

## FINANCIAL IMPACT STATEMENT For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Paul Smith	2. Telephone No. 503-823-7736	3. Bureau/Office/Dept. PBOT/OTD/TRP
5a. To be filed (hearing date): January 12, 2011	5b. Calendar (Check One) Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> 4/5ths <input type="checkbox"/>	4. Date Submitted to Commissioner's office and FPD Budget Analyst: December 29 2010

**1) Legislation Title:**

\*Authorize Intergovernmental Agreement with TriMet for the Portland- Lake Oswego Transit Project (Ordinance)

**2) Purpose of the Proposed Legislation**

Authorize the Mayor and Auditor to enter into an Intergovernmental Agreement, which would allow TriMet, as the lead agency, to complete the Draft Environmental Impact Statement (EIS) and Locally Preferred Alternative (LPA) process. The agreement also authorizes City payments to TriMet for Preliminary Engineering and the federal New Starts grant application, subject to an appropriation by Council in the 2011-12 budget.

**Revenue and/or Expense:**Is ALL the Revenue and/or Expense a part of the current year's budget? Yes \_\_\_\_\_ No XSAP COST OBJECT No(s): \_\_\_\_\_ then go to Step #5.  
If NO, complete Steps 3 & 4. For modifications to budgets, identify/discuss only the changes to the budget.**3) Revenue:**

Will this legislation generate or reduce current or future revenue coming to the City? No

If so, by how much? If new revenue is generated please identify the source.

**4) Expense:**

What are the costs to the City as a result of this legislation? What is the source of funding for the expense?

\$183,000 in the current year (2010-11). These funds are in the Bureau of Transportation's budget

\$677,000 in FY 2011-12 subject to City Council appropriation in the FY 2011-12 budget

(Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required) (If there is a project estimate, please identify the level of confidence.)

**Staffing Requirements:**

5) Will any positions be created, eliminated or reclassified in the current year as a result of this legislation? No

(If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions.

If the position is limited term please indicate the end of the term.)

6) Will positions be created or eliminated in future years as a result of this legislation? No

Complete the following section if you are accepting and appropriating a grant via ordinance. This section should only be completed if you are adjusting total appropriations, which currently only applies to grant ordinances.

**7) Change in Appropriations** (If the accompanying ordinance amends the budget, please reflect the dollar amount to be appropriated by this legislation. If the appropriation includes an interagency agreement with another bureau, please include the partner bureau budget adjustments in the table as well. Include the appropriate cost elements that are to be loaded by the Grants Office and/or Financial Planning. Use additional space if needed.)

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

JWF 12-28-10

*Susan D. Keil*

APPROPRIATION UNIT HEAD

SUSAN D. KEIL, Director, Bureau of Transportation

**INTERGOVERNMENTAL AGREEMENT  
FOR LAKE OSWEGO TO PORTLAND TRANSIT PROJECT –  
PAYMENT FOR FEIS AND PRELIMINARY ENGINEERING WORK**

THIS AGREEMENT is made by and entered into 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”. Collectively, TriMet and the City are referred to as the “Parties.”

**RECITALS**

1. Metro is currently conducting the NEPA process for the Lake Oswego To Portland Transit Project (“Project”), which is studying transit alternatives between Lake Oswego and Portland along the Highway 43 transit corridor.
2. The Parties are signatory to a multi-party agreement (TriMet contract number GH090371LE) related to the Project that was also signed by the City of Lake Oswego, Metro, and Clackamas County (“Multi-Party Agreement”). The purpose of that agreement was to set out the signatories’ obligations with regard to the Project through the New Starts application process and into preliminary engineering (“PE”).
3. As part of the Multi-Party Agreement, the City agreed to pay \$57,000 to Metro by April 15, 2009 to support the Refinement Study and \$83,000 (\$23,000 payment and \$60,000 in-kind services) for the DEIS and FTA application as match for MTIP funding of \$1,227,327. The DEIS payment was due on November 1, 2009. These payments have been made.
4. The City also agreed, upon notification from TriMet that the regional flexible transportation funding can be utilized to support the DEIS work, to seek an additional \$860,000 from the Portland City Council in the FY 10-11 budget to support the FEIS and preliminary engineering. The City has now obtained \$183,000 of that total to fund the City’s portion of the Locally Preferred Alternative phase of the Project and has submitted a request to fund the remaining commitment of \$677,000 in the 2011-12 budget approval process, which will be used for development of the New Starts project application and early PE activities. Funding of the \$677,000 is contingent on City Council approval. The purpose of this Agreement is to document and confirm the City’s intended obligation to make full payment to TriMet of \$860,000 subject to the above-referenced contingency.

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

**TERMS OF AGREEMENT**

1. The City shall pay TriMet a total of \$860,000, as described below.
  - a. The City has received approved budget authority and shall pay TriMet \$183,000 to

fund the City's portion of the Locally Preferred Alternative phase of the Project. Such payment shall be made within 30 days of execution of this Agreement.

b. Provided that City Council includes the appropriation of \$677,000 in the FY 2011-12 budget as described in Recital Number 4 on page 1, the City shall pay TriMet \$677,000 for the development of the New Starts project application and early PE activities. Such payment shall be made according to City of Portland, Bureau of Transportation accounts payable procedures and after receipt of an invoice from TriMet.

2. TriMet and the City each agree to continue to perform all obligations set forth in the Multi-Party Agreement, and this Agreement shall not be construed to alter any rights or responsibilities of the Parties set forth in the Multi-Party Agreement.
3. Each party has designated a project manager as its formal representative for purposes of this Project:

Joe Recker  
TriMet  
710 NE Holladay St.  
Portland, OR 97232  
Phone: (503) 962-2893  
Fax: (503) 962-2281  
Email: reckerj@trimet.org

Paul Smith  
City of Portland  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, OR 97204  
Phone: (503) 823-7736  
Fax: (503) 823-7736  
Email: Paul.Smith@portlandoregon.gov

## **General Provisions**

4. **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.
5. **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.
6. **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.
7. **Federal Funding Limitation.** The parties hereto understand that federal funds will be used to pay for a portion of the Project. To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.

9. **Effective and Termination Dates.** This Agreement shall be effective on the date all required signatures are obtained, 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.
8. **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.
9. **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 (14) 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.
10. **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.
11. **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.
12. **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.

**IN WITNESS WHEREOF**, the parties hereto have executed this Intergovernmental Agreement effective the date hereinafter written.

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

By \_\_\_\_\_

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

Date \_\_\_\_\_

**CITY OF PORTLAND,** by  
and through its elected officials

By \_\_\_\_\_

Mayor Sam Adams

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 \_\_\_\_\_

## **ORDINANCE No.**

\*Authorize Intergovernmental Agreement with TriMet for Portland – Lake Oswego Transit Project (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Regional Transportation Plan, adopted by the Metro Council in 2004, called for a corridor refinement plan for evaluation of high capacity transit options for the Portland to Lake Oswego corridor.
2. In 2005, Metro initiated an alternatives analysis consistent with Federal Transit Administration (FTA) requirements to assess the feasibility of transit and trail alternatives between Lake Oswego and Portland. A wide range of alternatives was evaluated in the alternatives analysis, including No-Build, Bus Rapid Transit with multiple alignments, Streetcar with multiple alignments, River Transit, and accompanying trail alignments.
3. An extensive public involvement process was undertaken from July 2005 to December 2007 which included a Lake Oswego to Portland Project Advisory Committee (LOPAC), Project Management Group (PMG), Steering Committee, public hearings, community design workshops, open houses, neighborhood meetings and meetings with individual property owners.
4. On September 10, 2007 the Steering Committee, adopted Recommendations on Alternatives to Advance into a Draft Environmental Impact Statement (DEIS) and Work Program Considerations.
5. The transit alternatives adopted by the Steering Committee included No-build, Enhanced Bus and Streetcar, including streetcar alternatives in Johns Landing on SW Macadam Avenue, the Willamette Shore Line or combinations of the two. The recommendation also called for a Minimal Operable Segment (MOS) extending streetcar from its existing terminus in South Waterfront to the southern end of Johns Landing.
6. On November 19, 2007, the Steering Committee amended their recommendation to add a permanent Johns Landing terminus to the alternatives to be advanced, and to initiate a Refinement Study of streetcar alternatives in the Johns Landing area prior to the start of the DEIS.
7. On December 12, 2007, the City of Portland submitted a letter to Metro Council supporting the Steering Committee recommendations as amended and approved on November 19, 2007 and recommending elements to be incorporated in the Johns Landing Refinement Study.

8. On December 13, 2007, Metro Council adopted the Lake Oswego to Portland Transit and Trails Alternatives to Advance into the Draft Environmental Impact Statement (DEIS).
9. Metro is currently conducting the NEPA process for the Lake Oswego to Portland Transit Project ("Project"), which is studying transit alternatives between Lake Oswego and Portland along the Highway 43 transit corridor.
10. The Parties are signatory to a multi-party agreement (TriMet contract number GH090371LE) related to the Project that was also signed by the City of Lake Oswego, Metro, and Clackamas County ("Multi-Party Agreement"). The purpose of that agreement was to set out the signatories' obligations with regard to the Project through the New Starts application process and into preliminary engineering ("PE").
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12. The City also agreed, upon notification from TriMet that the regional flexible transportation funding can be utilized to support the DEIS work, to seek an additional \$860,000 from the Portland City Council in the FY 10-11 budget to support the FEIS and preliminary engineering. The City has now obtained \$183,000 of that total to fund the City's portion of the Locally Preferred Alternative phase of the Project and has submitted a request to fund the remaining commitment of \$677,000 in the 2011-12 budget approval process, which will be used for development of the New Starts project application and early PE activities. Funding of the \$677,000 is contingent on City Council appropriation of those funds in the FY 2011-12 budget. The purpose of this Agreement is to document and confirm the City's intended obligation to make full payment to TriMet of \$860,000 subject to the above-referenced contingency.

NOW, THEREFORE, the Council directs:

- a. That the Commissioner-in-Charge and Auditor are authorized to enter into an Intergovernmental Agreement with TriMet, substantially in accordance with the Intergovernmental Agreement attached to the original of this ordinance and, by reference, made a part hereof.
- b. The City's Project Manager is hereby authorized to agree and execute, on behalf of the City, any amendment that does not increase the amount of the Intergovernmental Agreement.

Section 2. The Council declares that an emergency exists because approval of the Intergovernmental Agreement by City Council is required before the City can make payment to

TriMet for work currently in process; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,

Mayor Sam Adams

Prepared by: Paul Smith

Date Prepared: December 22, 2010

**LAVONNE GRIFFIN-VALADE**

Auditor of the City of Portland

By

Deputy

Agenda No.  
**ORDINANCE NO.**  
Title

\*Authorize Intergovernmental Agreement with TriMet for the Portland – Lake Oswego Transit Project (Ordinance)

<p><b>INTRODUCED BY</b> Commissioner/Auditor: <b>MAYOR SAM ADAMS</b> <i>on behalf of Mayor Adams</i></p> <p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p><b>BUREAU APPROVAL</b></p> <p>Bureau: Bureau of Transportation Bureau Head: Susan D. Keil, Director Other: <i>Susan D. Keil</i></p> <p>Prepared by: Paul Smith Date Prepared: 12-22-10 <i>P.S.</i></p> <p>Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date 1-12-11</p> <p><b>City Attorney Approval</b></p>	<p>CLERK USE: DATE FILED <u>JAN 07 2011</u></p> <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p><b>ACTION TAKEN:</b> JAN 12 2011 <i>REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION.</i></p>
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<b>AGENDA</b>
<p><b>TIME CERTAIN</b> <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p> <p><b>CONSENT</b> <input checked="" type="checkbox"/> <i>Passed</i></p> <p><b>REGULAR</b> <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Leonard	4. Leonard		
Adams	Adams		