

DESIGN, CONSTRUCTION AND USE AGREEMENT

LIGHT RAIL IMPROVEMENTS

This Agreement made this _____ day of _____, 1982 by and between the City of Portland (City), the Portland Development Commission (PDC) and the Tri-County Metropolitan Transportation District of Oregon (Tri-Met).

I. RECITALS

1. The City of Portland owns the property in the City of Portland, County of Multnomah, State of Oregon, described as Block 179, Portland and, by and through the Portland Development Commission (PDC), plans to develop Pioneer Courthouse Square on the property (Square).

2. PDC has retained Martin, Soderstrom and Matteson (Designer) to provide architectural/engineering services for the Project.

3. The City and Tri-Met have determined that Light Rail Work in and adjacent to the Square can be constructed in the most cost effective and timely manner by being constructed concurrently with other elements of the Square and that the City

and Tri-Met should jointly participate in construction of the improvements described in attached Exhibit 'A' (Project).

4. Review. Final Design Plans, Specifications and Construction Documents pertaining to the Project shall be subject to a formal review by and written approval from Tri-Met prior to City issuing documents pertaining to the Project for bids. Tri-Met may reject any part of the plans, specifications and documents. Final Design Plans attached to the original bid documents have already been approved by Tri-Met and are incorporated herein by reference and made a part of this Agreement as though fully set forth herein.

II. AGREEMENTS

1. General Responsibility. The City, through PDC, will carry out the City's responsibility to design and construct the Project and obtain all City permits, Council ordinances and approval required for the Project. PDC will contract with Designer to provide design services for the Project. PDC will competitively bid and award a Construction Contract to a single General Contractor (Contractor) for constructing the Project. The Construction Contract shall contain all terms and conditions for third party contracts as required by the UMTA Third-Party Contracting Guidelines. PDC will provide staff and consultants

to administer contracts for designing and constructing the Project. In consideration for the Light Rail Work completed by the City and for the right to continued use of the Project, Tri-Met agrees to provide funds to the City for a portion of the Project, as set forth in Section 11, "Compensation".

2. Changes in Work. Any changes in the Construction Documents or the Project subsequent to the Tri-Met authorization required above shall be subject to prior written approval from Tri-Met. Tri-Met shall respond to all such changes within 5 working days of receipt. Changes or modifications directed by Tri-Met shall be made by Designer at Tri-Met's expense. In addition, no approval shall be unreasonably withheld or denied. Tri-Met will hold the City harmless for any damages or costs or time due to a contractor when Tri-Met fails to respond to a proposed change within the specified time or when it has been determined that Tri-Met unreasonably withheld or denied approval of a proposed change. Delays to the project, resulting from Tri-Met's exercise of its rights hereunder shall be cause for an extension of time of completion of the project as set forth in Sections 8 and 9 herein below.

3. Project Representatives. Tri-Met and City shall each appoint a Project Representative authorized to act on behalf of their respective agencies. Project Representatives shall meet

from time to time with other project participants to review and make decisions necessary to the timely completion of Construction Documents and the construction work. All communications between the two agencies on the subject of the Project shall be directed through the Project Representatives and shall be in writing or memorialized at a later time.

4. Access. City shall permit the Tri-Met Representative and any other Tri-Met personnel directly associated with this Project access to the Project site to observe and inspect the work during construction. During these visits, Tri-Met shall not give instructions to the Contractor.

5. Schedule. Time is of the essence in this contract. The Project shall achieve Final Completion, ready for Tri-Met use no later than January 31, 1984, except as provided for in Article II., Sections 6 and 7. If, through not fault of the City, or Tri-Met, the Project is not completed at that time, Tri-Met shall receive a prorated share of liquidated damages due the City through PDC's contract with the contractor. In the event that the City, without reason, decides not to complete construction of the Project, all money paid by Tri-Met pursuant to this Agreement shall be refunded within sixty (60) days of that decision.

6. Delays. For the purpose of the provisions of this Agreement, the City shall not be considered in breach of or in default of its obligations, or in any way be liable, with respect to the City's responsibilities for completion of construction of the improvements, or progress in respect thereto, in the event of delays to the contractor, any subcontractor to the project without the City's fault or negligence, including, but not limited to, claims related to design which claims are attributable to actions by PDC, Designer or Tri-Met. In the event of occurrence of any such delay, the time or times for performance of the obligations of the City shall be extended for the period of such delay and for such additional time as may be required because of impact to the construction because of the delay.

7. Force Majeure. For the purpose of any of the provisions of this Agreement, the City shall not be considered in breach of or default in its obligations with respect to the completion of construction of the improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe

weather or delays of suppliers or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City shall be extended for the period of the enforced delay and to such additional time as may be required because of impact to the Project because of the delay.

8. Final Completion. Upon receipt of City's notice that the Project is ready for final inspection and acceptance and upon receipt of a final invoice, Tri-Met will make inspection, and when Tri-Met finds the work acceptable under this Agreement, Tri-Met will make final payment to PDC and forward PDC a written letter accepting the Project. The date of this letter shall be the Date of Final Completion and the date when any Tri-Met responsibility for maintenance and Tri-Met's right to use the Light Rail Improvements shall commence.

9. Use. City will grant to Tri-Met, through other agreements, full access to and use of the Project as long as a light rail system or alternate mass transportation use (requiring said improvements) exists.

10. Maintenance. City shall be responsible for maintenance of the Project, excluding the Transformer Room and other LRT equipment, which shall be the responsibility of Tri-Met. The

City will be responsible for maintenance of the Canopy, but Tri-Met will contribute to the cost of maintenance of the Canopy an amount equal to the average cost of maintaining a Light Rail Shelter in downtown Portland. Tri-Met will make this payment annually on the first anniversary of Final Completion and each anniversary thereafter.

11. Compensation. In consideration of the Work completed by the City and the use allowed by the City, Tri-Met shall pay the City the actual contract cost of the Project as established by a detailed Cost Breakdown prepared by the Contractor up to the following maximum amounts for each category of Light Rail Work:

<u>Category</u>	<u>Maximum Amount</u>
Sidewalk Improvements	\$250,000.00
LRT Canopy	70,000.00
Transformer Room	\$ 63,403.00

The maximum amounts above shall be Tri-Met's total contribution to the Project and shall be full compensation for all services under this Agreement. The City shall pay the balance of the contract costs and all costs of the Project

exceeding the maximum amounts above. City will require the successful bidder to deliver a detailed cost breakdown for each of the three categories of the Light Rail Work which shall be the basis for establishing compensation in this Article. The breakdown shall be a complete itemization with detail. The City will deliver the breakdown to Tri-Met within 30 days of Awarding the General Contract for the Project and prior to submitting invoices for compensation provided for in this Agreement.

12. Design Costs. In addition to the compensation set forth in Article 10, Tri-Met shall pay the City a maximum of \$5,000 for architectural and engineering expenses incurred by the City in designing the Project.

13. Payment. Tri-Met shall make payment to the City required in Article 10 as follows:

Tri-Met shall, within 10 days of the award of the contract for the Project, establish a separate account in the State's Local Government Investments Pool that can be drawn on by an authorized representative from PDC as an agent of the City having limited Power of Attorney. Monthly payments shall be in an amount equal to the estimated value of the work completed during the month. Tri-Met shall maintain funds sufficient to cover the estimated anticipated cost to be drawn on each month by PDC.

Expenditures exceeding \$50,000 will be submitted to Tri-Met on an individual basis.

Detailed Invoices. PDC is required to submit detailed monthly invoices to Tri-Met's Finance Department specifically describing the work accomplished. In the event that a payment is not supported by the detailed invoice, Tri-Met shall be given a credit on a subsequent month's draw down/payment.

14. UMTA Approval. This Agreement is effective on the date written notification is received from UMTA approving this Agreement provided that such notification is received prior to Sept. 3, 1982. If UMTA approval is not received on time, this Agreement will be of no affect.

15. Compliance with Law. The parties hereto agree and understand that they will comply with all applicable federal and state statutes and regulations, including, but not limited to: Title VI, Q., S., C. Civil Rights Act; Title XVIII, U. S. C., Anti-Kickback Act; Department of Transportation requirements; Office of Management & Budget Circular A-102 and A-87; and UMTA's Grant Agreement with Tri-Met, as well as all applicable municipal codes. The successful bidder shall be determined by PDC in compliance with state and local laws and OMB Circular A102, Attachment O.

16. Relocation Assistance. City shall have the responsibility of providing any relocation assistance and any such relocation shall be accomplished pursuant to Titles II and III of the Uniform Relocation Assistance and Real Property Policies Act of 1970.

17. Liability. PDC shall be liable, hold the City and Tri-Met harmless for and defend the City and Tri-Met from claims or suits for all injuries to persons and property and for resulting claims, liability, money paid in settlement, losses, costs, attorneys' fees and other expenses, arising out of construction of the Project or related to any other obligation of PDC relating to the Project, including related Light Rail Improvements specified in Exhibit 'A'. PDC shall maintain public liability and property damage insurance to protect the City and Tri-Met, its Commissioners, Officers, Agents, and Employees from claims for damage to property or personal injury, including death, which may arise out of the design or construction of the Project. Such insurance shall provide coverage in sums of not less than \$300,000 for personal injury to each person and not less than \$300,000 for each occurrence. Insurance for architectural, engineering and design liability in a sum of not less than \$300,000 to the extent of PDC negligence can be provided on a "claims made" basis (in lieu of an occurrence

basis). Any insurance provided shall be without prejudice to coverage otherwise existing, and shall name, as additional insureds, the City and Tri-Met, its Commissioners, Officers, Employees or Agents and shall further include a completed operations protection clause extending three (3) years after all PDC's connection to the Project has been terminated. Therefore, prior to termination or cancellation, notice in writing must first be given to the Auditor of the City of Portland. Such insurance shall be subject to approval by the City Attorney on behalf of the City as to the adequacy of the protection, and proof of such insurance shall be provided to the City prior to the City signing this Agreement.

City. City shall be liable for injuries to persons or property arising out of its obligations under this Agreement. Except as provided below, City shall hold Tri-Met harmless, in sums of no more than the City's maximum liability under the Tort Claims Act.

Tri-Met. Tri-Met shall be liable, hold the City harmless for and defend the City from claims or suits for injuries to persons and property and for resulting claims, liability, money paid in settlement, losses, costs, attorneys' fees and other expenses, specifically resulting from Tri-Met's use of the Project, or some other action or failure to act by Tri-Met or one

of its employees or agents and for any costs due the contractor because Tri-Met has failed to carry out any of its responsibilities under this Agreement.

Tri-Met shall maintain public liability and property damage insurance to protect the City, its Commissioners, Officers, Agents, and Employees from claims for damage to property or personal injury, including death, which may arise out of Tri-Met's specific use of the Project or resulting from any act or failure to act by Tri-Met or its employees or agents in relationship to any portion of the Project. Such insurance shall provide coverage in sums of not less than the amounts of maximum City liability under State of Oregon statutes, but in no event less than \$300,000 for personal injury to each person, \$300,000 for each occurrence and shall be in effect through the time frame specified in Article II., Section 9. Such insurance shall be without prejudice to coverage otherwise existing, and shall name, as additional insureds, the City, its Commissioners, Officers, Employees or Agents and shall further include a completed operations protection clause extending three (3) years after Tri-Met terminates any or all uses set forth in Exhibit 'A' to this Agreement within the Project. Such insurance shall be subject to approval by the City Attorney on behalf of the City as to the adequacy of the protection. Proof of such insurance shall be provided to the City prior to the City signing this Agreement.

18. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

19. Interest of Public Officials. No member, officer, or employee of Tri-Met or City during his/her tenure or for one year thereafter shall have any financial interest direct or indirect, in this Agreement or the proceeds thereof.

20. Minority and Female Business Enterprise. In connection with the performance of this Agreement, the parties will cooperate with each other in meeting their commitments and goals with regard to the maximum utilization of minority and female business enterprises and will use its best efforts to ensure that minority and female business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. A ten percent (10%) minority and one percent (1%) female business enterprise requirement shall be included in the bid and construction documents for building the Project. For purposes of this Agreement, the guidelines of City of Portland Ordinance No. 149959 will be followed.

21. Equal Employment Opportunity. In connection with the execution of this Agreement, City and Tri-Met shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Tri-Met and City shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, age, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

22. Audit and Inspection of Records. The parties shall permit the authorized representatives of City, Tri-Met, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of City and Tri-Met relating to their performance under the Agreement.

23. Documents. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the design and construction of the Project shall become

public property. All design drawings and documents prepared by City staff under this contract shall be available to Tri-Met.

24. Title VI Assurance. Tri-Met and City shall comply with all provisions of the attached Exhibit F, Title VI Assurance, which shall be hereby incorporated within this Agreement.

25. Federal Funding Limitation. City understands that funds to pay for services under this Agreement will be made available from the United States Department of Transportation through the Urban Mass Transportation Administration (UMTA) and in accordance with UMTA Grant Agreement with Tri-Met. If this Agreement is disapproved by UMTA Tri-Met is not liable for payment and may suspend this Agreement, without penalty, until such time as this Agreement is approved. Tri-Met shall notify City promptly in writing of the nonallocation, delay, or disapproval of funding.

26. Notice. All Notices provided for hereunder shall be in writing and sufficient if deposited in the United States Mail, postage prepaid, and if to City addressed to City Auditor, City of Portland, 1220 S. W. Fifth Avenue, Portland, Oregon 97204; and if to Tri-Met addressed to Tri-County Metropolitan Transportation District of Oregon, 4012 S. E. 17th Avenue, Portland, Oregon 97202.

27. Entire Agreement. This Agreement constitutes the entire, complete, and final expression of the agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first herein written.

Approved as to form:

CITY OF PORTLAND

City Attorney

By Mayor

By Commissioner of Public Safety

Approved as to form:

TRI-MET

Grants & Contracts Section

By Gerard K. Drummond, President

Approved as to form:

PDC

PDC Attorney

By William E. Roberts, Chairman

EXHIBIT 'A'

Light Rail Improvements. The Light Rail Improvements shall include the following work:

1. Sidewalks.

a. 19'-6" wide sidewalk reconstructed on Yamhill and Morrison between Broadway and Sixth including reconstruction of a portion of the sidewalk on Sixth.

b. Conduit system for future wiring from the handicapped lift, telephone booth and ticket/information kiosk locations on Yamhill and on Morrison to the Tri-Met LRT electrical panel in the Square's Lower Level electrical room.

c. Two ornamental street lighting fixtures on temporary poles at future strain pole locations on Yamhill and on Morrison.

d. Foundations for three strain poles on Yamhill and on Morrison.

e. Temporary traffic signals, wiring and poles.

f. Conduit from each center block strain pole to the Tri-Met Transformer Room for a future warning light on Yamhill and on Morrison.

g. 2" conduit from each center strain pole stubbed out 12" beyond curb line on Yamhill and on Morrison.

h. Conduit for future signal wire from handicapped lift location to future controller location on Yamhill and on Morrison.

i. Tri-Met LRT electrical panel consisting of a blank 200 amp main panel, disconnect switch and fuse and meter base for platform electrical items located in the Square Lower Level electrical room.

2. Transformer Room.

a. Repairs and improvements within the existing basement extension on Yamhill for a Transformer Room including:

1) Demolition of existing traffic signal foundation.

2) Two concrete vent ducts on Yamhill extending to 12" outside of curb and capped, for future Transformer Room ventilation.

3) Demolition of existing wood in east portion and new concrete floor.

4) Removable 10' x 10' lift out panel in the Yamhill sidewalk.

5) Manhole and ladder exit in Yamhill sidewalk.

6) Concrete block enclosure wall with metal door and frame.

7) Concrete stairway and handrails at entrance to Transformer Room.

8) Floor drain.

9) Floor grounding mat.

10) Repairs to the vault roof structure.

11) Waterproof membrane on roof structure.

b. 5' x 5' x 4' manhole on corner of Broadway and Yamhill.

c. 12-3", 2-1" and 1-4" concrete encased conduits from west wall of Transformer Room to manhole.

3. LRT Canopy. Approximately 2600 square feet canopy structurally supported by columns for waiting LRT patrons including lighting and related electrical work.

ORDINANCE NO. 153717

An Ordinance authorizing an Agreement between the City of Portland, the City of Portland Development Commission and the Tri-County Metropolitan Transit District of Oregon (Tri-Met) providing for the funding, construction and use of Light Rail Improvements in and adjacent to Block 179, and declaring an emergency.

The City of Portland Ordains:

Section 1. The Council finds:

1. By Ordinance No. 31971, adopted October 12, 1977, the Council directed the Portland Development Commission to oversee the design and construction of the Pioneer Courthouse Square on Block 179.
2. By Resolution 32851, adopted January 19, 1981 the Council directed the Portland Development Commission to work with Tri-Met to construct light rail in conjunction with Pioneer Courthouse Square.
3. By Resolution 32983, adopted August 12, 1981, the Council directed the Portland Development Commission to negotiate with Tri-Met for paying construction costs for light rail improvements that will be required on the adjoining sections of Morrison and Yamhill Streets, which improvements included sidewalk widening, transformer vault and glass canopy.
4. By Ordinance 153358, adopted June 9, 1982, the Council directed the Portland Development Commission to prepare for Council consideration agreements with Tri-Met and/or UMTA whereby they pay for their proportionate share of costs attributable to accommodating the Light Rail System.
5. Tri-Met is willing to construct said improvements subject to receiving final Urban Mass Transit Authority (UMTA) approval of grants for these activities.
6. The City of Portland, Portland Development Commission and Tri-Met have determined that light rail work in and adjacent to the Square can be constructed in the most cost effective and timely manner by being constructed concurrently with other elements of the Square and that the City and Tri-Met should jointly participate in construction of the improvements described in the attached Agreement marked Exhibit "A".

Calendar No. **2510**

ORDINANCE No. 153717

Title

An Ordinance authorizing an Agreement between the City of Portland, the City of Portland Development Commission and the Tri-county Metropolitan Transit District of Oregon (Tri-Met) providing for the funding, construction and use of Light Rail Improvements in and adjacent to Block 179, and declaring an emergency.

Filed **AUG 27 1982**

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *John Powell*
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN	/	
LINDBERG	/	
SCHWAB	-	
STRACHAN	/	
IVANCIE	/	

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

INTRODUCED BY	
Mayor Frank Ivancie	
NOTED BY THE COMMISSIONER	
Affairs	
Finance and Administration <i>FDJ / JG</i>	
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau:	
Portland Development Commission	
Prepared By:	Date:
Christoper Kopca	8/25/82
Budget Impact Review:	
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required	
Bureau Head: <i>Patricia L. Shaw</i>	
CALENDAR	
Consent <i>Y</i>	Regular
NOTED BY	
City Attorney	
City Auditor	
City Engineer	