

INTERGOVERNMENTAL AGREEMENT

**Between the Tri-County Metropolitan Transportation District of Oregon ("TriMet")
and the City of Portland
For Capital Improvements for Safe Access to Transit**

TriMet Contract No. GH120345LE

This Intergovernmental Agreement (this "Agreement"), dated this ____ day of _____, 20__, ("Effective Date") is made and entered into by and between the City of Portland, Bureau of Transportation ("City") and the Tri-County Metropolitan Transportation District of Oregon ("TriMet") (collectively "the Parties").

RECITALS

1. TriMet is the transit agency serving the Portland metropolitan area.
2. The City is responsible for transportation operations and improvements within the City public rights of way.
3. The Parties desire to work together to provide safe access to transit, especially on busy streets where crossing for TriMet passengers is difficult.
4. TriMet recently conducted a safety audit and has focused resources on safety projects to provide connectivity to transit and reduce the conflicts that passengers may encounter as a barrier to accessing transit service. The City has also focused on safety through its programs for high crash corridors, Safe Routes to School, pedestrian safety improvements, sidewalk infill, and neighborhood greenways.
5. The Parties agree that the increased use of Rectangular Rapid Flash Beacon (RRFB) systems at unsignalized intersections or mid-block crosswalks will provide better and safer access to public transit services. Therefore, the Parties desire to work together to facilitate the use of RRFB systems at locations that they believe will improve pedestrian visibility and safety.

Now therefore, the parties agree as follows:

AGREEMENT

- I. Joint Obligations
 - A. TriMet and the City will jointly identify project locations where the installation of RRFB systems would enhance safe pedestrian access to transit at unsignalized intersections and mid-block pedestrian crossings.

- B. Prior to any RRFB systems being procured, TriMet and the City will conduct a planning study of potential sites, narrow options and develop a project scope, schedule and budget of feasible locations. A Work Order, in the form set out in Exhibit A, will be executed documenting the parties' agreement. The Parties agree that selection of the project locations is subject to TriMet's budget for this work. The Parties expect to install RRFB systems in approximately six to eight locations.
- C. The City and TriMet will keep each other informed of written material (e.g., news releases, brochures, newsletters, reports) produced for the projects that are intended for public distribution.
- D. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.
- E. Each project manager will invite the other to attend all regular or significant meetings regarding work performed under this Agreement.
- F. The Project Managers will maintain communication regarding the status of projects, and regarding any time scope, schedule, or budget changes.

II. TriMet Obligations

- A. TriMet will be responsible for purchasing and supplying RRFB systems that are appropriate for the locations identified by the Parties. TriMet will maintain ownership of the RRFB systems even after installation by the City.
- B. TriMet's Project Manager shall be Young Park, or such other person as designated in writing by Executive Director of Capital Projects. TriMet's Project Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

III. City Obligations

- A. City will provide labor and supporting hardware (e.g., poles, pole bases and signage) to install the systems. The City will bear all costs required to install the RRFB systems.
- B. City will maintain all RRFB systems installed under this Agreement.
- C. City's Project Manager shall be Kyle Chisek, or such other person as designated in writing by the Capital Program Manager and approved by the Director. The City Project Manager is responsible for the day-to-day management of this Agreement as provided herein.
- D. The City's Contract Manager shall be Kathryn Levine, who will serve as the first level of conflict resolution.

- E. The City's Project Manager shall be responsible for outreach to the community, in partnership with TriMet if this is so desired; coordination of design and installation efforts; and ensuring that individual Work Orders maintain agreed upon scope, schedule, and budgets.
- F. City will provide design engineering, traffic engineering, construction, and inspection services as required.
- G. City shall submit Capital Improvement Status Reports within 90 days after the Effective Date of this Agreement and quarterly thereafter, listing the RRFB systems scheduled for installation by the City by Work Order and location and the approximate date that construction completion is expected.

I. General Provisions

A. Term and Termination.

- 1. The Term of this Agreement is from the Effective Date until July 1, 2015, unless further extended upon mutual written agreement of the Parties.
- 2. Early Termination of Agreement.
 - a) This Agreement may be terminated at any time by mutual written consent.
 - b) This Agreement may be terminated by either Party upon thirty (30) days written notice.

B. Indemnification.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, the City of Portland agrees to indemnify, hold harmless and defend TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement, except to the extent caused by TriMet's negligence.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, TriMet agrees to indemnify, hold harmless and defend the City of Portland, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorneys fees, resulting from or arising out of the activities of TriMet, its directors, employees or agents under this Agreement, except to the extent caused by the City's negligence..

C. Funding Acknowledgement / Signage.

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the City and TriMet.

D. Amendments

1. Except as otherwise provided for in this Agreement, the City or TriMet may amend this Agreement only in writing signed by the authorized staff members.
2. Changes to Work Orders:
 - a) Changes to Work Orders, including changes to scope, schedule, and budget may be made upon written agreement by the project managers identified in Section II of this Agreement.
 - b) Changes will not take effect or be binding on either party until agreed to in writing.

E. 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.

F. 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.

G. 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, including, to the extent applicable, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279C.580, which hereby are incorporated by reference. Without limiting the generality of the foregoing, the parties expressly agree to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. 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.

I. 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.

J. 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.

K. Entire Agreement; Modification; Waiver. This Agreement and attached exhibits constitute 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.

L. 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 City and TriMet have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

TriMet

Tom Miller, Director, Portland Bureau
of Transportation

Daniel W. Blocher, P.E., Executive Director

Date

Date

APPROVED AS TO FORM

185105

Paula Mungo
CITY ATTORNEY

City Attorney

TriMet Deputy General Counsel

City Auditor

Date

Exhibit A

City Contract No. _____

Work Order No. _____

TriMet Contract No. _____

Capital Improvements for Safe Access to Transit**Work Order****Project Name:****Location:****Purpose:****Anticipated Scope (with description of key improvements):****SAP Project Number:** _____**Grant Number:** _____

Capital Equipment Supplied by TriMet	Installation Labor and Materials Supplied by the Bureau

The City of Portland, Bureau of Transportation plans to procure and install the project described above.

TriMet**Bureau**_____
Project Manager_____
Project Manager_____
Contract Manager