

Attachment A
INTERGOVERNMENTAL AGREEMENT

184385

This Intergovernmental Agreement (IGA) is entered into by and among the City of Portland (CITY) acting by and through its Bureau of Environmental Services, hereafter called "BES"; the State of Oregon, acting by and through its Oregon Department of Transportation, hereafter called "ODOT"; and the Tri-County Metropolitan Transportation District of Oregon, hereafter called "TriMet". This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

RECITALS

1. By the authority granted in ORS 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

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

TERMS OF AGREEMENT

1. BES, ODOT, and TriMet desire to work together to retrofit existing parking areas at TriMet's Barbur Boulevard Transit Center located at 9712 SW Barbur Boulevard to manage stormwater runoff to provide for water quality treatment and mitigation of stormwater flows, hereinafter referred to as "Project". These actions will improve water quality in Tryon Creek, help protect and improve habitat in Tryon Creek for ESA listed species. Construction of this Project will also help ODOT meet its obligation under a settlement agreement with the Northwest Environmental Defense Center (NEDC). BES will obtain any required City permits at its own expense.

2. The Project will be financed at an estimated cost of \$ 770,000.

The estimated cost for the design portion of this Project is \$120,000 and will be paid for at BES expense. BES will provide the engineering design documents for construction of the proposed Project at no cost to ODOT and TriMet.

The estimated cost for the construction portion of this Project is \$650,000. ODOT agrees to fund the cost of Project construction up to \$600,000 with funds available to ODOT from the NEDC Settlement. TriMet agrees to manage the Project construction including procurement of services and materials, contract administration and construction inspection at an estimated cost of \$50,000 with Project construction to be completed by June 30, 2011. In the event NEDC funding is not allocated to this Project, this IGA is terminated.

TriMet agrees to be responsible for future operation and maintenance of all facilities constructed as part of the Project including all expenses.

3. This Project has a BES project number E09106.

GENERAL PROVISIONS

1. Effective Date and Duration. This IGA is effective from the date of execution by the three parties, and will terminate upon completion of the services contemplated by this Agreement. Unless earlier terminated or extended, this IGA will expire September 30, 2014.
2. Statement of Work. The statement of work, (the "Work"), including the delivery schedule for the Work, is contained in Exhibit A, attached hereto and by this reference made a part hereof. ODOT agrees to fund this Project and TriMet agrees to construct this Project in accordance with approved Project design drawings and construction specifications, and in accordance with the terms and conditions of this IGA.

3. Consideration. BES agrees to provide engineering design documents for construction of the proposed Project as described in Exhibit A. BES will provide ODOT and TriMet with approved engineering Project design drawings, construction specifications and cost-estimate, as listed in Exhibit B, attached hereto and by this reference made a part hereof. ODOT shall reimburse TriMet its actual costs in performing the Work, in a sum not to exceed Six Hundred Thousand Dollars (\$600,000), as allocated in Exhibit B, which is incorporated by this reference.
4. Design Modifications. TriMet and ODOT agree to notify the BES design engineer of any modifications to the approved engineering design documents and any modifications shall be approved to the satisfaction of the BES design engineer.
5. Project Representatives. Each party has designated a project manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this IGA must be directed to the following individuals:

	<u>BES</u>	<u>ODOT</u>	<u>TriMet</u>
Project Manager:	Amin Wahab		Patricia Oxley
Organization:	City of Portland	Oregon Department of Transportation	TriMet
Address:	1120 SW Fifth Ave., Suite 1000 Portland, OR 97204	123 NW Flanders St Portland, OR 97209-4012	4012 SE 17 th Avenue Portland, Oregon
Phone:	(503) 823-7895	(503)	(503)-963-2463
Fax:	(503) 823-5344	(503)	503-962-2488
Email:	amin.wahab@portlandoregon.gov		oxleyp@trimet.org

6. Subcontracts. TriMet shall not enter into any subcontracts for any of the work scheduled under this IGA without first obtaining written consent from the BES Project Manager, which consent will not be unreasonably withheld or delayed.
7. IGA Documents. This IGA consists of the following documents, which are listed, in descending order of precedence: This IGA less all exhibits, attached Exhibit A, "Work Statement," and Exhibit B, "Budget". All attached Exhibits are hereby incorporated in their entirety for reference.
8. Amendments. The terms of this IGA must not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
9. Reimbursement.
 - A. TriMet shall submit itemized invoices to ODOT for 100 percent of the actual costs incurred by TriMet on behalf of the Project. TriMet shall designate in the invoices the Project and ODOT contract numbers, and the allocation of costs in accordance with line items identified in Exhibit B. ODOT shall review, approve, and provide reimbursement to TriMet for the Work performed. Under no conditions will ODOT total reimbursement obligations exceed \$600,000, including all expenses.
 - B. Costs incurred for travel, lodging, and meals will be reimbursed to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, and all travel has been approved by the ODOT Project Manager.
 - C. ODOT will detain for payment processing non-itemized or incomplete billings until TriMet has supplied correct information to BES. ODOT shall notify TriMet immediately if it is detaining any invoice because it is not itemized or incomplete.
 - D. TriMet shall submit to ODOT a monthly invoice for costs incurred during the preceding one-month period no later than forty-five (45) days following the end of that performance period. If TriMet does not submit the quarterly invoice on or before 45 days following the end of the performance period, ODOT will not be liable for reimbursement of those costs itemized in that preceding monthly invoice.
 - E. Invoices must be submitted in duplicate, identifying the ODOT IGA number to:

Project Manager
Oregon Department of Transportation

ODOT shall pay all approved invoices to TriMet within 30 days.

10. Termination.
- A. The parties may agree to an immediate termination of this IGA or at a time certain upon mutual written consent.
 - B. Any of the parties may terminate this IGA effective not less than ten (10) days from written notice or at such other date as may be established by both parties under any of the following conditions:
 - 1) If funding is not obtained and continued at levels sufficient to allow for the specified services. When possible, and when agreed upon, the IGA may be modified to accommodate a reduction in funds.
 - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate under this IGA, or are no longer eligible for the funding proposed for payments authorized by this IGA.
 - C. Any of the parties may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate and explain the reason therefor. If the party has not cured the breach within ten (10) days or a longer period as granted in the cure notice, or made considerable steps toward curing the breach within five (5) days after receiving the cure notice, the party seeking compliance may terminate this IGA.
 - D. In the event of termination for any reason, ODOT shall remain liable to reimburse TriMet for all actual expenses incurred by TriMet prior to the effective date of termination and designated as eligible for reimbursement under this IGA. In the event of termination, TriMet will supply all invoices reflecting costs incurred, but not paid, to ODOT. ODOT shall then have thirty (30) days to pay the outstanding costs.
11. Funds Available and Authorized. All parties certify that at the time the IGA is written that sufficient funds are available and authorized for expenditure to finance costs of this IGA within party's current appropriation and limitation. All parties understand and agree that payment of amounts under this IGA attributable to work performed after the last date of the current budget period is contingent on each of the parties receiving appropriations, limitations, or other expenditure authority. In the event one party does not receive the necessary appropriations to continue to perform that party's obligations under this IGA, that party shall immediately notify the other parties.
12. Captions. The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.
13. Choice of Venue. Oregon law will govern this IGA and all rights, obligations, and disputes arising out of the IGA. Venue for all disputes and litigation will be in Multnomah County, Oregon.
14. Severability/Survival. If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions must not be impaired. All provisions concerning the limitation of liability, indemnity, and conflicts of interest must survive the termination of this IGA for any cause.
15. Work Product. TriMet agrees that it controls and is responsible for the maintenance of the stormwater facilities constructed under this Project pursuant to the terms of this IGA. After construction is complete, TriMet will remain in control of and responsible for routine operation and maintenance of the stormwater facilities. Upon completion of construction, the stormwater facilities shall be listed as capital assets by TriMet and shall be not be removed or altered before the expiration of this Agreement.
16. Right of Access: BES certifies that ODOT and TriMet have agreed to grant access to BES staff or designees to make observations or monitor stormwater facility performance. This right of access will continue for the duration of this Agreement.
17. Access to Records. All parties and their duly authorized representatives will have access to the books, documents, papers, and records that are directly pertinent to this IGA for the purpose of making audits, examinations, excerpts, and transcripts.
18. Compliance with Applicable Law. All parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA.
19. No Third Party Beneficiary. BES, ODOT and TriMet are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or may be construed to give or provide any benefit, direct, indirect, or otherwise to other parties unless other persons are expressly described as intended to be beneficiaries of its terms.

20. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, all parties agree to indemnify and defend the other and its officers, employees, agents, and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this IGA, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death, or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors, or representatives.
21. Merger Clause. This IGA constitutes the entire agreement among the parties. No waiver, consent, modification or change of terms of this IGA may bind any of the parties unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this IGA.
22. This IGA may be executed in several counterparts (facsimile or otherwise) 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 IGA so executed shall constitute an original.

Executed in triplicate by the duly authorized representatives of the parties.

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

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission, or in a line item in the biennial budget approved by the Director.

Executed in triplicate by the duly authorized representatives of the parties.

CITY OF PORTLAND

Elected Official or Delegate Date

Approved as to form by City Attorney Date

TriMet

Authorized Signature Date

Approved as to form by Deputy General Counsel Date

Oregon Department of Transportation

Authorized Signature Date

Approved as to form by Deputy General Consul Date

EXHIBIT A**Statement of Work**

BES is partnering with the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the Oregon Department of Transportation (ODOT) to implement stormwater retrofits to existing parking areas to manage stormwater runoff at the Barbur Boulevard Transit Station.

Project Location

Barbur Boulevard Transit Station
9712 SW Barbur Boulevard
Portland, OR

Project Description

The Tri-County Metropolitan Transportation District of Oregon (TriMet) Barbur Boulevard Transit Station is located in the upper Tryon Creek watershed.

The TriMet Barbur Boulevard Transit Station site consists of 243,155 square feet, comprised of 203,518 square feet of impervious surfaces, located southeast of the intersection of SW Taylors Ferry Road and SW Barbur Blvd. Surface water from the parking areas, drive lanes, and bus shelter currently flow untreated into drain inlets on this site ultimately discharging directly into Tryon Creek. This project will result in the design and construction of stormwater management facilities to treat stormwater runoff from drive lanes, parking areas and roof areas. Stormwater swales will replace existing pedestrian walkway islands between parking spaces.

BES will design the proposed stormwater facilities. TriMet will be responsible for construction of the stormwater facilities, construction management, and future operation and maintenance of the constructed stormwater facilities. ODOT will reimburse TriMet for the cost of constructing the stormwater facilities.

Scope of Work

The water quality facilities described above will be designed and constructed in accordance with this IGA as follows:

1. *The City of Portland, BES shall:*
 - a. Provide stamped engineering design documents for construction of proposed stormwater facilities.
 - b. Obtain any required City permits at its own expense.
2. *The Tri-County Metropolitan Transportation District of Oregon (TriMet) shall:*
 - a. Provide for the procurement of all required services and materials to carryout construction of the stormwater facilities.
 - b. Provide for all construction management.
 - c. Provide for all future operation and maintenance of all project elements on TriMet managed property.
 - d. Complete all project construction by June 30, 2011.
3. *The Oregon Department of Transportation (ODOT) shall:*
 - a. Reimburse TriMet for the actual cost of construction of the stormwater facilities at a total cost not to exceed \$600,000.

Schedule

Activity	Date
Predesign	Completed
Design	January 2011
Construction	February 2011– June 2011

EXHIBIT B**Estimated Project Budget**

BES will provide engineering design services. ODOT funds transferred to TriMet under this IGA will be used for materials and project construction. TriMet will provide construction management.

Responsible Party	Estimated Cost
Design (BES)	\$120,000
Construction (ODOT)	\$600,000
Construction Management (TriMet)	\$ 50,000
Total	\$770,000