

**INTERGOVERNMENTAL AGREEMENT
FOR LAKE OSWEGO TO PORTLAND TRANSIT PROJECT**

**PAYMENT FOR EXTENDED LOCALLY PREFERRED ALTERNATIVE (LPA)
AND PROJECT REFINEMENT PHASES**

THIS AGREEMENT is made by and entered into between the **TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON**, a mass transit district of the state of Oregon, hereinafter referred to as "TriMet", the **LAKE OSWEGO REDEVELOPMENT AGENCY**, the urban renewal agency of the City of Lake Oswego, a municipal corporation of the state of Oregon hereinafter referred to as "LORA", and **THE CITY OF PORTLAND**, a municipal corporation of the state of Oregon, hereinafter referred to as "Portland". Collectively, TriMet, LORA and Portland are referred to as the "Parties."

RECITALS

1. TriMet, in cooperation with Portland, the City of Lake Oswego ("Lake Oswego"), Metro and other regional partners, is currently conducting the NEPA process for the Lake Oswego to Portland Transit Project ("Project"), which is studying transit alternatives between Lake Oswego and Portland along the Highway 43 transit corridor.
2. On December 10, 2010, Metro published the Draft Environmental Impact Statement (DEIS) and commenced the process for local approvals of a Locally Preferred Alternative (LPA) for the Project. The city councils of both Lake Oswego and Portland approved streetcar because it is the preferred mode and adopted LPA resolutions, subject to resolving certain issues. Both city councils requested reports prior to TriMet directing additional detailed engineering on the Project.
3. The regional partners incurred additional costs in undertaking the LPA process due to additional agency coordination and extensive public outreach. These costs are outlined in Exhibit "B" attached hereto. The parties desire that LORA and Portland pay these additional costs.
4. Subsequent to the LPA approvals by Lake Oswego and Portland, the regional partners agreed to undertake additional refinement of the Project prior to completing the LPA process. A scope of work for such a refinement (Phases I and II) is outlined in Exhibit "A" attached hereto; the cost of such work and the funding sources are outlined in Exhibit "B" attached hereto.
5. The parties agree that it is now timely to involve Portland Streetcar, Inc. (PSI) as the operating entity for streetcar given that Portland and Lake Oswego have both endorsed streetcar as the preferred LPA mode while, at the same time, posing questions about the streetcar alternative that need to be addressed before further action is taken to advance the Project. Given the actions taken on the LPA by Portland and Lake Oswego and specific questions raised by their respective city councils, the parties agree that the most effective approach at this stage of the Project is to engage PSI to address specific streetcar-related issues. Accordingly, the parties desire for TriMet to delegate work and assign existing

third-party contracts to PSI in order to allow PSI to take the lead on the Refinement Phase of the Project as contemplated herein.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. The recitals above shall be considered part of this Agreement.
2. TriMet shall cause all work to be performed as described in the Project Refinement Phase Scope of Services Outline attached as Exhibit A and incorporated in this Agreement ("the Work"). TriMet shall subcontract with PSI for the Work as indicated in Exhibit A, including assigning existing TriMet contracts to PSI as appropriate.
3. LORA and Portland each agree to pay TriMet the sum of \$247,500 to fund the Work, together with the sum of \$87,500 each to reimburse TriMet for the Extended LPA Phase, as detailed on attached Exhibit B incorporated in this Agreement (\$335,000 total for each). LORA and Portland shall each make their required payments in two installments as follows: \$267,500 within 30 days of execution of this Agreement, and the balance of \$67,500 on or before November 1, 2011. The parties agree that funds can be re-allocated within the budget shown in Exhibit "B" provided the total cost to each party does not exceed the foregoing total of \$335,000 for each party. If any amounts are not expended on the scope described in this Agreement, TriMet shall make the remaining funds available for future work on the Project, subject to the Parties agreement or return unexpended funds equally to the Parties after all expenditures have been paid.
4. Each party has designated a project manager as its formal representative for the purposes of this Project:

For TriMet:

Alan Lehto
TriMet
710 NE Holladay St.
Portland, OR 97232
Phone: (503) 962-2136
Fax: (503) 962-2281
Email: lehto@trimet.org

For LORA:

Brant Williams
Lake Oswego Redevelopment Agency
Lake Oswego, OR 97034
Phone: (503) 635-6138
Fax:
Email: bwilliams@ci.oswego.or.us

For Portland:

Paul Smith
 City of Portland
 1120 SW 5th Avenue, Suite 800
 Portland, OR 97204
 Phone: (503) 823-7736
 Fax: (503) 823-7736
 Email: Paul.Smith@portlandoregon.gov

5. **Relationship of the Parties.** Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be an employee, agent or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.
6. **No Third-Party Beneficiary.** Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-parties are expressly described as intended to be beneficiaries of its terms.
7. **Compliance with Laws.** The parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. If a Party is not in compliance with any law, regulation, executive order or ordinance, it shall take immediate steps to gain compliance.
8. **Federal Funding Limitation.** The parties hereto understand that federal funds will be used to pay for a portion of the Project. To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
9. **Effective Dates and Termination.** This Agreement shall be effective on the date all required signatures are obtained, and shall remain in effect until the completion of all obligations created by this Agreement, unless all the parties agree in writing to extend it, or upon termination of the Agreement as provided herein. This Agreement may be terminated at any time by mutual written consent of the parties. Any one or more of the parties may terminate this Agreement upon 30 days written notice to the other parties. LORA or Portland may terminate this agreement immediately upon written notice to TriMet in the event that TriMet fails to cause the performance of the Work, or any portion thereof, within the time specified, time being of the essence of this Agreement. If this Agreement is terminated prior to completion of the Work, TriMet shall promptly reimburse to LORA and Portland in equal shares all sums paid to fund the Work pursuant to paragraph 2 of this Agreement, less the amount of such funds reasonably expended by TriMet to perform or cause the performance of the Work prior to the date of termination.

10. **Remedies.** The remedies provided under this Agreement shall not be exclusive. The parties also shall be entitled to any other equitable and legal remedies that are available.
11. **Oregon Law, Dispute Resolution and Forum.** This Agreement shall be construed according to the laws of the State of Oregon. The parties shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen (14) calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between the parties arising under this Agreement or out of the Work shall occur, if in the state courts, in the Multnomah City Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
12. **Assignment.** Except as expressly provided herein, no party to this Agreement shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other parties.
13. **Liability; Indemnity.** Each party shall be responsible for the acts of their respective employees and agents under this Agreement. No party, nor any elected and appointed official, officer, board or council member, employee, volunteer or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board or council members, employees, volunteers or agents, under or in connection with or arising out of any activities pursuant to this Agreement.

Subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, the parties shall each defend, save and hold harmless and fully indemnify each other, their elected and appointed officials, officers, board and council members, employees, volunteers and agents from any claims, suits or actions of whatsoever nature, loss expenses or costs, including attorney fees, judgments, damages or liability arising from injury or death to persons or property, by reason of, and to the extent caused by, the negligent acts or omissions or willful misconduct of the indemnifying party, its elected or appointed officials, officers, board or council members, employees, volunteers or agents, under or in connection with or arising out of an activities pursuant to this Agreement.

Prior to performance of any of the Work, TriMet shall cause PSI, and any other contractors or subcontractors performing the Work, to execute contracts containing provisions requiring the contracting party to indemnify the parties to this Agreement under terms substantially similar to those in the preceding paragraph.

14. **Severability/Survivability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.
15. **Interpretation of Agreement.** This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section

headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement effective the date hereinafter written.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**

By _____
Daniel W. Blocher, P.E., Executive Director

Date _____

**CITY OF PORTLAND, by
and through its elected officials**

By: _____
Mayor Sam Adams

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR TRIMET**

By: _____
Lance Erz, Deputy General Counsel

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR CITY OF
PORTLAND**

By: _____
City Attorney

Date _____

LAKE OSWEGO REDEVELOPMENT AGENCY

By _____
Alex D, McIntyre, LORA Executive Director

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY FOR LORA**

By: _____
LORA Counsel

Date _____

Exhibit "A"
LAKE OSWEGO TO PORTLAND TRANSIT PROJECT
PROJECT REFINEMENT PHASE

SCOPE OF SERVICES OUTLINE

I. OBJECTIVES

- Respond to specific requests from the Lake Oswego and Portland city councils for additional information on project costs, finance plan, schedule and other issues.
- Design and engineer the Project to position the Project for 60% Federal funding.
- Address property owner issues.
- Refine and simplify the project alignment to specifically address issues of project costs by analyzing opportunities to:
 - Reduce capital cost
 - Reduce local match
- Obtain low (good) cost effectiveness rating while addressing:
 - Capital Cost
 - Ridership
 - Park and Ride requirements
 - Capacity
 - Travel times
 - Safety
 - Long-term operations sustainability
- Solidify an agreement with the Johns Landing neighborhood regarding project configuration, funding and use of the WSL right-of-way.
- Identify needed environmental steps stemming from the refinement of the project and define the next steps in the environmental and funding processes for the project.
- Address governance and management responsibilities for the project going forward.
- Produce a set of preliminary findings and a preliminary report by 9/30/11 and a final report by 1/31/12.
- Provide support for completion of LPA process by 4/30/12.

II. PROJECT REFINEMENT ENGINEERING MANAGEMENT

Portland Streetcar, Inc. (PSI) will cause and oversee the performance of all work described in this scope of services

TriMet shall assign to PSI its existing contracts for management, design, engineering and other services for the project. The Project Team will include the following disciplines:

- Project Management

- Design Engineering
- Cost Estimating
- Financial Planning
- Operations Planning
- Appraising
- Public Outreach

The Project Team should also include representatives from TriMet, Metro, City of Portland (COP) and City of Lake Oswego (LO). TriMet will contract with PSI, receive and disburse funds for PSI services and manage federal funding procedures.

On-going reporting to the Lake Oswego to Portland Transit Project partners will be through the existing Project Management Group (PMG).

Work to be conducted in two phases:

- Phase 1 (July 1-October 31, 2011):
 - Complete preliminary findings for Tasks 1-8 Project Refinement Tasks (see below)
 - Preparation of Preliminary Report (by 9/30/11)
 - Provide briefings for project partners as appropriate
- Phase 2 – November 1, 2011-April 30, 2012):
 - Complete findings for all Project Refinement Tasks (see below)
 - Prepare Final Report
 - Provide briefings for Lake Oswego and Portland City Councils (January 2012)
 - Provide support for completion of LPA process by 4/30/12

III. PROJECT REFINEMENT TASKS

1.Reduce and refine options:

- South Portal/Boundary
- Potential phasing locations
- Sellwood Bridgehead
- Dunthorpe/Riverdale
- LO/Foothills terminus
- Station locations

2.Identify/quantify construction cost and potential savings:

- Single/double track configurations
- Evaluate compatibility of environmental objectives with single track sections

- Trestles/feasibility of reuse or new
- Tunnel improvements
- Stop designs
- Grade crossing treatments
- Signalization
- Overhead Catenary System
- Park & Ride garage/lot

3. Refine project soft costs:

- Administrative/engineering/management
- Art
- Estimating Contingency
- Construction Contingency
- Inflation
- Financing costs

4. Review/minimize right-of-way acquisitions

5. Quantify contributions from/to ancillary projects/improvements:

- South Portal/Boundary extension
- LO Foothills
- Sellwood Bridge
- Streets/roads/pedestrian/bikeways

6. Produce an Operating Plan:

- Operations responsibility
- Operating cost and funding
- Impact of single track segments
- Travel time estimates
- Preliminary schedule of service
- Ridership estimates
- Cost effectiveness computations
- Portland streetcar service interface

7. Produce a Phasing Plan:

- Define phasing location options
- One/two phase Schedules

8. Produce a Finance Plan:

- Commission new Willamette Shore Line ROW appraisal (per LO request)
- Assess general feasibility of proposed funding sources:

- FTA New Starts grant (50% and 60% funding)
- State lottery
- MTIP
- Urban renewal/tax increment
- Local improvement districts
- Negotiate public/private contributions
- Update project budget
- One/two phase Finance Plans

9. Produce an Implementation Plan:

- Solidify an agreement with the Johns Landing neighborhood regarding project configuration, funding and use of the WSL right-of-way.
- Contracting approaches for completing:
 - Environmental work
 - Design
 - Construction
- Two-year work plan/budget
- Project governance/participation/roles:
 - TriMet
 - PSI
 - City of Portland
 - City of Lake Oswego
- Define next steps

10. Community outreach, including support for completion of the LPA process by 4/30/12.
(Note: the City of Portland will assist in the coordination outreach efforts related to discussions of a potential local improvement district and trail easement within Johns Landing.)

IV. WORK PRODUCTS

- Revised preliminary design drawings
- Cost estimate document
- Presentations/meetings:
 - Project Team
 - Jurisdiction/agency staff
 - Lake Oswego/Portland city councils (by end of January 2012)
 - Property owners
 - Public
- Operations Plan

- Finance Plan
- Phasing Plan
- Technical Memoranda:
 - Process for addressing phasing options in the NEPA process
 - Operations analysis
 - Cost estimates and supporting data
 - WSL ROW appraisal
 - Updated project budget
 - Revised finance plan
 - Updated schedule
 - Two-year work plan
- Team/public/private meeting minutes
- Preliminary Report (by 9/30/11)
- Final Report (by 1/31/12)

Final – July 20, 2011

Exhibit "B"
BUDGET

EXTENDED LPA PHASE (2/1/11-6/30/11)		
<u>USES OF FUNDS</u>		
Metro and SOJ/Subconsultants (Through 6/30/11)	\$175,000	
Subtotal		\$175,000
<u>SOURCES OF FUNDS</u>		
City of Portland	87,500	
Lake Oswego Redevelopment Agency	<u>87,500</u>	
TOTAL		\$175,000

REFINEMENT PHASE I BUDGET (7/1/11 – 10/31/11):		
<u>USES OF FUNDS</u>		
<u>PSI Contracted Services:</u>		
Project Management	\$100,000	
Civil Engineering	55,500	
Finance Planning	10,000	
Cost Estimating	25,000	
Appraisal	30,000	
Operations Planning	10,000	
Public Outreach	20,000	
Contingency	<u>19,500</u>	
Subtotal		\$270,000
<u>Agency Costs:</u>		
TriMet	\$5,000	
Lake Oswego Redevelopment Agency - Foothills Planning	75,000	
Metro	<u>10,000</u>	
Subtotal		<u>\$90,000</u>
TOTAL		\$360,000
<u>SOURCES OF FUNDS</u>		
City of Portland	\$180,000	
Lake Oswego Redevelopment Agency	<u>180,000</u>	
TOTAL		\$360,000

REFINEMENT PHASE II BUDGET (11/1/11-4/30/12)		
<u>USES OF FUNDS</u>		
<u>PSI Contracted Services:</u>		
Project Management	\$70,000	
Civil Engineering	10,000	
Public Outreach	30,000	
Contingency	<u>10,000</u>	
Subtotal		\$120,000
<u>Agency Costs:</u>		
TriMet	\$5,000	
Metro	<u>10,000</u>	
Subtotal		<u>\$15,000</u>
TOTAL		\$135,000
<u>SOURCES OF FUNDS</u>		
City of Portland	\$67,500	
Lake Oswego Redevelopment Agency	<u>67,500</u>	
TOTAL		\$135,000
TOTAL COST-ALL PHASES		\$670,000
<u>TOTAL FUNDING COMMITMENTS:</u>		
City of Portland	335,000	
Lake Oswego Redevelopment Agency	<u>335,000</u>	
TOTAL REVENUE SOURCES		\$670,000