

**Intergovernmental Agreement Related to the  
Operations & Maintenance of the Portland Streetcar System  
between the Tri-County Metropolitan Transportation District of Oregon  
and the City of Portland**

This Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012, is made and entered into between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the City of Portland (City); collectively known as the Parties.

**RECITALS:**

- a) While the City owns and operates the Portland Streetcar system, TriMet has been an active partner in the planning, funding, construction and operations of the Streetcar.
- b) Most recently, TriMet was the recipient of a Small Starts Grant and the City was named as the sub-grantee and charged with implementing the Portland Streetcar Loop Project (Loop Project). Revenue service is planned to begin on September 22, 2012.
- c) As the Streetcar System expands and becomes more integrated with regional transit, the Parties recognize that their relationship should become more formalized.
- d) TriMet and City have worked together to develop a long-term Master Agreement on Streetcar setting forth their collaborative relationship regarding streetcar operations and system development.
- e) The Master Agreement anticipates the City and TriMet enter into a more detailed agreement every one or two years, or as often as necessary, addressing funding, operations, personnel and other aspects of operating and maintaining the streetcar system.
- f) TriMet and the City wish to enter into this Intergovernmental Agreement Related to the Operations & Maintenance of the Portland Streetcar System (IGA).

**AGREEMENT:**

**I. Term**

This contract is effective on September 1, 2012, and will terminate on June 30, 2015, unless otherwise terminated under Section VI. D. Early Termination.

**II. Funding for Streetcar Operations & Maintenance**

**A. Funding Process and Amounts**

The City and TriMet will each contribute operations and maintenance funding to the Portland Streetcar during the period of this Agreement, based on a July 1 – June 30 fiscal year.

The City will determine its funding level through its normal budget process, as approved by the City Council, and will coordinate with TriMet regarding development of that budget. TriMet's contribution will be developed during its annual budget development process, as approved by the TriMet Board of Directors, and will coordinate with the City regarding development of that budget.

Beginning July 1, 2012, TriMet will adjust its monthly payment to the City by the annual rate of change in the Portland All Urban Consumers Price Index report for December 2011 compared to December 2010. If the change is negative, the adjustment to the monthly payment will be zero. For FY 12-13, the first year of Loop Project funding, TriMet's contribution will be pro-rated based on the ratio of number of days of revenue service to the total number of days in the year. TriMet's actual contribution for each fiscal year will be conveyed to the City after TriMet's Board of Directors has approved their annual budget.

In FY12/13, TriMet funding to City for Streetcar operations will be as follows: For July and August 2012, TriMet will make two equal monthly payments to the City in the amount of \$248,275.90, attributable to Westside Streetcar operations, as set out in Amendment 5 to the April 19, 2001 Portland Streetcar Funding Agreement. For September 2012, assuming a revenue start date of September 22, 2012 for the Loop project, TriMet will pay the amount of \$283,893.91 to the City, consisting of \$248,275.90 attributable to Westside Streetcar operations, and \$35,618.01 attributable to Eastside Streetcar operations for one-third of September 2012. For October 2012 through June 2013, TriMet will make equal monthly payments to the City in the amount of \$330,270.83, consisting of \$230,896.58 attributable to Westside Streetcar operations, and \$99,374.25 attributable to Eastside Streetcar operations. Total FY12/13 TriMet funding to City for Streetcar operations will be \$3,752,883.18. TriMet's FY12/13 monthly payments to City for Streetcar operations reflect a 7% reduction effective October 2012, due to TriMet budget conditions.

TriMet's payments to the City will be made on or after the 1<sup>st</sup> day of the month to which they are attributable. Any payments received by the City later than 10 days from the time they are due will accrue interest at a rate of 0.75% per month.

This IGA defines funding commitments to the expanded Streetcar service as a result of the Loop Project only. Any consideration of increased funding for Streetcar service improvements, including the restoration of streetcar funding from TriMet, which was reduced due to overall TriMet service cuts, and commiserate with the restoration of frequent bus service by TriMet will occur at the Permanent Executive Group, as set forth under the Master Agreement on Streetcar.

## **B. Definition of Operating Costs**

TriMet funding will be used by the City for Streetcar system operating and maintenance costs, which include costs directly or indirectly attributable to the staffing, operations, repair, vehicle maintenance and maintenance-of-way. TriMet funds will not be used for current or future capital maintenance or replacement costs of the Streetcar system, or for Startup costs as described in Section V.A. Startup Costs.

Other costs considered to be eligible for TriMet participation are the costs associated with the City's compliance with all federal requirements for operations, including but not limited to the Federal Transit Administration's Triennial Review process, reporting to the National Transit Database, Title VI Compliance and additional requirements as set forth in the following

Intergovernmental Agreements between TriMet and the City:

1. Intergovernmental Agreement to Disburse Federal Grant Funds for the Portland Streetcar Loop Project – Project Development Phase (TriMet Contract GH080176TL; City Contract C52920).
2. Intergovernmental Agreement to Disburse Federal Grant Funds for the Portland Streetcar Loop Project – Project Construction Phase (TriMet Contract GH100400TL; City Contract 30000943).
3. Intergovernmental Agreement to Disburse Federal Grant Funds for the SW Moody Street & Streetcar Reconstruction Project (TriMet Contract GH110219TL; City Contract 30001650).

**III. TriMet Personnel for Streetcar Operations**

**A. TriMet Obligations**

TriMet will provide to the City certain personnel in accordance with the terms and conditions set forth in the attached and incorporated Exhibit A to this IGA. These personnel will at all times remain TriMet employees. At the beginning of each fiscal year, TriMet will send to the City the budgeted unit costs of wages, benefits, overtime and administrative overhead for TriMet personnel furnished to the City for Streetcar operations and maintenance.

TriMet will submit a monthly invoice to the City for its direct and indirect costs and in accordance with the wages, benefits, overtime and administrative overhead referenced above. TriMet administrative overhead costs will be calculated as 10% of the sum of all TriMet direct and indirect personnel costs. The 10% administrative overhead charge shall be deemed as reimbursement to TriMet for its hiring, training, payroll, benefits, administration and related employee support costs in providing and replacing personnel supplied to the City.

The invoice will be supported by a detailed accounting or personnel provided and costs incurred in providing the personnel.

Cost calculations shall be based on actual hours worked and pay earned for each TriMet employee plus fringe, based on employee average rates as follows:

- Paid Time Off: paid time off fringe rate \* FICA rate = paid time off date
- Payroll Tax: FICA only (7.65%); TriMet payroll tax not charged
- Pension: normal and UAAL costs, current year union contribution (Total Annual Required Contribution divided by active plan participants)
- Workers Comp/Unemployment: based on Workers Comp/Unemployment fringe rate
- Medical/Dental: based on average cost per union employee
- Life/Disability: based on average cost per union employee
- General Fund Overhead: 10% administrative cost

TriMet's personnel benefit costs exclude Other Post Employment Benefits (OPEB) costs for those personnel provided to the City. In return, the City and TriMet agree that TriMet will retain revenues from federal Fixed Guideway Modernization Funds that are attributable to the Portland Streetcar system. Upon request by the City, TriMet will provide the City an accounting of OPEB

costs and Fixed Guideway Modernization Funds attributable to the Portland Streetcar System.

### **B. City Obligations**

Except for those Streetcar/MAX Track Crossing Facilities Maintained by TriMet as set forth in Exhibit B, the City is responsible for the operation and maintenance of the Streetcar system, including but not limited to the management of personnel provided to the City by TriMet under this IGA, in accordance with the terms and conditions set forth in Exhibit A.

The City will reimburse TriMet for all of its direct, indirect and administrative overhead costs, as set forth above..

The City will make monthly payments to TriMet within 30 days of receiving a TriMet invoice. Any invoices remaining unpaid when due will accrue interest at a rate of 0.75% per month.

Notwithstanding any other provision of this IGA, the City will not withhold any monthly payments to TriMet because it disputes any portion of TriMet's monthly invoice. In the event of a dispute, the Parties will resolve the dispute or seek mediations pursuant to Section VI. I. Mediation.

### **C. Other Streetcar Work**

The City will provide for Streetcar system work not covered in Exhibit A to this IGA through any available means, including through City employees or by contract. At the sole discretion of the City, TriMet may be offered the work whose acceptance will be determined by available resources and the limitations provided for in the Portland Streetcar Working and Wage Agreement between TriMet and its represented employees Association.

However, for maintenance of overhead electrification, traction substation, rail signal and powered track switches, the City, if it does not assign the work to City employees, will offer TriMet the opportunity to perform the work, under Section IV. Other TriMet Services for Streetcar Operations and Maintenance of this IGA.

If TriMet does not accept the offer or work, the City is free to contract with others to perform the work.

## **IV. Other TriMet Services for Streetcar Operations & Maintenance**

At the City's request and subject to available TriMet resources, TriMet may provide other services to the City for Streetcar operations and maintenance, beyond personnel as set forth in Section III. TriMet Personnel for Streetcar Operations of this IGA.

### **A. Authorized Representatives**

Actions of the City and TriMet to administer Other TriMet Services for Streetcar operations and maintenance will be implemented upon the signature of the following Authorized Representatives:

for the City:	Gary Cooper Portland Streetcar Maintenance Manager 1516 NW Northrup Street
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Portland OR 97209  
 503/823-2199; fax 503/823-2493  
[Gary.Cooper@portlandoregon.gov](mailto:Gary.Cooper@portlandoregon.gov)

or

Lenore DeLuisa  
 Portland Streetcar Operations & Safety Manager  
 1516 NW Northrup Street  
 Portland OR 97209  
 503/823-2904; fax 503/823-2493  
[Lenore.DeLuisa@portlandoregon.gov](mailto:Lenore.DeLuisa@portlandoregon.gov)

for TriMet: Dan Caufield  
 Director, Operations Planning and Development  
 TriMet  
 4012 SE 17<sup>th</sup> Avenue  
 Portland OR 97202  
 503/962-4803; fax 503/962-5713  
[CaufieldD@trimet.org](mailto:CaufieldD@trimet.org)

#### **B. Work Requests, Work Proposals and Work Authorizations**

The Parties agree that their respective Authorized Representatives will be responsible to establish and maintain written, agreed-upon administrative procedures to processing City's requests to TriMet for performing services under this IGA (Work Requests), TriMet's proposals to City of resources, schedule for performance and estimated cost for requested work to be performed to City specifications (Work Proposals) and City's authorization for TriMet to perform work (Work Authorizations).

TriMet will make its best efforts to timely and satisfactorily furnish services requested by the City and will promptly notify the City when TriMet is unable to meet the City specifications and schedule for service. When TriMet accepts work offered by the City, TriMet agrees to make its best efforts to assure that support is provided under all emergency circumstances, including snow events.

#### **C. Propulsion Power Furnished by TriMet to Streetcar**

The design of each Streetcar/MAX light rail track crossing is configured such that TriMet's light rail propulsion power system is the source of electrical power for propulsion of Streetcar vehicle through the crossings. In addition, the design of the Loop Project is configured such that TriMet's propulsion power system is the source of electrical propulsion of streetcars for 1.064 miles southbound from the Broadway Bridge through the NE Holladay/7<sup>th</sup> Avenue MAX crossing and for 1.058 miles northbound from the NE Holladay/Grand Avenue MAX crossing to the Broadway Bridge.

The cost for TriMet's provision of propulsion power is determined as follows:

$$C = (A * 1.058) + (B * 1.064)$$

$$E = C * D$$

$$G = E * F$$

where:

A = annual Streetcar scheduled trips, northbound on Loop segment powered by TriMet

B = annual Streetcar scheduled trips, southbound on Loop segment powered by TriMet

C = annual Streetcar car-miles operated on Loop segment powered by TriMet

D = average kilowatt-hours (kWh) per Streetcar car-mile = 5

E = annual kWh supplied by TriMet to Streetcar on Loop segment powered by TriMet

F = TriMet propulsion power average cost per kWh

G = annual cost for propulsion power furnished by TriMet to Streetcar

As part of TriMet's billing to the City for Other Services, TriMet will include the monthly cost of propulsion power provided to the City, as calculated above.

#### **D. Safety Rules and Regulations**

The City is responsible for managerial coordination and operational and safety interface of the TriMet employees providing Other Services related to Streetcar operations and maintenance. However, TriMet employees will remain under a continuous reporting relationship to TriMet supervisors and TriMet will have sole discretion that all safety rules and regulations, Standard Operating Procedures and other related regulations are appropriate and applicable to the working conditions and conduct of the Other Services.

#### **E. Restricted Periods for Non-Emergency Other Services**

The Parties agree that non-emergency Other Services should be provided effectively without undue burden on either party. The City will not request, and TriMet will have no obligation to provide, non-emergency Other Services on Martin Luther King Day, Memorial Day, Starlight and Grand Floral days, Rose Festival Air Show days, Independence Day, Labor Day, Halloween, Thanksgiving Day and weekend, Christmas Day and any adjoining weekend day(s), New Year's Eve and New Year's Day.

#### **F. Cost Reimbursement**

TriMet's Other Services for Streetcar operations will be provided to City on a cost reimbursement basis. Except for propulsion power costs as set forth above, the City will reimburse TriMet for all of its direct and indirect costs in furnishing personnel, materials, and use of equipment in providing the Other Services. Labor rate indirect cost elements will include TriMet's personnel benefit costs (excluding Other Post Employment Benefits - OPEB), and will include TriMet's 10% administrative overhead for supervision of Other Services personnel and work.

At the beginning of each fiscal year, TriMet will send to the City the budgeted unit costs of

wages, benefits, overtime and overhead for TriMet personnel, and for use of equipment, in providing the Other Services.

TriMet will submit a monthly invoice to the City for its direct and indirect costs and in accordance with the unit costs for the fiscal year referenced in this section, for Other Services furnished to the City, during the preceding month. The invoice also will include the monthly cost of propulsion power supplied by TriMet to the City. The invoice will be supported by a detailed accounting of personnel, materials, and equipment used in providing the Other Services, and accompanying costs incurred. The City will make monthly payments to TriMet within 30 days of receiving a TriMet Other Services invoice. Any invoices remaining unpaid when due will accrue interest at a rate of 0.75% per month.

## **V. Other Considerations**

### **A. Startup Costs**

Startup costs are costs such as vehicle testing and equivalent facilitation determination, operator hiring and training, mechanic hiring and apprenticeship training and other costs incurred prior to the beginning of revenue service of a new Streetcar extension, such as the Loop Project, that are reasonable necessary to prepare for startup. Streetcar startup costs are eligible for reimbursement under the capital project. Separately from this IGA, the City and TriMet will agree on a budget for startup costs for the Loop Project.

### **B. Fares and Fare Revenue**

As of September 1, 2012, the City will issue fare instruments for the Streetcar system that will be the equivalent of TriMet Adult, Honored Citizen and Youth base fares. The City also may issue clearly identifiable Streetcar-only or promotional fare instruments that may be sold for less than the equivalent TriMet fare. TriMet will accept Streetcar fare instruments on TriMet's system that are sold equivalent to TriMet fares. TriMet will not accept Streetcar fares on TriMet's system that are Streetcar-only fare instruments sold for less than the equivalent TriMet fare. City will accept all TriMet's fare instruments for use on the Streetcar system.

The City will retain all revenue from the sale of Streetcar fares; and TriMet will retain all revenue from the sale of TriMet fares.

TriMet will assist the City in estimating the total TriMet fares honored by Streetcar. This information is intended to be used to establish an estimate of the farebox recovery ratio for Streetcar operations inclusive of fares collected by Streetcar and average fares attributed to TriMet monthly passes and transfers.

### **C. Development of Electronic Fare Collection**

TriMet anticipates future development of a electronic fare collection system for TriMet transit services. TriMet will have the lead role in the design the system and the City will have the opportunity to comment on design criteria that will provide for seamless electronic fare payment between TriMet transit services and the Portland Streetcar system. In the case of TriMet seeking grant funding for the fare collection system, and to the extent possible, Streetcar requirements will be a part of the grant request.

Separate agreement(s) between TriMet and the City will be developed related to the electronic fare system.

**D. Streetcar/MAX Track Crossings Operations and Maintenance**

In the immediate area of crossings of TriMet's light rail and City's Streetcar tracks, the Parties agree to specific operations and maintenance rights, responsibilities and operating procedure protocols. Locations and protocols are as set forth in the attached and incorporated Exhibit B.

1. Crossing Area Operating Procedures – Normal Operating Conditions

All train movements within each crossing area will be under the authority of TriMet's light rail personnel. During normal operating conditions, train movements within each crossing area will be supervised by rail, regulated by traffic signals within the crossing area and operated in accordance with mutual Standard Operating Procedures (SOPs) of the Parties.

All track-access within each crossing area will be subject to TriMet's light rail track-access procedure.

2. Crossing Area Operating Procedures – Non-normal Operating Conditions

Non-normal operating conditions within a crossing area are those which prevent train operations within the crossing area according to the Parties' SOPs for normal operating conditions. Non-normal operating conditions include, but are not limited, to light rail incident/accident, Streetcar incident/accident, light rail/Streetcar joint incident/accident, other party incident/accident (e.g., fire in area), winter storm conditions preventing normal operations and track/electrification/signal defect or damage conditions. All train movements within each crossing area will be under the authority of TriMet's light rail personnel.

3. Crossing Area Maintenance Procedures and Responsibilities

TriMet will have physical custody of, and will perform all scheduled and unscheduled maintenance for each crossing area track (excluding street surfaces along the Streetcar trackway outside of TriMet's light rail trackway, which will be maintained by the City), overhead electrification, and railway signals facilities and equipment of both parties, as described in Exhibit B. TriMet's labor and equipment for maintenance services (but excluding spare parts) to Streetcar track, overhead electrification, and railway signals facilities or equipment within each crossing area, will be provided without charge to City, with such maintenance services considered as outside the scope of Section IV. Other TriMet Services for Streetcar Operations and Maintenance of this IGA.

City will report, through its Streetcar operating and maintenance personnel, to TriMet light rail Operations Control any defect or damage to Streetcar track, overhead electrification or railway signals facilities and equipment within a crossing area. If the crossing facilities or equipment defect or damage has resulted in suspension of Streetcar operations, TriMet will assign highest priority to repair of such crossing facilities or



equipment so as to enable restoration of Streetcar operations, unless light rail operations are coincidentally suspended, for any reason, in which case the repair of such crossing facilities or equipment to enable restoration of Streetcar operations will have highest priority following the restoration of light rail operations.

#### 4. Crossing Area Spare Parts for Streetcar System

TriMet will have physical possession of spare parts for the Streetcar system track, overhead electrification or railway signal facilities of equipment within MAX/Streetcar areas as set forth in Exhibit B. Through the procedures of Section IV. Other TriMet Services for Streetcar Operations and Maintenance, the Parties Authorized Representatives will agree on and maintain a list of Streetcar spare parts, which should be stocked for crossing area maintenance. Upon usage by TriMet of a crossing area spare part for scheduled or unscheduled maintenance, TriMet will procure replacement of such spare part and will invoice City for reimbursement of such expense.

## VI. General Provisions

### A. Documents and Inspection of Records

The City will maintain such records, documents, reports and data for a period of six (6) years that are necessary to show the operating costs of the Streetcar. TriMet will maintain such records, documents, reports and data for a period of six (6) years that are necessary to substantiate TriMet funding or provision of other services for the Streetcar system. The City will permit TriMet, and TriMet will permit the City, and their respective authorized representatives to inspect all records, documents, reports and data associated with this IGA.

### B. Independent Contractor

In connection with this IGA, each Party is an independent contractor and will have no authority to bind or commit the other. Nothing herein will be deemed or construed to create a joint venture, joint employment, partnership or agency relationship between the Parties for any purpose.

### C. Liability/Indemnification

#### 1. Design and Construction

The Parties acknowledge and agree that TriMet has no responsibility for the design and construction of the Streetcar system. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, City agrees to defend, hold harmless and indemnify TriMet and its officers, agents and employees from any liability, settlements, costs and expenses, including but not limited to attorney fees, arising out of any action, suit or claim in connection with the design and construction of the Streetcar system.

#### 2. Operations and Maintenance

Except for those Streetcar/MAX Track Crossing Facilities Maintained by TriMet as set forth in Exhibit B, the parties acknowledge and agree that TriMet has no responsibility

for the operation and maintenance of the Streetcar system. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, City agrees to defend, hold harmless and indemnify TriMet and its officers, agents and employees from any liability, settlements, losses, costs and expenses, including but not limited to attorney fees, arising out of personal injury or property damage resulting from operation and maintenance of the Streetcar system. This includes personal injury or property damage resulting from actions or inactions of TriMet employees provided to the City under this Agreement, unless the actions or inactions of the TriMet employees are caused by TriMet, in which case TriMet agrees, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, to defend, hold harmless and indemnify the City and its officers, agents and employees from any settlements, losses, costs and expenses, including but not limited to attorney fees. If the parties are unable to agree on defense and indemnification obligations, the matter will be subject to mediation, as set forth the Paragraph I. of this Section. This defense, hold harmless, and indemnification provision also applies to claims or potential accessibility claims filed by non-employees under Title II of the Americans with Disabilities Act or other civil rights laws.

### 3. Employment

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, TriMet agrees to defend, hold harmless and indemnify the City and its officers, agents and employees from any liability, settlements, losses, costs and expenses, including but not limited to attorney fees, arising out of any action, grievance, complaint, suit, or claim by TriMet employees or the Amalgamated Transit Union resulting from actions or inactions of TriMet or its officers, agents, or employees under this Agreement.

### 4. Streetcar/MAX Track Crossing Facilities Maintained by TriMet

The parties acknowledge and agree the City has no responsibility for the operation and maintenance of the Streetcar system as set forth in Exhibit B. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, TriMet agrees to defend, hold harmless and indemnify the City and its officers, agents and employees from any liability, settlement, costs and expenses, including but not limited to attorney fees, arising out of personal injury or property damage resulting from the actions or inactions of TriMet employees undertaking the work as described in Section V. Other Considerations, Paragraph D. Streetcar/MAX Track Crossings Operations and Maintenance.

#### **D. Early Termination**

Either Party may terminate this IGA upon 12-month written notice. Any termination will not prejudice any rights or obligations accrued to the Parties prior to termination.

#### **E. Compliance with Laws**

The Parties will comply with all applicable federal, state and local laws, rules and regulations applicable to the work as set forth in this IGA.

**F. Communications**

All notices or communications related to this IGA will be in writing and will be considered sufficiently given if addressed and mailed by first class mail, as follows:

To the City:	Vicky L. Diede Portland Streetcar Project Manager Portland Bureau of Transportation 1120 SW 5 <sup>th</sup> Avenue, Room 800 Portland OR 97204
To TriMet:	Beth deHamel Executive Director of Finance & Administration TriMet 4012 SE 17 <sup>th</sup> Avenue Portland OR 97202

The Parties may change the contact person or the Communications address by giving written notice of the changes as provided in this Section.

**G. Amendments**

This IGA may not be changed, modified or altered except by written amendment executed by the Parties.

**H. Assignment**

TriMet will not assign or subcontract any of its rights or responsibilities under this IGA without obtaining the City's prior written consent. Any assignment or subcontract by TriMet will not relieve TriMet of any of its responsibilities under this IGA.

The City will not assign any of its rights or responsibilities under this IGA without obtaining TriMet's written consent. Nothing in this IGA will prevent the City from subcontracting aspects of the operation of the Portland Streetcar system as the City deems appropriate. Any assignment or subcontract by the City will not relieve the City of any of its responsibilities under this IGA.

**I. Mediation**

Except for the agreement on the annual budget as provided in II.A. Funding Process and Amounts of this IGA, should any dispute arise between the Parties concerning this IGA which is not resolved by mutual agreement, the dispute will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the Parties to this IGA will participate in good faith in a non-binding mediation process. 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 shall jointly select the permanent mediator. All costs of mediation will be borne equally by the Parties.

**J. Severability**

If any Section of this IGA is found invalid, all remaining Sections will remain in effect.

**K. Waiver of Breach**

Any waiver of any breach or failure to enforce any of the terms and conditions of this IGA at any time will not affect, limit or waive the rights of either party to enforce and compel compliance with every term and condition of this IGA. Neither party will be relieved of its obligations to comply with any provisions of this IGA by reason of any failure of the other party to enforce prompt compliance.

**L. No Third Party Beneficiary**

The City and TriMet are the only parties to this IGA and, as such, are the only parties entitled to enforce its terms. Nothing in this IGA gives or will be construed to give or provide any legal right or benefit, direct, indirect or otherwise, to any other party.

**M. Integration**

This IGA constitutes the entire agreement of the Parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of any kind.

**APPROVALS:**

CITY OF PORTLAND

TRIMET

By: \_\_\_\_\_  
Sam Adams  
Mayor

By: \_\_\_\_\_  
Neil McFarlane  
General Manager

By: \_\_\_\_\_  
LaVonne Griffin-Valade  
City Auditor

Approved as to Form:

By: \_\_\_\_\_  
Mark Moline  
Sr. Deputy City Attorney

By: \_\_\_\_\_  
Jana Toran  
Legal Counsel

**Exhibit A****Terms and Conditions - TriMet Personnel for Streetcar Operations**

1. Streetcar Department - TriMet will establish a separate Streetcar department within its Operations Division and designate employees to work in the Streetcar Department, in accordance with Section III. TriMet Personnel for Streetcar Operations of this IGA and the Portland Streetcar Supplemental Working and Wage Agreement between TriMet and its represented employees Association. TriMet will only provide personnel in the classifications of Streetcar Operator, Streetcar Maintenance Technician, and Streetcar Superintendent. The personnel required by the City will be assigned to the City from the Streetcar Department.
2. Employee Status - The City will reimburse TriMet for its direct and indirect cost of providing employees. The employees of TriMet who perform services hereunder, however, will remain employees of TriMet. TriMet will be responsible for tax withholdings, salaries, unemployment insurance, workers compensation coverage, social security contributions, and employee benefits such as vacation, sick pay, disability, insurance, and pensions of the TriMet employees.
3. Personnel Report Exclusively to the City - The personnel provided by TriMet pursuant to the IGA will report directly and exclusively to the City, and the City Streetcar managers will be responsible for managing the personnel and for assigning and approving any and all work performed by them. The City will supply and provide the personnel with access to all facilities, equipment, and tools necessary for the personnel to perform their duties for the City; will obtain all consents and approvals from third parties required to enable the personnel to perform work and have access to needed facilities, equipment, and tools and will establish work rules and standard operating procedures in consultation with TriMet.

TriMet operations managers and City's Streetcar managers will collaborate during transfers of TriMet personnel to and from the Streetcar Department to maintain consistent employee performance standards and supervision and continuity of employee records documenting performance, corrective actions taken, and coaching/counseling sessions.

For significant Streetcar incidents, including collisions and derailments, Streetcar's investigation team will include TriMet safety and operations managers, and Streetcar managers will consult with TriMet safety and operations managers to include relevant consideration of the Streetcar Department employee's combined TriMet/Streetcar work record in determination of corrective actions and/or consequences.

4. Number of Personnel Supplied; Budget - On or before each January 1 during the term of the Agreement, the City and TriMet will agree on the number of personnel to be provided to the City for the following fiscal year. Following agreement on the number of personnel to be provided for the next fiscal year, TriMet will make its best efforts to provide personnel from the Streetcar Department to the City, based on TriMet's next regular or appropriate workforce sign-up.
5. Additional Personnel - In the event the City notifies TriMet that the City requires more personnel during the year than initially determined under paragraph 4 above, TriMet will use its best efforts to provide the additional personnel to the City, and the City will reimburse TriMet for its direct and indirect cost of supplying the additional personnel.

6. Selection of Personnel - On agreement on the number of personnel for the following fiscal year as set out in Paragraph 4 above, on notification by the City as set out in Paragraph 5 above, and on the City's notification to TriMet of vacancies in the number of Streetcar personnel, TriMet will offer the openings in the Streetcar Department to its employees. TriMet will offer the openings, at the next regularly scheduled workforce sign-up to those eligible TriMet employees who apply and meet the job qualifications established by the City. The employees selected will be designated to work in the Streetcar Department and will be assigned work by the City. If the number of applicants selected for the Streetcar Department is less than the number of City openings, TriMet will undertake to hire outside applicants for the remaining positions.
7. Training - The City will provide training Streetcar Department personnel for Streetcar operations. Any training provided by TriMet will be the subject of separate cost reimbursement agreements between the City and TriMet as set out in Section IV. Other TriMet Services for Streetcar Operations and Maintenance of this IGA
8. Work Assignments - On completion of Streetcar Department training, the City will assign Streetcar department employees to Streetcar Department work and schedules in accord with a sign-up system to be developed by the City in consultation with TriMet. The work to be performed by Streetcar Department employees will be as set out in job descriptions developed by the City and provided by the City to TriMet. When TriMet employees are in Streetcar Department training or assigned to Streetcar Department work, they will be supervised by and subject to directions (including designation of their place of work and reporting) of the City's Streetcar Manager of Operations and Safety, Manager of Maintenance or their designees.
9. Work Hours - The City may schedule five (5) 9-hour day or four (4) 10-hour day workweeks, or such other shift durations and workweeks as may be agreed to by the City and TriMet. If the City schedules 10 hour shifts, it may abandon the 10 hour shifts at its discretion.
10. Overtime The City will reimburse TriMet at a rate of time and one half for employee hours worked in excess of 10 hours on any one 4/10 shift and in excess of 8 hours on any one 5/8 shift.
11. Extra Board - The TriMet Extra Board will not be used for Streetcar Department work.
12. Grievances - Pursuant to the Portland Streetcar Supplemental Working and Wage Agreement between TriMet and its represented employees Association, Streetcar Department grievances will be subject to adjustment through the contractual grievance and arbitration procedure, except that Department Director references will be deemed to mean the City's Streetcar Project Manager or designee and the employer grievance committee designees will be appointed by TriMet. City's Streetcar managers will be responsible for timely response to Streetcar Department personnel issues and grievances, in the same manner as TriMet managers for non-Streetcar Department TriMet employees. No grievance adjustment under this paragraph will be deemed to establish a practice or any precedent for non-Streetcar Department operations, and no grievance adjustment for non-Streetcar Department operations will be deemed to establish a practice or any precedent for Streetcar Department operations. City's Streetcar managers will consult with TriMet operations and labor relations managers for consistent grievance administration and record keeping. TriMet agrees that no streetcar grievance will be settled without notification to and consultation with Streetcar managers.

## Exhibit B

## Streetcar/MAX Track Crossing Facilities Maintained by TriMet

## OVERHEAD ELECTRIFICATION:

Streetcar Alignment	MAX Alignment	TriMet OCS Inspection & Maintenance Responsibilities
<ul style="list-style-type: none"> <li>• SW 10th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Yamhill Street</li> <li>• SW Morrison Street</li> </ul>	<p>Streetcar's Northbound track is crossing TriMet's Eastbound and Westbound Blue Line track. TriMet's responsibility lies between the non-bridging section insulators on 10th Ave., one block North and one block South of TriMet's Blue line tracks.</p>
<ul style="list-style-type: none"> <li>• SW 11th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Morrison Street</li> <li>• SW Yamhill Street</li> </ul>	<p>Streetcar's Southbound track is crossing TriMet's Westbound and Eastbound Blue Line track. TriMet's responsibility lies between the non-bridging section insulators on 11th. Ave., one block North and one block South of TriMet's Blue line tracks.</p>
<ul style="list-style-type: none"> <li>• SW Market Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 6th Avenue</li> <li>• SW 5th Avenue</li> </ul>	<p>Streetcar's Southbound track is crossing TriMet's 6th Ave. and 5th Ave. Mall Line track. TriMet's responsibility lies between the section insulators numbered 438 and 434.</p>
<ul style="list-style-type: none"> <li>• SW Montgomery St.</li> <li>• SW Mill Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 5th Avenue</li> <li>• SW 6th Avenue</li> </ul>	<p>Streetcar's Northbound track is crossing TriMet's 5th Ave. and 6th Ave. Mall Line track. TriMet's responsibility lies between the section insulators numbered 439 and 435.</p>
<ul style="list-style-type: none"> <li>• NE 7th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	<p>Streetcar's Southbound track is crossing TriMet's Westbound and Eastbound Blue Line track. TriMet's responsibility lies between the insulated overlap at station number 183+37 and the first non-bridging section insulator South of TriMet's Blue Line Eastbound track.</p>
<ul style="list-style-type: none"> <li>• NE Grand Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	<p>Streetcar's Northbound track is crossing TriMet's Eastbound and Westbound Blue Line track. TriMet's responsibility lies between the insulated overlap at station number 582+65 and the first non-bridging section insulator South of TriMet's Blue Line Eastbound track.</p>



**TRACK:**

The City shall maintain and repair all street surfaces within the crossing areas which extend beyond the existing TriMet MAX mainline maintenance responsibilities.

TriMet will inspect and maintain the track system components within the crossing areas as follows:

<u>Streetcar Alignment</u>	<u>MAX Alignment</u>	<u>TriMet Track Inspection &amp; Maintenance Responsibilities</u>
<ul style="list-style-type: none"> <li>• SW 10th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Yamhill Street</li> <li>• SW Morrison Street</li> </ul>	8 feet north of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 10 <sup>th</sup> and Morrison, running south to a point 10 feet south of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 10 <sup>th</sup> and Yamhill. The identification of these limits will be and include the rail compromise joints located at both of these locations.
<ul style="list-style-type: none"> <li>• SW 11th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Morrison Street</li> <li>• SW Yamhill Street</li> </ul>	14 feet north of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 11 <sup>th</sup> and Morrison, running south to a point 12 feet south of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 11 <sup>th</sup> and Yamhill. The identification of these limits will be and include the rail compromise joints located at both of these locations. Inspect and maintain the turnout #5 C to the heel of the frog joints (welded).
<ul style="list-style-type: none"> <li>• SW Market Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 6th Avenue</li> <li>• SW 5th Avenue</li> </ul>	23 feet east of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 5 <sup>th</sup> and SW Market, running west to a point 37 feet west of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 6 <sup>th</sup> and SW Market.
<ul style="list-style-type: none"> <li>• SW Montgomery St.</li> <li>• SW Mill Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 5th Avenue</li> <li>• SW 6th Avenue</li> </ul>	52 feet east of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 5 <sup>th</sup> and SW Montgomery, running northwest to a point 21 feet west of the centerline of the TriMet/Portland Streetcar crossing diamond at SW 6 <sup>th</sup> and SW Mill.
<ul style="list-style-type: none"> <li>• NE 7th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	15 feet south of the centerline of the TriMet Eastbound/Portland Streetcar crossing at NE 7 <sup>th</sup> and NE Holladay, running north to a point 22 feet north of the centerline of the TriMet Westbound/Portland Streetcar crossing diamond at NE 7th and NE Holladay.
<ul style="list-style-type: none"> <li>• NE Grand Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	20 feet south of the centerline of the TriMet Eastbound/Portland Streetcar crossing at NE Grand Ave and NE Holladay, running north to a point 25 feet north of the centerline of the TriMet Westbound/Portland Streetcar crossing diamond at NE Grand and NE Holladay.

**RAILWAY SIGNALS:**

<u>Streetcar Alignment</u>	<u>MAX Alignment</u>	<u>TriMet Signals Inspection &amp; Maintenance Responsibilities</u>
<ul style="list-style-type: none"> <li>• SW 10th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Yamhill Street</li> <li>• SW Morrison Street</li> </ul>	<p>City of Portland (COP) traffic controls. Not maintained by TriMet Signals Dept.</p>
<ul style="list-style-type: none"> <li>• SW 11th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• SW Morrison Street</li> <li>• SW Yamhill Street</li> </ul>	<p>Inspect and maintain the TriMet train control signal system at 11<sup>th</sup>/ Morrison and 11<sup>th</sup>/ Yamhill. The identification of these limits will be the rail compromise joints located at both of these locations. Included will be the train to wayside (TWC) device starting at a point 135 feet north of the centerline of the TriMet/Streetcar crossing diamond at SW 11<sup>th</sup> and Morrison. This equipment has interface control with the TriMet train control and operation at this location.</p>
<ul style="list-style-type: none"> <li>• SW Market Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 6th Avenue</li> <li>• SW 5th Avenue</li> </ul>	<p>City of Portland (COP) traffic controls. Not maintained by TriMet Signals Dept.</p>
<ul style="list-style-type: none"> <li>• SW Montgomery St.</li> <li>• SW Mill Street</li> </ul>	<ul style="list-style-type: none"> <li>• SW 5th Avenue</li> <li>• SW 6th Avenue</li> </ul>	<p>City of Portland (COP) traffic controls. Not maintained by TriMet Signals Dept.</p>
<ul style="list-style-type: none"> <li>• NE 7th Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	<p>City of Portland (COP) traffic controls. Not maintained by TriMet Signals Dept.</p>
<ul style="list-style-type: none"> <li>• NE Grand Avenue</li> </ul>	<ul style="list-style-type: none"> <li>• NE Holladay Street</li> </ul>	<p>City of Portland (COP) traffic controls. Not maintained by TriMet Signals Dept.</p>