

**INTERGOVERNMENTAL AGREEMENT
FOR PERSONNEL SERVICES**

TriMet Contract No. GC210853GS

City Contract No. _____

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the **TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON** (TriMet), a mass transit district of the state of Oregon, and the **CITY OF PORTLAND** (City), a municipal corporation of the state of Oregon, acting by and through its Elected Officials and its Portland Bureau of Transportation.

RECITALS

- A. City of Portland's Bureau of Transportation has a substantial amount of Transportation Capital Improvement Project (CIP) work planned for Fiscal Years 2021 and 2022, for which City has an immediate need for additional qualified and experienced professional personnel.
- B. City's need for additional professional personnel for the transportation CIP program is short-term and not reflective of a long-term programmatic increase. It does not warrant the creation of and hiring for new, permanent positions.
- C. TriMet employs a number of qualified and experienced professional personnel in its engineering and Construction Division as project managers, construction managers, engineers, engineering technicians, and inspectors.
- D. Due to the deferral of the Southwest Corridor and related capital construction projects, TriMet was required to reorganize its Engineering and Construction Division and release from service a number of TriMet's qualified and experienced engineering, design and construction personnel because they will exceed TriMet's immediate need for their services.
- E. City wishes to obtain the services of a certain number of qualified and experienced professionals for its 2021/22 and 2022/23 CIP construction seasons from TriMet, and TriMet wishes to make such personnel available to City, in lieu of releasing them from employment (hereafter referred to as "assigned employees).
- F. Historically, transit capital improvement investments made by TriMet affect and necessitate corresponding physical changes to the City's street network infrastructure, including assets of the bureaus of Transportation, Water, and Environmental Services. Because of this impact, TriMet capital projects employees are particularly suited to performing construction management services for the City.
- G. Both Parties desire a partnership that retains, mentors, and develops assigned employees to facilitate their success for the Parties' mutual benefits.

H. Both Parties anticipate a lasting benefit to each as a result of sharing professional expertise and knowledge. The application of each Parties' best practices will inform and is an opportunity to shape how each performs such transportation capital improvement work in the future.

NOW THEREFORE, TriMet and City, the Parties hereto, agree as follows:

TERMS OF AGREEMENT

I. TERM.

This Agreement shall commence on March 1, 2021 and shall remain in effect until December 31, 2022, unless otherwise extended or terminated earlier in accordance with this Agreement.

II. ASSIGNED EMPLOYEES.

A. Upon and after execution of this Agreement and City's request for employees, TriMet will seek to make available certain qualified and experienced personnel to provide construction management services for assignment to various City transportation Capital Improvement Projects.

B. Ideal candidates provided to City by TriMet should have:

- Willingness to work on City transportation Capital Improvement Projects
- Experience with design, construction, and/or project management of transportation infrastructure improvements
- Familiarity with City, ODOT, AASHTO, construction specifications, ADAAG
- Good communication and organizational skills
- Flexibility and willingness to learn
- Ability to work independently but as part of a larger team
- Willingness to conduct site visits as often as needed
- Professionalism in working with City, design, and construction teams and in serving the public

C. The City shall provide a brief summary of the anticipated project(s), duration, role, job classification and compensation for the anticipated position. TriMet shall provide City with the resume and salary information of the employee for the proposed assignment. See Exhibit A for this information along with compensation total.

D. The City reserves the right to reject any employee TriMet proposes to assign to the City. If City rejects any offered employee, TriMet agrees to attempt to provide a suitable qualified alternative employee to the City, provided such an employee is available and interested.

The Parties may revise the above list of personnel and the skills requested from time to time, as City's needs may change, and in such case TriMet will attempt to identify and provide a suitable employee.

E. On and after the City's acceptance of any TriMet assigned employees, TriMet shall continue to pay the employee's regular compensation, including all benefits. City shall reimburse TriMet for the salary and fringe costs of each assigned employee, plus a ten percent (10%) overhead amount and reimbursement mileage for personal vehicle travel to/from job sites, and use of TriMet-issued smart phones. The assigned employee shall be a salaried TriMet employee and no paid overtime will be provided, in accordance with TriMet policy.

F. If City no longer needs the services of a particular TriMet employee, City may return the employee to TriMet upon 30 days' notice to the employee and TriMet. If there are performance issues that cannot be resolved, then City may return employee to TriMet without further notice.

G. At all times and for all purposes, TriMet remains the sole employer of any assigned employee and shall continue to provide Workers Compensation coverage for such employees. TriMet expressly understands and agrees that the City will not be construed as a joint employer. Although the City has the right to direct and control the day-to-day activities of any assigned employee, TriMet, as the employer, is responsible for complying with all state and federal employment laws and all human resources functions, including discipline. TriMet will confer with the City and reach agreement on reasonable accommodations under the American with Disabilities Act for any assigned employee's request for reasonable accommodation.

H. City shall provide the assigned employees with all resources, guides, training, and necessary and appropriate City equipment, including identification, mobile communication devices, laptop computers and safety equipment unless supplied by TriMet. Assigned employees shall rely on a personal vehicle, public transportation or other means to commute to City workstations or construction sites. Costs for vehicle usage are reimbursable at the federal rate and will - be included in invoicing by TriMet.

I. Should TriMet desire to reengage one of its assigned employees for a TriMet project, TriMet shall provide City with 30 days' written notice that TriMet intends to terminate the employee's City assignment.

J. Where an assignment could create a potential conflict of interest between the Parties, City shall not assign a TriMet employee to perform City work on a TriMet project being performed pursuant to a City permit.

K. City shall provide assigned employees with either large stand-alone projects or portfolios of smaller projects located in various parts of the City, to ensure reasonable full-time work.

L. City shall onboard, mentor, and otherwise support assigned employees with guidance and assistance from City personnel who understand City procedures and systems, and who are well-versed in the portfolio or projects assigned to the employees.

M. Upon the assigned employees' successful completion or termination of a City assignment, the City mentor(s) and/or supervisor(s) shall provide feedback to the Project Managers of this Agreement and the assigned employees.

III. PROJECT MANAGERS.

A. Each Party has designated the Project Manager listed below to supervise each Party's respective obligations under this Agreement, manage the assigned personnel and conduct all communications necessary to effectuate its purposes:

Project Managers:

Amy Fandrich, P.E.
Director of Program Management

Todd Liles, P.E.
Manager, Construction, Inspection
& Pavement Management

TriMet Engineering & Construction
1800 SW 1st Avenue, Ste. 300
Portland, Oregon 97201
Phone: (503) 962-2132
Email :
Fandrica@trimet.org

City of Portland / PBOT
1120 SW 5th Avenue, Ste. 1414
Portland, Oregon 97204
Phone: 503-267-7491
Email :
Todd.liles@portlandoregon.gov

B. The Project Managers are authorized to jointly identify and approve suitable TriMet employees for assignment to City transportation Capital Improvement Projects, address any compensation adjustments, employment disputes or other matters that may arise concerning any assigned employee, and replace or reassign any assigned employee.

C. The Project Managers are authorized to give notices, execute amendments to this Agreement consistent with its purposes, terminate or extend this Agreement pursuant to its terms, and to carry out any other act described herein. Either Party may designate a different Project Manager at any time by giving written notification to the other Party.

D. TriMet's Project Manager shall cause a monthly invoice to be submitted to the City for assigned employees' work and City's Project Manager shall approve the assigned employees' work and pay invoices submitted by TriMet's Project Manager for the amount of assigned employees' regular compensation, including benefits, plus a ten percent (10%) overhead for TriMet's managerial and administrative costs along with mileage expenses. The City shall provide payment within 30-days of receipt of invoice. Invoices shall be at the attention of the City's Project Manager and mailed and submitted through the City's e-builder system with a

copy emailed directly to the address above in III.A. City shall pay invoices in accordance with the TriMet procedures described on the attached Exhibit B.

IV. STANDARD TERMS.

A. Relationship of the Parties. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be an employee, agent or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

B. Termination and Modification of Agreement. This Agreement shall remain in effect until the completion of all obligations created herein, unless the Parties both agree in writing to extend it. The Parties may modify this Agreement by writing, signed by the Parties. Either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party.

C. No Assignment. Neither TriMet nor City shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.

D. No Third-Party Beneficiary. Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to any third-party unless such person is expressly described as intended to be a beneficiary of its terms.

E. Compliance With Law. The Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. If a Party is not in compliance with any law, regulation, executive order or ordinance, it shall take immediate steps to become compliant.

F. Inspection of Records. Either Party shall have the right to inspect, at any reasonable time, records relating to this Agreement in the possession, custody or control of the other Party as it deems necessary for review of the other Party's obligations and their respective rights under this Agreement. The cost of such inspection shall be borne by the inspecting Party.

G. Severability / Survivability. If any provision of this Agreement is found to be illegal or unenforceable, that provision shall be stricken, and the balance of this Agreement shall remain in full force and effect.

H. Entire Agreement, Modification and Waiver. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every

kind. There are no understandings, other agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by a Party of that or any other provision.

I. Interpretation. This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The Section headings contained herein are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

J. Oregon Law, Dispute Resolution and Forum. This Agreement shall be interpreted and enforced according to the laws of the State of Oregon. TriMet and City shall negotiate in good faith to resolve any dispute that may arise out of this Agreement. If the Parties are unable to resolve any dispute within fourteen (14) calendar days, they are free to pursue any legal or equitable remedies that may be available. Jurisdiction and venue for any arbitration or litigation between TriMet and City that may arise under this Agreement, or from the performance of any work described herein, shall be in the Multnomah County Circuit Court or the United States District Court for the District of Oregon, located in Portland, Oregon.

K. Mutual Indemnification. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each Party shall hold harmless, indemnify and defend the other Party and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement, including the cost of defense thereof and attorney fees, asserted by any person on account of personal injury, death, damage to property, or violation of law, that arises out of, or results from, the negligent acts or omissions of the other Party, its officers, employees, or agents. This mutual indemnity shall survive the termination of this Agreement for any cause.

IN WITNESS WHEREOF, and pursuant to the prior approval of the Portland City Council, the Parties hereto have executed this Intergovernmental Agreement as of the last date written below.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT
OF OREGON (TRIMET)**

CITY OF PORTLAND

By: Steven D. Witter Digitally signed by Steven D. Witter
Date: 2021.03.05 10:57:07 -08'00'
Steve Witter, Executive Director
Engineering and Construction Division

By: _____
Commissioner in Charge

Date _____

Date _____

Dee
Brookshire

Digitally signed by
Dee Brookshire
Date: 2021.03.09
07:51:27 -08'00'

By: _____
Dee Brookshire, Executive Director, Finance

Date _____

APPROVED AS TO FORM FOR TRIMET



Gregory E. Skillman
Senior Deputy General Counsel

APPROVED AS TO FORM FOR CITY

City Attorney

Description of Assignment

Provide Construction Management Services for the SW Capitol Hwy (Garden Home to Taylor's Ferry) project.

Duties are those of the classification of Civil Engineer II. It is anticipated that the assignment will be from March 2021 through at least the end of June 2022.

TriMet employee will be supervised by a PBOT Engineering Manager and will be assigned a mentor for training throughout assignment. Employee will be trained according to typical roles and responsibilities held by PBOT Construction Managers including contractor payments, certified payrolls and labor compliance, civil rights documentation and subcontractor performance, adherence to contract plans and specifications, submittal review, change order negotiation and documentation, daily activity reporting, utility coordination, communication with other bureaus and outside stakeholders.

Responsibility will also include overseeing the contractors work related to performance of bid items, adherence to construction schedules and monitoring and reporting on construction budgets.

Compensation

Hourly wage rate will be set at \$61.72 per hour with no paid overtime. TriMet will invoice PBOT this amount, plus fringe and 10% for overhead. Costs for mileage reimbursement at the federal rate will also be billed to PBOT. See Page 2 of this Exhibit for breakdown of costs. Total compensation not to exceed \$260,000.

EXHIBIT A

190338

EXHIBIT A

Construction Support Program - TriMet and PBOT
2/24/2021

Dan Sosnovkse Annual Wage	Dan Sosnovske Hrly wage	Dan Sosnovske Annual Base + Fringe	Overhead @ 10%	Total Anticipated Annual Wage-Related Payment to TriMet *
\$ 128,394	\$ 61.72	\$ 166,996	\$ 16,700	\$ 183,696 **

* This is an annualized summary of the payments. The term of the IGA will extend beyond one year to end 2022

** Total payment to TriMet will be a combination of wage-related expenses plus mileage reimbursement at the federal rate of \$.55/mi

SW Capital Highway duration is March 2021 through June 2022



TriMet accepts the following payment methods in the following preferential order:

1. Preferred Method:

Automated Clearing House (ACH) Electronic Payments:

Use the following information to establish ACH payments and send an ACH payment remittance advice so we can correctly apply the payment to your account:

Name on Account: Tri-County Metropolitan Transportation District of Oregon (TriMet)

Account Type: Checking

Account Owner Type: Business

ABA Number: 121000248

Account Number: 4121883805

Bank Name: Wells Fargo Bank

Bank Address: 420 Montgomery Street
San Francisco, CA 94104

ACH Payment Description: Reference your company's TriMet account number and invoice number (or Contract/IGA number if account/invoice number is not applicable).

ACH Remittance Advice: An ACH payment remittance advice MUST BE SENT to the email address AccountsReivable@trimet.org

2. Secondary Method:

Check Payments:

Mail Checks and a copy of your reconciled invoice to our lock box at the following address:

TriMet

#43002

P.O. Box 35146

Seattle, WA 98124-9828

For questions about payments or payment applications, please contact
AccountsReivable@trimet.org or 503-962-5863.