

**INTERGOVERNMENTAL AGREEMENT  
CITY OF PORTLAND and the TRI-COUNTY METROPOLITAN TRANSPORTATION  
DISTRICT OF OREGON (TRIMET)  
Agreement No. 15-0802**

**ADMINISTRATIVE HEARINGS SERVICES  
TRIMET CODE EXCLUSIONS**

This Agreement is entered into effective December 1, 2014 between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") and the City of Portland, Oregon ("City"), hereinafter collectively referred to as "the Parties" and individually as "Party":

**RECITALS**

A. The City is a municipality and TriMet is a mass transit district, both of which are duly organized and existing under Oregon law.

B. The City, through its Hearings Office, provides administrative hearings services for TriMet's exclusion program pursuant to Contract No. 04-0805.

C. The Parties now desire to mutually terminate Contract No. 04-0805, as amended by Addenda 1 through 3, and enter into revised terms and conditions regarding the City's provision of administrative hearings services as more fully set forth below.

D. The City and TriMet are authorized to enter into this intergovernmental agreement (Agreement) pursuant to ORS 190.003, et seq.

**NOW, THEREFORE**, based on the foregoing Recitals, the Parties agree as follows:

1. Term, Termination and Amendment

A. The Parties hereby mutually terminate Contract No. 04-0805, as amended by Addenda 1 through 3. Termination of Contract No. 04-0805 shall be effective on December 1, 2014.

B. This Agreement takes effect on December 1, 2014, and shall remain in effect through November 30, 2016, subject to termination in whole or part by either Party upon ninety (90) days prior written notice.

C. This Agreement may be amended only by written amendment executed by the Parties.

2. Scope of Duties

A. Duties of the City

(1) The City's Hearings Office Hearings Officer(s) is designated as TriMet's Hearings Officer for exclusion hearings.

(2) The City will provide administrative hearings services as described below for TriMet exclusions.

(3) The City Hearings Office shall provide all administrative services for and conduct TriMet exclusion hearings in accordance with the following governing documents:

(1) TriMet Code (TMC) Section 28.18 and TriMet Administrative Rules, as those

authorities may be amended from time to time; and (2) to the extent made applicable by TriMet Administrative Rules, Portland City Code (PCC) Chapter 22.10 and Rules of the City of Portland Code Hearings Officer. In the event of any conflict among the foregoing documents, the conflict shall be resolved in accordance with the following priority: (1) TMC Section 28.18; (2) TriMet Administrative Rules; (3) PCC 22.10; (4) Rules of the City of Portland Code Hearings Officer.

- (4) In the event that the Hearings Officer determines a TriMet exclusion to be invalid, the Hearings Officer shall promptly forward a written notice to that effect to TriMet's Project Manager.

B. Duties of TriMet

- (1) TriMet will designate an Exclusion Administrator who shall be responsible for forwarding TriMet exclusion administrative review documentation to the Hearings Officer in accordance with the TriMet Code and TriMet Administrative Rules.

Concurrent with forwarding the documents to the Hearings Officer, TriMet shall forward or otherwise provide a copy of the documents to the excluded person as provided in the TriMet Code and TriMet Administrative Rules.

- (2) TriMet will provide the Hearings Officer with the list of unlawful conducts that shall subject a person to exclusion, as well as copies of TMC Section 28.18 and TriMet Administrative Rules, as those documents may be modified from time to time.
- (3) TriMet will be responsible for providing excluded persons information explaining the procedure for submitting hearing scheduling requests to the Hearings Officer.
- (4) TriMet shall appear at any hearing by way of an officer, Inspector or other individual who shall have knowledge of or information about the facts giving rise to the exclusion as required by the Hearings Officer.

3. Compensation

A. Hearing fee

TriMet shall pay the City the sum of \$343 per scheduled hearing. This compensation shall constitute payment in full for all services provided by the City in connection with the hearing.

B. Price adjustment

The scheduled hearing fee may be increased annually based on the differential change in the Consumer Price Index (Urban, All Consumers, in the Portland Metropolitan Area) (the "CPI") between the second half of the prior calendar year compared to the second half of the year immediately preceding the prior calendar year. For example, for fiscal year 2014-2015 (July 1, 2014-June 30, 2015), the hearing fee would be multiplied by a fraction, the numerator of which is the CPI for the second half of 2013 (July 1-December 31, 2013) and the denominator of which is the CPI for the second half of 2012 (July 1-December 31, 2012). Any increase under this Paragraph must be mutually agreed upon in writing by the Parties' respective Project Managers prior to taking effect.

C. Invoicing

City shall invoice TriMet monthly for services provided. Invoices shall be submitted to TriMet, Finance Department, 1800 S.W. 1<sup>st</sup> Avenue, Portland, Oregon 97201, with a copy to TriMet's Project Manager. Each invoice shall contain a reference to this Agreement number and contain a description of the services performed. TriMet shall remit payment to the City within 30 days of receipt of an approved City invoice.

D. Total Compensation

The total compensation to City under this Agreement shall not exceed \$400,000, which amount shall not be increased without written amendment to this Agreement signed by the Parties.

4. Independent Contractor Status

The City is engaged under this Agreement as an independent contractor. City has sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. City and its employees are not employees of TriMet and are not eligible for any benefits through TriMet. Neither City, nor its directors, officers, employees or subcontractors are officers, employees or agents of TriMet as those terms are used in ORS 30.265, and shall not hold themselves out either explicitly or implicitly as such for any purpose. TriMet and its employees are not employees of the City and are not eligible for any benefits through the City. Each party shall be responsible for any federal, state, and local taxes and fees attributable to that party resulting from payments under this Agreement.

5. Personnel

The City may assign such personnel as it deems necessary to do the work or services to be rendered under this Agreement.

6. No Third Party Beneficiary

TriMet and the City are the only parties to this Agreement, and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide benefit, direct, indirect, or otherwise to other parties unless such third parties are expressly designated by name as intended to be beneficiaries of its terms.

7. Ownership of Documents

All work that the City performs under the terms of this Agreement shall be considered to be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the City produces in connection with this Agreement. However, upon reasonable notice, TriMet and its duly authorized representatives shall have access to and may make copies of any and all of the foregoing described materials produced by the City in connection with this Agreement for purposes of audit, inspection or other TriMet uses or purposes.

8. Indemnification

- (a) In accordance with the provisions of the Oregon Tort Claims Act, including the limits of liability for public bodies set forth therein, the City will hold harmless, defend and indemnify TriMet, its directors, officers, employees and agents against all claims, demands, actions, and suits brought against any of them arising out of the City's negligent conduct in the performance of this Agreement.

- (b) In accordance with the provisions of the Oregon Tort Claims Act, including the limits of liability for public bodies set forth therein, TriMet will hold harmless, defend and indemnify the City, its officers, employees and agents against all claims, demands, actions and suits brought against any of them arising out of TriMet's negligent conduct in the performance of this Agreement.
- (c) TriMet shall also be responsible for defending all challenges brought by way of a writ of review (ORS 34.010 to 34.100) or any other type of challenge (including but not limited to federal civil rights claims) to any decision of the Code Hearings Officer made under the authority of this Agreement.

9. Compliance with Laws

The City and TriMet agree to comply with all federal, state and local laws, rules and regulations applicable to the work under this Agreement.

10. Workers Compensation

The City and TriMet, their subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers Compensation laws and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers.

11. Project Managers

City's Project Manager for this Agreement shall be Mr. Gregory Frank, Hearings Officer, City of Portland, 1900 S.W. 4<sup>th</sup> Avenue, Room 3100, Portland, Oregon 97201; Phone: (503) 823-7303; (FAX) (503) 823-4347. TriMet's Project Manager for this Agreement shall be Mr. Harry Saporta, Executive Director, Safety & Security, TriMet, 4012 S.E. 17<sup>th</sup> Avenue, Portland, Oregon 97202; Phone: (503) 962-4909; (FAX) 962-7888. Except as otherwise provided in this Agreement, notices and communications between the parties under this Agreement shall be directed to the Project Managers. Each party shall promptly provide written notice to the other in the event there is any change in the Project Manager information provided under this Paragraph.

12. Integration/Authority

This Agreement constitutes the entire Agreement between the City and TriMet and supersedes all other agreements or representations by either party regarding the same subject. Any modification of this Agreement must be in writing signed by a person authorized to contractually bind the party. The parties signing below represent and warrant that they have authority to bind the party for which they sign.

13. Counterparts

This Agreement may be executed in multiple counterparts and each counterpart shall be deemed to be an original. The counterparts together shall constitute a single binding agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS HEREOF, the City and TriMet have executed this Agreement as set forth below.

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF  
OREGON (TRIMET)**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Legal Department