

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between Metro, an Oregon municipal corporation, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ("Metro"), and the City of Portland, 1221 SW 4th Avenue, Portland, Oregon 97204 (the "City").

RECITALS

- A. By the authority granted in ORS 190.110, units of local government may enter into agreements with other units of local government for the performance of any or all functions and activities that the parties to the agreement, its officers, or agents have the authority to perform.
- B. Metro, as the area Metropolitan Planning Organization, is responsible for maintaining and running the regional transportation model.
- C. The City is currently undergoing state-mandated Periodic Review of its Comprehensive Plan, and must document the impact of potential plan changes in order to prepare findings against statewide planning goals and the Transportation Planning Rule.
- D. The City wishes to retain the services of Metro to provide, and Metro wishes to provide, regional transportation model outputs, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS OF AGREEMENT

1. Purpose

The purpose of this Agreement is to memorialize the terms on which Metro will provide modeling services to the City, to help fulfill its Periodic Review obligations, as described on the attached Exhibit A.

2. Term

This Agreement shall be effective as of the last date all required signatures are obtained and all work shall be completed no later than December 31, 2014, on which date this Agreement shall automatically terminate unless extended by a fully executed amendment in writing and signed by both parties.

3. Responsibilities of Metro

Metro agrees to:

- a. Collaboratively perform the work described in the attached Exhibit A and bear its costs in such performance, subject to the payment required in Section 4(b).
- b. Comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, which are hereby incorporated by reference. Without limiting the generality of the foregoing, Metro expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation statutes, rules and regulations; and (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142.

- c. Perform the work under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals performing the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
- d. Comply and require the compliance of its subcontractors, if any, and of all employers working under this Agreement with ORS 656.017, requiring the provision of workers' compensation coverage for all subject workers.
- e. Appoint as Metro's project manager for this Agreement Cindy L. Pederson, Principal Researcher and Modeler, 503-797-1772, cindy.pederson@oregonmetro.gov (the "Metro Project Manager").

4. **Responsibilities of City**

City agrees to:

- a. Collaborate with Metro in Metro's completion of the work described in the attached Exhibit A.
- b. Pay Metro, in consideration for the services Metro performs under this Agreement, including any necessary staffing, data and service expenses (except travel expenses), up to the maximum sum of Twenty Thousand Dollars (\$20,000.00). Invoices shall identify the task performed and this Agreement, and shall itemize and explain all expenses for which reimbursement is claimed.
- c. Certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the City's current appropriation or limitation of current biennial budget.
- d. Appoint as the City's project manager for this Agreement Tom Armstrong, Supervising Planner, Bureau of Planning and Sustainability, 1900 SW Fourth Ave, Suite 7100 Portland, OR 97201, 503-823-3527, tom.armstrong@portlandoregon.gov (the "City Project Manager").
- e. The City shall have the discretion to eliminate tasks that Metro has not yet performed or to request that Metro perform additional tasks under this Agreement. In each case, the parties' project managers shall first discuss the proposed additional work or elimination of tasks. After the discussion, the City may eliminate tasks that Metro has not yet performed upon written notice delivered to Metro. With respect to additional tasks agreed upon by Metro, the parties shall attach a revised scope of work (Exhibit A), with any additions initialed and dated by both parties.

5. **Termination of Agreement**

- a. This Agreement may be terminated by mutual written consent of both parties.
- b. The City may terminate this Agreement effective upon delivery of written notice to Metro, or at such later date as may be established by the City, under any of the following conditions:
 - a. If Metro fails to complete the services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Metro fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the City fails to correct such failures within 10 days or such longer period as the City may authorize.

- c. Either Metro or the City may terminate this Agreement effective upon delivery of written notice to the other party, under any of the following conditions:
 - i. If the City fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
 - ii. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if the City is prohibited from paying for such work from the planned funding source.
- d. Metro may terminate this Agreement effective upon delivery of written notice to the City, if the City fails to its obligations under this Agreement, and after receipt of written notice from Metro fails to correct such failures within 10 days or such longer period as Metro may authorize.
- e. Any termination of this Agreement, including the expiration of the term of this Agreement, shall not prejudice any rights or obligations accrued to the parties prior to termination.

6. Insurance

Metro and the City are self-insured for general liability insurance and workers' compensation insurance coverages. Each party is responsible for the wages and benefits of its respective employees performing services under this Agreement.

7. Indemnification

- a. The City shall indemnify, defend, and hold harmless Metro, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of the assigned personnel acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.
- b. Metro shall indemnify, defend, and hold harmless the City, its officers, employees, and agents, including assigned personnel from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of Metro or its assignees, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.

8. Access to Records

Both parties and their duly authorized representatives shall have access to books, documents, papers, and records otherwise privileged under Oregon Law which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

9. Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written amendment signed by both parties.

10. Non-Discrimination

In their respective performances of this Agreement, neither party shall unlawfully discriminate against any person on the basis of race, ancestry, national origin, sex, disability, age, religion, marital status or sexual orientation. Moreover, each party shall comport its performance with all applicable federal, state and local anti-discrimination acts and associated regulations.

11. Force Majeure

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

12. Governing Law

This Agreement shall be governed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of laws, rules, and doctrines. Any litigation between the parties that arises out of or relates to the performance of the Agreement shall occur in the Circuit Court of Multnomah County, and if in the federal courts, the United States District Court for Oregon.

13. Captions

The captions or heading in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

14. Merger/Entire Agreement

This Agreement and attached exhibit(s) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless it is in writing and signed by both parties and all necessary approvals have been obtained. 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 part to enforce any provision of this Agreement shall not constitute a waiver by that party of that provision or of any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

METRO

CITY OF PORTLAND

By: _____
Name: Scott Robinson
Title: Deputy COO

By: _____
Name: Charlie Hales
Title: Mayor

Date: _____

Date _____

Approved as to Form:

Approved as to Form:

By: _____

By: _____

Exhibit "A"
Statement of Work

Task 1.

- A) The Transportation Research and Modeling Services (TRMS) Division will provide model outputs as requested from the existing 2010 base year as well as the 2035 Financially Constrained future year.
- B) TRMS will incorporate an alternative future year land use allocation by transportation analysis zone (TAZ) as provided by the City of Portland. A full regional model run will be required to determine the impacts of the land use changes.
- C) TRMS will provide model outputs from the new 2035 scenario as requested. These data may include traffic volumes, congestion measures, and other summaries.

Task 2.

- A) TRMS will incorporate a modified 2035 roadway network as provided by the City of Portland Bureau of Transportation.
- B) The City will coordinate with TriMet to determine what changes to the transit network will be implemented, and TRMS will code in the recommended modifications, which will be itemized by the City of Portland.
- C) TRMS will perform a full regional model run using the revised land use allocation and the updated roadway and transit networks for comparison to the results from the model run in Task 1.B.
- D) TRMS will provide model outputs from this 2035 scenario as requested. These data may include traffic volumes, congestion measures, and other summaries.

Tasks 1 and 2 may be modified as agreed to in writing (via email or letter) by both parties. The City acknowledges that (as with all national models), there will be some degree of uncertainty with regard to the model forecasts due to variations that can occur with regard to household and employment growth, unforeseen emerging technologies, changes in the cost of travel relative to household income, etc.

Metro will invoice the City for the work required to complete Task 1 in accordance with this Agreement, anticipating that the City will direct Metro to charge the hours accrued to complete Task 1 to the City of Portland Technical Assistance Fund first. Once those funds are depleted, the parties anticipate that the City will pay Metro's invoices directly.