved by FTA. Project Costs do not the cost of Betterments.
- ee. “Project Finance Plan” means the year-by-year cash-flow of Project Costs and revenues (by source), including interim borrowing.
- ff. “Project Funds” means Local Matching Funds and any federal grants provided to pay Project Costs.
- gg. “Project Schedule” means the anticipated dates for completing major Project milestones, as set forth in Exhibit E to this Agreement, as may be amended from time to time.
- hh. “Project Scope” means the narrative set forth in Exhibit B to this Agreement (and related engineering and drawing sets and project specifications), as may be amended from time to time, that describes all component elements of the Project.
- ii. “Small Starts” means the discretionary capital investment grant program administered by FTA pursuant to 49 USC 5309 for capital projects that (1) either incorporate a fixed guideway for at least 50 percent of the project length in the peak period or are corridor-

based bus projects with 10 minute peak/15 minute off-peak headways or better while operating at least 14 hours per weekday and (2) require less than \$100 million of Small Starts Funds and have a total capital cost of less than \$300 million in year of expenditure dollars.

- jj. “Small Starts Funds” means the grant funds authorized under 49 USC 5309 for assisting Small Starts projects pursuant to a CGA.
- kk. ‘TriMet’ means the Tri-City Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the state of Oregon.
- ll. “TriMet Project Manager” means the person designated by TriMet as such under the DCSA, as may be re-designated by TriMet from time to time.
- mm. “Vision Zero Project” is a City program to design a safe transportation system with the aim of eliminating deaths and serious injuries on streets by 2025.

EXHIBIT B

PROJECT SCOPE

1. General Description

The Division Transit Project will operate as a bus rapid transit (BRT) line along a 15-mile alignment between downtown Portland and the City of Gresham. This Project will traverse the Transit Mall in downtown Portland, crossing the Willamette River, connecting with SE Division Street near SE 8th Avenue, and running on SE Division to the Cleveland Park & Ride. The alignment serves several major destinations including the Portland Community College's Southeast Campus and CLIMB (worker retraining) Centers, Oregon Health & Sciences University, the largest high school in the state (David Douglas H.S.), and Portland State University.

The Project includes 42 stations and 83 platforms along the entire corridor, including 35 stations and 69 platforms in the City of Portland, with a range of station types used to integrate into the existing urban environment. Each platform will be branded per FTA requirements, and typically includes a shelter, a bench, a trash receptacle, lighting, and other supportive elements. Platform heights range from 6" – 9", depending on the adjacent environment, and ridership demand.

The Project will provide high-quality transit service with 60-foot long articulated buses. It also will provide advanced traffic signalization and communication to provide more reliable and faster service than currently possible. The project includes sidewalk, intersection, and bicycle facility improvements to weave the project into the character of the neighborhoods it will serve.

2. Specific Project Cost Elements

- **Right of Way / Real Estate** – For the majority of the alignment, the Project operates within the existing street right of way. At select station areas, additional right-of-way is required to create adequate room for pedestrian and bicycle clearances. Acquisitions for utility pole relocations and temporary construction easements make up the remainder of the real estate work.
- **Utility Relocation** – The majority of the utility relocation work is above-ground and consists of utility poles and guy wires. These relocations are typically a result of accommodating space for station platforms.
- **Street Construction** – Some repaving will be required at stations, and it is anticipated that concrete pads will be included as determined by the future pavement design analysis.
- **Stations** – The Project is utilizing a mixture of existing and new station infrastructure. From downtown to OMSI, the project will depend on the existing legacy system with the exception of an NE Irving Station. From SE 11th Avenue to the eastern terminus, new platforms and amenities will be constructed.

- **Signals and TSP** – Many of the existing traffic signal along the alignment will either be improved or rebuilt to address ADA standards, interconnectivity, controls, and Transit Signal Priority (TSP). Fiber optic cable is currently planned to provide a continuous signal communications backbone for the corridor.
- **Bicycle & Pedestrian Facilities** – Investment in bicycle infrastructure at the platforms, and along bike lanes will contribute to make safer environments at points of modal interface.
- **Articulated Bus Vehicles** – The Project will include approximately (32) vehicles to operate this new BRT line, including spare vehicles, parts, and test equipment.
- **Engineering and Administration** – Engineering and Administration necessary to complete this Project include preliminary engineering, design, construction management and inspection services, administration, insurance, and intergovernmental agreement activities.
- **Contingencies** – Consistent with FTA requirements, contingency amounts are included to provide for unanticipated inflationary or construction cost increases that may arise.
- **Financing** – The Project Costs include Construction-Period Finance Costs and, if any, interim financing costs incurred to keep the Project on schedule during periods when local or federal funds are not available to pay Project Costs on a current basis.
- **Start-Up** – The Project includes testing, simulated schedule operations, training, public information, and other activities that are prerequisite to commencing actual revenue passenger operations.

VISION ZERO PROJECT ELEMENTS IN THE DIVISION TRANSIT PROJECT

The map illustrates the proposed route for the San Jose BART extension. The route is highlighted in green, starting from the existing BART system and extending through the city center to the new station at 4th & Hall. The map includes major roads like I-5, I-205, and I-680, and various street names. The proposed route is shown as a green line with green dots indicating station locations. The map also shows the locations of various BART stations and the proposed route for the extension.

CONTINUE TO SECTION B



- New signalized/controlled pedestrian crossings
- Upgrades to existing signalized/controlled pedestrian crossings
- Traffic signal upgrades/TSP
- Pedestrian scale lighting
- Upgrades to pedestrian environment
- Statewide Transportation Improvement Program
- Division Transit Project improvements

ADDITIONAL IMPROVEMENTS:

- **Bike Lane Protection**
(Division, 82nd to 174th)
- **Elimination of bus/**
bike conflicts when
bus stops in-lane
- **Traffic calming effect**
when BRT platform is
adjacent to travel way
- **Lane reconfigurations**

Current improvement locations – subject to change based on engineering and financial analysis

EXHIBIT D
PROJECT BUDGET

PROJECT COSTS	Amount
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Design and Construction	\$168,461,000
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PROJECT FUNDS	Amount
Small Starts Funds - Anticipated	\$87,341,000
TriMet – Per 2015 IGA with Metro	\$3,050,000
TriMet – Additional per this Agreement	\$31,520,000
ODOT	\$750,000
Portland – Per 2015 IGA with Metro	\$2,000,000
Portland - Additional per this Agreement	\$15,730,000
MTIP IGA Contribution	\$25,000,000
Metro	\$1,240,000
Reallocated Regional Funds	\$1,500,000
Gresham	\$200,000
Multnomah County	\$130,000
Project Finance Revenues	\$6,242,335
Total Revenue	\$174,703,335

EXHBIT E
PROJECT SCHEDULE

Milestone	Target Date
30% Design Complete	July 15, 2018
Submit NEPA Materials to FTA	October 19, 2018
NEPA Clearance Received	December 20, 2018
Project Recommended in President's Budget	February 13, 2019
60% Design Complete	February 25, 2019
Submit CGA Application	March 12, 2019
90% Design Complete	July 8, 2019
100% Design Complete	September 6, 2019
CGA Executed	October 21, 2019
Start Major Construction	October 31, 2019
Portland First Installment Payment	December 21, 2019
Second Appropriation in President's Budget	February 13, 2020
Receipt of First Small Starts Appropriation	April 2, 2020
Portland Final Installment Payment	December 21, 2020
Receipt of Second Small Starts Appropriation	April 2, 2021
Project Safety Certified	March 1, 2022
Start Revenue Operations	September 11, 2022
Project Closeout	March 15, 2023