

**INTERGOVERNMENTAL AGREEMENT
FOR TRANSIT SYSTEM SAFETY IMPROVEMENTS
IN THE CITY OF PORTLAND**

THIS AGREEMENT is made this _____ day of _____, 2010, by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district of the State of Oregon, hereinafter referred to as "TriMet", and THE CITY OF PORTLAND, a municipal corporation of the State of Oregon acting by and through its Elected Officials, hereinafter referred to as "City".

RECITALS

1. TriMet is currently conducting a system-wide safety review. This review is being performed by an independent safety expert, who has made certain recommendations on how TriMet can improve safety throughout its organization.
2. Certain recommendations concern making changes to bus lines throughout TriMet's system, which would require physical changes to streets and rights of ways controlled by the City.
3. City has agreed to construct certain safety improvements in its rights of way at TriMet's request. TriMet has agreed to fund such improvements.
4. The estimated cost of such safety improvements is approximately \$50,000.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. TriMet and City agree to jointly coordinate design solutions for certain transit safety improvements in the City of Portland. Such safety improvement projects may include, but are not necessarily limited to, signage for the 15 bus line on NW Thurman Street, repositioning of a sidewalk where buses turn from westbound Capitol Highway onto northbound Terwilliger Boulevard, and restriping traffic lanes at Collins Circle.
2. Once the parties have agreed on the scope of work and estimated cost for a particular safety improvement project, the City's Office of Transportation shall oversee final design, construction or implementation of the improvements, and shall either perform services with its own forces or procure the services of a prime contractor. In the event the City procures the services of a contractor under this agreement, City shall comply with all applicable laws related to public contracting, including prevailing wage laws. City shall also require Contractor to obtain insurance at levels at least equal to those set out in Paragraph 10 of this Agreement, and require Contractor to name TriMet as an additional insured under such policies.
3. City shall invoice TriMet upon completion of a safety improvement project. Invoices shall be sent to the following address: TriMet Finance Department, Attn: Accounts

Payable, 4012 SE 17th Avenue, Portland, OR 97202.

4. TriMet shall reimburse City for project costs within thirty days of receipt of City's invoice.
5. Allowable project costs: TriMet agrees to pay the City's actual costs for the safety improvement projects, including direct salary and wage costs, fringe benefits, direct non-salary costs, and general overhead. Salary, wage, and fringe benefit costs shall be based on actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. Overtime premium pay (pay in excess of straight time) shall not be invoiced to TriMet unless TriMet's Project Manager has specifically authorized overtime in advance of the work, or in the event of an emergency. The fringe rate applied to overtime hours shall be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by TriMet. Direct non-salary costs shall be those reasonable costs directly incurred by City in fulfilling the terms of this Agreement, including, but not limited to, equipment rentals and purchase of outside services. General overhead costs charged by City shall not exceed ten percent (10%) of City's project costs, excluding purchase of outside services.
6. Each party has designated a project manager as its formal representative for purposes of this Project:

Kerry Ayres-Palanuk
TriMet
4012 SE 17th Avenue
Portland, OR 97212
Phone: (503) 962-7520
Fax: (503) 962-3088
Email: PalanukK@trimet.org

Dan Layden
City of Portland
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
Phone: (503) 823-2804
Fax: (503) 823-7576
Email: Dan.Layden@portlandoregon.gov

The Project Managers are authorized to approve work and billings, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement and to carry out any other act referred to herein.

Either party may designate a different project manager by giving written notification to the other party as provided in this paragraph.

7. City shall adopt an ordinance authorizing its city officials to enter into and execute this Agreement.
8. **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.

9. **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 third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.
10. **Compliance with Laws.** 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 gain compliance.
11. **Insurance Requirements.** City and TriMet are both self-insured. Both parties agree the other shall not be required to purchase the insurance described below unless it is no longer self-insured. Any purchased insurance shall meet the following requirements.
 - 11.1 **Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.** This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this Agreement; and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The liability coverage required for performance of the Agreement shall include both TriMet and City as additional insureds, to the extent allowed by law. The party obtaining such insurance shall furnish the other party with a Certificate of Insurance for the limits set out above, which is to be in force and applicable to the Work. The insurance coverage shall not be amended, altered, modified, or canceled without at least thirty (30) days prior written notice to TriMet or City, as applicable.
 - 11.2 **Worker's Compensation.** TriMet and City, and all employers working under this Agreement, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Each party shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, Workers Compensation, unemployment taxes, and state and federal withholdings.
12. **Indemnification.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other 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, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

13. **Effective and Termination Dates.** This Agreement shall be effective as of September 1, 2010, and shall remain in effect until the completion of all obligations created by this Agreement, unless the parties both agree in writing to extend it.

13.1 Early Termination of Agreement.

13.1.1 City and TriMet, by mutual written agreement, may terminate this Agreement at any time.

13.1.2 Either City or TriMet may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within thirty days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

14. **Remedies.** The remedies provided under this Agreement shall not be exclusive. The parties also shall be entitled to any other equitable and legal remedies that are available.
15. **Oregon Law, Dispute Resolution and Forum.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and City shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between City and TriMet arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah City Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
16. **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.
17. **Severability/Survivability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.
18. **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. The Section headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the parties

and no usage of trade will be relevant to supplement any term used in 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. 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 a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

20. **Inspection of Records.** 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.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement.

**TRI-MET METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**

By _____
Shelly Lomax, Executive Director

Date _____

CITY OF PORTLAND, by
and through its elected officials

By _____

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR TRIMET**

By: _____
Lance Erz, Deputy General Counsel

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR CITY**

By: _____
City Attorney

Date 9/2/10