



PORTLAND STREETCAR:
City bears financial burden and operational risk
while relying on outside partners

April 2014

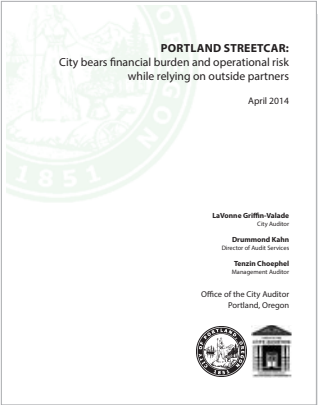
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April 17, 2014

TO: Mayor Charlie Hales
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman
Leah Treat, Director, Portland Bureau of Transportation

SUBJECT: Audit Report – *Portland Streetcar: City bears financial burden and operational risk while relying on outside partners*, (Report #451A)

The attached report is the first of two audits of the Portland Streetcar. While this is my office's first review of the Portland Streetcar, we believe these audits are timely given the organizational changes that have and will continue to occur as the City completes construction of the Central Loop line in 2015.

The City's partnership arrangement for Portland Streetcar is complex. The ownership and operations responsibilities are characterized in various ways, even within the City's own records. Therefore, the objective of this first review was to describe the partnership structure and strategic direction of Portland Streetcar, with a focus on operations and maintenance. Our second audit of the Portland Streetcar will assess management systems and outcomes.

This report describes the partnership structure – specifically, the financial, organizational and contractual arrangements – and the existing strategic planning framework in which Portland Streetcar operates. We found the City needs to apply more management control to meet its legal and contractual requirements, protect the public interest in the partnership arrangement, and explicitly link the City's enterprise-wide goals to more detailed Portland Streetcar plans. We make four recommendations to the Portland Bureau of Transportation (PBOT) to address the most significant areas which warrant the City's attention.

After years of system growth, the City needs to focus on aligning its mission, strategic direction and partnership structure to ensure the success of Portland Streetcar operations. With that in mind, we also recommend City Council defer future Portland Streetcar system expansion decisions until PBOT has implemented our recommendations.

We ask PBOT to provide us with a status report in one year, through the Commissioner-in-charge, detailing steps taken to address our recommendations in this report. We very much appreciate the cooperation and assistance we received from PBOT staff as we conducted this audit.

LaVonne Griffin-Valade
City Auditor

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Attachment

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Summary

This is the City Auditor's first review of the Portland Streetcar. As such, we conducted this audit to describe the partnership structure and strategic direction of the Portland Streetcar. Our audit scope focused on the Portland Streetcar's operations and maintenance. We also included information on past and current capital projects when this context was significant to the partnership arrangement. This report is the first in a two-part series on the Portland Streetcar; the second audit will focus on performance management systems.

The City initiated the Portland Streetcar as a public-private partnership with Portland Streetcar Incorporated, a private nonprofit organization, and later added TriMet, the public transportation agency for the Portland metro region. While public-private partnerships generally allow for more private sector participation and/or ownership, we found the City applied an approach that includes the use of PBOT management and staff, with no real transfer of responsibility or risk to its partners. Ultimately, Portland Streetcar is owned and operated by the City through the Portland Bureau of Transportation (PBOT).

The investments in Portland Streetcar's system expansion and ongoing operations have increased over time. The City has leveraged financial resources from numerous sources, with TriMet jointly paying for annual operations. However, we found the City has retained enough overall financial responsibility to result in PBOT spending an increased proportion of its discretionary transportation dollars for Portland Streetcar. Moreover, the City does not fully report Portland Streetcar operations and maintenance costs, and it has authorized PSI to possess public dollars that are not managed in compliance with Oregon law.

We found that the Portland Streetcar structure is convoluted and confusing. Such partnerships should be tailored with the overall aim of matching risk with the partner best able to control that risk. Given the City's clear ownership and operations responsibility, we question how and why the private sector is involved at each level of the organization.

The City's decisions have resulted in a structure that is not readily transparent to the public, does not reflect an actual level of City control to match its contractual responsibilities, and raises concerns about related-party relationships and perceived conflicts of interest.

Successful partnerships require clear plans, goals, and contractual agreements aligned with the public agency's overall program. Such guidance can also help inform the partnership structure to ensure effective service delivery. We found numerous City, PBOT and Portland Streetcar-specific documents with wide-ranging goals, but no mission statement or strategic plan for Portland Streetcar, that have been created since the Portland Streetcar project began in 1995.

In addition, we found problems in the City's contract with Portland Streetcar Incorporated, particularly with the ways the public's interest could be better protected through the use of competitive procurement practices, financial assessments showing the overall cost-benefit of outsourcing, and mechanisms for holding the contractor accountable for its performance.

Finally, the City lacks a consolidated approach in its mission, strategic direction and partnership structure to ensure the success of Portland Streetcar operations. After years of expansion, we recommend the City now focus on Portland Streetcar operations and maintenance, and strengthening the management of its partnerships.

We make several recommendations to the Commissioner-in-charge and the Portland Bureau of Transportation. For example, we recommend adoption of a mission and strategic plan, development of new contract agreements, and improved transparency in financial reporting. We also recommend City Council defer decisions about Portland Streetcar system expansion until PBOT has implemented these recommendations.

Chapter 1 **City owns, operates and retains the risks associated with the Portland Streetcar**

The City manages a public-private partnership for the Portland Streetcar

The idea of reintroducing modern streetcar service emerged as part of the 1988 Central City Plan. As the Portland Bureau of Transportation's first venture into transit services, the City did not have in-house transit expertise. This prompted the City to issue a request for proposal in 1995 to investigate the feasibility of a public-private partnership and the development of future partnership contracts.

Over the years, the City has worked with two partners for operations and maintenance services: Portland Streetcar Incorporated, a private nonprofit corporation, and TriMet, the public transportation agency for the Portland metropolitan region. The Portland Streetcar currently serves the Central City, Central Eastside, and other close-in Portland neighborhoods.

Key Partner: Portland Streetcar Incorporated



The only response to the 1995 solicitation came from the founders of Portland Streetcar Incorporated (PSI). The PSI founders were private and public representatives from organizations directly affected by the original streetcar project; later they became members of the volunteer Board of Directors.

Over the last two decades, the City has entered into numerous contracts to reimburse PSI for its services. Current agreements include capital project management and vehicle acquisition project management related to completing the Central Loop line, as well as an Operations Assistance service agreement.

**Key Partner:
TriMet**



The City received a commitment from TriMet in 1998 to provide annual financial assistance for operations. Prior to the Portland Streetcar opening in 2001, the City requested TriMet provide specialized transit personnel to work under City management. At that time, the City also contracted with TriMet for other services, such as collecting ridership data and providing bus bridges.

The City reimburses TriMet for the cost of these services. Current agreements include an overarching Master Agreement as well as a more detailed operations and maintenance agreement.

The City owns and operates Portland Streetcar through Portland Bureau of Transportation

The City owns and operates the Portland Streetcar through the Portland Bureau of Transportation (PBOT). The City also retains the risk related to operations and maintenance, with the City's Risk Management Office processing Portland Streetcar property damage and personal injury claims. City Risk Management reports that since the Portland Streetcar's opening, it has processed 65 claims for losses resulting in the City paying out about \$150,000. Risk Management has also collected about \$225,000 from individuals who have been responsible for causing damage to the Portland Streetcar. City Risk Management told us that, relative to all risks the City faces, Portland Streetcar results in a small number of low-cost claims.

Public-private partnerships allow for more private sector participation and/or ownership than the typical procurement approach. Based on our review of available City records and discussions with PBOT, it is unclear whether the City intended to transfer Portland Streetcar operations responsibility and risk to its partners.

The City's initial interest in partnerships with more private sector responsibility is reflected in its 1995 solicitation as well as the 1998 Operations and Finance Plan. In 2000, the City contracted with PSI to provide Operations Start Up services prior to the Portland Streetcar opening. Within the year, however, the Operations Plan explicitly identifies the City as the entity responsible for operations and maintenance, and PSI is designated as an assistance provider in the

Operations Assistance service contract. Ultimately, the City partnership approach includes the use of PBOT management and staff, with no real transfer of responsibility or risk to its partners.

The City's overarching responsibilities, as defined in its current partner agreement with PSI states the City is "fully responsible for operations and maintenance, including the safety thereof" and that "PSI shall have no responsibility for operation and maintenance safety." In addition, the agreement with TriMet indicates the City "owns the streetcar system and all its capital elements." We describe the partnerships financial and organizational structure in the next chapters.

Chapter 2 **City leverages outside resources, but holds many financial management responsibilities**

Portland Streetcar system expansions financed with various capital sources

The City has planned for the Portland Streetcar system's continued expansion, with four extensions already completed. Various funding sources paid for the system's \$251 million capital costs, as shown in Figure 1. Local funds – which include City resources – made up the larger share.

The City utilized Local Improvement Districts as a tool to pay for each segment, where adjacent property owners share in the project costs. PSI assisted the City with outreach to property owners. Similarly, TriMet and the Metro regional government assisted the City in the preparation of and requests to the federal government for capital financing. These federal sources paid for half of the recent Central Eastside extension, the system's largest and most expensive segment.

City retains capital improvement responsibilities

The City is responsible for capital investments, including improvements for vehicles, software systems and fare machines. The City is working on connecting the Portland Streetcar to TriMet's Portland to Milwaukie Light Rail Bridge to complete the Central Loop line and, as part of that work, needs additional equipment to support the 2015 opening.

The current Capital Improvements Strategy includes initial one-time sources and requires the City to take out a ten-year loan to finance equipment. But over time, the strategy relies on annual contributions from the City's discretionary transportation revenue (i.e. funds collected from parking fees and fines), starting with \$733,000 in 2016 and growing to \$1.5 million in 2020.

Figure 1 Portland Streetcar capital funding resources (millions)

Sources	Streetcar Segments					System		
	Legacy to PSU (2001)	PSU to RiverPlace (2005)	RiverPlace to Gibbs (2006)	Gibbs to Lowell (2007)	Eastside extension (2012)	Total sources	% of Total	
Tax Increment Financing	\$7.50	\$8.40	\$3.80	\$1.80	\$27.70	\$49.20	20%	LOCAL
Local Improvement Districts	\$9.60	\$3.00	\$2.00	\$4.80	\$15.50	\$34.90	14%	
City Parking Bonds	\$28.60					\$28.60	11%	
City System Development Charges				\$2.50	\$6.10	\$8.60	3%	
City Land Sale		\$3.10				\$3.10	1%	
City Transportation Fund	\$1.70	\$0.60				\$2.30	1%	
City Parking Fund	\$2.00					\$2.00	1%	
City General Fund	\$1.80					\$1.80	1%	
Subtotal	\$51.20	\$15.10	\$5.80	\$9.10	\$49.30	\$130.50	52%	
Federal Transportation Funds	\$5.00				\$75.00	\$80.00	32%	FED
US HUD Grant	\$0.50	\$0.80		\$0.70		\$2.00	1%	
Stimulus Funds					\$0.40	\$0.40	0%	
Subtotal	\$5.50	\$0.80	\$0	\$0.70	\$75.40	\$82.40	33%	
State Fund for Vehicles					\$20.00	\$20.00	8%	STATE
Regional Transportation Funds			\$10.00		\$3.60	\$13.60	5%	
Connect Oregon				\$2.10		\$2.10	1%	
Subtotal	\$0	\$0	\$10.00	\$2.10	\$23.60	\$35.70	14%	
Miscellaneous	\$0.20	\$0.10		\$1.80		\$2.10	1%	OTHER
Extension Savings				\$0.70		\$0.70	0%	
Tram Transfer				\$0.20		\$0.20	0%	
Subtotal	\$0.20	\$0.10	\$0	\$2.70	\$0	\$3.00	1%	
Total Capital Resources	\$56.90	\$16.00	\$15.80	\$14.50	\$148.30	\$251.40	100%	

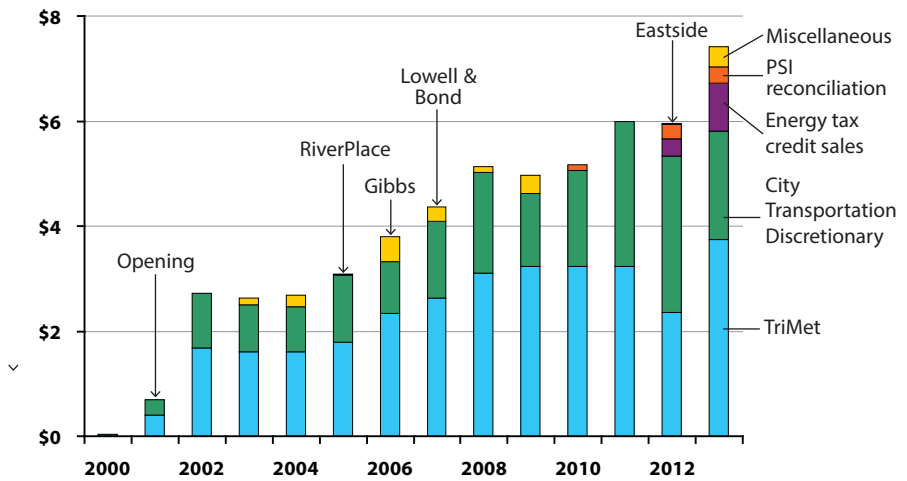
Source: Portland Streetcar website (unaudited). Financial activity not adjusted for inflation.

Note: Totals may not equal sum of components due to rounding.

City and TriMet jointly responsible for Portland Streetcar operations costs

In addition to the City’s responsibility for capital investments, the City also has an ongoing obligation for operations (which includes general system maintenance). PSI’s 1995 proposal noted that, as a purely private initiative, the Portland Streetcar is not a profitable venture. Historically, other sources – such as fare revenue and sponsorships – supplemented the public sector investment in operations. These other sources are estimated to support 8 percent and 2 percent, respectively, of the total Portland Streetcar operations for fiscal year 2014.

Figure 2 Historical sources for Portland streetcar operations and maintenance (expenditures as reported in City fund, millions)



Sources: Portland Bureau of Transportation (unaudited). Financial activity not adjusted for inflation. System expansions identified in the year service began. Except for the most recent four years, the City’s financials provide insufficient historical detail to categorize the required annual reconciliations to Portland Streetcar Inc.’s Enterprise Fund which accounts for fare and sponsorship revenue as well as operations assistance costs.

As shown in Figure 2, the City and TriMet jointly paid for Portland Streetcar operations as costs increased over time with each system expansion. TriMet considers Portland Streetcar to be part of its “frequent service” network and initially agreed to contribute up to two-thirds of total operations. However, due to TriMet’s own financial challenges, its contributions have varied over the years, ranging from 39 percent during the economic downturn to 65 percent of the City fund’s reported expenditures. According to PBOT, the sale of business energy tax credits has been used to partially backfill the past loss of TriMet revenues, as shown in Figure 2. But, with the exception of fiscal year 2013, the City increased its contributions rather than adopt any budgetary cuts that would impact service levels.

As lines mature, TriMet plans to increase financial contributions for operations

The 2012 Master Agreement with TriMet provides a framework to incrementally increase TriMet's contributions up to 85 percent of operations (after accounting for Portland Streetcar fare and sponsorship collections) once the system's lines mature. The City and TriMet agreed to performance targets (e.g. ridership, development) to define what percent of operating costs will be paid by each partner. For fiscal year 2014, TriMet contributed about 62 percent for the North-South line and 50 percent for the Central Loop line. Since these future commitments are contingent on the financial situation of each partner, both the City and TriMet are responsible for coordinating how to meet or trim costs needed to operate Portland Streetcar.

The proportion of discretionary transportation revenue used for Portland Streetcar has increased

The City's discretionary transportation resources include those with and without restrictions. Gas tax revenue is restricted by the Oregon Constitution for road maintenance and improvements, and cannot be used for transit. In contrast, parking fees and fines have no restrictions and, as a result, the City has used this revenue stream to support Portland Streetcar. While streetcar advocates have proposed that certain parking meter revenue be dedicated to Portland Streetcar, City Council has not approved such designation.

The City's 1998 analysis on the Portland Streetcar project raised the concern that the transportation resources would be burdened if any financial problems emerge in the project's implementation. In a 2013 audit on transportation funding, we reported that the City has used an increasing proportion of its discretionary transportation revenue for Portland Streetcar. PBOT showed us communications to its former Commissioner, which included various options for how the City could finance operations costs related to the Central Eastside extension. Ultimately, the City planned to pay for these costs by raising additional parking revenue. However, as we reported in 2013, the City did not raise this revenue and PBOT told us that the economic recession impacted its plans. Since our 2013 audit, PBOT has created parking districts near the Central Eastside extension, but told us those districts have yet to generate positive revenue for the City.

PBOT's financial forecast for fiscal years 2014 through 2019 shows sufficient resources for Portland Streetcar. However, across the trans-

portation services paid by the discretionary transportation revenue stream, PBOT's requirements exceed its revenues for some years over the period. As a result, PBOT's forecast shows that it plans to draw upon its fund balance to pay for these requirements. According to PBOT, Portland Streetcar's impact on other transportation services will be mitigated once the original financing plans for the Central Eastside operations are realized.

We remain concerned about how projects like Portland Streetcar displace other transportation services. Given the capital equipment and operations obligations we describe throughout this chapter, PBOT forecasts that the City will continue to rely on discretionary transportation resources to pay for Portland Streetcar.

Portland Streetcar's total operations and maintenance costs not fully reported

The Portland Streetcar's total operations budget combines activity paid for by the City's Transportation Operating Fund, including TriMet's portion, along with PSI's Enterprise Fund. For this fiscal year, the City's budget of about \$9 million and PSI's budget of about \$750,000 combines to reflect the \$9.75 million total operations for the Portland Streetcar.

While PBOT develops a total annual operations budget and tracks expenditures against partner-specific budgets, we found PBOT did not have sufficient information to report trends and the relationship between the two funds over time. PBOT recognizes the need to strengthen its reporting and, starting this year, began making changes to improve future reporting. Given this information, we have included available historical information, as shown in Figure 2, which only includes the City fund's reported activity for Portland Streetcar.

City officials determined PSI possesses public dollars and must follow certain legal requirements

Over the last year, a disagreement emerged between the City and PSI on whether PSI is in possession of public dollars. Unlike private resources, public monies must be managed in compliance with specific legal requirements stipulated in Oregon law. Based on the partner agreement, PSI acts as the City's agent and manages two fund accounts – the Enterprise and Maintenance Reserve – that come from fare, sponsorship and parking revenue. Moreover, any spending

from these funds requires PBOT's prior approval. PSI began holding Maintenance Reserve public dollars in fiscal year 2009, but the City's agreement with PSI did not reflect this arrangement until a 2012 contract amendment.

City officials familiar with this issue, including the City Attorney, confirm that these are public dollars under the control of PBOT. Further, a recent determination by the City's Office of Management and Finance has identified PSI as a component unit of the City, although not one significant enough to be included in the City's financial statements. PSI's legal counsel has disagreed with the City's position on PSI's possession of public monies. However, PBOT reports that – in accordance with the agreement – it continues to provide approval for any spending from these fund accounts.

So far, neither partner has initiated the agreement's arbitration provision. Based on the PSI audited statements, PSI had about \$506,000 in its Maintenance Reserve at the end of fiscal year 2013. The City proposed an amendment to the agreement to reflect the changes it needs to comply with Oregon law, but has not yet reached agreement with PSI.

Chapter 3 **City decisions about private sector involvement create complex and unclear structure**

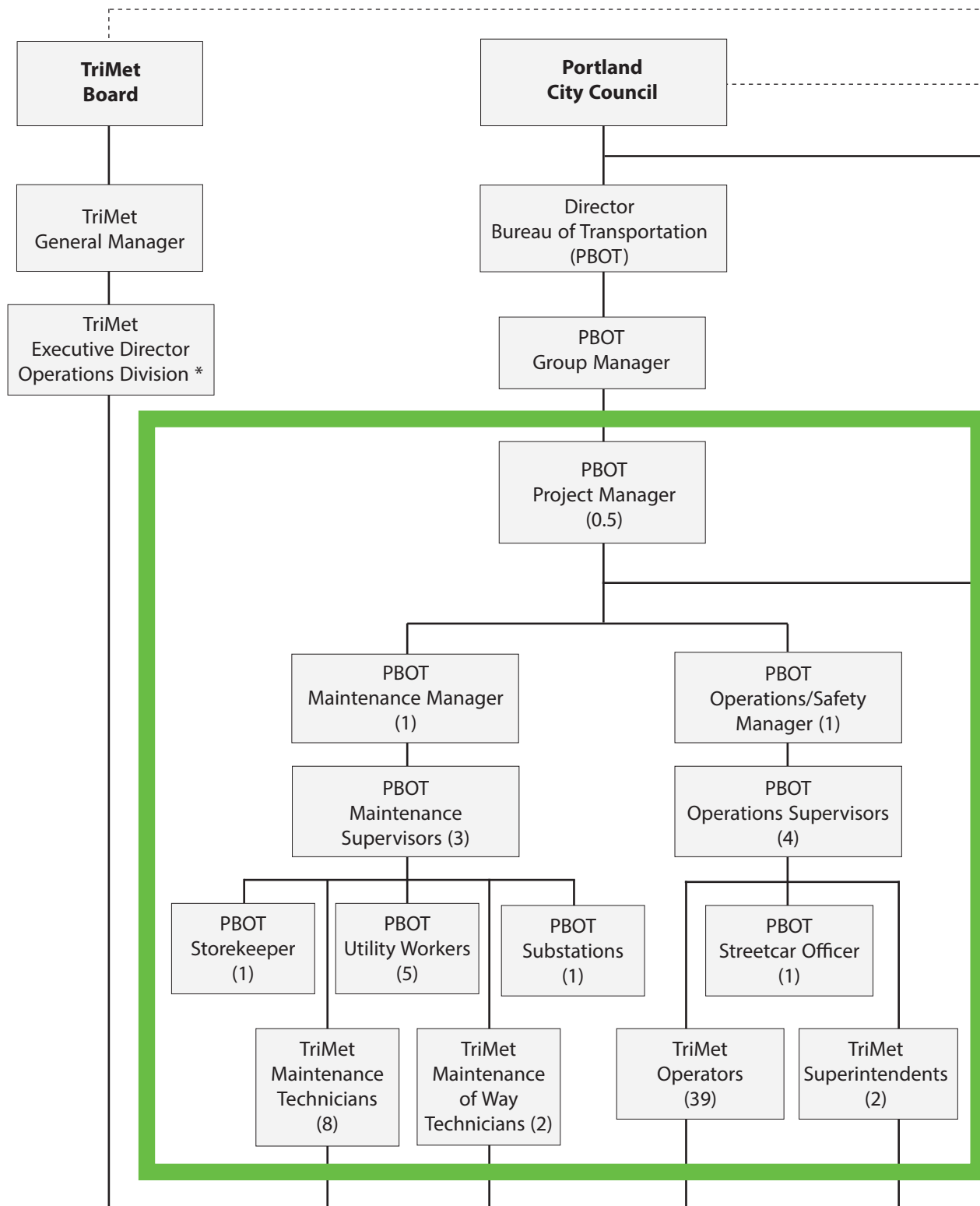
Current structure involves private and public sector at each organizational level

The structure of Portland Streetcar has changed multiple times over the years. The current organizational chart shown in Figure 3 represents the structure in place as of July 2013. The chart focuses on the delivery of operations and maintenance services, but does not include staffing requirements for capital project and vehicle acquisition management. As described earlier, two funds account for the total operations. The functions within the green border on the left are paid by the City's fund; the functions within the orange border on the right are paid by PSI's Enterprise Fund.

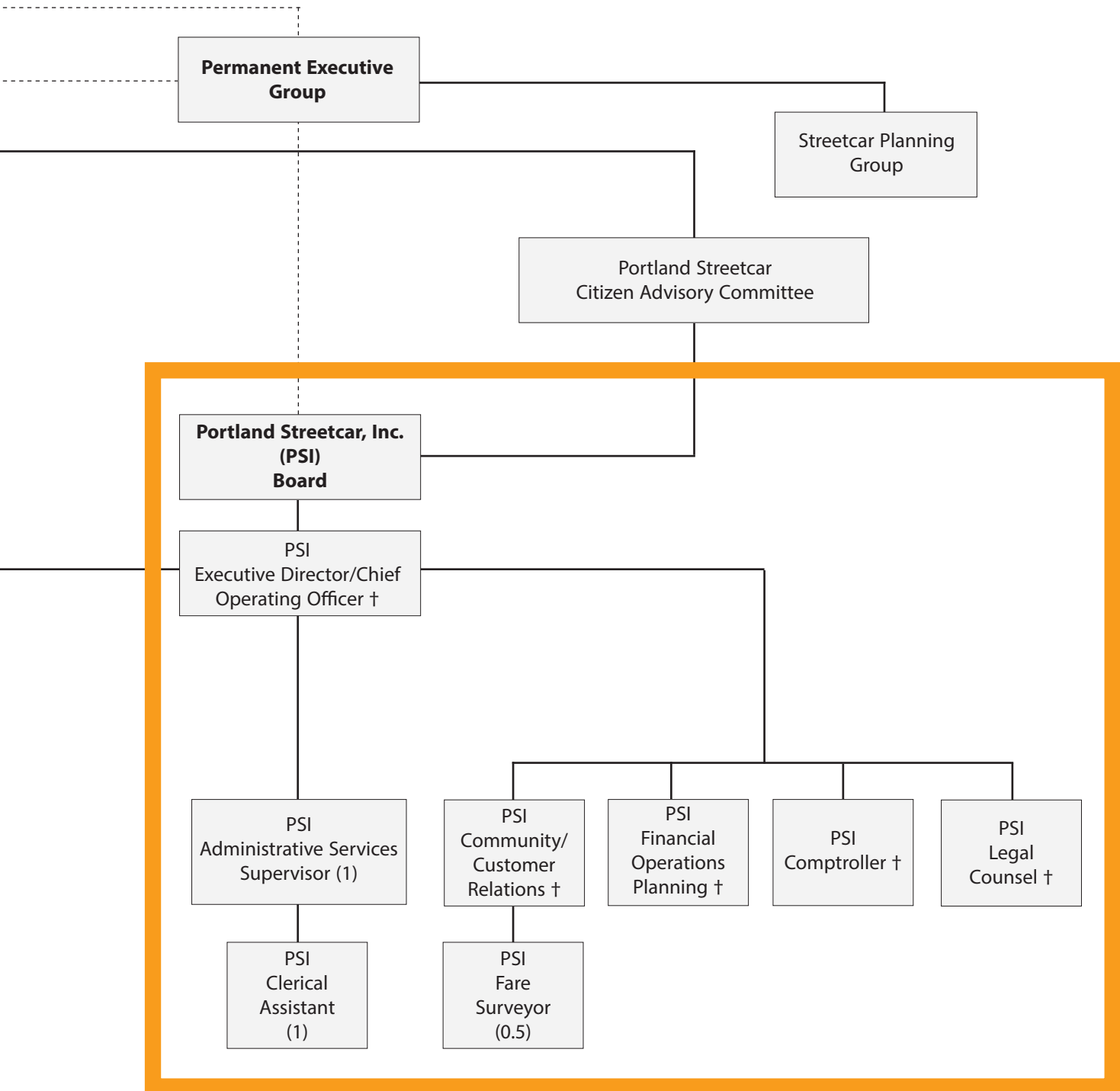
Figure 3 also shows the relationship between the governing bodies, committees, City and TriMet employees, as well as PSI employees and its contractors. For fiscal year 2014, there are 70 dedicated staff members who report to the Portland Streetcar maintenance facility. Each partner is described below in order of staffing significance:

- TriMet employees make up the majority (73 percent) and fill the specialized staff positions. Superintendents provide dispatch directions, operators drive the streetcar vehicles, and maintenance technicians maintain the system.
- City managers and supervisors oversee the specialized TriMet employees, as well as City staff responsible for inventory, substations, fare enforcement, and the daily cleaning of the system. The City must manage these represented staff in accordance with collective bargaining agreements between TriMet and the Amalgamated Transit Union, and between the City and the District Council of Trade Unions.
- PSI has two full-time employees who provide office administration, and one part-time employee who conducts fare instrument surveys of Portland Streetcar riders. Other PSI positions are filled by contract staff.

Figure 3 Portland Streetcar organization chart (as of July 2013)



* TriMet positions assigned to Portland Streetcar come from various departments within the Operations Division.



Source: Audit Services Division analysis of available organization charts, relevant agreements, and interviews. The number of dedicated positions are noted in parentheses. PBOT and TriMet have gone through organizational changes since this July 2013 snapshot.

† Other positions are filled by part-time contractors.

Private sector involvement is not clear or transparent

We found the structure confusing because of how the City has chosen to involve its partners in Portland Streetcar operations. Similar to the financial information for total operations, the organization chart for Portland Streetcar required us to compile information from numerous discordant sources.

Guidance on public-private partnerships emphasize that structures should be tailored with the overall aim to match risk with the partner best able to control that risk. A listing of some public-private partnership guidance is available at the end of this report (see page 33).

Given the City's ownership, responsibility over operations, and risk retention, there is a need for greater clarity and transparency in how and why the private sector is involved at each level of the organization. In this section, we consider three organizational levels (governance, management, staffing) and describe the arrangements in place. Further, we describe some of the confusion and lack of transparency they present.

Governance

City Council has ultimate decision-making authority over the City's aspects of Portland Streetcar. However, in recognition of the City and TriMet's joint responsibilities, a new structure – the Permanent Executive Group and the Streetcar Planning Group – is in place to help coordinate between these partners. In addition, other groups – the PSI Board of Directors and Portland Streetcar Citizen Advisory Committee – are regularly convened to serve in an advisory capacity for Portland Streetcar operations.

Permanent Executive Group and Streetcar Planning Group

The Permanent Executive Group and Streetcar Planning Group were formed in 2012 to begin implementation of the City's Master Agreement with TriMet. These groups provide a formal structure through which the City Council and TriMet's Board of Directors can discuss Portland Streetcar commitments and resolve any issues that may arise. The Permanent Executive Group is a consensus-based, decision-making entity supported by the work of the Streetcar Planning Group. Permanent Executive Group members are governance representatives or executives, while the Streetcar Planning Group members

are staff representatives. The partner representation in each group is similar: two City representatives, two TriMet representatives, and one PSI representative.

PSI Board of Directors

The agreement with PSI indicates that, as the City's agent, PSI will "advise" the City on "scheduling, fares, promotion and community relations, City contractor management and financial administration, budgeting and organizational management, and coordination between the City and TriMet." During our review, we found PSI described as having an oversight, rather than advisory, role in Portland Streetcar operations. Functioning as an advisory body is a distinctly different role than functioning as an oversight body. In this case, the lack of precision about PSI's role in the partnership has, in effect, conferred more authority to PSI than agreed to or is warranted, given that City has primary responsibility for the Portland Streetcar.

While not mandated in the City's agreement or the PSI Bylaws, the City and TriMet have each held voting memberships on PSI's Board of Directors ("Board") since Portland Streetcar began operations. Only City Council members have served as City representatives on the PSI Board.

We requested a formal legal opinion from the City Attorney's Office after we learned a City Commissioner serves on the PSI Board. The Attorney concluded that the City's representation on the Board of PSI, a nonprofit corporation, does not create a conflict of interest, as defined in Oregon statutes. The City Attorney also interpreted City Charter, Code, and administrative rules as allowing City representation on the PSI Board. Moreover, the City Attorney's opinion states that having a City representative on the PSI Board helps ensure the City's interests in this City-owned asset are being served.

Further, the City Attorney's opinion states PSI Board's policy specifically excludes anyone representing a government entity or those with ownership or investment interest in property that benefits from Portland Streetcar from being subject to conflict of interest provisions. Therefore, the City representative also has no conflict of interest as far as PSI is concerned.

We questioned the appropriateness of the City's membership on a contractor's Board of Directors. City representation on the Board places a City Council member in the position of advising PSI on the scope of actions and projects, while voting at the same time to authorize funding and policy direction as a member of Council. At the very least, this gives rise to the appearance of a conflict of interest, a concern also raised as a public complaint to the City Ombudsman.

Portland Streetcar Citizen Advisory Committee

The City Commissioner over PBOT appoints members to the Portland Streetcar Citizen Advisory Committee (PSCAC), which reports back to the Commissioner. PSCAC was established in 1991, and PBOT told us that individuals from PSCAC became PSI's founders. We found no Council ordinances or resolutions that refer to the PSCAC's authority and purpose.

The Portland Streetcar website indicates the PSCAC is a 22-member committee that meets monthly to advise on project planning, design, and operations. The City agreement states PSI is responsible for assisting with staff duties required by the PSCAC, as well as informing and seeking advice from the PSCAC. Based on the meeting minutes, PSCAC requested a liaison to PSI and the PSCAC Chair began serving as a PSI Board member in 2010.

Management

The City's agreement with PSI makes clear that the "City will assign a City Project Manager to direct the work of personnel provided by PSI." This position is also responsible for coordination within the City and managing contractual agreements with partners. The agreement language appears to reflect a level of control that matches the City's ownership of and financial investment in Portland Streetcar, as well as the City's operations responsibilities. However, we found the actual level of control applied by the City is not as straightforward as what is reflected in the agreement.

For example, the key PSI position, as shown in Figure 3, is the PSI Executive Director. The PSI Executive Director's job description states that this position is also the "Chief Operating Officer for Portland

Streetcar,” and includes responsibilities that duplicate those assigned to the City’s managers. One of the PSI Executive Director’s stated responsibilities – oversight of Portland Streetcar safety and security requirements – directly contradicts the agreement’s clear language that the City is fully responsible for safety.

PSI Executive Director acting as management

We found the most problematic reporting relationships are those between the PSI Executive Director and the City’s managers responsible for the daily operations at the Portland Streetcar maintenance facility. As shown in Figure 3, the Maintenance and Operations Managers have a reporting relationship to both the City Project Manager as well as the PSI Executive Director. However, their reporting relationship to the PSI Executive Director is not specified in the agreement or job descriptions.

When we interviewed these individuals, their descriptions about the reporting relationships were inconsistent with each other, as well as what is shown in Figure 3. Generally, dual reporting relationships are advantageous when there are complex coordination requirements. For example, in geographically dispersed operations, an individual may administratively report to an on-site manager but functionally report to another manager. However, in this case, the delineation between and necessity for the dual reporting relationships is not clear.

Related-party relationships and perceived conflicts of interest

While we found no actual conflicts of interest, there are related-party relationships involving PSI employees and subcontractors, and we were told about perceived conflicts of interest. PSI has a significant subcontractor relationship with a firm that provides streetcar services for multiple jurisdictions. It is not always clear when the subcontractor is acting on behalf of the City and when it may be representing other interests.

For example, we were told that PBOT provides assistance to the City of Seattle, a streetcar jurisdiction also served by the subcontractor. In 2010, PBOT staff provided training to Seattle Streetcar. Seattle paid for the two PBOT staff members’ accommodations, but did not reimburse PBOT for staff time, other travel expenses, or the one-week

loan of PBOT equipment. When we reviewed the documentation, we found the subcontractor approved the use of PBOT resources rather than defer to the PBOT managers who later provided approval. We do not know what influence, if any, the subcontractor had on the decision, but PBOT did not scrutinize the business rationale or take any action to mitigate the perceived conflict of interest.

In addition, PBOT management told us there are family members within the Portland Streetcar organization, some of whom are in management positions. The City has a nepotism policy, but it has not been violated since these relationships involve non-City positions. However, we found that other individuals that report to the Portland Streetcar maintenance facility have expressed concern about how these family relationships impact the work environment. We were told that concerns about one relationship were expressed to both the then-City Project Manager and the PSI Executive Director.

Even if these anecdotal reports on workplace environment have no merit, the City is responsible for the complex organizational environment it has created. The City's knowledge of family relationships within the Portland Streetcar organization warrants increased PBOT oversight, the City Project Manager's regular on-site presence, and more frequent communication with individuals that report to the Portland Streetcar maintenance facility.

We do not raise this concern due to any specific conflicts of interest we identified in this organization, but instead to ensure that current employees are insulated from even the appearance of a conflict. More action by PBOT would help protect individuals from being falsely accused of wrongdoing, and preserve the integrity of the Portland Streetcar organization.

Staffing We found the City made business decisions about PSI services that seem to further blur lines between partners. PBOT told us these decisions streamlined business processes and information to Portland Streetcar customers.

For example, the Portland Streetcar logo is used extensively on streetcar facilities, vehicles, platforms, equipment and staff uniforms, but it has also been adopted by PSI as its corporate logo. The use of the logo to represent the Portland Streetcar organization as well as PSI impacts the public's recognition of Portland Streetcar as a City asset supported primarily by public dollars.

Similarly, PSI employees are presented as City employees, with PBOT business cards, computers, phone numbers, and access to the City's network and financial system. PBOT's use of PSI employees seemed unusual to us given that these administrative services are generally provided by City staff.

The City pays for PSI's administrative services as well as its corporate functions, but this type of expertise – such as accounting, auditing, financial planning, insurance, legal, office support, and public relations – is not unique to PSI and exists at the City. PBOT told us that since PSI is a separate legal entity, some of these services must be provided.

PSI possesses other fund accounts that reflect activity for other City capital contracts as well as its independent efforts promoting Portland Streetcar and streetcar projects in other jurisdictions. Based on our review, these corporate overhead items are not allocated across all of PSI's organizational activities. However, we found that the City is responsible for paying these PSI corporate functions under the terms of the Operations Assistance agreement.

Chapter 4 **Portland Streetcar lacks consolidated strategy and proper contract management oversight**

PBOT has no strategic plan, but has developed a one-year business plan

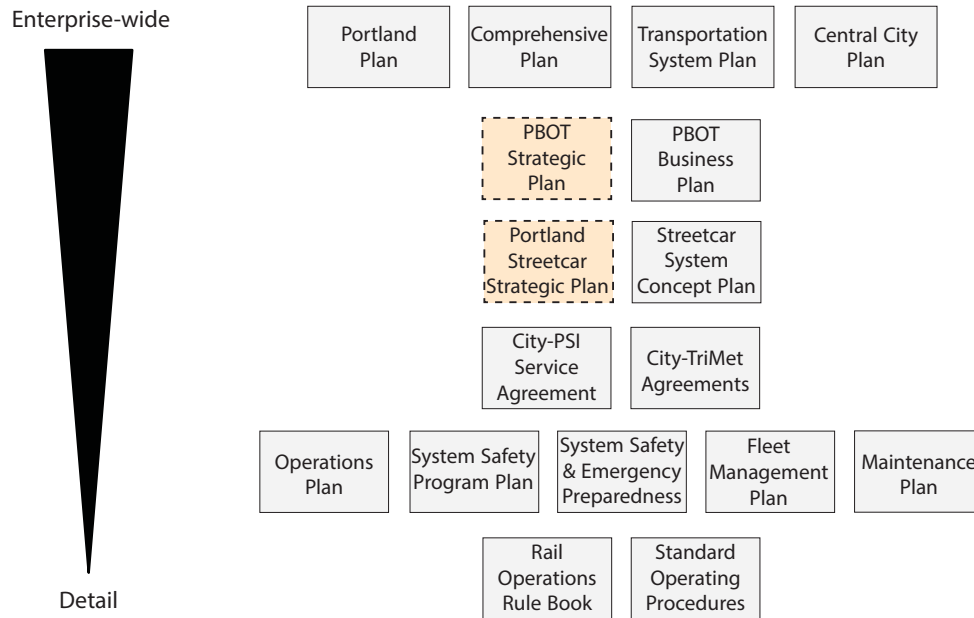
Strategic planning is a disciplined effort to shape and guide an organization. It includes articulating a vision and mission, establishing measurable organization-wide objectives or priorities, identifying strategies for achieving the objectives, and measuring progress and levels of success. While elements may be developed informally, a formal process helps provide an opportunity to unify internal and external stakeholders. Many City bureaus apply this management practice that results in the development of written strategic plans.

In our 2013 audit on transportation funding, we agreed with the City Budget Office's recommendation that PBOT develop a transportation strategy to prioritize and reconcile potentially competing transportation priorities. PBOT has yet to create a written strategic plan. Since our 2013 recommendation, PBOT has adopted a one-year business plan to articulate a series of targeted actions for its fiscal year 2014 budget.

Consolidated strategy needed to link Portland Streetcar within City and PBOT

Successful public-private partnerships strategically link to the public agency's overall program. Portland Streetcar is a part of a larger City and PBOT planning framework, as shown in Figure 4. The most significant enterprise-wide guidance documents are the City's *Comprehensive Plan* and *Transportation System Plan* adopted through Council ordinances. However, we found no consolidated strategy to clearly link between the City's larger enterprise-wide goals and the more detailed Portland Streetcar plans, as shown in Figure 4.

Figure 4 Portland Streetcar planning framework



Source: Audit Services Division analysis of City guidance documents and interviews. Documents ranged from enterprise-wide plans to detailed Portland Streetcar procedures. Missing planning items are highlighted. While not presented here, there are also ties to other non-City plans, such as TriMet’s *Transit Investment Plan* and Metro’s *Regional Transportation Plan*.

We also found no general City mission or strategic plan for the Portland Streetcar. PBOT told us the completion of the Central Loop line in 2015 achieves the strategic direction articulated in the Central City Plan adopted by Council in 1998.

PBOT also considers the Streetcar System Concept Plan a strategic plan for Portland Streetcar, as shown in Figure 4. Based on our review, the Streetcar System Concept Plan states it is to be used to identify and select corridors for future analysis and study. The mission and goals articulated are for the plan specifically, rather than Portland Streetcar generally.

Moreover, we found no consistent set of current goals across the guidance documents, but disjointed references to various goals. Current guidance either addresses Portland Streetcar goals for a historical

point in time (e.g. specific streetcar extension), discrete function (e.g. safety, operations, fleet management), or those shared with partners (e.g. contractual agreements). In addition, the goals range across economic development, transit, environmental and financial categories. Some of these goals are specific to capital expansion activities and others to operations. Similar to our 2013 audit finding related to transportation in general, it is unclear how the City focuses, prioritizes and reconciles any competing goals for the Portland Streetcar.

Current PSI Operations Assistance agreement should be re-evaluated

In public-private partnerships, the intent is to protect the public interest through the public partner's use of competitive procurement practices, financial assessments resulting in an overall cost-benefit, as well as management that is guided by clear performance standards and specifications. One of the challenges in such partnerships is the public sector entity is required to develop capacity and different skill sets to effectively manage these complex arrangements. For Portland Streetcar, we found problems in how the City ultimately made sure the public interest was protected.

Competitive solicitation dates to 1995 and contract amended numerous times

As described earlier, the City used a 1995 solicitation to select PSI as its private sector partner through June 30, 2015. PBOT used the solicitation as the competitive basis for four subsequent PSI contracts, as shown in Figure 5. Each agreement was subsequently amended, and there were numerous instances when City Council adopted amendments after a contract had expired. Two agreements – including the current Operations Assistance agreement – were significantly amended to increase the duration in excess of ten years, with total compensation increasing to over four times the original amount.

Oregon state laws require the City practice impartial and open competition, protecting both the integrity of the public contracting process as well as the competitive nature of public procurement. We found the City's actions undermine the purpose and expectation of fair and competitive procurement practices required of the public sector.

In addition to these state laws, City Charter generally limits the duration of City contracts to ten years, whereby the original contract should not exceed five years, and the extension or renewal should not exceed an additional five years. City Charter has an exception for “property contracts,” but the City Attorney’s Office told us this category of contracts is not clearly defined. As a result, the City Attorney’s Office is unable to provide a definitive opinion, but stated that, “although not free from doubt, the PSI contract could be construed as a property contract not subject to the Charter limitation.”

Figure 5 Portland Streetcar Inc. contracts resulting from the City’s 1995 request for proposals

Contract	Year Issued	No. of Amendments	Duration		Total maximum compensation per contract	
			Original	Final	Original	Final
Preliminary Services (No. 30057)	1995	5	1.5 years	2.25 years	\$2,520,632	\$2,563,632
Final Engineering Services (No. 31428)	1997	34	1.75 years	11 years	\$3,090,319	\$14,264,295
Start Up Operations Services (No. 32895)	2000	1	0.25 years	1 year	\$200,000	\$200,000
Operations Assistance (No. 33325, replaced No. 32895)	2001	14	2.5 years	14.5 years	\$1,007,462	\$4,184,462*

Source: Audit Services Division analysis of information available in City Archives. The only currently active agreement is the Operations Assistance agreement.

(*) The amount listed here reflects activity through fiscal year 2012. Thereafter, PBOT provides approval for PSI to use its Enterprise Fund for reimbursement.

Council authorized each amendment to the Operations Assistance agreement, bringing the contract total to over \$4 million through fiscal year 2012. With one exception, the amendments to increase compensation used lumped-sum totals for each fiscal year – PBOT included no financial detail by the type of assistance service, staffing needs, or hourly rates by contracted position.

Given PBOT's contract monitoring responsibilities, we asked for information on the City's total payments through fiscal year 2012. PBOT did not know the total amount paid to PSI, even though it had been over a year since the end of the reporting period. Eventually, PBOT reported to us that contract payments had not exceeded the maximum total compensation for the agreement. PBOT's lack of tracking is inadequate given the contract's duration and compensation amount.

No assessment of the benefit of outsourcing services

Public-private partnerships should be used if they are reasonably expected to deliver enhanced value for the public benefit. Financial assessments can help determine the potential value. For example, a Value for Money analysis is commonly used to compare the long-term total costs of the partnership to that of a typical procurement approach. Not applying this type of test or tool can allow for aspects of the public interest to be overlooked. During our review, we found no references to any City financial assessment consistent with public-private partnership guidance.

Performance specifications undefined and contractual deliverables not met

At their core, public-private partnerships are contractual relationships and, as a result, rely on carefully crafted agreements and strong contract management to hold partners accountable. Performance specifications define what the private sector partner must meet in order to be compensated. If the private sector partner does not meet the specifications, then it is penalized through reduced or delayed payments, or with no payments at all. Also, penalties can escalate if poor performance continues.

We found that the agreement between PBOT and PSI largely failed to describe PSI's performance expectations. More importantly, there are few stated deliverables or metrics to assess PSI's performance across the various assistance services it is contracted to provide the City. For example, PSI is responsible for responding to public inquiries and complaints, but there are no efficiency or effectiveness requirements such as response timeliness, pursuit through resolution, or analysis of complaints that may be indicative of other operational issues.

Furthermore, when clearly defined in the agreement, we found numerous instances when PBOT did not hold PSI accountable to its roles, responsibilities and deliverables. From a transparency, accountability, and public stewardship perspective, the following examples of PBOT's poor contract management are particularly concerning.

1. PSI is contractually responsible for annual status reports to City Council that cover its performance, revenues, budget recommendations, and any organizational or other adjustments needed to achieve adopted operational goals or problems. PBOT told us they were unaware of any annual PSI updates to Council.
2. Starting in fiscal year 2013, PSI was required to provide the City with audited financial statements by the end of September 2013. PBOT received finalized financial statements in January 2014.
3. PSI is supposed to provide a staff position that is responsible for inventory. However, due to an inventory issue identified during the City's financial audit last year, this position was recently converted to a City Storekeeper position to allow for more direct oversight by the City Maintenance Manager. PBOT has not amended the contract to reflect this change in partner responsibilities.
4. City staff informed us they regularly assisted with or performed services that we found were PSI's contractual responsibilities. For example, City staff conducted community relations tours, responded to public requests for information, and regularly collected fare revenue from vehicles, even though these duties are PSI's responsibilities.

These examples show that PBOT has provided insufficient contract management to ensure PSI follows through with its partner expectations.

Recommendations

In meeting our audit objective, we found the strategic direction and management of the partnership structure requires the City's attention.

We recommend the Commissioner-in-charge direct the Portland Bureau of Transportation to:

1. Conduct a strategic planning effort that, at a minimum, results in the following organizational decisions:

a. City Council's adoption of the City's organizational mandates and mission for Portland Streetcar

The purpose of this recommendation is to explicitly link Portland Streetcar within the City's enterprise-wide efforts. The early stage of strategic planning includes identifying current organizational mandates since they prescribe what must or should be done, and may constrain the ways the organization meets its mission. Another stage of strategic planning includes identifying the mission, values and vision of the organization – the mission statement is particularly important because it defines the purpose of the organization by answering why it exists and what it does.

b. City Council's adoption of the Portland Streetcar strategic plan and implementation process

The purpose of this recommendation is to articulate the City's strategic priorities for Portland Streetcar, and define how PBOT will demonstrate the successful achievement of these priorities to the public. The written plan should include identifying goals, objectives and strategic issues that encompass the scope of current organizational activities – for example, capital expansion as well as ongoing operations and maintenance.

2. Better protect the public interest in the Portland Streetcar partnership arrangement that, at a minimum, includes the following actions:

a. Strengthen PBOT's management of the current PSI Operations Assistance agreement until its expiration in June 30, 2015.

PBOT should enforce compliance with Oregon laws for public funds, as well as existing contract provisions. For the latter, PBOT should focus on PSI's adherence to organization structure and performance deliverables stipulated in the agreement.

b. Complete a financial assessment to identify what aspects of Portland Streetcar operations and maintenance should be contracted out

PBOT should be able to demonstrate the cost-benefit of any outsourcing decisions to the public. The assessment should be timed in a way to help inform the development of new agreements (see below).

c. Develop new contractual agreements for the Portland Streetcar to start July 1, 2015

At a minimum, PBOT should follow current Oregon law and City requirements for competitive procurement; align business rationale for the contract with the City enterprise, and available Portland Streetcar mission and strategic plan elements; include detailed legal and business reviews by City Attorney and Office of Management and Finance bureaus, respectively; and include provisions for measurable performance deliverables as well as penalties for nonperformance.

3. Improve transparency for Portland Streetcar financial reporting

At a minimum, PBOT should develop financial reports that reflect the complete level of activity managed by the City. Using the current budgetary structure and PSI agreement terms, this would include the PBOT Transportation Operating Fund as well as PSI's Enterprise Fund. PBOT should have processes in place to ensure financial information is accurately and reliably recorded over time, particularly the annual reconciliations with the PSI Enterprise Fund.

4. Mitigate risks related to conflicts of interest and/or related-party relationships within the Portland Streetcar organization.

PBOT could use best practices as well as existing City resources (administrative rules, questionnaires, conflict of interest forms) to develop an approach to manage conflicts of interest and/or related-party relationships. Rather than wait for employees to report, PBOT could solicit City employees for this information on a recurring basis. PBOT could also work with City Procurement to include similar requirements as contract provisions within its partner agreements.

We recommend City Council:

5. Defer future Portland Streetcar system expansion decisions until PBOT has implemented the above recommendations.

Given the City's financial management responsibilities we report in Chapter 2, the City is not yet in the position to make future investments to the Portland Streetcar's expansion.

Objective, scope and methodology

We conducted this audit to describe the organizational structure and strategic direction of the Portland Streetcar. We selected this audit topic because we had not previously reviewed the Portland Streetcar. Our audit scope focused on the Portland Streetcar's operations and maintenance and its key partners, but included information on past and current capital projects whenever such context was significant. This report is the first of a two-part series on the Portland Streetcar; the second audit will focus on performance management systems.

To prepare for our review, we examined a variety of resources to gain an understanding of public-private partnerships and public transportation generally. These included domestic sources such as the American Association of State Highway and Transportation Officials, National Council for Public-Private Partnerships, National League of Cities, and U.S. Government Accountability Office. Since the international community leads the U.S. in public-private partnership efforts, we also reviewed international sources such as the European Commission and the United Nations Economic Commission for Europe.

From this context, we examined information about the Portland Streetcar and the City's relationships with key partners. The information reviewed included resources such as the City's expired and current agreements with Portland Streetcar Incorporated (PSI) and TriMet, historical organizational charts, historical and forecasted financials, position descriptions, meeting minutes and actions from governing bodies, as well as organizational information specific to PSI. Given the document contents, we supplemented our audit work with interviews of individuals in governance, management and staff

positions across the Portland Streetcar organization. When warranted, we also requested information from City representatives of the Office of the City Attorney and bureaus within Office of Management and Finance.

Given the focus on strategic direction, we reviewed a variety of guidance documents that could help us inform our review in this area. These resources included documents we identified as well as those referenced by interviewees. Some provided historical context, such as the *Central City Trolley Alignment Analysis* from 1990 and the *Central City Transit Management Plan* from 1995, and others were less directly related to our audit focus on the Portland Streetcar, such as the *PBOT Financial Task Force Report* from 2012. We identified the key documents currently used at the City, bureau and functional-levels as presented in Chapter 4 of this report.

We relied on management's representations about information provided. We checked management representations against our knowledge of operations. We requested supporting documentation and, if available, reviewed this information for reasonableness. For example, the financial information reflects the best available information provided by the bureau, but was not audited for reliability. Therefore, our reviews are not intended to provide assurance that information provided by management is free from error, fraud, waste or abuse.

We conducted this performance audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

RESPONSES TO THE AUDIT




CITY OF
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Memorandum

April 8, 2014

To: **LaVonne Griffin-Valade, City Auditor**

From: **Commissioner Steve Novick** 

Subject: **Response to Audit of Portland Streetcar
Internal Advisory Communication Report #451**

As Commissioner for the Transportation bureau, I would like to thank you and your audit team for the tenacity and diligence of the first audit of the Portland Streetcar system. Your team's work has highlighted how the project's vision gained shape over the past 25 years and provides clarity to the structure of contractual agreements with our partners, and how organizational structure and reporting relationships developed over time.

The Streetcar serves the central city, northwest neighborhoods, Lloyd District, Central East-side District, and the South Waterfront Neighborhood. With construction nearly complete on the central loop system and with 16 cars in the City's fleet, a city staff of 17 including a Portland Bureau of Transportation (PBOT) project manager, and providing weekday 14 – 18 minute headways, PBOT is gearing up to a renewed focus on system operations and maintenance.

PBOT Director Leah Treat and I are committed to ensuring the longevity and success of Portland's streetcar system connecting people with places in the core area of the City. PBOT's Interim Capital and Development Manager has been asked to lead the efforts to carry out our action plan in response to recommendations and ensure they are implemented with regular reporting to the Commissioner and Director.

Below please find our combined response to your recommendations, to which we agree.

Audit Recommendations **[bold]** and Responses *[italic]*

1. Conduct a strategic planning effort that, at a minimum, results in the following organizational decisions:

- a. **City Council's adoption of the City's organizational mandated and mission for the Portland Streetcar**

b. City Council's adoption of the Portland Streetcar strategic plan and implementation process

We agree. Organizationally, PSI's role needs to be clarified through many levels. Although we value the work of PSI, we agree that the nature of its role should be better defined. Is it a contractor? ...An advisory body? Or a governing body? And if it is a governing body, should it not have a greater financial stake in the enterprise? To quote "Spider-Man," "with great power comes great responsibility"; or at least, that's the way things should be. We need to clarify PSI's role before making decisions about extending the partnership.

The nature of PSI's role should be consistent with the needs of the City, including the bureau (PBOT) responsible for operation and financial risk of Portland Streetcar. Together we will explore the responsibility of PSI and the authority of the Streetcar Board and develop a recommendation balancing the needs identified by PBOT and City Council. We will also include in the development of options an analysis of the requirement for the City's Transportation Commissioner to participate on the Streetcar Board and the Board's decision making authority for the Streetcar system.

We need to clarify the role of PSI in a way that either obviates what we perceive as the need for a City seat on the board, or eliminates any hint of a potential for even a perceived conflict of interest. This Audit does not state that there is any conflict of interest with the participation of the Commissioner on the PSI Board. Regardless, it is important to be clear about this issue and we are asking the City Attorney for an opinion on City participation on the Board. We want to be transparent and clear about any conflicts of interest; real or perceived.

PBOT will develop a consolidated strategic mission statement and performance indicators for the street car that builds upon the system's historic purpose and need, mission and goal statements, contained in documents which this audit has helped highlight.

2. Better protect the public interest in the Portland Streetcar partnership arrangement that, at a minimum, includes the following actions:

- a. Strengthen PBOT's management of the current PSI Operations Assistance agreement until its expiration in June 30, 2015.**
- b. Complete a financial assessment to identify what aspects of Portland Streetcar operations and maintenance should be contracted out.**
- c. Develop new contractual agreements for the Portland Streetcar to start July 1, 2015**

We agree. The Operations Assistant Agreement with PSI is set to expire in 15 months with the close of fiscal year 14-15. Prior to developing a new contract PBOT will consider the costs and benefits of the operations aspects of the streetcar. Assuming the results of our investigations indicate a need to continue a partnership for operations assistances, a new agreement will be developed with necessary change.

Responsibility for overall system operation is under PBOT's Streetcar Project Manager and which falls under the PBOT Development and Capital Group Manager. This PBOT team has adopted a focus to implement robust business practices. They are working with PSI, led by its recently appointed Executive Director, to ensure contractual requirements are met. Their focus will be on strengthened oversight, fiscal accountability, risk assessment, plus cost benefit and value based decision-making.

3. Improve transparency for Portland Streetcar financial reporting

We agree. PBOT's project manager is working with finance managers to ensure a complete, timely, and accurate accounting of all expenses and revenues in accordance with best practices and shall follow through with PSI in ensuring their reporting responsibilities.

4. Mitigate risks related to conflicts of interest and/or related-party relationships within the Portland Streetcar organization

We agree. PBOT will request that PSI complete the City's related party's questionnaire. In future contracts, the Bureau will require the contractor to complete the related party's questionnaire annually. If anything is perceived to be a conflict, PBOT will develop a plan to address this recommendation and the underlying concern to take appropriate action with input from Human Resources and our contractor. PBOT has already provided instruction to supervisors on how to address perceived conflict of interest. In addition, future assistance with other jurisdictions will be conducted with appropriate best practices agreements.

5. We also recommend City Council defer future Portland Streetcar system expansion decisions until PBOT has implemented the above recommendations.

We agree. PBOT will not initiate construction (or commit to funding construction) of a new line or extension until we have addressed the recommendations of this audit.

This does not mean of course that we will not spend any time thinking about the possibility of expansion in the interim. Development of transportation projects is typically a multi-year

process involving community outreach, alternatives analysis, technical review, and identification of funding sources. Streetcar projects, like other major capital transportation investments, move through a planning and prioritization process involving local, state and federal agencies. The Regional Transportation Plan (RTP) currently includes potential Streetcar projects on the Financially Constrained list.

There are no specific Streetcar Extension projects moving towards construction. There is ongoing work with Metro on a technical update to the RTP, as well as analysis of the Streetcar System Concept Plan Tier 1 and Comprehensive Plan corridors. This analysis addresses Comprehensive Plan land-use changes, and growth projections, resulting potential ridership impacts, corridor designations, and potential real market value impacts. As a result of this planning and prioritization process, the City will be better informed as to the anticipated land-use and transportation outcomes of future streetcar lines, and locations where streetcar service is important to support future growth.

Should a specific project opportunity arise, which supports the City's growth and economic development policies and provides external, leveraged funding, it may be in the best interest of the City to proceed with alternatives analysis and environmental analysis, but we will not commit funds to construction or initiate construction until all recommendations are addressed.

A final thought -- We share your concern about the portion of PBOT discretionary resources directed to the streetcar - although in our view the problem is rooted in the small size of the denominator. PBOT cannot commit city resources to capital or operating costs of any further expansion of the system until we have addressed the need for adequate funding for basic street maintenance and safety projects. The streetcar can be an important feature of a strong transportation system, but it should not be the only strong link in a crumbling system.

C: Director Leah Treat, Chris Warner, Greg Jones, Alissa Mahar, Christine Leon, Kathryn Levine, Gary Cooper, Lenore DeLuisa

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Portland Streetcar: City bears financial burden and operational risk while relying on outside partners

Report #451A, April 2014

Audit Team Members: Tenzin Choephel

This report is intended to promote the best possible management of public resources. This and other audit reports produced by the Audit Services Division are available for viewing on the web at: www.portlandoregon.gov/auditor/auditservices. Printed copies can be obtained by contacting the Audit Services Division.

LaVonne Griffin-Valade, City Auditor
Drummond Kahn, Director of Audit Services

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