

TriMet Contract GH110418BC
Mod 2

Misc. Contracts and Agreements
No. 27252

DRAFT DATE: November 9, 2012

AMENDMENT NUMBER 02
INTERGOVERNMENTAL AGREEMENT
Stormwater Retrofit Program
Barbur Boulevard Transit Center

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," the City of Portland, acting by and through its Bureau of Environmental Services, hereinafter referred to as "BES," and the Tri-County Metropolitan Transportation District of Oregon, hereinafter called "TriMet," entered into an Agreement on March 24, 2011 and Amendment Number 01 on February 29, 2012. That Agreement covers the stormwater retrofit project at TriMet's Barbur Boulevard Transit Center to provide for water quality treatment and mitigation of stormwater flows.

It has now been determined by ODOT, BES, and TriMet that the Agreement referenced above should be amended to modify the financial contributions of the Parties, extend the Project completion date, and revise Exhibits A and B. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Revised Exhibit A and B, which were included in Amendment Number 01, shall be deleted in their entirety and replaced with the attached 2nd Revised Exhibit A and 2nd Revised Exhibit B. All references to "Revised Exhibit A" will hereinafter be referred to as "2nd Revised Exhibit A" and all references to "Revised Exhibit B" will hereinafter be referred to as "2nd Revised Exhibit B."

TERMS OF AGREEMENT, Paragraphs 2 and 3, Page 1, which read:

2. The Project will be financed at an estimated cost of \$855,000 (Project Budget).
3. The Project Budget is set forth in Revised Exhibit B, "Budget," which is attached hereto and by this reference made a part hereof. The Project Budget consists of the Design Budget and the Construction Budget, as described below. The estimated cost for the design portion of this Project is \$120,000 (Design Budget) and will be paid for at BES expense. BES will provide the engineering design documents for construction of the proposed Project at no cost to ODOT and TriMet. BES will obtain any required City permits at its own expense. The estimated cost for the construction portion of this Project is \$735,000 (Construction Budget). The Construction Budget includes (a) \$590,000 for Project construction from ODOT's SRP funds, (b) \$10,000 for Project oversight from ODOT's SRP funds, (c) \$50,000 for Project management from TriMet as an in-kind contribution, and (d) an \$85,000 construction cost contingency for any approved construction cost overruns exceeding \$590,000 to be split 50/50 between ODOT and BES. TriMet's in-kind contribution will include construction

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management services, including procurement of services and materials, contract administration, and construction inspection. The actual costs of construction materials will be provided out of ODOT's contribution of \$590,000 or from the contributions towards the overrun from ODOT and BES if construction costs exceed \$590,000. Any cost overruns will be handled according to GENERAL PROVISIONS Paragraph 3a.

Shall be deleted in their entirety and replaced with the following:

2. The Project will be financed at an estimated cost of \$1,182,000 (Project Budget).
3. The Project Budget is set forth in 2nd Revised Exhibit B, "Budget," which is attached hereto and by this reference made a part hereof. The Project Budget consists of the Design Budget and the Construction Budget, as described below. The estimated cost for the design portion of this Project is \$120,000 (Design Budget) and will be paid for at BES expense. BES will provide the engineering design documents for construction of the proposed Project at no cost to ODOT and TriMet. BES will obtain any required City permits at its own expense. The estimated cost for the construction portion of this Project is \$1,062,000 (Construction Budget). The Construction Budget includes (a) \$590,000 for Project construction from ODOT's SRP funds, (b) \$10,000 for Project oversight from ODOT's SRP funds, (c) \$50,000 for Project management from TriMet as an in-kind contribution, (d) a \$240,000 construction cost contingency for any approved construction cost overruns exceeding \$590,000 to be split 50/50 between ODOT and BES, and (e) up to \$172,000 of ODOT's SRP funds available for construction costs above \$830,000 (\$590,000 + \$240,000) to finish the Project. TriMet's in-kind contribution will include construction management services, including procurement of services and materials, contract administration, and construction inspection. The actual costs of construction materials will be provided out of ODOT's contribution or from the contributions towards the overrun from ODOT and BES. Any cost overruns will be handled according to GENERAL PROVISIONS Paragraph 3a and 3b.

GENERAL PROVISIONS, Paragraph 3, Page 2, which reads:

3. Consideration. BES agrees to provide engineering, construction-ready design documents for construction of the proposed Project as described in Revised Exhibit A. BES will provide ODOT and TriMet with approved engineering, construction-ready Project design drawings, construction specifications and a cost-estimate. ODOT shall reimburse TriMet its actual costs in performing the Work, in a sum not to exceed \$590,000, as allocated in Revised Exhibit B.
 - a. Overrun. In the event TriMet believes its actual costs to perform the Work will exceed \$590,000, prior to incurring such costs, TriMet, ODOT, and BES agree to meet and confer about the Work and attempt to reach a mutually beneficial resolution, which includes, but is not limited to, attempting to increase funding levels or reviewing the design to remove elements so the design falls within the available funding amount. Any cost overrun that is mutually agreed to over \$590,000 will be split 50/50 between ODOT and BES.

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Shall be deleted in its entirety and replaced with the following:

3. Consideration. BES agrees to provide engineering, construction-ready design documents for construction of the proposed Project as described in 2nd Revised Exhibit A. BES will provide ODOT and TriMet with approved engineering, construction-ready Project design drawings, construction specifications and a cost-estimate. ODOT shall reimburse TriMet its actual costs in performing the Work, in a sum not to exceed \$590,000, as allocated in 2nd Revised Exhibit B, subject to the terms listed below in subparagraphs 'a' and 'b'.
- a. Overrun. In the event TriMet believes its actual costs to perform the Work will exceed \$590,000, prior to incurring such costs, TriMet, ODOT, and BES agree to meet and confer about the Work and attempt to reach a mutually beneficial resolution, which includes, but is not limited to, attempting to increase funding levels or reviewing the design to remove elements so the design falls within the available funding amount. Any cost overrun that is mutually agreed to over \$590,000 will be split 50/50 between ODOT and BES up to an additional \$240,000, for a total cost of \$830,000.
- b. Contingency. In the event TriMet believes its actual costs to perform the Project construction will exceed \$830,000, prior to incurring such costs, TriMet, ODOT, and BES agree to meet and confer about the Work and attempt to reach a mutually beneficial resolution, which includes, but is not limited to, attempting to increase funding levels or reviewing the design to remove elements so the design falls within the available funding amount. Any construction cost overrun that is mutually agreed to over \$830,000 will be paid by ODOT up to but not to exceed \$172,000.

GENERAL PROVISIONS, Paragraph 7, Page 2, ODOT's Project Manager which reads:

Project Manager: Sandra Prock
 Organization: Oregon Department of Transportation
 Address: 123 NW Flanders St.
 Portland, OR 97209
 Phone: (503) 731-3001
 Fax: (503) 731-8531
 Email: sandra.prock@odot.state.or.us

Shall be deleted in its entirety and replaced with the following:

Project Manager: Ula Janik
 Organization: Oregon Department of Transportation
 Address: 123 NW Flanders St.
 Portland, OR 97209
 Phone: (503) 731-3019
 Email: urszula.janik@odot.state.or.us

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GENERAL PROVISIONS, Paragraph 11, Page 3, which reads:

11. Reimbursement.

- A. With the exception of costs invoiced under Reimbursement subsection F below, TriMet shall submit itemized invoices to ODOT for 100 percent of the actual construction-related costs incurred by TriMet on behalf of the Project. TriMet shall designate in the invoices the Project and ODOT IGA number, and shall itemize and explain expenses for which reimbursement is claimed. ODOT shall review, approve, and provide reimbursement to TriMet for the Work performed. If construction costs exceed \$590,000, the construction overrun will be paid by BES and ODOT on a 50/50 basis as further described in GENERAL PROVISIONS, Paragraph 3a. The process identified in this Paragraph 11 for invoicing and receiving payment from ODOT for actual construction-related costs will be the same process that applies to any construction cost overruns that ODOT is obligated by this Agreement to pay.
- B. Costs incurred for travel, lodging, and meals will be reimbursed to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations and all travel has been approved by the ODOT Project Manager.
- C. ODOT will detain for payment processing non-itemized or incomplete billings until TriMet has supplied correct information to ODOT. ODOT shall notify TriMet immediately if it is detaining any invoice because it is not itemized or is incomplete.
- D. TriMet shall submit to ODOT a monthly invoice for costs incurred during the preceding one-month period no later than forty-five (45) days following the end of that performance period.
- E. Invoices must be submitted in duplicate, identifying the ODOT IGA number, to Sandra Prock, Project Manager, or her assigns, at the address listed in General Provisions, Paragraph 7 above. ODOT shall pay all approved invoices to TriMet within thirty (30) days.
- F. In the event construction costs exceed \$590,000 and the Parties have determined to continue with the Project according to General Provisions Paragraph 3.a., TriMet shall invoice BES for 50 percent of the mutually agreed upon construction overrun. TriMet shall designate in the invoices the BES IGA number, and shall itemize and explain the expenses for which reimbursement is claimed.
- G. TriMet shall submit to BES a monthly invoice for BES's share of overrun costs incurred during the preceding one-month period no later than forty-five (45) days following the end of that performance period.

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- H. Invoices to BES must identify the BES IGA number and be submitted to Amin Wahab, or his assigns, at the address listed in General Provisions, Paragraph 7. BES shall pay all approved invoices to TriMet within thirty days (30) days.
- I. BES will detain for payment processing non-itemized or incomplete billings until TriMet has supplied correct information to BES. BES shall notify TriMet immediately if it is detaining any invoice because it is not itemized or is incomplete.

Shall be deleted in its entirety and replaced with the following:

11. Reimbursement.

- A. With the exception of costs invoiced under Reimbursement subsection F below, TriMet shall submit itemized invoices to ODOT for 100 percent of the actual construction-related costs incurred by TriMet on behalf of the Project. TriMet shall designate in the invoices the Project and ODOT IGA number, and shall itemize and explain expenses for which reimbursement is claimed. ODOT shall review, approve, and provide reimbursement to TriMet for the Work performed. If construction costs exceed \$590,000, the construction overrun will be paid by BES and ODOT on a 50/50 basis as further described in GENERAL PROVISIONS, Paragraph 3a. The process identified in this Paragraph 11 for invoicing and receiving payment from ODOT for actual construction-related costs will be the same process that applies to any construction cost overruns that ODOT is obligated by this Agreement to pay.
- B. Costs incurred for travel, lodging, and meals will be reimbursed to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations and all travel has been approved by the ODOT Project Manager.
- C. ODOT will detain for payment processing non-itemized or incomplete billings until TriMet has supplied correct information to ODOT. ODOT shall notify TriMet immediately if it is detaining any invoice because it is not itemized or is incomplete.
- D. TriMet shall submit to ODOT a monthly invoice for costs incurred during the preceding one-month period no later than forty-five (45) days following the end of that performance period.
- E. Invoices must be submitted in duplicate, identifying the ODOT IGA number, to Ula Janik, Project Manager, or her assigns, at the address listed in General Provisions, Paragraph 7 above. ODOT shall pay all approved invoices to TriMet within thirty (30) days.
- F. In the event construction costs exceed \$590,000 and the Parties have determined to continue with the Project according to General Provisions Paragraph 3.a., TriMet shall

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invoice BES for 50 percent of the mutually agreed upon construction overrun. TriMet shall designate in the invoices the BES IGA number, and shall itemize and explain the expenses for which reimbursement is claimed. BES and ODOT will split the construction cost overruns up to \$240,000 of additional costs.

- G. TriMet shall submit to BES a monthly invoice for BES's share of overrun costs incurred during the preceding one-month period no later than forty-five (45) days following the end of that performance period.
- H. Invoices to BES must identify the BES IGA number and be submitted to Amin Wahab, or his assigns, at the address listed in General Provisions, Paragraph 7. BES shall pay all approved invoices to TriMet within thirty days (30) days.
- I. BES will detain for payment processing non-itemized or incomplete billings until TriMet has supplied correct information to BES. BES shall notify TriMet immediately if it is detaining any invoice because it is not itemized or is incomplete.
- J. If Project construction costs and construction cost contingency (\$590,000 + \$240,000) exceeds \$830,000, TriMet will submit invoices to ODOT according to the process set out in subparagraph 11.A above and ODOT will pay up to \$172,000 in additional eligible construction costs.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed will constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, are each duly authorized to sign it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, by and through its
Bureau of Environmental Services

STATE OF OREGON, by and through
its Department of Transportation

By _____
Bureau Director

By _____
Highway Division Administrator

Date _____

Date _____

APPROVED AS TO LEGAL FORM

APPROVAL RECOMMENDED

By _____
City Attorney

By _____
Technical Services Manager/Chief Engineer

Date _____

Date _____

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

By _____
Region 1 Manager

By _____
Executive Director

Date _____

Date _____

By _____
Geo-Environmental Section Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
District 2B Manager

By _____
TriMet Legal Department

Date _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

BES Contact:
Amin Wahab, City of Portland
1120 SW Fifth Avenue, Suite 1000
Portland, Oregon 97204
(503) 823-7895
amin.wahab@portlandoregon.gov

By _____
Assistant Attorney General

Date: _____

TriMet Contact:
Bryon McNatt, TriMet
710 NE Holladay Street
Portland, Oregon 97232
(503) 962-2209
mcnattb@trimet.org

ODOT Contact:
Ula Janik, ODOT
123 NW Flanders Street, 2nd Floor
Portland, Oregon 97209
(503) 731-3019
urszula.janik@odot.state.or.us

2nd REVISED EXHIBIT A

Statement of Work

The City of Portland Bureau of Environmental Services (BES), the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the Oregon Department of Transportation (ODOT) are partnering to implement stormwater retrofits to existing parking areas to manage stormwater runoff at the Barbur Boulevard Transit Station.

Project Location

Barbur Boulevard Transit Station
9712 SW Barbur Boulevard
Portland, OR

Project Description

TriMet's Barbur Boulevard Transit Station is located in the upper Tryon Creek watershed.

The TriMet Barbur Boulevard Transit Station site consists of 243,155 square feet, comprised of 203,518 square feet of impervious surfaces, located southeast of the intersection of SW Taylors Ferry Road and SW Barbur Boulevard. Surface water from the parking areas, drive lanes, and a bus shelter currently flow untreated into drain inlets on this site ultimately discharging directly into Tryon Creek. This Project will result in the design and construction of stormwater management facilities to treat stormwater runoff from drive lanes, parking areas and roof areas. Stormwater swales will replace existing pedestrian walkway islands between parking spaces.

BES will design the proposed stormwater facilities and procure any necessary permits from the City or State. TriMet will be responsible for construction of the stormwater facilities, construction management, and future operation and maintenance of the constructed stormwater facilities. ODOT will reimburse TriMet for the cost of constructing the stormwater facilities as listed below.

Scope of Work

The water quality facilities described above will be designed and constructed in accordance with this IGA as follows:

1. *BES shall:*
 - a. Provide stamped engineering, construction-ready design documents for construction of proposed stormwater facilities.
 - b. Obtain any required City and State permits at its own expense.
 - c. Upon discussion with ODOT and TriMet in the event of an overrun in construction costs, pay for any agreed to construction overrun costs over \$590,000 on a 50/50 basis with ODOT up to \$240,000 in additional construction costs. BES will pay up to \$120,000 of the cost overrun.

2. *TriMet shall:*
 - a. Provide for the procurement of all required services and materials to carryout construction of the stormwater facilities.
 - b. Provide for all construction management.
 - c. Provide for all future operation and maintenance of all Project elements on TriMet managed property.
 - d. Endeavor to complete all Project construction by the end of December 31, 2012.

3. *ODOT shall:*
 - a. Reimburse TriMet for the actual cost of construction of the stormwater facilities up to \$590,000, unless otherwise agreed to according to this Agreement.
 - b. Upon discussion with BES and TriMet in the event of an overrun in construction costs, pay for any agreed to construction overrun costs over \$590,000 on a 50/50 basis with BES, up to \$240,000 in additional construction costs. ODOT will pay up to \$120,000 of the cost overrun.
 - c. In the event construction costs exceed \$830,000 (\$590,000 + \$240,000), ODOT will cover the contingency up to \$172,000 to complete the Project.

Schedule

Activity	Date
Predesign	Completed
Design	February 2011
Construction, including advertising for bid	November 2011 – November 2012
Permits	February 2012
Project close-out	November 2012 – December 2012

2nd REVISED EXHIBIT B

Budget

BES will provide engineering design services. ODOT funds transferred to TriMet under this IGA will be used for construction materials and Project construction. TriMet will provide construction management.

Responsible Party	Estimated Cost
Design Budget	
Design (BES)	\$120,000
Construction Budget	
Construction (ODOT)	\$590,000
Oversight (ODOT)	\$10,000
Construction Management (TriMet) (In-kind)	\$50,000
Construction Change Orders (ODOT and BES)	\$240,000
Construction Contingency	\$172,000
Subtotal	\$1,062,000
Total Project Budget	\$1,182,000