

## AGREEMENT

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 1980, by and between the METROPOLITAN SERVICE DISTRICT, hereinafter referred to as "METRO," and the CITY OF PORTLAND, OREGON, hereinafter referred to as "CONTRACTOR."

## W I T N E S S E T H :

WHEREAS, METRO and CONTRACTOR are cooperatively conducting a continuing, comprehensive transportation study in the Portland/Vancouver metropolitan area; and

WHEREAS, METRO has programmed Interstate Transfer Funds already granted to METRO by the Urban Mass Transportation Administration (UMTA) for system planning studies as they relate to the Westside priority transit corridor; and

WHEREAS, METRO has allocated certain of these Interstate Transfer Funds for the use of CONTRACTOR to participate in the priority corridor transportation study; and

WHEREAS, A Unified Work Program (UWP) has been developed between METRO, CONTRACTOR, and other units of local government to define the activities to be undertaken; and

WHEREAS, The METRO Budget and UWP for FY 1980 contains funds to carry out the purpose of this Agreement; and

WHEREAS, CONTRACTOR has funds to provide the local matching share for the project in the amount of fifteen (15) percent of costs incurred up to TWO THOUSAND FOUR HUNDRED TWENTY-SIX and NO/100THS (\$2,426.00) DOLLARS;

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

I. CONTRACTOR shall perform that planning work indicated in the Scope of Work (Attachment A), which is attached hereto and incorporated herein. The project shall be conducted under the general supervision of the METRO Westside Corridor Project Director so that METRO may coordinate the study with regional planning activities.

II. CONTRACTOR agrees to begin its performance under this Agreement on \_\_\_\_\_, 1980, and to complete the performance by June 30, 1980. This Agreement shall expire on June 30, 1980 unless extended in writing by METRO.

III. METRO agrees to compensate CONTRACTOR for the performance as follows:

A. The services of CONTRACTOR staff shall be compensated on the basis of actual salaries and fringe benefits (except unemployment compensation) paid staff personnel by CONTRACTOR for the time the personnel are directly utilized on work necessary to fulfill the terms of this Agreement. The rates of compensation for the personnel shall be as adopted by CONTRACTOR applicable for Fiscal Year 1980.

B. It is understood and agreed that CONTRACTOR shall keep accurate time records and receipts with respect to the salaries and benefits to be paid, as well as other direct reimbursable costs and consultant fees, and shall make such records available to METRO for audit.

C. All costs reimbursed under this section shall be not only itemized and certified as payments to specifically named individuals or businesses, but shall, whenever reasonably possible, be supported by receipts.

D. Inasmuch as CONTRACTOR is a non-profit organization, only reimbursable costs for the actual compensation of employees engaged in and direct expenses and consultant fees necessary for the performance of this Agreement shall be paid CONTRACTOR.

IV. The total amount of the work to be accomplished on this project is SIXTEEN THOUSAND ONE HUNDRED SEVENTY-SIX and NO/100THS (\$16,176.00) DOLLARS and the total amount to be paid to CONTRACTOR for such work shall not exceed eighty-five (85) percent of that amount. CONTRACTOR further agrees to provide fifteen (15) percent of the total cost of the project not to exceed TWO THOUSAND FOUR HUNDRED TWENTY-SIX and NO/100THS (\$2,426.00) DOLLARS. METRO certifies that sufficient funds have been allocated in the METRO FY 1980 Budget to finance the amount to be paid to CONTRACTOR under this Agreement. Payments by METRO to CONTRACTOR for work done or to be done pursuant to this Agreement shall be conditioned upon METRO's receipt of federal funds in the amount of eighty-five (85) percent of the total amount of the project.

V. CONTRACTOR shall bill METRO at quarterly intervals for said reimbursable costs incurred in the preceding quarter, and METRO shall pay CONTRACTOR ninety (90) percent of the quarterly billings. The final ten (10) percent of the payment due CONTRACTOR shall be made upon submission to and approval of the completed work by METRO and audit of CONTRACTOR records. CONTRACTOR shall provide METRO with a final report at the completion of the project summarizing work accomplished under this Agreement.

VI. CONTRACTOR shall submit to the METRO Westside Corridor Project Director monthly Budget Management progress reports

no later than the last working day of each month. This report must describe the months activities and estimated expenditures by task as defined in the Interim Grant Work Program.

CONTRACTOR shall submit to METRO quarterly progress reports no later than the last working day in each reporting period and such additional records and financial reports as are necessary to enable METRO to meet the requirements of UMTA. Records must be maintained by CONTRACTOR and be made available to METRO upon reasonable request to show actual time devoted to the project and costs incurred in pursuance of the project.

#### VII. Termination:

A. Termination for Convenience: METRO may terminate this Agreement, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to METRO, the CONTRACTOR will account for the same, and dispose of it in the manner METRO directs.

B. Termination for Default: If the CONTRACTOR fails to perform in the manner called for in the Agreement, or if the CONTRACTOR fails to comply with any other provisions of the Agreement, METRO may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by METRO that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the CONTRACTOR, METRO, after setting up a new performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

C. This Agreement may be terminated at any time by mutual consent of both parties.

VIII. CONTRACTOR and METRO further mutually agree as follows:

A. CONTRACTOR will assign staff members whose experience and specialties will facilitate and aid performance of the Agreement.

B. Each party shall allow personnel of the other party who are assigned to work on this project reasonable access to procedures and techniques employed in performance of this Agreement.

C. CONTRACTOR authorizes METRO and UMTA to review and inspect the study activities. Such reviews and inspections by UMTA, as needed, will be arranged for through METRO, and may be by personnel from the Washington or Regional offices.

D. CONTRACTOR shall maintain accounting records and other evidence pertaining to the costs incurred and make the records available at its office at all reasonable times during the Agreement period and for three (3) years from the date of the final payment of federal funds to METRO with respect to the study. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by METRO, or UMTA, or any authorized representative of the federal government, and copies thereof shall be furnished, if requested.

E. CONTRACTOR hereby agrees to hold METRO harmless from, and shall process and defend at its own expense, all claims, demands or suits at law or equity, of whatever nature brought against those parties arising from CONTRACTOR'S performance of the provisions of this Agreement. This indemnity provision shall not require the CONTRACTOR to defend or indemnify UMTA or METRO against any action based solely on the alleged negligence of UMTA or METRO.

F. Performance of this Agreement shall not be subcontracted in whole, or in part, except with the written consent of METRO. CONTRACTOR shall not assign this Agreement in whole, or in part, or any right, privilege, duty or obligation hereunder, without the prior written consent of METRO, and UMTA. No provision of this section and no approval by METRO of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by METRO in addition to the Agreement price.

G. CONTRACTOR shall be free to copyright material developed under this Agreement. METRO and UMTA reserve a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

H. Publication of any reports by either party shall give credit to the other party and to the Urban Mass Transportation Administration. However, if either METRO or UMTA does not wish to subscribe to the findings or conclusions of the study, the following statement shall be added:

"The opinions, findings and conclusions expressed in this publication are those of the authors and not necessarily those of METRO or the Urban Mass Transportation Administration."

I. CONTRACTOR shall perform this Agreement as an independent CONTRACTOR and not as an employee of METRO.

J. During the performance of this Agreement, CONTRACTOR for itself, and its assignees and successors in interest,

agree as follows:

1. Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: During the performance of this Agreement, the CONTRACTOR agrees as follows:

a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees, and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

c. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the CONTRACTOR'S

noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further METRO contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11236 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, national origin or handicap.

4. Information and Records: The CONTRACTOR will provide all information and reports required by the Regulations, or order and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by METRO or UMTA to be pertinent to ascertain compliance with such Regulations, order or instructions. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to METRO or UMTA, as appropriate, and shall set forth what efforts it has made to obtain this information.

5. Sanctions for Noncompliance: In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of this Agreement, METRO shall impose such Agreement sanctions as they or UMTA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies; and/or

b. Cancellation, termination or suspension of the Agreement in whole or in part.

6. Interest of Members of or Delegates to Congress: No member of, or delegate to the Congress of the United States, shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

7. Prohibited Interest: No member, officer or employee of the Public Body or of a local public body during his/her tenure or one (1) year thereafter shall have any interest direct or indirect in this Agreement or the proceeds thereof.

8. Equal Employment Opportunity: In connection with the execution of this Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

9. Minority Business Enterprise: In connection with the performance of this Agreement, the CONTRACTOR will cooperate with the project sponsor in meeting his/her commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to ensure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. Best efforts to meet the goals will be documented in accordance with the requirements in the I.F.B.

10. Incorporation of Provisions: The CONTRACTOR will include the provisions of paragraphs (1) through (10) in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order or instructions issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontract or procurement as METRO or UMTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request METRO to enter into such litigation to protect the interests of METRO, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.



K. METRO's failure to object to any breach of this Agreement shall not constitute a waiver of METRO's right to object to any additional breach or to require strict performance of the Agreement.

L. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for CONTRACTOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warrant, METRO shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

M. Such provisions as are necessary to comply fully with the laws of the State of Oregon concerning public contracts and provisions to be included herein are hereby made a part of this Agreement by reference, and the parties shall comply with all obligations and other provisions of those laws the same as though those obligations were fully set out herein.

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

CONTRACTOR: CITY OF PORTLAND

METROPOLITAN SERVICE DISTRICT

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Rick Gustafson  
Executive Officer

By: \_\_\_\_\_  
Auditor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
KT/gl  
7960/120



## ATTACHMENT A

## SCOPE OF WORK

The Portland liaison will work as a member of the Westside Transitway team to perform:

- A. Development and evaluation of alternative Transitway station locations in terms of impact on existing streets and public facilities, neighborhoods and adopted plans.
- B. Community involvement with the Westside Citizen's Advisory Group, neighborhood associations and other citizen and business group.
- C. Proposed budget

<u>UMTA Share</u>	<u>Local Share</u>	<u>Total</u>
\$13,750	\$2,426	\$16,176

FA:gl  
7960/120

**ORDINANCE No. 149551**

An Ordinance authorizing an amendment to an agreement between the City of Portland and Metropolitan Service District (METRO) to develop regional transportation plans and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. By Ordinance 149143, the Council authorized entering into an agreement with METRO to develop regional transportation plans;
2. METRO has proposed to add a termination clause to the Agreement which prescribes the conditions under which either party may terminate the Agreement (attached as Exhibit A);
3. The Bureau of Planning agrees that the termination clause is a necessary and reasonable amendment to the Agreement; and
4. The City Attorney has indicated that the addition of such a termination clause to the Agreement requires Council approval.

NOW, THEREFORE, the Council directs:

- a. The Mayor and Auditor are authorized to enter into the amended agreement with METRO, shown as Exhibit A, attached hereto.


Section 2. The Council declares that an emergency exists because delay in the enactment of this Ordinance will result in delay of services by the City of Portland; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, **MAY 7 1980**

Mayor McCready  
April 30, 1980  
Lee Hames:db  
51049004-0001

  
Mayor of the City of Portland

Attest:

  
Auditor of the City of Portland

Calendar No. 1536

# ORDINANCE No. 149551

## Title

An Ordinance authorizing an amendment to an agreement between the City of Portland and Metropolitan Service District (METRO) to develop regional transportation plans and declaring an emergency

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie		
Jordan		
Lindberg		
Schwab		
McCready		

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
McCready	
Schwab	
Goldschmidt	

INTRODUCED BY

Mayor McCready

NOTED BY THE COMMISSIONER

Affairs

Finance and  
Administration

Safety

Utilities

Works

BUREAU APPROVAL

Bureau:

Planning Bureau

Prepared By:

Date:

Lee Hames

4/30/80

Budget Impact Review:

☐ Completed

☒ Not required

Bureau Head:

Frank Frost, Acting Director

NOTED BY

City Attorney

City Auditor

City Engineer

Filed MAY 2 1980

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

By Deputy