

**TRIMET/CITY OF PORTLAND  
CONTINUING CONTROL AGREEMENT  
SOUTH CORRIDOR PROJECT – PORTLAND MALL SEGMENT**

This continuing control agreement (the "Agreement") is made and entered into by and between the Tri-County Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the State of Oregon ("TriMet"), and the City of Portland, a municipality in the State of Oregon ("City") (jointly referred to herein as "the Parties"), as of the date set forth below.

**RECITALS**

- A. 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.
- B. The City Council identified the South Corridor Project as the region's next priority rail transportation project and confirmed its support through Resolution No. 36130 adopted March 19, 2003.
- C. 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.
- D. 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.
- E. In October 2005, FTA authorized TriMet to enter into the final design stage of Project development.
- F. In June 2007, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now complete, and opened for revenue service in September 2009. Upon completion of the Project, TriMet commenced light rail service to areas under the City's jurisdiction.

- H. The Parties now desire to enter into this Agreement for TriMet's continuing control over the alignment and real property located in the City, as required by the FFGA. The Parties have the authority to enter into Intergovernmental Agreements pursuant to ORS Chapter 190.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the Parties as follows:

### AGREEMENT

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(d)(1)(B), the City hereby grants to TriMet a permanent permit over, under, and above only those portions of the City's public right-of-way upon which the Project's facilities, features, or both are sited (the "Property"), which Property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit 1. Subject to the terms of this Agreement, the City agrees to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to the City's permit process with respect to construction and maintenance within the Property as provided in this Agreement. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Property, TriMet shall give 30 days' prior written notice to City of such intent. Upon receipt of such notice, the City may revoke the continuing control rights granted herein and require TriMet to restore the Property to its original condition.
2. The Parties agree that the purpose of this Agreement is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Agreement. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet by FTA pursuant to the FFGA No. OR-03-0124, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Property generally shown in Exhibit 1. TriMet's interest in the Property may not be assigned or transferred without FTA's written concurrence.
3. The City shall retain ownership of the Property and, to the extent permitted by 49 U.S.C. § 5307(d)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
4. TriMet shall have the right to construct, maintain, and operate the Project on the Property, provided that TriMet shall cause its contractor to obtain an access permit from the City prior to any construction. The City will have the right to review the construction plans and specifications for any construction to occur on the Property and for structures partially or entirely located on the Property.

5. TriMet shall include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend City, 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 investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to this Property.
6. While this Agreement is in effect, TriMet shall require its contractors and subcontractors to name the City, its officers, employees and agents as an additional insured with respect to work or operations resulting from or arising out of their activities with respect to this Property. Limits of insurance covering City shall equal TriMet's insurance requirements.
7. The City shall not charge TriMet or the Project a fee for use of or access to the Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Agreement.
8. The City agrees to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Agreement, other than the approval of this Agreement by the City Council. However, in the event that the parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the City shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the City staff agrees to propose for enactment regulations that would:
  - A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the City or others.
  - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. The City shall not approve any plan or specification that would prohibit TriMet from operating light rail on the Property or Project alignment.

- C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. The City shall not approve any plan or specification that would prohibit TriMet from operating light rail on the Property or Project alignment.
  - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
  - E. Notify TriMet of any proposed future changes by the City, or which are proposed to be approved through permit by the City, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
  - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
  - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the City's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
9. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of the City streets and other public or private facilities, parades, or civic events may occur, provided that the City shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.
10. This Agreement, including any interests herein, shall not be assignable without the City's prior written consent. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Agreement will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.

11. All notices required under this Agreement will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE CITY:

Director  
Portland Bureau of Transportation  
City of Portland  
1120 SW 5<sup>th</sup> Avenue, Rm. 800  
Portland, OR 97204

IF TO TRIMET:

Manager of Real Property Acquisition  
TriMet  
Capital Projects and Facilities Division  
710 NE Holladay St.  
Portland, OR 97232

12. Any modification to this Agreement shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
13. 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 acts or omissions of the indemnitor, its officers, employees, or agents.
14. The Parties agree that each party and its respective successors or assigns may avail itself of any remedy at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein.
15. The provisions of this Agreement shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Agreement shall be conducted in the Circuit Court of the State of Oregon for Multnomah County.
16. If any provision of this Agreement is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement as of the date signed by both Parties.

<b>TRIMET</b>	<b>CITY OF PORTLAND</b>
By: _____ Daniel W. Blocher, P.E. Executive Director	By: _____  Portland Bureau of Transportation
Date: _____	Date: _____
<b>Approved as to Form:</b>	<b>Approved as to Form:</b>
For TriMet	For City
By: _____ Lance Erz Assistant General Counsel	By: <u>Mark Moline</u> Mark Moline City Attorney

