

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made and entered into as of the 2nd day of January 1986, by and between the METROPOLITAN SERVICE DISTRICT, hereinafter referred to as "METRO," and the CITY OF PORTLAND, OREGON, hereinafter referred to as "CONTRACTOR."

W I T N E S S E T H :

WHEREAS, METRO and CONTRACTOR are cooperatively conducting a continuing, comprehensive transportation study in the Portland/Vancouver metropolitan area; and

WHEREAS, METRO requires services which CONTRACTOR is capable of providing, under terms and provisions hereinafter described; and

WHEREAS, A Unified Work Program (UWP) has been developed between METRO, CONTRACTOR, and other units of local government to define the activities to be undertaken; and

WHEREAS, The METRO Budget and UWP for FY 1986 contain funds to carry out the purpose of this Agreement; and

WHEREAS, CONTRACTOR has funds to provide the local matching share for the project in the amount of fifteen (15) percent of costs incurred up to ONE THOUSAND FIVE HUNDRED and NO/100THS (\$1,500.00) DOLLARS;

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

I. CONTRACTOR shall perform that planning work indicated in the Scope of Work (Attachment A), which is attached hereto and incorporated herein. The project shall be conducted under the general supervision of the METRO Transportation Director so that METRO may coordinate the study with regional planning activities.

II. CONTRACTOR agrees to begin its performance under this Agreement on January 2, 1986, and to complete the performance by June 30, 1987. This Agreement shall expire on June 30, 1987, unless extended in writing by METRO.

III. METRO agrees to compensate CONTRACTOR for the performance as follows:

A. The services of CONTRACTOR staff shall be compensated on the basis of actual salaries and fringe benefits (except unemployment compensation) paid staff personnel by CONTRACTOR for the time the personnel are directly utilized on work necessary to fulfill the terms of this Agreement. The rates of compensation for

the personnel shall be as adopted by CONTRACTOR applicable for Fiscal Year 1986.

B. It is understood and agreed that CONTRACTOR shall keep accurate time records and receipts with respect to the salaries and benefits to be paid, as well as other direct reimbursable costs and consultant fees, and shall make such records available to METRO for audit.

C. All costs reimbursed under this section shall be not only itemized and certified as payments to specifically named individuals or businesses, but shall, whenever reasonably possible, be supported by receipts.

D. Inasmuch as CONTRACTOR is a nonprofit organization, only reimbursable costs for the actual compensation of employees engaged in and direct expenses and consultant fees necessary for the performance of this Agreement shall be paid CONTRACTOR.

IV. The total amount of the work to be accomplished on this project is TEN THOUSAND and NO/100THS (\$10,000.00) DOLLARS and the total amount to be paid to CONTRACTOR for such work shall not exceed eighty-five (85) percent of that amount. CONTRACTOR further agrees to provide fifteen (15) percent of the total cost of the project not to exceed ONE THOUSAND FIVE HUNDRED and NO/100THS (\$1,500.00) DOLLARS. METRO certifies that sufficient funds have been allocated in the METRO FY 1986 Budget to finance the amount to be paid to CONTRACTOR under this Agreement. Payments by METRO to CONTRACTOR for work done or to be done pursuant to this Agreement shall be conditioned upon METRO's receipt of federal funds in the amount of eighty-five (85) percent of the total amount of the project.

V. CONTRACTOR shall bill METRO at quarterly intervals for said reimbursable costs incurred in the preceding quarter. CONTRACTOR shall provide METRO with a final report at the completion of the project summarizing work accomplished under this Agreement.

VI. CONTRACTOR shall submit to METRO quarterly progress reports no later than the last working day in each reporting period and such additional records and financial reports as are necessary to enable METRO to meet the requirements of UMTA. Records must be maintained by CONTRACTOR and be made available to METRO upon reasonable request to show actual time devoted to the project and costs incurred in pursuance of the project.

VII. Termination:

A. Termination for Convenience: METRO may terminate this Agreement, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its

termination claim to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to METRO, the CONTRACTOR will account for the same, and dispose of it in the manner METRO directs.

B. Termination for Default: If the CONTRACTOR fails to perform in the manner called for in the Agreement, or if the CONTRACTOR fails to comply with any other provisions of the Agreement, METRO may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by METRO that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the CONTRACTOR, METRO, after setting up a new performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

C. This Agreement may be terminated at any time by mutual consent of both parties.

VIII. CONTRACTOR and METRO further mutually agree as follows:

A. CONTRACTOR will assign staff members whose experience and specialties will facilitate and aid performance of the Agreement.

B. Each party shall allow personnel of the other party who are assigned to work on this project reasonable access to procedures and techniques employed in performance of this Agreement.

C. CONTRACTOR authorizes METRO and UMTA to review and inspect the study activities. Such reviews and inspections by UMTA, as needed, will be arranged for through METRO, and may be by personnel from the Washington or Regional offices.

D. CONTRACTOR shall maintain accounting records and other evidence pertaining to the costs incurred and make the records available at its office at all reasonable times during the Agreement period and for three (3) years from the date of the final payment of federal funds to METRO with respect to the study. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by METRO, or UMTA, or any authorized representative of the federal government, and copies thereof shall be furnished, if requested.

E. CONTRACTOR hereby agrees to hold METRO harmless from, and shall process and defend at its own expense, all claims, demands or suits at law or equity, of whatever nature brought against

those parties arising from CONTRACTOR'S performance of the provisions of this Agreement. This indemnity provision shall not require the CONTRACTOR to defend or indemnify UMTA or METRO against any action based solely on the alleged negligence of UMTA or METRO.

F. Performance of this Agreement shall not be sub-contracted in whole, or in part, except with the written consent of METRO. CONTRACTOR shall not assign this Agreement in whole, or in part, or any right, privilege, duty or obligation hereunder, without the prior written consent of METRO, and UMTA. No provision of this section and no approval by METRO of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by METRO in addition to the Agreement price.

G. CONTRACTOR shall be free to copyright material developed under this Agreement. METRO and UMTA reserve a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

H. Publication of any reports by either party shall give credit to the other party and to the Urban Mass Transportation Administration. However, if either METRO or UMTA does not wish to subscribe to the findings or conclusions of the study, the following statement shall be added:

"The opinions, findings and conclusions expressed in this publication are those of the authors and not necessarily those of METRO or the Urban Mass Transportation Administration."

I. CONTRACTOR shall perform this Agreement as an independent CONTRACTOR and not as an employee of METRO.

J. During the performance of this Agreement, CONTRACTOR for itself, and its assignees and successors in interest, agree as follows:

1. Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

2. Equal Employment Opportunity: During the performance of this Agreement, the CONTRACTOR agrees as follows:

a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall

include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

c. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the CONTRACTOR'S non-compliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further METRO contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11236 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, national origin or handicap.

4. Information and Records: The CONTRACTOR will provide all information and reports required by the Regulations, or order and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by METRO or UMTA to be pertinent to ascertain compliance with such Regulations, order or instructions. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to METRO or UMTA, as appropriate, and shall set forth what efforts it has made to obtain this information.

5. Sanctions for Noncompliance: In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of this Agreement, METRO shall impose such Agreement sanctions as they or UMTA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies; and/or

b. Cancellation, termination or suspension of the Agreement in whole or in part.

6. Interest of Members of or Delegates to 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.

7. Prohibited Interest: No member, officer or employee of the Public Body or of a local public body during his tenure or one (1) year thereafter shall have any interest direct or indirect in this Agreement or the proceeds thereof.

8. Minority Business Enterprise Requirements: Metro's goals for MBE participation in this Contract are 0 percent for MBE and 0 percent for women-owned MBE's. The goal is the

percent of the total Contract price that should be awarded to MBE subcontractors.

As used in this Contract, unless the context requires otherwise:

a. "Minority Business Enterprise" or "MBE" means a small business concern, as defined under the federal Small Business Act, of which one or more minorities or women own at least 51 percent and control management and daily business operation.

b. The term "minority" means a person who is a citizen or a lawful permanent resident of the United States and who is:

1. A person having origins in any of the Black racial groups of Africa.

2. Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

3. Portuguese: A person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

4. Asian American: A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

5. American Indian or Alaskan Native: A person having origins in any of the original peoples of North America.

6. Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

Pursuant to 49 CFR 23.43 (a), the following provisions are made a part of this Contract.

Policy It is the policy of the (U.S.) Department of Transportation (DOT) and Metro that MBE as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

MBE Obligation. The recipient (METRO) or its CONTRACTOR (City of Portland) agrees to ensure that MBE as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with CFR Part 23 to ensure that MBES have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

CONTRACTOR'S failure to carry out the requirements set forth in this paragraph shall be a breach of this Contract and may result in termination of this Contract for default or any other remedy Metro deems appropriate.

CONTRACTOR shall make good faith efforts to replace an MBE subcontractor that is unable to perform successfully with another MBE. Tri-Met shall seek Metro's approval of a prospective substitute before making the substitution. Metro shall approve the substitute if it is an eligible MBE.

9. Incorporation of Provisions: The CONTRACTOR will include the provisions of paragraphs (1) through (10) in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order or instructions issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontract or procurement as METRO or UMTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request METRO to enter into such litigation to protect the interests of METRO, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

K. METRO's failure to object to any breach of this Agreement shall not constitute a waiver of METRO's right to object to any additional breach or to require strict performance of the Agreement.

L. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for CONTRACTOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award of making of this Agreement. For breach of violation of this warrant, METRO shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

M. Such provisions as are necessary to comply fully with the laws of the State of Oregon concerning public contracts and provisions to be included herein are hereby made a part of this Agreement by reference, and the parties shall comply with all obligations and other provisions of those laws the same as though those obligations were fully set out herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

CONTRACTOR: CITY OF PORTLAND

METROPOLITAN SERVICE DISTRICT

By: _____
Margaret D. Strachan
Commissioner of Public Utilities

By: *Rick Gustafson*
Rick Gustafson,
Executive Officer

By: _____
Auditor

Date: _____

Date: _____

APPROVED AS TO FORM:

Thomas A. Baxendale

KT/srs
5210C/452-3
03/03/86

ATTACHMENT A

SCOPE OF WORK

CITY OF PORTLAND - REGIONAL RAIL STUDY

This Scope of Work identifies tasks to be performed by the CONTRACTOR (City of Portland) as part of the Phase I-Regional Light Rail Study. The focus of the CONTRACTOR's efforts will be on design, traffic, and impact-related issues for the I-205 and Barbur Boulevard corridors. Coordination and public involvement activities will also be conducted as part of this Scope.

The CONTRACTOR agrees to perform the following activities. A Technical Memorandum will document the findings or conclusions of each task.

- I. I-205 Corridor (tasks to be completed by May 15)
 - A. Assess the land use impacts and review ODOT's assessment of the traffic impacts in the vicinity of possible LRT stations at Lents, Holgate, Powell, Division, Stark-Washington (Mall 205-Adventist Hospital), Gateway, Parkrose and Airport Way.
 - B. Assess the transit service plan impacts on Portland neighborhoods.
 - C. Determine economic impacts of the project to the City of Portland. Monitor and coordinate the Port's and Clackamas County's economic impact studies with other Portland bureaus.
 - D. Monitor and coordinate the study with Portland neighborhood associations and citizen groups.
- II. Barbur Corridor (schedule to be determined at a later date)
 - A. Assist in alignment definition.
 - B. Assess the traffic impacts of the proposed LRT alignment on Barbur Boulevard.
 - C. Assess the traffic and land use impacts in the vicinity of possible LRT stations (i.e., Hamilton Court, Burlingame, PCC, etc.)
 - D. Monitor and coordinate the conceptual engineering analysis and construction and right-of-way impacts with other City bureaus.
 - E. Assess the economic impacts potentially accruing to the City from implementation of light rail in the corridor.

- F. Monitor and coordinate the project with transportation projects in the Burlingame area.
- G. Monitor and coordinate the study with Portland neighborhood associations and citizen groups.

RB/srs
5210C/452-3
03/03/86

ORDINANCE NO.

158788

An Ordinance authorizing the Commissioner of Public Utilities and the Auditor to enter into an Intergovernmental Agreement with the Metropolitan Service District (METRO) to provide transportation analysis for the Regional Light Rail Transitway (LRT) Study to Metro in the amount of \$8,500, increasing appropriations; and declaring an emergency.

The City of Portland ordains:

Section 1, The Council finds:

1. The Arterial Streets Classification Policy encourages the development of regional transit facilities to reduce the need for new regional traffic facilities, promote economic development, and to minimize the impact of future traffic on the City and its neighborhood.
2. The Urban Mass Transportation Administration (UMTA) awarded Metro a grant to examine the feasibility and priority of LRT in the Portland metropolitan area, meeting all Phase I Alternative Analysis requirements, and maintaining progress and commitments for I-205 Corridor and SW Corridor.
3. Transportation Planning and Finance of the Portland Office of Transportation will be the lead city agency for providing Metro with information required for the Regional LRT Study.
4. Transportation Planning and Finance has sufficient appropriation authority to provide the required \$1,500 local match.
5. The existing staffing level in Transportation Planning and Finance is adequate to support this study.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Works and the Auditor are authorized to sign an Intergovernmental substantially in conformance with the attached Exhibit A, and by this reference made a part hereof.

ORDINANCE No.

Section 2. Resources and requirements within the Federal Grants Fund and the Transportation Operating Fund will be increased as follows:

Federal Grants Fund

Resources

UMTA	\$8,500
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Requirements

Transfers to Other Funds - Transportation Operating	\$8,500
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Transportation Operating Fund

Transfers from other Funds - Federal Grants - 15795301	\$8,500
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Requirements

Bureau of Transportation Planning and Finance	
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15700441/210	\$8,500
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Section 3. The Council declares that an emergency exists because delay of the signing of this Intergovernmental Agreement could result in the loss of the UMTA grant; therefore this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **JUL 16 1986**

Steven Iwata
July 11, 1986

Jewel Lansing

Auditor of the City of Portland

By

Doris E. O'Leary
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BOGLE	/	
LINDBERG	/	
SCHWAB	—	
STRACHAN	/	
CLARK	/	

FOUR-FIFTHS CALENDAR	
BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

Calendar No. **1458**

ORDINANCE No. **158788**

Title

An Ordinance authorizing the Commissioner of Public Utilities and the Auditor to enter into an Intergovernmental Agreement with the Metropolitan Service District (METRO) to provide transportation analysis for the Regional Light Rail Transitway (LRT) Study to Metro in the amount of \$8,500, increasing appropriations; and declaring an emergency.

Filed **JUL 11 1986**

JEWEL LANSING
Auditor of the CITY OF PORTLAND

By *Elena Cervera*
Deputy

INTRODUCED BY	
COMMISSIONER M. STRACHAN	
NOTED BY THE COMMISSIONER	
Affairs	
Finance and Administration	
Safety	
Utilities <i>MDS/jes</i>	
Works	
BUREAU APPROVAL	
Bureau: Transportation Planning & Finance	
Prepared By:	Date:
Steven Iwata	July 11, 1986
Budget Impact Review:	
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required	
Bureau Head:	
Cynthia J. Kurtz	
CALENDAR	
Consent	Regular X
NOTED BY	
City Attorney	
City Auditor	
City Engineer	
Richard O. Schmidt, P.E.	