

Exhibit A

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
SUBRECIPIENT AGREEMENT
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION
STATEWIDE TRANSPORTATION IMPROVEMENT FUND (STIF) DISCRETIONARY
GRANT FUNDS
ODOT GRANT AGREEMENT NO. 35610**

PARTIES:

1. Tri-County Metropolitan Transportation District of Oregon (TriMet)
2. City of Portland, Bureau of Transportation, on behalf of the City of Portland (City or Subrecipient)

RECITALS

1. TriMet, a mass transit district, is the transit agency serving the Portland metropolitan area. TriMet is a Qualified Entity as defined by OAR 732-040-0005(28) and a Public Transportation Service Provider as defined by OAR 732-040-0005(28).
2. The City, through its Bureau of Transportation, is responsible for transportation operations and maintenance improvements within the City public rights of way.
3. ORS 184.751 establishes the Statewide Transportation Improvement Fund (STIF), which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
4. ORS 184.758 establishes that a percentage of STIF funds shall be allocated to Public Transportation Service Providers based on a competitive grant program adopted by the Oregon Transportation Commission (STIF Discretionary Fund).
5. The STIF Discretionary Fund is intended to provide a flexible funding source to improve public transportation in Oregon by distributing moneys to Public Transportation Service Providers pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 44.
6. The Parties have a mutual desire to improve the speed and reliability of public transit service on City roadways. The City has established an ongoing Transit Priority Spot Improvement Program to implement projects to improve transit speed and reliability, and the Parties collaborate on identifying and prioritizing locations for improvement through this program.
7. Capital improvements through the Transit Priority Spot Improvement Program can include signal modifications, bus-only lanes, business-access-transit lanes, queue jumps, curb extensions, turn pockets, crossings, parking restrictions, and other capital projects that are expected to improve transit speed and reliability.
8. TriMet has been awarded STIF Discretionary Funds in the amount of \$500,000 from the Oregon Transportation Commission for transit priority spot improvements in the Portland Metro region. The City has committed \$125,000 toward the local match for this grant. Of the \$500,000 available in state grant funds, TriMet has pledged a minimum of \$125,000 for projects within the City. The grant funding will be available starting July 1, 2023 and costs must be incurred by June 30, 2025.

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9. This Agreement funds planning, project administration, capital, and preventative maintenance activities to conduct design, engineering, and implementation of transit priority spot improvements (improvements) for segments within the right-of-way, or at traffic signals where buses are delayed due to traffic congestion, within TriMet's district boundaries in the Portland, Oregon metropolitan area.
10. The Parties desire to work together to implement transit priority spot improvements and have determined that the City will design, construct, and inspect the Project Work identified for the grant funding.
11. The City has capacity through the Maintenance Operations Group or contract services, capacity to design, construct, and/or inspect Project Work improvements.
12. The purpose of this Agreement is to memorialize the terms and conditions under which TriMet will reimburse the City for costs associated with the Project Work.

Now therefore, the parties agree as follows:

1. General

- A. Subrecipient agrees to comply with and use the STIF Discretionary Funds in accordance with the terms of this Agreement including the terms and conditions of ORS 184.751 through 184.766 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, and D which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement without exhibits, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the STIF Discretionary Funds, and shall be amended to incorporate those changes.
- B. Subrecipient agrees to comply with all subrecipient monitoring policies, procedures and other requirements that may be established by TriMet, including but not limited to Title VI compliance.
- C. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this Agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 4, and 6(B).
- D. The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State and by amendment pursuant to Section 6 of Exhibit A of this Agreement.

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2. **Audit Requirements/Financial Management Procedures**

STIF Discretionary Funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit A shall apply. TriMet may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 184.751 through 184.766 and OAR Chapter 732 in addition to the requirements set forth in Exhibit A.

Subrecipient shall comply with applicable federal, state and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing and reporting requirements with STIF Discretionary Funds. **Subrecipient shall document the expense of all funds disbursed by TriMet under this Agreement.**

3. **Withholding of Funds**

In addition to any other provisions of this Agreement including but not limited to Exhibits A and D, TriMet may withhold payment of STIF Discretionary Funds if the funds are not being used in accordance with ORS 184.751 through 184.766, OAR Chapter 732, or this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the use of STIF Discretionary Funds. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STIF Discretionary Funding requirements hereunder by Subrecipient, and shall, upon breach of conditions that require TriMet to return funds to the Section, hold harmless and indemnify TriMet for an amount equal to the funds required to be repaid plus any additional costs incurred by TriMet.

4. **Discrimination Prohibited/Compliance with Laws**

Subrecipient certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STIF Discretionary Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

5. **Independent Contractor/Indemnification**

- A. Subrecipient is an independent contractor for all purposes under this Agreement and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient shall have sole control and supervision over the manner in which the Project is performed, subject only to consistency with the terms of this Agreement, and shall be responsible for determining the appropriate means and manner of executing the Project. Neither Subrecipient, nor its officers, directors, employees, subcontractors or volunteers, are officers, employees or agents of TriMet as those terms are used in ORS 30.265. Neither Subrecipient, nor its directors, officers, employees,

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subcontractors or volunteers, shall hold themselves out either explicitly or implicitly as officers, employees or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

- B. The parties agree that TriMet shall have no liability of any nature in connection with the Subrecipient's use of the funds. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising solely out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph (B) shall survive termination or expiration of this Agreement.
- C. The following section applies to any claim not arising solely out of the negligence of Subrecipient as described in this Section 6(B):
 - i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against TriMet or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - ii. With respect to a Third Party Claim for which TriMet is jointly liable with City (or would be if joined in the Third Party Claim), TriMet shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of TriMet on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of TriMet on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. TriMet's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if TriMet had sole liability in the proceeding.

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- iii. With respect to a Third Party Claim for which City is jointly liable with TriMet (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by TriMet in such proportion as is appropriate to reflect the relative fault of City on the one hand and of TriMet on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of TriMet on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

6. **Vehicle/ Operator Requirements**

Subrecipient shall ensure that all drivers of equipment have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Operators of rail vehicles shall not be required to have a Commercial Driver's License (CDL). Operators of rail vehicles shall be required to complete vehicle specific operator training. Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

7. **Funding**

- A. Upon execution of this Agreement, TriMet agrees to reimburse City based on actual costs for the performance of work authorized by executed Task Orders, up to the amount authorized by the Task Order and not to exceed the amounts designated in Exhibit D, except services expressly to be performed at City's cost. The total amount disbursed by TriMet under this Agreement shall not exceed the sum of \$500,000. TriMet will not reimburse City for any expenditures that occurred before the Term of this Agreement or before execution of a Task Order as described in Exhibit D. TriMet will not reimburse City for expenses in excess of the amounts identified in the categories identified in Exhibit D, "Eligible Costs."
- B. This is a reimbursement contract. City shall document eligible use of funds through the reports submitted to TriMet's Project Manager in accordance with this Agreement. City shall submit no more than monthly, invoices to TriMet for project expenses incurred. Additional documents should be included to support all costs charged to the grant to ensure costs are allowable, necessary and reasonable and are properly allocable. TriMet's Project Manager will review invoices as submitted to ensure compliance with the

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requirements of the STIF Discretionary Funding. TriMet may request additional information including, but not limited to, additional information supporting the expenditure for which City is seeking reimbursement, and audits of specific projects or services. TriMet may reject any invoice that contains inadequate or insufficient information for TriMet, in the exercise of its reasonable discretion, to determine whether the expense(s) in an invoice are allowable under this Agreement.

- C. City will be reimbursed for up to 50% of submitted project invoices.
- D. All invoices shall be submitted electronically to TriMet Accounts Payable at accountspayable@trimet.org, with a copy to Luke Norman, TriMet's Project Manager at normanl@trimet.org and Wendy Chang, Senior Grant Accountant at changw@trimet.org
- E. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand. For the fiscal year ending June 30, 2024, the City will invoice TriMet within three weeks of receiving the fully executed signed agreement. For the fiscal year ending June 30, 2025, the City will submit two invoices for any expenses over \$50,000 at least 45 days before the end of the fiscal year.

8. Term

This Agreement shall be in effect from July 1, 2023 through June 30, 2025, unless the Agreement is terminated earlier as provided in this Agreement. No cost shall be incurred by the City after June 30, 2025. Subrecipient shall complete all purchases, including installation, and all construction of capital assets funded under this Agreement prior to the Expiration Date of this Agreement. If local circumstances prevent purchase, installation, or construction by the specified date, Subrecipient will notify TriMet in writing of the circumstances regarding the delay. Such notification must be received at least sixty (60) days prior to the expiration of the Agreement. Agreement amendment for time will be considered extenuating circumstances.

9. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

TriMet:

Luke Norman
TriMet
10 1SW Main Street., Suite 700
Portland, Oregon 97201
503-962-2133
normanl@trimet.org

Subrecipient:

Matthew Kelly
City of Portland
1120 SW 5th Ave, Suite 1331
Portland, Oregon 97204
Matthew.kelly@portlandoregon.gov
503-823-5831

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

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10. **Assignment/Subcontracts**

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by TriMet.

11. **Mediation**

Should any dispute arise between the parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties.

12. **Entire Agreement/Authority**

This Agreement and the attached Exhibits A, B, C, and D constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of TriMet to enforce any provision of this Agreement shall not constitute a waiver by TriMet of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SIGNATURE PAGE FOLLOWS

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The individuals signing below represent and warrant that they have authority to bind the party for which they sign

CITY OF PORTLAND

Portland Bureau of Transportation
Commissioner-in-Charge

Date

APPROVED AS TO FORM:

City Attorney

TRIMET

Bonnie Todd
Chief Operating Officer

Date

Nancy Young-Oliver
Chief Financial Officer

Date

EXHIBIT A SPECIFIC AGREEMENT PROVISIONS

Subrecipient shall comply and require each of its subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit.

1. Disbursement and Recovery of Grant Funds.

- A. **Disbursement Generally.** TriMet shall disburse STIF Discretionary Funds to Subrecipient within 30 days of TriMet's approval of reimbursement.
- B. **Conditions Precedent to Disbursement.** TriMet's obligation to disburse STIF Discretionary Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. TriMet has received funding, appropriations, limitations, allotments or other expense authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient's representations and warranties set forth in Section 4 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iii. Subrecipient is in compliance with the terms of this Agreement.
 - iv. All funds previously disbursed have been used in accordance with OAR Chapter 732.
 - v. Any audit findings relating to Subrecipient's use of funds under this Agreement or any other agreement with the State or TriMet have been resolved.
- C. **Recovery of Grant Funds.** Any STIF Discretionary Funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement (Misexpended Funds) must be returned to TriMet. Subrecipient shall return all Misexpended Funds to TriMet promptly in accordance with TriMet's written demand.

If this Agreement is terminated for any reason, Subrecipient shall return to TriMet all funds within 15 days of TriMet's written demand.

2. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to TriMet as follows:

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing

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or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

3. **Records Maintenance and Access; Audit.**

- A. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and State standards for audits of municipal corporations, non-profit and for profit organizations as applicable. Subrecipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) TriMet and their duly authorized representatives shall have access to the books, documents, papers and records of Subrecipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary of State, USDOT, FTA, and TriMet and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Subrecipient shall permit authorized representatives of TriMet, State, the Secretary of State, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Subrecipient as part of the Project, and any transportation services rendered by Subrecipient.
- B. **Retention of Records.** Subrecipient shall retain and keep and require its subrecipients and subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Discretionary Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient, its subrecipients and subcontractors shall retain the records until the questions are resolved.

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C. **Expense Records.** Subrecipient shall document the expense of all STIF Discretionary Funds disbursed by TriMet under this Agreement. Subrecipient shall create and maintain all expense records in accordance with generally accepted accounting principles and in sufficient detail to permit TriMet to verify how the STIF Funds were expended.

D. **Audit Requirements.**

- i. Subrecipient shall, at Subrecipient's own expense, submit to TriMet, and if requested by the State or the State of Oregon Public Transit Division, at 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 (or electronically to ODOTPTDreporting@odot.TriMet.or.us) a copy of its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any Subrecipient(s), and any of Subrecipient's contractor(s), or subcontractor(s) responsible for the financial management of funds received under this Agreement.
- ii. Subrecipient shall save, protect and hold harmless TriMet and the State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and TriMet or by the State.

4. **Subrecipient Sub agreement and Procurement**

A. **Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.

- i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being discovered.

B. **Subrecipient and Sub agreement indemnity; insurance.**

Neither Subrecipient' nor any attorney engaged by Subrecipient, shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient is prohibited from defending State or that Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient if State elects to assume its own defense.

Subrecipient shall obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

C. Subrecipient's sub agreement(s) shall require the other party to such sub agreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in

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whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Subrecipient's Subrecipients(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's Subrecipient is prohibited from defending State or that Subrecipient's subcontractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's Subrecipient if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its sub agreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

- D. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules. Procurements of rolling stock, facilities and personal services for any amount, and all procurements for an amount greater than \$100,000 must be approved by TriMet and the State of Oregon prior to solicitation.
- E. **Conflicts of Interests.** Subrecipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

5. Termination

- A. **Termination by TriMet.** TriMet may terminate or suspend this Agreement, in whole or part, effective upon delivery of written notice to Subrecipient, or at such later date as may be established by TriMet in such written notice, under any of the following conditions, but not limited to those conditions:
 - i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. TriMet fails to receive funding, appropriations, limitations or other expense authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if TriMet determines to terminate or suspend for its own convenience; or
 - iii. Federal or State laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

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- iv. The Project would not produce results commensurate with the further expense of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of TriMet and which under the provisions of this Agreement would have required the approval of TriMet.
- B. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to TriMet, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or State laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- C. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

6. General Provisions

- A. **Responsibility for Grant Funds.** In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Subrecipient receiving STIF Discretionary Funds, pursuant to this Agreement shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires TriMet to return funds to the State, hold harmless and indemnify TriMet for an amount equal to the funds received under this Agreement; or if state or federal law limitations apply to the indemnification ability of the Subrecipient of STIF Discretionary Funds, the indemnification amount shall be the maximum amount of funds available for expense, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- B. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- C. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other party, organization or individual.
- D. **No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject

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to any obligations or liabilities to the Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- E. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 10 Communications of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- F. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. In no event shall this section be construed as a waiver by TriMet or by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- G. **Compliance with Law.** Subrecipient shall comply with all federal, State, and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- H. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall indemnify and hold TriMet harmless including reasonable attorney's fees for breach of this provision.
- Subrecipient shall meet the insurance requirements within Exhibit C.
- I. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of State or TriMet. Subrecipient has no right or authority to incur or create any obligation for or legally bind State or TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer," "employee," or "agent" of

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State or TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

J. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

- K. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- L. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

EXHIBIT B INSURANCE REQUIREMENTS

GENERAL

City is self-insured for general liability, auto liability, and worker's compensation insurance coverage. City will provide a certificate of self-insurance to TriMet upon request.

City shall require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the insurance applicable to subcontractor's performance under its sub agreement: i) insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of this Agreement and of any sub agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to TriMet. City shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, City shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. City shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall City permit work under a sub agreement when City is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the City is a Party.

City shall comply with any requirements of TriMet with respect to City's compliance with these insurance requirements, including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

- I. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
- II. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to TriMet. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by TriMet:

Bodily Injury, Death and Property
Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).
Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
- III. **AUTOMOBILE Liability Insurance:** Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination

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with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by TriMet:

Bodily Injury, Death and Property

Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include State and TriMet, and their respective officers, employees and agents as Additional Insureds but only with respect to subcontractors activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the subcontractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the subcontractors completion and City's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE

The subcontractor or its insurer must provide 30 days' written notice to TriMet before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

EXHIBIT C
CAPITAL ASSET REQUIREMENTS

The terms of this Exhibit C applies to all Capital Assets purchased with STIF Discretionary Funds.

1. City shall ensure Satisfactory Continuing Control of capital assets purchased or leased in whole or part under this Agreement while the capital assets are being used for public transportation purposes. Satisfactory Continuing Control means the legal assurance that a capital asset will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
2. City shall inventory Capital Assets purchased or leased in whole or part with STIF funds. The inventory will include a description of the Capital Asset, date of purchase or leases, purchase price, amount of STIF funds contributed to the purchase or lease, the source of other funds, the authorized use, the entity using the Capital Asset, and the condition of the asset.
 - i. If Capital Asset is a vehicle, the inventory must include the size of vehicle, the total number of passenger seats, the total number of ADA stations, the total number of seats when all ADA stations are deployed, the current mileage, and its current condition.
 - ii. If Capital Asset is an improvement to real property, such as a facility, building, or transit shelter, the inventory must include the location of the Capital Asset and its current condition.
3. Vehicles may be replaced using STIF funding if:
 - i. City holds clear title to the vehicle(s) being replaced. Salvage titles will not be accepted.
 - ii. The vehicle(s) has met or exceeded the applicable useful life guidelines established by the Oregon Department of Transportation (ODOT), or, if federal funds are used to purchase the vehicle, those established by the Federal Transit Administration (FTA), provided such FTA standards are no less stringent.
 - iii. The vehicle has not been previously replaced.
4. By executing an Agreement that includes the purchase of Capital Assets, City commits to continually use the vehicle for the approved purpose for the useful life of the vehicle(s).
5. To be eligible to receive STIF funds for a real property Capital Asset, such as a transit facility, bus barn, maintenance facility, land, or administration building, City shall demonstrate one or more of the following:
 - i. City ownership of the property upon which the Capital Asset will be located;
 - ii. City possession of an executed lease agreement for the property location that will be in place for the useful life of the Capital Asset;
 - iii. City possession of an executed lien on the property for the useful life of the Capital Asset;
 - iv. In the case of a Project which will utilize property owned by a local city, county or government, an executed intergovernmental agreement with the property owner guaranteeing ongoing use for the duration of the useful life of the Capital Asset; or

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- v. In the case of a Project to purchase land, an option to purchase the land identified in the Project.

6. City shall:

- i. Comply with all useful life standards established by TriMet and ODOT for Capital Assets acquired pursuant to their STIF Agreement, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
 - ii. Use TriMet's and ODOT's established procedures for the disposition of Capital Assets acquired with STIF Discretionary Fund moneys, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
 - iii. Retain the net proceeds from a sale or other disposition of a Capital Asset purchased with STIF funds in a restricted account to allow Subrecipient to propose reinvesting the proceeds in a future STIF Plan or return the net proceeds to ODOT. Net proceeds are the disposal proceeds less original value, less depreciation, less disposal costs. If non-STIF Discretionary Funds were used in the original purchase, then only the proportion representing STIF Discretionary Fund contribution to the purchase are subject to this rule.
 - iv. Comply with TriMet's and ODOT's written procedures to ensure that a Capital Asset is maintained in safe operating condition, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA provided such FTA standards are no less stringent.
 - v. Maintain insurance coverage, or require subcontractors to maintain insurance coverage, that meets or exceeds the standards in ORS 806.070.
 - vi. Ensure that vehicles purchased in whole or in part with STIF Discretionary Fund moneys are titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division pursuant to ORS 803.045 and supporting rules, with the Oregon Department of Transportation listed as the primary security interest holder, subject to the following additional requirements:
 - 1. If the vehicle is registered in the name of an entity that is not a Qualified Entity or Public Transportation Service Provider, then TriMet, as the Qualified Entity and as required by OAR 732-044-0050(6), must be listed on the vehicle title as the secondary security interest holder.
 - 2. If the vehicle was purchased with federal funds in addition to STIF Discretionary Fund moneys, and the federal funding source requires the vehicle to be titled otherwise than provided in this Agreement, then the federal titling requirements prevail.
7. City shall notify TriMet of the sale, transfer or other disposition of a Capital Asset purchased with Discretionary STIF funds and shall report the use of proceeds, if any, from the sale to TriMet.

Exhibit D
SCOPE OF WORK

1. Project Deliverables, Tasks, and Schedule

The Parties, in the performance of this Project, shall document steps taken to improve accessibility of public transportation for vulnerable populations. Vulnerable populations include low-income individuals or households, veterans, Tribal communities or groups, individuals of age 65 and older, individuals with disabilities, and individuals with limited English proficiency. Information on this topic shall be provided to State through reporting. Improvements will be prioritized on lines designated as low-income and/or minority, identified by the equity map created by TriMet's HB 2017 Transit Advisory Committee.

2. Budget Detail.

Project Title: STIF Disc TriMet 35610				
<i>TriMet Transit Priority Spot Improvements</i>				
Item #1: General Development/Comprehensive Planning				
	Total	Grant Amount	Local Match	Match Type(s)
	\$42,000	\$33,600	\$8,400	Local
Item #1: Preventative Maintenance				
	Total	Grant Amount	Local Match	Match Type(s)
	\$583,000	\$466,400	\$116,600	Local
Sub Total	\$625,000	\$500,000	\$125,000	
Grand Total	\$625,000	\$500,000	\$125,000	

3. Budget Amendment

The budget may be revised by an amendment as provided Section 6(B) of Exhibit A to this Agreement that revises the Budget Detail Chart in this Exhibit D. If necessary, any budget amendment will first be approved by the Oregon Department of Transportation.

4. Project Description

1. General Development/Comprehensive Planning

Where the need for transit priority is identified, Recipient will partner with local jurisdictions to implement the improvements over the life of this agreement.

2. Preventive Maintenance

Examples of the types of improvements that will be implemented by agreements with local jurisdictions include (but are not limited to): restriping for bus or bus/bike only lanes; right turn only, except bus lanes; reallocation of lane space to prevent buses being delayed behind left turning vehicles; queuing at freeway/highway interchanges; transit signal priority; and signal adjustments.

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5. **Eligible Costs.** Eligible Costs include:

1. **General Development/Comprehensive Planning:** \$42,000 (\$33,600 Grant/\$8,400 Match)

Eligible expenditures include procurement for a planning consultant, or use internal staff where sufficient planning capacity exists, to deliver the objectives of this agreement.

2. **Preventative Maintenance:** \$583,000 (\$466,400 Grant/\$116,600 Match)

Eligible project preventive maintenance expenses include activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner. Preventive maintenance includes, but is not limited to inspections; scheduled or routine maintenance; and associated parts, supplies, and labor. Preventive maintenance under this Agreement does not include repairs resulting from motor vehicle accidents covered by insurance, repairs on vehicles or components under warranty, or repairs that are paid for in other agreements or contracts.

6. **Task Orders**

- A. A Task Order, in the form set out below, will be executed documenting the parties' agreement regarding specific projects. The Parties agree that selection of the project locations is subject to TriMet's budget for this work.
- B. No work described in a Task Order shall be reimbursable by TriMet until both parties have fully executed the Task Order. A fully executed Task Order is one that is signed by TriMet's Project Manager and the City's Project Manager. Work described in an executed Task Order may be referred to in this Agreement as a "Project."
- C. Each Parties project manager will inform the other project manager of inquiry from a media or press representative and make reasonable efforts to consult with the other project manager prior to any verbal or written information being provided to such a representative; if unable to make a prior consultation, notice will be provided afterwards.
- D. Each project manager will invite the other to attend all regular or significant meetings regarding work performed under this Agreement.
- E. The Project Managers will maintain communication regarding the status of projects, and regarding any time scope, schedule, or budget changes.
- F. For each task order, City shall prepare final construction cost estimates and shall submit cost estimates to TriMet. The Parties must execute a Task Order before City commences construction.
- G. City staff will conduct outreach to adjacent residents and property owners regarding changes to the public right-of-way at proposed sites. City staff will provide TriMet draft materials prior to outreach and a summary of outreach conducted along with fully executed Task Order.
- H. Any oral reports made to neighborhood, business, or other civic organizations, as well as to any members of the press shall acknowledge work being done is based on a partnership between the City and TriMet.

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- I. The City's Project Manager shall be responsible for outreach to the community, in partnership with TriMet if this is so desired; coordination of design and installation efforts; and ensuring that individual Task Orders maintain agreed upon scope, schedule, and budgets.
- J. TriMet shall promptly respond to all requests by City for review of information regarding the Project Work.

City Contract No. _____

Task Order No. _____

TriMet Contract No. _____

Transit Priority Spot Improvements Task Order

Project Name:

Location:

Purpose:

Anticipated Scope (with description of key improvements):

SAP Project Number: _____

Grant Number: _____

Scope of Work	Installation Labor and Materials Supplied by the Bureau

The City of Portland, Bureau of Transportation plans to procure and install the project described above.

TriMet

Bureau

Project Manager

Project Manager