

INTERGOVERNMENTAL AGREEMENT**Between the Tri-County Metropolitan Transportation District of Oregon (“TriMet”)
and the City of Portland
For Construction of Capital Improvements at Transit Bus Stops****TriMet Contract No.**

This Intergovernmental Agreement (this “Agreement”), dated this 1st day of July, 2013, (“Effective Date”) is made and entered into by and between the City of Portland, Bureau of Transportation (“City”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively “the Parties”).

RECITALS:

1. TriMet is the transit agency serving the Portland metropolitan area.
2. The City is responsible for transportation operations and maintenance improvements within the City public rights of way.
3. TriMet continues to improve bus stops by constructing wheelchair access, strategic sidewalk connections, and other access improvements that integrate bus stops with the streetscape. These improvements make bus stops more accessible and safe for everyone and help make fixed-route service more attractive for elderly and disabled riders. The City has also focused on safety and access improvement to promote active transportation through its programs for high crash corridors, Safe Routes to School, pedestrian safety improvements, sidewalk infill, and neighborhood greenways.
4. The Parties desire to work together to improve passenger boarding and access to transit, especially on streets with deficient sidewalk infrastructure. Capital improvements could include: modifications to, and/or additions of, curb ramps, sidewalks, carriage walks, curb extensions, and modifications to bus landing pads, on-street parking areas and certain bus zones (“Project Work”).
5. The City’s Bureau of Transportation Maintenance Operations Group has the capacity to construct and inspect Project Work improvements.
6. TriMet has received a grant from the Federal Transit Administration (“FTA”) to fund the capital improvements described as Project Work.
7. The purpose of this Agreement is to memorialize the terms and conditions under which TriMet will reimburse the City for costs associated with the Project Work.

AGREEMENT:**I. Joint Obligations**

- A. Once a sufficient number of sites have advanced from concept to design development (including procurement of permits), TriMet and the City will meet to review the Project Work that will be sequenced via work orders in sufficient detail for cost estimating purposes.
- B. Once costs have been reviewed and approved, City shall coordinate site review and pre and post construction meetings with TriMet to prioritize and establish the installation methods, schedule and inspections for the Project Work.
- C. A Work Order, in the form set out in Exhibit A, will be executed documenting the parties' agreement. The Parties agree that selection of the project locations is subject to TriMet's budget for this work.
- D. Each project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.
- E. Each project manager will invite the other to attend all regular or significant meetings regarding work performed under this Agreement.
- F. The Project Managers will maintain communication regarding the status of projects, and regarding any time scope, schedule, or budget changes.

II. City Obligations

- A. City at TriMet request may participate with TriMet in an on-site investigation of proposed sites to determine the feasibility of proposed improvements.
- B. For each task order, City shall prepare final construction cost estimates and shall submit cost estimates to TriMet. The Parties must execute a Work Order before City commences construction. Any work performed without a fully executed Work Order is not eligible for reimbursement under this Agreement.
- C. City staff will be available to provide assistance with citizen involvement if requested by TriMet.

- D. City shall construct all Project Work improvements, which shall be in conformance with all applicable codes, laws, and regulations, within 30 days after execution of a Work Order.
- E. City shall bear the cost of all reasonably foreseeable cost increases to the Project Work, all increases caused by City's failure to timely perform its obligations hereunder, and all increases caused by the fault of the City. Cost increases which are beyond City's control or are not reasonably foreseeable shall be chargeable to the Project upon approval by both parties.
- F. City shall maintain detailed and accurate records of all funds expended and all work performed with regard to this Agreement, and shall make such records available to TriMet for inspection at any reasonable time.
- G. City shall provide a standard two-year warranty period on all Project Work for defective materials and workmanship, which will commence upon completion of punch list or written acceptance of Project Work by TriMet. The City shall correct all defects in Project Work at City expense if notified by TriMet of such defects during the two-year warranty period. Upon expiration of the two-year warranty period, TriMet shall be responsible for maintenance of the Project Work in accordance with Section III.F, below.

Maintenance of corner curb ramps within the right-of-way are the responsibility of the City of Portland and are considered non-transit improvements to the public right-of-way.

- H. City's Project Manager shall be Lee Munson, or such other person as designated in writing by the Maintenance Operations Group Manager. The City Project Manager is responsible for the day-to-day management of this Agreement as provided herein.
- I. The City's Contract Manager shall be Jody Yates, who will serve as the first level of conflict resolution.
- J. The City's Project Manager shall be responsible for outreach to the community, in partnership with TriMet if this is so desired; coordination of design and installation efforts; and ensuring that individual Work Orders maintain agreed upon scope, schedule, and budgets.

III. TriMet Obligations

- A. TriMet shall prepare site drawings, figures and dimensions for Project Work at transit locations designated by TriMet.

- B. TriMet shall be responsible for procuring all permits and private right-of-way agreements that may be necessary to complete the Project Work.
- C. TriMet shall be responsible for conducting citizen involvement.
- D. TriMet shall promptly respond to all requests by City for review of information regarding the Project Work.
- E. TriMet shall administer federal funding for the Project Work.
- F. At completion of construction, TriMet shall inspect the Project Work and provide written acceptance of Project Work or identify punch list items for prompt corrections by City. Upon expiration of the two-year maintenance period discussed in Section II.G, above, TriMet shall be responsible for maintenance of the Project Work for the life of the improvements unless the bus stop is vacated pursuant to Section III.G, below.
- G. TriMet reserves the right to vacate bus stops improved by the Project Work completed pursuant to this Agreement. In the event TriMet vacates the improvements located in the public right of way, the City shall, upon notice from TriMet, remove and restore the vacated improvements at TriMet's expense.
- H. TriMet's Project Manager shall be Young Park, or such other person as designated in writing by Executive Director of Capital Projects. TriMet's Project Manager is responsible for the day-to-day management of this Agreement as provided herein and serves as the first level of conflict resolution.

IV. Budget and Payment

- A. The Project Budget is \$165,000 per year. The Project Budget is subject to the availability of funds for each fiscal year during the term of this Agreement at TriMet's discretion. This Project Budget is a not-to-exceed amount and shall be allocated in accordance with executed Work Orders.
- B. TriMet agrees to pay City on the basis of actual costs for the performance of work authorized by executed Work Orders, up to the amount authorized by the Work Order, except services expressly to be performed at City's cost. Actual costs may include direct and indirect salary costs, fringe benefits, and direct non-salary costs as determined below. All costs shall be subject to audit and the cost principles and standards applicable to federal FTA grantees.
 - 1. Direct Salary Costs and Fringe Benefits shall mean:

Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. The City's salary rates for any time period shall be set out in the official City Compensation Plan as amended by the City Council for the particular period.

2. Direct Non-Salary Costs shall mean:

Actual costs directly incurred in fulfilling the terms of this Agreement, including but not limited to reproduction, computer expense, telephone supplies, equipment rentals, purchase of outside services, gravel, concrete, asphalts, and motorized City equipment at the rates established by the Commissioner-in-Charge.

C. Invoices

City shall submit invoices directly to TriMet's Project Manager for actual costs of authorized services performed. Invoices shall provide detail as to work accomplished. All of City's invoices must be approved by TriMet's Project Manager. TriMet shall make payment to the City within 30 days after TriMet receives City's invoice.

V. General Provisions

A. Term and Termination

1. The Term of this Agreement is from the Effective Date until July 1, 2015, unless further extended upon mutual written agreement of the Parties.
2. Early Termination of Agreement.
 1. This Agreement may be terminated at any time by mutual written consent.
 2. This Agreement may be terminated by either Party upon thirty (30) days written notice.

B. Indemnification

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, the City of Portland agrees to indemnify, hold harmless and defend TriMet, its directors, 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 investigation and defense thereof, including reasonable attorneys fees, resulting from or arising out of the activities of City, its officers, employees or agents under this Agreement, except to the extent caused by TriMet's negligence.

Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, TriMet agrees to indemnify, hold harmless and defend the City of Portland, 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 investigation and defense thereof, including reasonable attorneys fees, resulting from or arising out of the

activities of TriMet, its directors, employees or agents under this Agreement, except to the extent caused by the City's negligence.

C. Funding Acknowledgement / Signage

1. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the City and TriMet.

D. Amendments

1. Except as otherwise provided for in this Agreement, the City or TriMet may amend this Agreement only in writing signed by the authorized staff members.
2. Changes to Work Orders:
 - a) Changes to Work Orders, including changes to scope, schedule, and budget may be made upon written agreement by the project managers identified in Section II of this Agreement.
 - b) Changes will not take effect or be binding on either party until agreed to in writing and signed by both Parties.

E. 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.

F. 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.

G. Compliance with Law

The parties recognize that funds provided by the FTA will be used to pay for a portion of the Project Work. Each party agrees to comply with all local, state, and federal laws

and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA contractors.

H. Federal Funding Limitation

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.

I. 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.

J. 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.

K. 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.

L. Entire Agreement; Modification; Waiver

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

M. Inspection of Records

Each of the parties shall have the right to inspect, at any reasonable time, such records in the possession, custody or control of the other party as it deems necessary for review of the other party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting party.

IN WITNESS WHEREOF, the City and TriMet have executed this Agreement as of the Effective Date.

CITY OF PORTLAND

TriMet

Steve Novick, Commissioner
Portland Bureau of Transportation

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

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

APPROVED AS TO FORM

James H. Van Dyke
City Attorney
CITY ATTORNEY
1/2/13

TriMet Deputy General Counsel

Exhibit A

City Contract No. _____
 TriMet Contract No. _____

Work Order No. _____

Capital Improvements for Access to Transit

Work Order

Project Name:

Location:

Purpose:

Anticipated Scope (with description of key improvements):

SAP Project Number: _____

Grant Number: _____

Scope of Work	Installation Labor and Materials Supplied by the Bureau

TriMet

Bureau

 Project Manager

 Project Manager

 Contract Manager