

**INTERGOVERNMENTAL FUND
TRANSFER AGREEMENT
AMONG THE
OREGON DEPARTMENT OF TRANSPORTATION
AND THE
CITY OF PORTLAND
AND THE
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON**

This Intergovernmental Fund Transfer Agreement (“Agreement”) is made and entered into by and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as “State” or “ODOT,” and the City of Portland, acting by and through its Governing Board, hereinafter referred to as “City,” and the Tri-County Metropolitan Transportation District of Oregon, acting by and through its Governing Board, hereinafter referred to as “TriMet.” Parties signing this Agreement shall be referred to individually as “Party” and collectively as “Parties.”

WHEREAS, ODOT and City entered into a jurisdictional transfer of 82nd Avenue from NE Killingsworth to city limits south.

WHEREAS, the jurisdictional transfer was contingent on ODOT providing \$70M in federal funds to the City to address safety, access and asset condition improvements on 82nd Avenue in addition to the \$80M in American Recovery Plan Act (ARPA) funding transferred in 2021.

WHEREAS, Metro, TriMet, the City, Clackamas County and ODOT are developing a bus rapid transit project for 82nd Avenue to improve transit speed, reliability and access for the communities along the corridor (“Transit Project”).

WHEREAS, with local funding for project development, TriMet expects to begin the Project Development Phase of the 82nd Avenue Transit Project through the Federal Transit Administration’s (FTA’s) Capital Investment Grant program.

WHEREAS, the City wishes to contribute \$5M in federal funds towards the Project Development phase of the 82nd Avenue Transit Project. This contribution is in good faith with the expectation that a separate agreement is reached between TriMet and the City on reimbursement for City participation of the Project Development phase.

WHEREAS, on behalf of the City, ODOT will transfer \$5M of federal funds to FTA to contribute towards the 82nd Avenue Transit Project, Project Development phase. TriMet will enter into an agreement with FTA to utilize the \$5M towards the Transit Project.

WHEREAS The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation (“Stewardship Agreement”) documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State’s oversight and reporting

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requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

NOW THEREFORE, the Parties agree as follows:

A. Project Identification

1. TriMet, Metro, the City, and project stakeholders have identified the purpose and need and have agreed upon a plan to carry out the 82nd Avenue Transit Project.
2. The City agrees to contribute funding to the Project Development phase for the 82nd Avenue Transit Project through TriMet.
3. The City and TriMet will enter into a separate project agreement to guide the work with the expectation that City staff time will be reimbursed through a separate agreement.
4. This agreement allows ODOT to transfer \$5M of the City's 82nd Avenue federal funding to FTA.
5. TriMet will request permission from FTA under its Capital Investment Grant program to enter the Project Development phase of the 82nd Avenue Transit project.

C. State Responsibility

1. The State will transfer \$5M in federal funds to FTA on behalf of the City.
2. The State will enter into separate project agreements for the remaining \$65M for the 82nd Avenue improvements with the City.

D. TriMet Responsibilities

1. Upon transfer of \$5M to FTA, TriMet agrees to enter into a separate project agreement with FTA to conduct Project Development for the 82nd Avenue Transit Project .
2. TriMet agrees to enter into a separate Project IGA with the City to fund the City's participation, including City labor expenses, in the Project Development phase and agree to specific desired outcomes, decision-making processes, and approval criteria for the transit project.
3. TriMet agrees to reimburse the City for staff time from the first day of Project Development, however, invoicing for labor hours accrued will be dependent on finalizing the Project IGA referenced above.
4. TriMet will secure all funding necessary to complete Project Development and continue toward a locally preferred alternative (LPA). If that funding cannot be identified, the \$5M contributed by the City will be returned to the City.
5. TriMet will work closely with Metro and ODOT to update the STIP.
6. TriMet will provide any local match required for the \$5M in federal fund transferred through this agreement.

E. City of Portland Responsibilities

1. The City agrees to enter into a separate project agreement with TriMet to fund the City's participation in the Project Development phase and agrees to specific desired outcomes, decision-making processes, and approval criteria for the transit project.

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2. By signing this Agreement, City authorizes State to transfer \$5M from Key #23112 to FTA for the purpose of providing those funds to TriMet to deliver the Project Development for the 82nd Avenue Transit Project the City agrees to participate in the CIG Project Development phase of the 82nd Avenue Transit Project.

G. General Provisions

1. Federal funds under this Agreement are provided under Title 23, United States Code.
2. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate one (1) calendar year following the date all required signatures are obtained, whichever is sooner.
4. Termination.
 - a. This Agreement may be terminated by any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - b. State may terminate this Agreement upon thirty (30) days' written notice to the Parties.
 - c. State may terminate this Agreement effective upon delivery of written notice to the Parties, or at such later date as may be established by State, under any of the following conditions:
 - i. If Parties fail to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If Parties fail to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - iii. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
 - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final transfer. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
6. Contribution
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the

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- other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- b. With respect to a Third Party Claim for which State is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
 - c. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with State (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of the Party on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with State (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of the Party on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

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8. City shall assume sole liability for breach of any federal statutes, rules, program requirements and grant provisions applicable to the fund transfer, and shall, upon City's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
9. ALTERNATIVE DISPUTE RESOLUTION: The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. WORKER'S COMPENSATION COVERAGE: All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. The Parties shall ensure that each of its contractors complies with these requirements.
11. State, City, and TriMet are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to another party unless such that party is individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
12. Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. Parties certify and represents that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind agency.
14. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
15. This Agreement and any attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and any attached exhibits will control over project application and documents provided by Agency to State. There are no understandings, 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 all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
16. State's contact for this Agreement is Jeff Flowers, Jeffrey.a.flowers@odot.oregon.gov, 503-986-4453, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. City's contact for this Agreement is Kristin Hull, Kristin.hull@portlandoregon.gov, 503-865-6825, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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18. TriMet's contact for this Agreement is Michael Kiser, kiserm@trimet.org, 503-201-0217, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #????) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

DRAFT

Exhibit A

City of Portland, by and through its Governing Body

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

LEGAL REVIEW APPROVAL
(If required in City's process)

By _____
Recipient's Legal Counsel

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Statewide Investment Management Section

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)

By _____
Assistant Attorney General

Date _____

TriMet, by and through its Governing Body

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

LEGAL REVIEW APPROVAL
(If required in City's process)

By _____
Recipient's Legal Counsel

Date _____