

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF PORTLAND AND TRIMET
FOR MAINTENANCE OF I-205 MAX LIGHT RAIL PROJECT FACILITIES**

TriMet Contract No. GH120283LE

THIS MAINTENANCE AGREEMENT ("Agreement") is entered into by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district, and the CITY OF PORTLAND ("City") (each a "Party" and collectively the "Parties") on this the ____ day of _____, 2011.

RECITALS

1. Following public notice and a public hearing, on April 17, 2003, the Metro Council, upon recommendation of the City Council and the TriMet Board of Directors, among others, formally adopted the South Corridor Project Locally Preferred Alternative ("LPA"). The LPA provides for a two-phased major investment strategy for light rail in the South Corridor, and identifies the next light rail project for construction as light rail on I-205 between Clackamas Town Center and Gateway (the "Project"), and light rail on the Portland Transit Mall (the "Portland Mall Revitalization Project") (collectively, the "South Corridor Project"). This LPA decision was confirmed in January 2004 to include the Portland Mall from the Steel Bridge to Portland State University.
2. The City Council has identified the South Corridor Project as the region's next priority rail transportation project and has confirmed its support through Resolution No. 36130 adopted March 19, 2003.
3. On or about November 30, 2004, the Federal Transit Administration ("FTA"), Federal Highway Administration ("FHWA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the South Corridor Project.
4. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on January 15, 2004, the Metro Council adopted a Land Use Final Order Amendment for the South Corridor Project.
5. In March 2004, the FTA authorized TriMet to enter into the preliminary engineering stage of project development.
6. The City Council approved Ordinance No. 178673 on August 11, 2004 approving the "I-205/Mall Light Rail Project Intergovernmental Grant Agreement between TriMet and the City of Portland" ("Grant Agreement") for the City's financial contributions to fund the South Corridor Project, which was subsequently amended in December 2004 by Ordinance No. 178964.

7. In October 2005, FTA authorized TriMet to enter into the final design stage of project development.
8. The Parties have entered into the Banfield Light Rail Project Maintenance Agreement dated May 14, 1985, describing their respective maintenance responsibilities related to that project ("Banfield Maintenance Agreement"). The Parties have also entered a Westside Light Rail Project Maintenance Agreement dated April, 1994, which described their respective maintenance obligations related to the that project. The Parties have also entered an Interstate MAX Light Rail Project Maintenance Agreement dated January 1, 2006, which described their respective Maintenance obligations related to that project.
9. The Parties now desire to describe and agree to their respective Maintenance responsibilities in public right-of-way affected by the I-205 Project, which responsibilities will take effect upon execution of this Agreement.

NOW, THEREFORE, the Parties hereto desire to further define the Maintenance responsibilities for portions of the I-205 Project located within the corporate limits of the City of Portland.

ARTICLE I DIVISION OF MAINTENANCE RESPONSIBILITY

- A. Parties' General Maintenance and Repair Responsibilities. Except as otherwise stated, all capitalized terms have the meaning described in the attached Exhibit H, which is attached and fully incorporated by this reference. In general, TriMet's Maintenance responsibilities extend to all Light Rail improvements and Project features located within the Project ROW. The City shall be responsible for all Street right-of-way features outside of the Project ROW, except as otherwise provided herein. Exhibit A represents each Party's General Maintenance and Repair responsibilities and the Parties agree to perform those responsibilities as further elaborated on in this Agreement. Except as expressly set forth in this Agreement, the Parties have no intention to transfer any fundamental City or private party Maintenance obligation to TriMet.
- B. TriMet's Maintenance Responsibilities in Project ROW. TriMet's Maintenance responsibilities include: structures, including, but not limited to, chain link, bollard, and cable fences; trackbed and track; traction electrification and catenary system, traction electrification substation buildings, signals, communications equipment, and buildings; grade-crossing panels, including, but not limited to, paving within nine (9) feet of track centers and pavement between crossing panels; crossing gates, signals, warning lights, and grade crossing lighting (shoe box); pedestrian lighting on LRT ROW as defined in Exhibit A; Light Rail related signs, striping, and lighting; Station platforms, other platform furnishings, and passenger shelters; and pedestrian access, including sidewalk connections to and from Station platforms, and curb ramp detectable warnings.

- C. TriMet's Maintenance Responsibilities Outside Project ROW. TriMet shall maintain the following features outside the Project ROW unless otherwise indicated on Exhibit A:
- a. All TriMet installed bike lockers; and
 - b. All public art features installed as part of the Project, as described on Exhibit A.
- D. City's Responsibilities. Except as otherwise provided herein, the City shall continue to have full Maintenance responsibility for public streets, including, but not limited to the following:
- a. Any pedestrian crossing islands constructed as part of the Project ("Islands") in City of Portland right-of-way.
 - b. All non-Light Rail-specific traffic signals in City of Portland right-of-way;
 - c. All non-Light Rail-specific Roadway lighting in City of Portland right-of-way.
- E. Retaining Walls. Retaining walls built on private property as part of the Project will be the responsibility of the property owner.
- F. Graffiti Removal. TriMet shall be responsible for graffiti removal, masking, and painting only on wall faces located in the LRT ROW. All other graffiti removal will be the responsibility of the City or the Adjoining Property Owner in accordance with City Ordinances.
- G. Maintenance of Drainage and Water Quality Facilities: TriMet shall Inspect, maintain, and repair all Trackway drainage facilities and ditches, footing drainage for Trackway retaining walls, and trackway culverts installed by TriMet within the LRT ROW.
- H. Establishment Period Maintenance of Landscaping Installed by the Project: TriMet shall maintain all Landscaping and all irrigation systems installed to irrigate Landscaping during the establishment period, which period begins upon TriMet's final acceptance of the Landscaping and runs for two (2) years. . Following the establishment period, the Parties intend to abandon such systems in place without further obligation for Maintenance responsibility.
- I. Long-Term Maintenance of Landscaping Installed by the Project: After the execution of this Agreement, the Landscape Maintenance responsibility for all Landscape features installed for the Project will be in accordance with responsibilities shown on Exhibit A.
- J. Systems Facilities Maintenance: TriMet shall maintain systems facilities, which include but are not limited to: the Light Rail Trackway, Light Rail vehicle control signals, traction electrification systems, substations, power poles, power pole foundations and anchors, communication and fare collection systems, and all associated conduit, duct banks, address and control boxes, crossing gates, warning lights, and grade crossing

lighting. TriMet shall also maintain any trespass, warning, and other posted signs that pertain to Light Rail transit operation.

- K. Traffic / Train Signs: The City shall be responsible for Maintenance of all traffic signals and train warning signs mounted in traffic signal poles and any other traffic control signs or signals located outside the LRT ROW.
- L. General Cooperation for Facilities: In the event either Party engages in any Maintenance action that impacts Light Rail, Roadway operation, or any of the other Party's operating facilities, the applicable Party shall assign the highest priority to the restoration of such facilities.
- M. Financial Reimbursement for Extraordinary Maintenance Conditions: Each Party agrees to make every reasonable effort to accommodate the other in the accomplishment of Maintenance activities contemplated by this Agreement. In extraordinary situations and subject to the availability and appropriation of funds, the Director of Office of Transportation of the City of Portland and the TriMet Light Rail Manager of Maintenance of Way may negotiate reasonable reimbursement.
- N. Party Representatives: The representatives of the Parties for routine correspondence and notices with regard to the obligations set forth in this Agreement will be:

If to TriMet:

Manager, Maintenance of Way
 Ruby Junction Rail Operations Center
 2222 N.W. Eleven-Mile Avenue
 Gresham, OR 97030
 (503) 661-8112

If to City:

PBOT Manager, Maintenance Operations
 City of Portland
 2929 N. Kerby
 Portland, OR 97227
 503.823.1700

Routine correspondence or notices must be that deemed necessary to provide notice as soon as possible under the circumstances, whether verbal or written. The Parties' representatives shall use good faith efforts to confirm verbal notice or communication with written communication.

ARTICLE II GENERAL PROVISIONS

A. Liability: To the extent allowed by law within the limits of the Oregon Tort Claims Act, each Party ("Indemnitor") shall indemnify and hold the other Party ("Indemnatee") and applicable Indemnatee's agents, directors, officers, representatives, employees, volunteers, and contractors harmless from any and all liability, claim, loss, cost, or expense arising out of negligent actions or inactions by the Indemnitor under this Agreement.

B. Duration of Agreement: This agreement will be in full force and effect upon signatures of both Parties to this Agreement, until this Agreement is terminated as provided by law or this Agreement.

C. Termination for Convenience: The City or TriMet may terminate this Agreement in whole or in part at any time by written notice to the other Party.

D. Laws of Oregon: This Agreement will be governed by the laws of the State of Oregon as required by ORS Chapter 279, all relevant provisions of which must be included in public contracts.

E. Audit and Inspection of Records: The City and TriMet shall maintain cost records relating to any reimbursable work by either Party under this Agreement. All costs entitled to reimbursement under this Agreement will be those costs that are allowable costs under the applicable FTA cost principles and guidelines for private Parties. The City and TriMet shall maintain adequate records and shall permit authorized representatives of each Party hereto, the U.S. Department of Transportation, or the Comptroller General of the United States to inspect and audit all work, books, accounts, and other data relating to this Agreement.

F. Adherence to Law: The City and TriMet shall adhere to all applicable laws governing their respective relationships with employees, including, but not limited to, laws, rules, regulations, and policies concerning workers' compensation and minimum and prevailing wage requirements.

G. Successors and Assigns: The interests, rights, and benefits conferred by this Agreement, and the obligations assumed thereunder, will inure to the benefit of and bind the successors and assigns of the Parties hereto.

H. Modification of Agreement: No waiver, consent, modification, change, or amendment to the terms of this Agreement will bind either Party unless in writing and signed by both Parties. Any waiver, consent, modification, change, or amendment will be effective for specific purposes described and set forth in writing and signed by authorized representatives of each Party.

I. Notice: All notices provided for under this Section must be in writing and will be deemed sufficient if deposited in U.S. mail, or if sent by facsimile with electronic confirmation to a fax number provided by the respective Parties. If sent via mail, the notice must be addressed to the Parties as set forth below; or to such representatives and addresses as the Parties may designate by written notice to the other Party:

TriMet/City of Portland
I-205 Light Rail Project Maintenance Agreement

If to TriMet:

Legal Department
710 NE Holladay
Portland, OR 97232

If to the City of Portland:

City Attorney
City of Portland
1221 SW Fourth Avenue, Room 430
Portland, OR 97204

J. Severability: If any terms or provisions of this Agreement or the application thereof to any person or circumstance will, to any extent, be determined by a court to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law.

K. No Partnership: Nothing in this Agreement, nor any acts of the Parties hereto, will be deemed or construed by the Parties hereto, or any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between either of the Parties to this Agreement.

L. No Third Party Beneficiaries: Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or may be construed to give or provide any benefit, direct, indirect or otherwise to any third parties unless such third party is expressly described as an intended beneficiary under this Agreement.

M. Dispute Resolution. Any dispute of the Parties relating to interpretation or enforcement of the provisions of this Agreement must be resolved in accordance with the provisions of this Article II (Q).

N. Authorized Representatives. If a controversy, dispute or claim should arise, the City's designated Project representative and TriMet's designated Project representative shall meet in person at least once to attempt to resolve the matter. Either authorized representative may request the other to meet within fourteen (14) days, at a mutually agreed time and place.

O. Senior Executives. If the matter has not been resolved within twenty (20) calendar days of their first meeting, the authorized representatives shall refer the matter to senior department or bureau executives, who will have authority to settle the dispute. Thereupon, the authorized representatives shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations that have taken place, and attaching relevant documents. The senior

executives shall meet, at a mutually agreed time and place, for negotiations within fourteen (14) days of the end of the 20-day period referred to above.

P. Effective Date: Although the Parties have agreed to an effective date for administrative purposes that predates the dates of signature, neither Party is aware of, or intends to make any claim for breach of contract based on deficient performance under this Agreement prior to the date of signature. Maintenance deficiencies existing, if any, as of the date of signing will be repaired by the Party responsible under this Agreement as part of their Maintenance obligations under this Agreement.

Q. Mediation/Litigation. If a dispute has not been resolved within thirty (30) days of the meeting of the senior executives as described in Article II (O) above, the Parties shall attempt in good faith to resolve the controversy or claim by non-binding mediation. The mediation must take place in Portland, Oregon. The mediator will be selected by mutual agreement of the Parties, but in the absence of such agreement, each Party shall select a temporary mediator and those mediators will jointly select the permanent mediator. The mediator's fees and costs will be borne equally by the parties. If the mediation is unsuccessful at resolving the dispute, either Party will have the right to seek any legal remedies available to the aggrieved Party.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement effective as of the day and year the first stated herein.


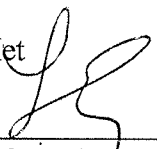
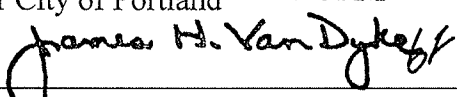
<p>TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON</p> <p>By: <u></u> Daniel W. Blocher, P.E. Executive Director, Capital Projects</p> <p>Date: <u>10.13.11</u></p> <p>Approved as to Form</p> <p>For TriMet <u></u> Counsel for TriMet</p>	<p>CITY OF PORTLAND</p> <p>By: _____ Name: _____ Title: _____</p> <p>Date: _____</p> <p>Approved as to Form</p> <p>APPROVED AS TO FORM For City of Portland <u></u> City Attorney ATTORNEY</p>
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Exhibit List

- Exhibit A – General Responsibility Matrix
- Exhibit B – Slope Responsibility Matrix and Color Coded Plan Set
- Exhibit C – Drainage Responsibility Matrix and Color Coded Plan Set
- Exhibit D – Illumination Responsibility Matrix and Color Coded Plan Set
- Exhibit E – Fence Responsibility Matrix and Color Coded Plan Set
- Exhibit F – Landscape Responsibility Matrix and Color Coded Plan Set
- Exhibit G – Sound/Retaining Wall Responsibility Matrix and Color Coded Plan Set
- Exhibit H – Abbreviations and Definitions

I-205 Maintenance Agreement Exhibits

- Exhibit A - I-205 Maintenance Responsibility Summary Matrix**
- Exhibit B - Slope Responsibility Matrix
(No COP Maintenance Items)**
- Exhibit C - Drainage Responsibility Matrix**
- Exhibit D - Illumination Responsibility Matrix**
- Exhibit E - Fence Responsibility Matrix
(No COP Maintenance Items)**
- Exhibit F - Landscape Responsibility Matrix
(One area noted as COP Responsibility – Intersection of LRT
alignment with the Springwater Corridor. Sheet # L16P-170)**
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