

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 04-3424
CHIEF OPERATING OFFICER TO ENTER INTO)
AN INTERGOVERNMENTAL AGREEMENT WITH)
TRIMET FOR COMPLETION OF THE SOUTH)
CORRIDOR PROJECT (I-205/PORTLAND MALL))
FINAL ENVIRONMENTAL IMPACT STATEMENT) Introduced by Councilor Brian Newman

WHEREAS, the South Corridor Project is the Metro Area's next light rail transit priority project for Federal New Starts Funding after the North Corridor Interstate MAX Light Rail Project; and

WHEREAS, authorization of Federal New Starts Funding for the South Corridor Project will require that the Metro Area maintain an aggressive schedule to get the project included in the next Federal 6-year Surface Transportation Bill; and

WHEREAS, in December of 2002 the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA) and Metro published the South Corridor Project SDEIS; and

WHEREAS, on April 17, 2003, the Metro Council approved Resolution No. 03-3303 (For the Purpose of Amending the Locally Preferred Strategy For the South/North Corridor Project to Define a Two-Phased Major Transit Investment Strategy For the South Corridor, With the I-205 Light Rail Transit Project as the Phase 1 Locally Preferred Alternative Followed By the Milwaukie Light Rail Transit Project in Phase 2), adopting a two-phased Locally Preferred Alternative (LPA) for the South Corridor Project, including the I-205 LRT Alignment as Phase 1 and the Milwaukie LRT Alignment as Phase 2; and

WHEREAS, in October of 2003 the FTA, FHWA and Metro published the Downtown Portland Amendment to the South Corridor Project SDEIS; and

WHEREAS, on January 15, 2004, the Metro Council approved Resolution No. 04-3403 (For the Purpose of Finalizing the Decision to Add the Portland Mall Alignment to the Locally Preferred Alternative For Phase I of the South Corridor Light Rail Project), affirming the Portland Mall light rail transit alignment as the LPA for downtown Portland; and

WHEREAS, on January 15, 2004, the Metro Council approved Resolution No. 03-3372 (For the Purpose of Amending the South/North Land Use Final Order, to Include the Two Phases of the South Corridor Project Consisting of the Addition of the I-205 Light Rail Transit Project From Gateway to Clackamas Regional Center With the Downtown Portland Transit Mall Alignment, and Modifications of the Proposed Light Rail From Milwaukie to Clackamas Regional Center, and to Reflect From Milwaukie to Clackamas Regional Center, and to Reflect the Final Interstate Max Design), amending the South/North Land Use Final Order (LUFO) to include the I-205, Portland Mall and Milwaukie light rail transit alignments; and

WHEREAS, Metro serves as the local lead agency for regionally significant transit projects with assistance from TriMet during the planning phase and for the preparation of the Environmental Impact Statement; and

WHEREAS, in October of 1999 Metro executed an IGA with TriMet for project design assistance during the Planning Phase of the South Corridor Project that allowed Metro to pay for TriMet's design assistance during the planning phase of the project; and

WHEREAS, local lead agency responsibility for the project shifts from Metro to TriMet after the selection of the Locally Preferred Alternative (LPA) when TriMet takes the lead to complete Preliminary Engineering (PE), Final Design (FD), construction and operation of the project; and

WHEREAS, entering into a revenue Intergovernmental Agreement (IGA) with TriMet will allow TriMet to reimburse Metro for work required to complete the environmental process required by the National Environmental Policy Act (NEPA) that will be documented in the FEIS, now therefore


BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute the IGA with TriMet attached hereto as to form to the Staff Report. The IGA will provide approximately \$2.7 million for Metro staff and consultant work on the South Corridor project (I-205/Portland Mall) FEIS.

ADOPTED by the Metro Council this 6th day of February, 2004.



David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3424, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TRIMET FOR COMPLETION OF THE SOUTH CORRIDOR PROJECT (I-205/PORTLAND MALL) FINAL ENVIRONMENTAL IMPACT STATEMENT

Date: February 12, 2004

Prepared by: Sharon Kelly

BACKGROUND

The South Corridor Project (I-205 and the Portland Mall) is the Metro Area's next light rail priority for Federal New Starts funding. Completion of the Federally mandated Environmental Impact Statement (EIS) must be done prior to federal approval of funding for final design and construction of the project. The South Corridor Project represents the southern portion of the larger South/North Project. Interstate MAX is the northern part and is expected to open this spring. Phase 2 of the South Corridor Project will include the Milwaukie light rail project.

Metro typically acts as the local lead agency during the planning process for these large multi-jurisdictional regionally significant transit projects. During the planning phase, Metro managed finances for the study and executed an IGA with TriMet for their assistance, including design of the alternatives. After the selection of the Locally Preferred Alternative (LPA), the local lead agency role shifts to TriMet for implementation of the project. TriMet becomes the federal grantee, and Metro then assists TriMet in the completion of the planning and environmental process. This IGA will allow TriMet to pay Metro for completion of the I-205/Portland Mall FEIS.

ANALYSIS/INFORMATION

1. **Known Opposition.** None
2. **Legal Antecedents.** There is a long history of legal actions that have led to the current action on the South Corridor Project, including federal authorizing legislation for the South/North Project, state legislative action for the Land Use Final Order, and numerous regional and local jurisdiction actions. The most recent formal actions by the Metro Council related to this project include:
 - Adoption of Resolution No. 03-3303 on April 17, 2003 (For the Purpose of Amending the Locally Preferred Strategy For the South/North Corridor Project to Define a Two-Phased Major Transit Investment Strategy For the South Corridor, With the I-205 Light Rail Transit Project as the Phase 1 Locally Preferred Alternative Followed By the Milwaukie Light Rail Transit Project in Phase 2), amending the Locally Preferred Alternative for the South Corridor to include the I-205 Light Rail Alignment;
 - Adoption of Resolution No. 04-3403 on January 15, 2004 (For the Purpose of Finalizing the Decision to Add the Portland Mall Alignment to the Locally Preferred Alternative For Phase I of the South Corridor Light Rail Project), amending the Locally Preferred Alternative to include the Portland Mall light rail alignment with a terminus at PSU in downtown Portland; and
 - Adoption of Resolution No. 03-3372 on January 15, 2004 (For the Purpose of Amending the South/North Land Use Final Order, to Include the Two Phases of the South Corridor Project Consisting of the Addition of the I-205 Light Rail Transit Project From Gateway to Clackamas Regional Center With the Downtown Portland Transit Mall Alignment, and Modifications of the

Proposed Light Rail Between Downtown Portland and Milwaukie, Deletion of Plans to Extend Light Rail From Milwaukie to Clackamas Regional Center, and to Reflect the Final Interstate Max Design), amending the South/North Land Use Final Order to include the I-205 light rail alignment and the downtown Portland Mall alignment to PSU.

3. Anticipated Effects. Execution of this IGA will provide the resources to Metro for staff and consultants to complete the Final Environmental Impact Statement for the South Corridor (I-205/Portland Mall) Project, allowing the project to eventually move into final design and then construction and operations.

4. Budget Impacts. Through this IGA, TriMet will pass \$2.7 million through to Metro to fund Metro staff and consultant work on completing the South Corridor Project (I-205 and the Portland Mall) Final Environmental Impact Statement. The revenue provided through this IGA will fund staff in the Corridor Planning section of the Planning Department. The adopted budget assumes that these resources would be available to complete the FEIS. The work on the FEIS will continue into FY 04-05, and this project is proposed to be in next year's budget.

RECOMMENDED ACTION

Michael J. Jordan, Chief Operating Officer, with the concurrence of David Bragdon, Council President, recommends adoption of Resolution No. 04-3424.

ATTACHMENTS

Attachment A: Draft IGA as to form and Budget

**INTERGOVERNMENTAL AGREEMENT
SOUTH CORRIDOR I 205 AND PORTLAND MALL LIGHT RAIL PROJECT**

THIS AGREEMENT is between the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) and Metro.

ARTICLE I – RECITALS

1. TriMet is a mass transit district organized under the laws of the State of Oregon as codified in ORS Chapter 267.
2. Metro is a Home Rule Chartered Regional Planning entity created by the Oregon Legislature, the rights and duties of which are authorized under its Home Rule Charter and ORS Chapter 268.
3. In December 2002, Metro completed a supplemental draft Environmental Impact Statement identifying the next alternative for a portion of the South/North Light Rail Project. The alternative provides a direct high-capacity rail transit connection between downtown Portland and the Gateway and Clackamas regional centers, such alternative being called the South Corridor I205 Light Rail Project.
4. On April 17, 2003, the Metro Council adopted light rail along the I-205 corridor as the locally preferred alternative for Phase I of the South Corridor project.
5. In October 2003, Metro completed the downtown amendment to the South Corridor Project supplemental draft Environmental Impact Statement. This amendment includes light rail transit on the transit mall, SW Fifth and Sixth Avenues in downtown Portland.
6. Following public notice, Metro held public hearings and, on January 15, 2004, adopted a revised alignment and approved the South Corridor I 205 / Portland Mall as Phase I of the South Corridor Light Rail Project.
7. TriMet has decided to contract with Metro for services related to the preparation and publishing of the final environmental impact statement, which additional services are specified in this Agreement.
8. The Project is, or will be, subject to budgetary limitations imposed by the U.S. Department of Transportation, Federal Transit Administration (FTA), and Finance Agreements.
9. The parties desire to enter into this agreement to document each party’s understandings and agreement relating to the services being contracted under this Agreement.

ARTICLE II – TERM

The term of this agreement shall be from December 1, 2003 through June 30, 2005 unless terminated or extended under the provisions of this Agreement.

ARTICLE III– TRIMET OBLIGATIONS

- A. Except as otherwise provided herein, TriMet shall retain responsibilities as the grantee for federal funding appropriated for this project.
- B. TriMet shall designate a Project Manager for this contract

ARTICLE IV – METRO OBLIGATIONS

- A. Metro agrees to supply appropriate and sufficient staff to complete the tasks required for the completion and publication of the Final Environmental Impact Statement.
- B. Metro agrees to use its best efforts to maintain Project schedule.
- C. Metro shall deliver the specific work products as identified in Exhibit A.
- D. The Metro Project Manager shall exercise good faith efforts to manage the Metro services within the budget specified for this contract.

ARTICLE V – COMPENSATION and PAYMENT

- A. Compensation
Metro’s compensation for services provided under this Agreement shall not exceed \$2,220,000 without prior written authorization of TriMet. The parties recognize that funding for this effort is constrained and will use their best efforts to minimize costs consistent with the timely completion of the required tasks.
- B. Method of Payment
TriMet agrees to pay the hourly rates for the performance of the services required herein, direct consultant and direct materials and services costs.
- C. Invoices
Metro shall submit to TriMet billings not more frequently than monthly for reimbursable costs incurred since the previous billings. TriMet shall pay Metro the balance due within thirty (30) days of receipt of such billings. Financial reports accompanying requests for reimbursement shall be in accordance with FTA requirements. TriMet shall review records for suitability and provide assistance as necessary to assure compliance with FTA requirements. Invoices shall be supported by current time sheets for each month and copies of other direct costs included in the invoice amount. The Project Managers shall review the invoices and billings against the project budget to provide real time cost tracking and budget management.

Overtime shall not be invoiced to TriMet unless TriMet’s Project Manager has specifically authorized overtime in advance of the work.

ARTICLE VI – PROJECT MANAGEMENT

- A. TriMet designates Alan Lehto as its Project Manager and Metro designates Ross Roberts as its Project Manager. Project Managers shall be responsible for coordinating all aspects of their

respective work scopes for the Project and all the respective employees assigned to the Project. The Project Managers shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be the contact persons through whom TriMet and Metro officially communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. In the event that a disagreement or dispute occurs between the Project Managers, they shall refer it to TriMet and Metro Directors for resolution.

- B. Until the environmental and preliminary engineering work for the Phase I South Corridor project is fully funded, TriMet shall issue Metro limited notices to proceed for specific tasks as agreed by the Project Managers.
- C. Following the publication of the FEIS, TriMet shall issue Metro limited notices to proceed for specific follow-on tasks as agreed by the Project Managers.

ARTICLE VII – GENERAL PROVISIONS

- A. **Liability.** TriMet shall hold harmless and indemnify Metro and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of TriMet work under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act. Metro shall hold harmless and indemnify TriMet and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of Metro work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.
- B. **Interest of Members of Congress.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.
- C. **Interest of Public Officials.** No member, officer, or employee of Metro or TriMet during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- D. **Disadvantaged Business Enterprise.** In connection with the performance of this Agreement, Metro will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
- E. **Equal Employment Opportunity.** In connection with the execution of this Agreement, neither Metro nor TriMet shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; and selection for training, including apprenticeship.
- F. **Termination for Convenience.** Metro or TriMet may terminate this agreement in whole or in part at any time by written notice to the other party. In the event of such termination, TriMet shall pay Metro's costs, including any costs necessarily incurred by Metro in terminating its work or the work of others under contract to Metro. Metro promptly shall submit its termination claim to be

paid by TriMet. If Metro has any property in its possession belonging to TriMet, Metro will account for it and dispose of it in the manner TriMet directs.

- G. Termination for Default. If Metro fails to perform in the manner called for in the Agreement, or if Metro fails to comply with any other provisions of the Agreement, TriMet may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on Metro setting forth the manner in which Metro is in default. Metro will be paid only the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by TriMet that Metro has an excusable reason for not performing, such as a strike, fire, flood, or events, which are not the fault of, or are beyond the control of Metro, TriMet shall establish a new performance schedule, and allow Metro to continue work, or treat the termination as a termination for convenience.

- H. Maintenance of Record. Metro shall maintain records to show actual time involved in accomplishment of the Project and the cost incurred for the period of time specified. Metro shall cooperate in good faith with TriMet and FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and provide assistance to Metro as necessary for compliance with FTA requirements.

- I. Audit and Inspection of Records. Metro shall permit the authorized representative of TriMet, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data and records of Metro relating to its performance under this Agreement. TriMet shall be responsible for all auditing costs.

- J. Documents: All records, reports, data, documents, systems, and concepts, whether from writings, figures, graphs, or models which are prepared or developed in connection with this Project shall become public property. All design drawings and documents prepared by Metro staff under this Agreement shall be property of TriMet. Nothing herein shall prevent Metro from retaining original design drawings and providing reproducible copies to TriMet.

METRO

Tri-County Metropolitan Transportation District of Oregon

By: _____

By: _____
Neil McFarlane , Executive Director

Dated: _____

Dated: _____

Approved as to form:

Approved as to Legal Sufficiency:

Metro Attorney

Legal Services

**INTERGOVERNMENTAL AGREEMENT
SOUTH CORRIDOR I 205 AND PORTLAND MALL LIGHT RAIL PROJECT**

EXHIBIT A

Scope of Work:

This scope of work outlines tasks to be performed by Metro in support of the South Corridor I 205/Portland Mall Light Rail Project Final Environmental Impact Statement (FEIS) and preliminary engineering. These tasks follow work performed in preparing the Supplemental Draft Environmental Impact Statement (SDEIS) and the Amended Supplemental Draft Environmental Impact Statement (ASDEIS).

Task 1:

Prepare, review with TriMet, and revise as required a schedule to meet agreed upon dates for the completion of the FEIS.

Task 2

Negotiate contracts with appropriate consultants for assistance with environmental, traffic, financial and other special areas of effort. Report any deficiencies to TriMet.

Task 3

Prepare review schedule for FTA and Federal Highway Administration (FHWA). Gain concurrence from appropriate federal staff on submittals and review timelines.

Task 4

Provide coordination with and secure appropriate approvals from resource agencies, including but not limited to State Historic Preservation Office, Division of State Lands, NOAA Fisheries, and the United States Army Corps of Engineers.

Task 5

Prepare, and revise as necessary, draft chapters of the FEIS. Publish and distribute final completed document in accordance with schedule.

**INTERGOVERNMENTAL AGREEMENT
SOUTH CORRIDOR I 205 AND PORTLAND MALL LIGHT RAIL PROJECT**

EXHIBIT B

Professional and Technical	\$ 695,000
Personal Services, Materials and Services	<u>\$1,525,000</u>
Total Agreement	\$2,220,000