

## Exhibit A

**INTERGOVERNMENTAL AGREEMENT FOR STUDENT TRANSIT PASS PROGRAM  
AMONG THE CITY OF PORTLAND,  
SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON, AND THE TRI-COUNTY  
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON**

This Intergovernmental Agreement for a Student Transit Pass Program commonly referred to as YouthPASS (hereinafter "Agreement") is entered into by and among the City of Portland, a municipal corporation, acting by and through its City Council (hereinafter "City"), Multnomah County School District 1J, School District No. 1J, Multnomah County, Oregon aka Portland Public Schools (hereinafter "PPS"), and the Tri-County Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the state of Oregon (hereinafter "TriMet"), (all jointly referred to herein as "the Parties").

**RECITALS**

- A. The Parties previously entered into student transit pass project(s) agreements supported by funding from the Oregon Department of Energy Business Energy Tax Credit (BETC) Program.
- B. In 2011, the Oregon Legislature eliminated BETC Program funding for student transit passes. Recognizing the benefit that student transit passes provide to PPS high school students, the Parties have worked together to designate replacement funding for a Student Transit Pass project.
- C. The Parties desire to implement a Student Transit Pass project under revised funding terms that would provide free transportation on regular TriMet service routes and Portland Streetcar to 9<sup>th</sup> through 12<sup>th</sup> grade students enrolled at PPS High Schools not currently providing access to regular yellow school bus service, including designated programs within the Education Options Department (hereinafter "Schools"), for the fall and spring terms during the period of August 29, 2016 through June 27, 2017 (hereinafter "Program").
- D. The Parties desire to set forth their agreements as to their respective roles and responsibilities for implementation of the Program.

Now, therefore, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

**AGREEMENT****ARTICLE I - TOTAL PROGRAM COSTS**

For purposes of this Program, the Total Program Cost for the period of August 29, 2016 through June 27, 2017 is \$2.9 Million based on revenue that TriMet estimates it would receive if the Student Pass Program were not in place. The Program will be funded through a combination of contributions from TriMet, PPS and the City as set forth in this Agreement.

**ARTICLE II - DIVISION OF RESPONSIBILITIES****A. City Shall:**

- 1. Assign a Program Manager for City's work under this Agreement who will serve as City's Program contact.

2. Attend meetings and distribute action items to the parties for follow-up.
3. Work with the partners to research and seek out additional regional, state and federal sources for long-term funding for extension of the Program.
4. Pay TriMet a total of \$966,666 for its share of the Total Program Cost. City shall make payment to TriMet within thirty (30) days after receipt of invoice from TriMet. City's obligation to pay TriMet \$966,666 shall survive expiration of this Agreement.
5. Authorize free travel on all regular Portland Streetcar service routes for students enrolled at Schools, for the fall and spring terms during the period of August 29, 2016 through June 27, 2017. City shall recognize a TriMet Youth monthly pass issued pursuant to this Agreement, and a PPS-issued, high-school student, photo ID card with embedded TriMet fare media design, or contactless fare card with student photo ID accepted as valid when tapped at card readers, as valid proof of fare payment on City's Portland Streetcar for such time period. Photo ID cards are non-transferrable and may be used as proof of payment on Portland Streetcar only by the individual whose name and photo appear on the front of the card.
6. Work with the partners to coordinate distribution of TriMet developed safety materials, "How to Ride" materials and the TriMet Code of Conduct Guidelines to each student, at badge or sticker distribution events.

**B. PPS Shall:**

1. Assign a Program Manager for PPS's work under this Agreement who will serve as the PPS Program contact. In addition, PPS shall designate and authorize a Program Administrator(s) to assist in implementation of this Agreement, including authorizations necessary for the Program Administrator to access and utilize TriMet's Institutional Website (the "Services") on behalf of PPS. PPS assumes sole responsibility for ensuring that Program Administrator(s) are duly authorized to administer the Program on behalf of PPS. For students receiving a contactless fare card with photo ID, PPS (including any designated participating schools) shall be required to maintain a record associating card ID number with a unique student identifier. PPS shall be required to upload a list including student's first name and last name via CSV file to the Services. Program Administrators, pending approval by TriMet, shall be given secure login credentials to access the PPS account using the Services. Program Administrators shall use the Services for the sole purpose of managing the Program, and only as provided in this Agreement. Program Administrators are responsible for any activity that occurs under the PPS account. Program Administrators shall keep usernames and passwords secure and shall not allow anyone else to use them to access the Services. TriMet is not responsible for any loss that results from the unauthorized use of Program Administrator's username and password, with or without Program Administrator's knowledge.
  - a. Using the Services, Program Administrators shall be able to perform certain tasks including, but not limited to:
    - i. Order fare instruments.
    - ii. Manage and edit PPS's account profile, such as maintaining contact information.
    - iii. Manage their students' fare cards, including blocking cards (deactivate) in case of loss or theft, and unblocking cards (reactivate).
  - b. PPS's use of the Services is subject to TriMet's Privacy Policy, located at: [myhopcard.com](http://myhopcard.com).
  - c. All content included in or through the Services, such as text (including blog posts, schedules, arrival information, fare information), graphics (including maps), designs,

logos, presentations, videos, data, instructions, photos, and software (the "Materials"), is the property of TriMet or its licensors. The Materials are protected by copyright, trademark and other intellectual property laws. TRIMET®, WES®, TRANSITTRACKER™, HOP FASTPASS™ and other trademarks, service marks and logos that we use, are trademarks of TriMet. Third-party trademarks that appear in connection with the Services are the property of their respective owners. The trademarks displayed in connection with the Services may not be used without express written permission.

- d. TriMet grants PPS a personal, royalty-free, non-assignable and non-exclusive license to use the Materials as part of the Services. This license is for the sole purpose of using the Services for TriMet's intended purposes and is subject to the license restrictions below.
- e. Unless laws prohibit these restrictions or you have our written permission, PPS may not:
  - i. Copy, modify, distribute, sell, or lease any part of our Services or included software;
  - ii. Reverse engineer or attempt to extract the source code of our software or copy the scripts of the website;
  - iii. Download, print, copy, distribute or otherwise use Materials for commercial purposes, including commercial publication, sale or personal gain;
  - iv. Use any manual process or robot, spider, scraper, or other automated means to collect information or Materials from the Services or from users of the Services;
  - v. Circumvent any of the technical limitations of the Services or interfere with the Services, including by preventing access to or use of the Services by our other users;
  - vi. Change or remove any copyright, trademark, or other proprietary notices, including without limitation attribution information, credits, and copyright notices that have been placed on or near the Materials;
  - vii. Impersonate any person or entity or misrepresent yourself or your entity in connection with the Services, or attempt to use another user's account without the user's permission; or
  - viii. Post or transmit through the Services any material that reasonably could be considered obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable to some or all users.
- f. Feedback and participation are important to us. With respect to any content submitted or made available to TriMet (including through our "Contact Us" pages), PPS grants to TriMet a non-exclusive, perpetual, worldwide, fully paid and royalty-free, transferable license to use, copy, distribute, publicly display, modify, and create derivative works from such content, for the limited purpose of operating, promoting, and improving the Services, and to develop new Services. In the event that PPS submits or posts any creative suggestions, proposals, or ideas about TriMet products and services, PPS agrees that such submissions will be automatically treated as non-confidential and non-proprietary. TriMet may use PPS' Feedback without any obligation or credit to PPS.
- g. **The Services and Materials are provided "as is," "as available," and without warranties of any kind. All use of the Services and Materials is at PPS' sole risk. To the fullest extent permitted by law, TriMet disclaims all warranties of any kind, whether express, implied or statutory, including without limitation implied warranties of title, quality, performance, merchantability, fitness for a particular purpose, accuracy, and non-infringement, as well as warranties implied from a course of dealing or course of performance. TriMet does not warrant that the Services will be continuous, prompt, secure, or error-free. TriMet assumes no liability for any errors or omissions, including the inaccuracy of content, or for any**

**damages or losses that PPS or any third party may incur as a result of the unavailability of the Services. TriMet assumes no responsibility, and shall not be liable for, any damages to PPS's equipment, devices or other property caused from use of the Services.**

2. Prior to providing the student with a contactless fare card, PPS shall obtain the student's written agreement ("Student Agreement Form") to the Terms of Service and Privacy Policy located at [myhopcard.com](http://myhopcard.com) regarding use of the card. PPS shall provide TriMet with a copy of the signed Student Agreement Form for each participating student.

All fields on the Student Agreement Form must be fully completed. PPS must return a copy of the Student Agreement Form to TriMet by October 1st, and make the form available for TriMet's review upon request by TriMet. PPS shall retain a copy of the Student Agreement Form through the end of the term of this Agreement.

3. PPS will produce a student photo ID card with embedded TriMet fare media design, or contactless fare card with student photo ID, which shall be distributed to each participating student. PPS shall pay the costs of producing the photo ID cards. Prior to distribution of photo IDs or TriMet passes for this Program, PPS shall provide TriMet with a list of participating schools with student enrollment and whether the school will issue photo identification cards or TriMet passes (see Article II (D)(3)) below.
4. Provide TriMet with a written procedure for distribution and tracking of TriMet monthly passes to be delivered as part of the Program. The terms and conditions of the procedure shall be deemed to be incorporated into and made part of this Agreement upon written approval issued by TriMet.
5. Pay TriMet a total of \$966,666 for its share of the Total Program Cost. PPS shall make payment to TriMet within thirty (30) days of receipt of invoice from TriMet. PPS's obligation to pay TriMet \$966,666 shall survive termination or expiration of this Agreement.
6. Work with Schools to develop and implement reasonable strategies to reduce crowding on TriMet transit vehicles. Such strategies must be cost-neutral to PPS and not negatively impact student achievement.
7. Develop an "opt-out" notification form to students and families that will include the TriMet developed "Code of Conduct" guidelines and inform parents/guardians that they may notify their student's school if they do not want their student to receive a Youth Pass. The notification form will include a statement that the student's use of their photo ID as proof of fare payment and use of the TriMet transit system is subject to TriMet Code regulations.
8. Distribute the TriMet developed "How to Ride" materials and the TriMet Code of Conduct guidelines to each student, which shall include any required program Terms, including that photo ID cards are non-transferable, and a student must tap a contactless fare card at card readers prior to each boarding.
9. Make every effort to provide school start times for participating schools to TriMet for transit service planning purposes.

**C. TriMet Shall:**

1. Assign a Program Manager for TriMet's work under this Agreement who will serve as TriMet's Program contact.
2. Authorize free travel on regular TriMet service routes for students enrolled at participating Schools, for the fall and spring terms during the period of August 29, 2016 through June 27, 2017. In addition to a TriMet Youth monthly pass issued pursuant to this Agreement, TriMet shall recognize a PPS-issued, high-school student, photo ID card with embedded TriMet fare media design, or contactless fare card with student photo ID accepted as valid when tapped at card readers, as valid proof of fare payment for such time period. Photo ID cards are non-transferable and may be used as proof of fare payment on TriMet transit system only by individual whose name and photo appears on the front of the card.
3. Develop "How to Ride" materials for the Program and deliver them to PPS with TriMet Code of Conduct guidelines materials.

**D. General Agreements/Obligations of the Parties**

1. The Parties agree to make decisions and act as quickly as possible to pursue the development of the Program and to provide resources and personnel necessary to implement the Program and to fulfill their obligations under this Agreement in a timely manner.
2. The Parties agree that TriMet is not responsible for any other costs associated with the Program beyond TriMet's express obligations set forth in this Agreement. Specific obligations as between City and PPS to pay TriMet for Program costs and expenses are set forth in this Agreement.
3. To be eligible for participation in the Program, Schools should be able to issue student photo ID cards with embedded TriMet fare media design, or contactless fare cards with student photo IDs. If at any time a participating school does not issue student photo IDs, the school will issue each student a TriMet monthly Youth pass. To be eligible to receive a TriMet monthly Youth pass, the student must show photo identification and any Youth pass issued for the previous month.
4. The Parties agree that after expiration of the Program any future student transit pass program would be subject to agreement by all of the Parties to the terms and conditions of a future student transit pass program through a subsequent Intergovernmental Agreement.
5. The Parties agree to include additional funding for the student transit pass programs on their respective agendas for future sessions of the Oregon Legislature.

**E. Special Agreements of the Parties**

1. The Parties agree to cooperatively work together to identify ways to decrease the Program's impacts on their respective budgets.
2. The Parties agree to cooperatively establish a working group that will:
  - (a) Monitor implementation of the Program;

- (b) Seek and develop sustainable funding sources for future extensions of the Student Transit Pass program; and
  - (c) Work with the State of Oregon to address regional fairness with respect to school transportation funding.
3. The Parties agree that there are no funding commitments made by any of the Parties for extension of the Student Transit Pass Program beyond the term of this Agreement which expires June 27, 2017.

**F. Program Managers**

1. TriMet hereby appoints the person identified below to act as its Program Manager with regard to this Agreement:

Tom Strader  
 Senior Coordinator, Fare Policy and Programs  
 TriMet  
 1800 S. W. 1<sup>st</sup> Avenue, Suite 300  
 Portland, OR 97201  
 Telephone: (503) 962-6424  
 Facsimile: (503) 962-6451

TriMet may, from time to time, designate another person to act as the TriMet Program Manager and may specify other contact information for its Program Manager by means of a writing delivered to PPS' and City's Program Managers.

2. The City hereby appoints the person identified below to act as its Program Manager with regard to this Agreement:

Alissa Mahar  
 Executive Director of Finance & Business Operations  
 Portland Bureau of Transportation – City of Portland  
 1120 SW 5<sup>th</sup> Ave, Ste 900  
 Portland, OR 97204  
 Telephone: (503) 823-6188  
 Facsimile: (503) 823-7576

City may, from time to time, designate another person within the Mayor's Office to act as the City Program Manager and may specify other contact information for its Program Manager by means of a writing delivered to TriMet's and PPS' Program Managers.

3. PPS hereby appoints the person identified below to act as its Program Manager with regard to this Agreement:

Teri Brady  
 Senior Director, Student Transportation  
 Portland Public Schools  
 716 NE Marine Drive  
 Portland, OR 97111  
 Telephone: (503) 916-6901 ext. 77274  
 Facsimile: (503) 916-2707

PPS may, from time to time, designate another person to act as the PPS Program Manager and may specify other contact information for its Program Manager by means of a writing delivered to TriMet's and City's Program Managers.

### **ARTICLE III- GENERAL PROVISIONS**

#### **A. 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.

#### **B. Liability**

Within the provisions and limits of liability set forth in the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall indemnify and defend the others and their directors, officers, employees, and agents from and against all claims, demands, penalties, and causes of action of any kind or character arising from this Agreement on account of personal injury, death or damage to property, which arises out of the acts or omissions of the indemnitor, its directors, officers, employees or agents. The obligations assumed hereunder shall survive the termination or expiration of this Agreement.

**To the maximum extent permitted by applicable law, TriMet, its officers, directors, employees, agents, services providers and licensors shall not be liable to PPS or anyone for any indirect, incidental, special, consequential or exemplary damages, including but not limited to damages for lost profits, goodwill, use, data or other intangible losses (regardless of whether we have been advised of the possibility of such damages), however caused, whether based on or upon contract, negligence, strict liability in tort, warranty or any other legal theory. In no event shall TriMet's total liability to PPS in connection with the Program and the Services for all damages, losses and causes of action exceed amounts paid to TriMet thereunder during the prior 12 months.**

#### **C. Termination**

1. This Agreement may be terminated by mutual agreement of the Parties.

2. In addition to the rights afforded under subparagraph C (1) above, this Agreement may be terminated by a Party as a result of a material breach of an obligation by another Party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the Program Managers of the other parties with thirty (30) calendar days written notice of the material breach, including a detailed explanation of the breach during which period the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the default, the terminating party may terminate this Agreement for default.

#### **D. Inspection of Records**

Each of the Parties shall have the right to inspect, at any reasonable time, such records in the possession, custody or control of the other Parties necessary for review of the other Parties' obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting Party. This right does not extend to records privileged or otherwise exempt from disclosure under applicable law. Any party required under this Agreement to create or develop records must maintain those records for inspection pursuant to this Paragraph D.

#### **E. Successors; No Assignment**

The benefits conferred by this Agreement and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Parties.

#### **F. Choice of Law; Place of Enforcement**

This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. The venue for any litigation relating to interpretation or enforcement of this Agreement shall be in Multnomah County, Oregon.

#### **G. Amendments**

This Agreement (including the exhibits hereto) may only be amended by means of a writing signed by an authorized representative of each of the Parties hereto. No amendment to any provision of this Agreement shall be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to the other Parties' performance or failure to perform, or any failure or delay by any Party to enforce its rights hereunder.

#### **H. Integration**

This document constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement.

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

**J. Severability/Survivability**

If any clause, sentence or portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

**K. Laws and Regulations**

The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.

**L. Waivers**

No waiver by any Party of any provision of this Agreement shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of another Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Parties not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.

**M. Notice**

Any notice or communication under this Agreement shall be deemed received by the addressee on the earliest to occur of:

1. The date such notice is hand-delivered to the notice address of the addressee; or
2. If such notice is transmitted by telecopy or facsimile machine to the fax number of the addressee specified as part of the notice address, then:
  - a. If such notice is transmitted during regular business hours, 8:00 a.m. to 5:00 p.m. Pacific Time, on a mail delivery day, such notice shall be deemed to be delivered on the date it is so transmitted; and
  - b. If such notice is not transmitted during such regular business hours, or is transmitted on a date that is not a mail delivery date, such notice shall be deemed delivered on the next mail delivery day following the date upon which the same was transmitted; or
  - c. If sent to the addressee's notice address through the United States Postal Service, postage prepaid, the third mail delivery day following the date upon which the envelope containing such notice is postmarked.

The notice address of each Party is set forth above in ARTICLE II, Paragraph (F) Program Managers. Any Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

**N. Headings**

Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**O. No Third Party Beneficiaries**

The Parties intend that the rights, obligations and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement, either express or implied.

**P. Mediation**

The Parties shall negotiate in good faith to resolve any dispute arising under this Agreement. If the Parties are not able to resolve a dispute within forty-five (45) days after such dispute has arisen, they shall submit the matter to mediation. The mediation shall be conducted in Portland, Oregon, in accordance with such procedures, and on such time schedules as the Parties shall mutually agree. The mediator shall be selected by mutual agreement of the Parties, or if the Parties cannot agree, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Mediators' fees shall be shared equally between the Parties. Each Party shall bear its own costs and expenses in connection with the mediation. Each Party shall participate in such mediation in good faith, but nothing in this Agreement shall preclude a Party from exercising its rights as provided by law in the event mediation is unsuccessful. The Parties shall continue in the performance of their respective obligations under this Agreement notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the Parties.

**Q. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

**R. Term**

This Agreement shall be in effect from August 29, 2016 through June 27, 2017, unless otherwise terminated by agreement of the Parties or in accordance with the provisions herein or by operation of law.

**SIGNATURE PAGE TO FOLLOW**

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

**CITY OF PORTLAND**

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

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

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

Approved as to Form: **APPROVED AS TO FORM**

Approved as to Form:

By: \_\_\_\_\_  
City Attorney *[Signature]*  
CITY ATTORNEY *7/22/16*

By: \_\_\_\_\_  
TriMet Legal Department

**SCHOOL DISTRICT NO. 1J,  
MULTNOMAH COUNTY, OREGON**

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

Approved as to Form:

By: \_\_\_\_\_  
Legal Counsel