

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND THE CITY OF TIGARD
FOR COST SHARE OBLIGATIONS ALONG SW COMMERCIAL STREET & 99W**

THIS AGREEMENT is made this _____ day of _____, 2016, by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district of the state of Oregon, hereinafter referred to as “TriMet”, and THE CITY OF TIGARD, a municipal corporation of the state of Oregon acting by and through its Elected Officials, hereinafter referred to as “City”.

I. RECITALS

1. TriMet and ODOT have entered into a separate binding Intergovernmental Agreement to administer ODOT Agreement No. 30684: Barbur/OR-99W Corridor Safety & Access to Transit Project (“TriMet/ODOT IGA”). The TriMet/ODOT IGA is attached hereto as Exhibit A.
2. The TriMet/ODOT IGA is a mechanism for ODOT to administer the local projects set out in that agreement. Under the TriMet/ODOT IGA, ODOT has agreed to administer and deliver the following three projects (referred to herein as “City Projects”) for the City of Tigard:
 - SW Commercial St – Design and construct 800 feet on an 8-foot sidewalk along SW Commercial St under the highway structure between Main St and SW Lincoln Ave and install fence between railroad and pedestrians. Project Budget: \$900,000. Local Match: \$92,430
 - SW Commercial St - Construct pedestrian path between SW Center St and Commercial St. Project Budget: \$75,000. Local Match: \$7,703
 - SW Naeve to SW Beef Bend Rd – Design and construct sidewalk infill on 99W northbound. Project Budget: \$330,000 Local Match: \$33,891
3. TriMet is willing to sign the TriMet/ODOT IGA to facilitate construction of the local projects. However, TriMet and the City understand and agree that the City Projects are being constructed by ODOT for the benefit of the City.
4. The total cost for the City Projects is estimated to be \$1,305,000 and funded as part of the Multimodal Transportation Enhance Program (MTEP). The Funding Ratio for the City Projects is 89.73% of MTEP funds to 10.27% of City funds. MTEP funds are fixed at \$1,170,976. The City’s contribution is \$134,024.
5. The Parties desire to work together and with ODOT to complete the City Projects, under the terms of this Agreement and the TriMet/ODOT IGA.
6. The Parties are authorized to enter into this Agreement pursuant to the provisions of ORS Chapter 190.

Now, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

PARTY RESPONSIBILITIES

A. City Responsibilities:

1. City shall be responsible for funding the City Projects at the amount of the local share as set forth in the TriMet/ODOT IGA (10.27 percent, or \$134,024). These funds shall be deposited to ODOT within two fiscal years of execution of this Agreement and can be split among multiple fiscal years.
2. City shall be responsible for payment of all "Project Overruns" (as defined in the TriMet/ODOT IGA) and other costs related to the City Project.
3. City shall designate appropriate staff to the City Projects to carry out the City's responsibilities. This includes, but is not limited to, appropriate permitting staff.
4. City's Office of Public Works shall provide oversight and guidance to ODOT as needed for all activities related to the City Projects, including project management, design, right-of-way, public outreach, citizen involvement activities, engineering, permitting, utility coordination, and project construction.
5. City shall review and approve City Project plans and specifications developed by ODOT. Per the TriMet/ODOT IGA, ODOT will advertise and award a construction contract to the lowest responsible, responsive bidder, per ODOT policy.
6. City shall facilitate the processing of required permits and provide inspection services of civil and electrical work to ensure the City Projects are constructed to City standards.
7. City shall be responsible for the ownership and maintenance of the fence and pedestrian path constructed along SW Commercial St.

B. TriMet Responsibilities:

1. TriMet shall work with the City to assist the City and ODOT in delivering the City Projects.
2. Pursuant to the TriMet/ODOT IGA, TriMet and ODOT shall mutually agree to project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering charges, construction engineering charges, and Contract Change Orders as these decisions may impact the Total Project Cost. TriMet delegates these decisions to City for purposes of City Projects.
3. TriMet is not responsible for payment of any costs for City Projects under this Agreement or under the TriMet/ODOT IGA. Any costs related to the City Projects will be paid by City.
4. In the event there are "Project Underruns" of the local share (as defined in the TriMet/ODOT IGA) that are returned from ODOT to TriMet, TriMet agrees to pay such underruns to the City.

II. GENERAL PROVISIONS

1. Each party has designated a project manager as its formal representative for purposes of this Project:

Young Park
TriMet
1800 SW 1st Avenue, Suite 300
Portland, OR 97201
Phone: (503) 962-2138
Email: parky@trimet.org

Andrew Newbury
City of Tigard
13125 SW Hall Blvd
Tigard, OR 97223
Phone: (503) 718-2472
Email: andrewn@tigard-or.gov

The Project Managers are authorized to approve work and billings, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement and to carry out any other act referred to herein.

Either party may designate a different project manager by giving written notification to the other party as provided in this paragraph.

City shall appropriately authorize its officials to enter into and execute this Agreement.

2. **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.
3. **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-persons are expressly described as intended to be beneficiaries of its terms.
10. **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.
11. **Insurance Requirements.** The parties agree to each maintain insurance or self-insurance which meets the following requirements:
 - 11.1 **Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.** This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this Agreement; and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The liability coverage required for performance of the Agreement shall include both TriMet and City as additional insureds, to the extent allowed by law. The party obtaining such

insurance shall furnish the other party with a Certificate of Insurance for the limits set out above, which is to be in force and applicable to the Work. The insurance coverage shall not be amended, altered, modified, or canceled without at least thirty (30) days prior written notice to TriMet or City, as applicable.

11.2 Worker's Compensation. TriMet and City, and all employers working under this Agreement, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Each party shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, Workers Compensation, unemployment taxes, and state and federal withholdings.

12. Indemnification. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, directors, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

13. Effective and Termination Dates. This Agreement shall be effective upon date all required signatures are obtained and shall terminate upon completion of the City Projects by ODOT.

13.1 Early Termination of Agreement.

13.1.1 City and TriMet, by mutual written agreement, may terminate this Agreement at any time. If such early termination by the City results in money being owed to ODOT under the TriMet/ODOT IGA, City shall pay such amounts to ODOT within 30 days of demand by ODOT or TriMet.

13.1.2 Either City or TriMet may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within thirty days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. If such early termination results from a breach by the City, and results in money being owed to ODOT under the TriMet/ODOT IGA, City shall pay such amounts to ODOT within 30 days of demand by ODOT or TriMet.

14. 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.

15. Oregon Law, Dispute Resolution and Forum. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and City 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 calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between City and TriMet arising under this Agreement or out of work performed under this Agreement 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.

16. **Assignment.** Neither TriMet nor City shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.
17. **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.
18. **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.
19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in 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. 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 a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.
20. **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 party as it deems necessary for review of the other party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting party.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement.

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

By _____
Daniel Blocher, Executive Director

Date _____

CITY OF TIGARD, by
and through its elected officials

By _____

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**

By: _____

City Attorney

Date _____