

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 24-5423
CHIEF OPERATING OFFICER TO ENTER INTO	)	
A GRANT AGREEMENT WITH THE STATE OF	)	Introduced by Chief Operating Officer
OREGON FOR A HEAVY FREIGHT RAIL	)	Marissa Madrigal in concurrence with
ASSETS STUDY	)	Council President Lynn Peterson

WHEREAS, Metro is a metropolitan service district authorized under the Metro Charter and ORS 268 as the transportation planning authority for the Portland Metropolitan area; and

WHEREAS, Oregon Senate Bill 5701 (2024) section 503 appropriates \$500,000 from the Oregon Department of Transportation (ODOT) General Fund to distribute to Metro to study the use of existing heavy freight rail assets in the Portland metropolitan area for passenger rail alternatives to existing transportation modes; and


WHEREAS, ODOT has provided to Metro a Grant Agreement for distribution of the \$500,000 to Metro for a heavy freight rail assets study; and

WHEREAS, Metro will use these funds to study the use of existing heavy freight rail assets in the greater Portland area and explore passenger rail alternatives to existing transportation modes; and

WHEREAS, the Grant Agreement requires authorization from the Metro Council; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into the Grant Agreement in a form substantially like the document attached as Exhibit A.

ADOPTED by the Metro Council this 11<sup>th</sup> day of July 2024.

  
\_\_\_\_\_  
Duncan Hwang, Deputy Council President

Approved as to Form:

  
\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

**Exhibit A to Metro Resolution No. 24-5423**

**GRANT AGREEMENT**

Title: Senate Bill 5701 (2024 Regular Session) General Fund Grant

Agreement Number: 73000-00032488

This grant agreement (“Agreement”) is made by the State of Oregon, acting by and through its Department of Transportation (“ODOT” or “State”), and Metro (“Recipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (the “Effective Date”) and, unless earlier terminated, expires on June 30, 2025 (the “Expiration Date”). The period from the Effective Date through the Expiration Date is hereinafter referred to as the “Grant Term.” **Certain terms of the Agreement survive its termination or expiration as set forth in Section 8.K below.**

Pursuant to the Oregon Laws 2024, chapter 114, section 503 (the “Authorization”), the Oregon Legislature appropriated \$500,000 from the General Fund for a grant to Recipient to fund a study to explore the use of existing heavy freight rail assets in the Portland Metropolitan area for passenger rail alternatives to existing transportation modes project (the “Project”).

**SECTION 1 – GRANT**

ODOT shall provide Recipient, and Recipient shall accept from ODOT, a grant (the “Grant”) in the amount of \$500,000.

Conditions Precedent. ODOT’s obligations are subject to the receipt of the following items, in form and substance satisfactory to ODOT and its counsel:

- (1) This Agreement duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as ODOT may reasonably require.

**SECTION 2 – DISBURSEMENT**

- A. Full Disbursement. Upon satisfaction of all conditions precedent, ODOT shall disburse the full Grant to Recipient.
- B. Condition to Disbursement. ODOT has no obligation to disburse funds unless, in the reasonable exercise of its administrative discretion, it has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.

**SECTION 3 - USE OF GRANT**

- A. Use of Grant Moneys. Recipient shall use the Grant only to fund the Project.
- B. Costs Paid for by Others. Recipient may not use any of the Grant to cover costs to be paid for by another State of Oregon agency or any third party.
- C. Unexpended Grant Moneys. No later than five (5) business days after the Expiration Date, Recipient shall return to ODOT all Grant moneys disbursed to Recipient, and any interest earned by Recipient on the Grant moneys, that remain unexpended on the Expiration Date.

**Exhibit A to Metro Resolution No. 24-XXXX**

**SECTION 4 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

Recipient represents and warrants to ODOT:

A. Organization and Authority.

- (1) Recipient is a metropolitan service district validly organized and existing under the laws of the State of Oregon.
- (2) Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive the Grant funds.
- (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient's governing body.
- (4) This Agreement has been duly executed by Recipient, and when executed by ODOT, is legal, valid and binding, and enforceable in accordance with their terms.

B. Full Disclosure. Recipient has disclosed in writing to ODOT all facts that materially adversely affect its ability to perform all obligations required by this Agreement. Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement is true and accurate in all respects.

C. Pending Litigation. Recipient has disclosed in writing to ODOT all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the ability of Recipient to perform all obligations required by this Agreement.

D. No Defaults. No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.

E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of any agreement or instrument to which Recipient is a party; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient or its properties or operations.

F. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.

**SECTION 5 - COVENANTS OF RECIPIENT**

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify ODOT of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Agreement.

B. Compliance with Laws. Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and Recipient's use of the Grant funds.

**Exhibit A to Metro Resolution No. 24-XXXX**

C. RESERVED.

- D. Books and Records. Recipient shall keep accurate books and records of the uses of the Grant and maintain them according to generally accepted accounting principles.
- E. Inspections; Information. Recipient shall permit ODOT and any party designated by ODOT to inspect and make copies, at any reasonable time, of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall supply any related reports and information as ODOT may reasonably require.
- F. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement for a minimum of six years beyond the later of the final and total expenditure or disposition of the Grant. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- G. Notice of Default. Recipient shall give ODOT prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- H. Contribution.
- 1) 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 State or Recipient 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.
  - 2) With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim ), State 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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of Recipient 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 State on the one hand and of Recipient 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. State'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 State had sole liability in the proceeding.
  - 3) With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient 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 State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which

**Exhibit A to Metro Resolution No. 24-XXXX**

resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State 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. Recipient'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.

<b>SECTION 6 - DEFAULTS</b>
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Any of the following constitutes an "Event of Default":

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Agreement or in any document provided by Recipient related to this Grant.
- B. Recipient fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this section 6, and that failure continues for a period of 10 business days after written notice specifying such failure is given to Recipient by ODOT. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

<b>SECTION 7 - REMEDIES</b>
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- A. Remedies. Upon any Event of Default, ODOT may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
  - (1) Terminating ODOT's commitment and obligation to make the Grant.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Agreement.
  - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by ODOT pursuant to section 7.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by ODOT; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Agreement, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to ODOT is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. ODOT is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 7 of this Agreement.

**Exhibit A to Metro Resolution No. 24-XXXX**

**SECTION 8 - MISCELLANEOUS**

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third-Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (3) This Agreement will be binding upon and inure to the benefit of ODOT, Recipient, and their respective successors and permitted assigns.
  - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Agreement without the prior written consent of ODOT. ODOT may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to ODOT, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of ODOT's counsel. Any approved assignment is not to be construed as creating any obligation of ODOT beyond those in this Agreement, nor does assignment relieve Recipient of any of its duties or obligations under this Agreement. For the avoidance of doubt, nothing in this Section 8.B(4) prevents Recipient from distributing Grant funds to contractors or subgrantees for Project purposes.
- C. Disclaimer of Warranties; Limitation of Liability. Recipient agrees that:
- (1) ODOT makes no warranty or representation.
  - (2) In no event are ODOT or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Agreement.
- D. Notices and Communication. Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or ODOT at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to ODOT: Oregon Department of Transportation  
ATTN: Jeff Flowers  
555 13<sup>th</sup> St NE Salem, Oregon 97301  
[Jeffrey.a.flowers@odot.oregon.gov](mailto:Jeffrey.a.flowers@odot.oregon.gov)

**Exhibit A to Metro Resolution No. 24-XXXX**

If to Recipient: Metro  
ATTN: Rachael Lembo  
600 NE Grand Avenue Portland, Oregon 97232  
[rachael.lembo@oregonmetro.gov](mailto:rachael.lembo@oregonmetro.gov)

- E. No Construction against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Agreement may not be amended without the prior written consent of ODOT (and when required, the Department of Justice) and Recipient. This Agreement may not be amended in a manner that is not in compliance with the Authorization. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to ODOT by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). 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.
- Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- J. Integration. This Agreement (including all exhibits, schedules or attachments, if any) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- K. Survival. The following provisions survive expiration or termination of this Agreement: Sections 3.C., 5.E., 5.F., 5.H., 6, 7, 8.H., 8.I and 8.K.
- L. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

**Exhibit A to Metro Resolution No. 24-XXXX**

Recipient, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through its  
Department of Transportation

**RECIPIENT**  
Metro

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

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

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

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

//s// Samuel B. Zeigler on 5.6.24

Senior Assistant Attorney General



IN CONSIDERATION OF RESOLUTION NO. 24-5423, FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO A GRANT  
AGREEMENT WITH THE STATE OF OREGON FOR THE REGIONAL RAIL FUTURES  
STUDY

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Date: June 20, 2024

Prepared by: Kelly Betteridge, Investment  
Areas Manager

Department: Planning, Development and  
Research

[kelly.betteridge@oregonmetro.gov](mailto:kelly.betteridge@oregonmetro.gov)

Meeting Date: July 11, 2024

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## **ISSUE STATEMENT**

The State of Oregon allocated \$500,000 for Metro's Investment Areas Team to undertake a Regional Rail Futures Study. The proposed resolution will allow Metro to enter into a grant agreement with the State of Oregon to convey these funds to Metro.

The purpose of the Fund is to study the use of existing heavy freight rail assets in the greater Portland area for passenger rail alternatives to existing transportation modes.

The Fund will be reserved for the study. The study scope will be developed by Metro staff and a consultant with subject matter expertise in freight rail and passenger rail.

Staff will engage Council throughout the course of this study.

## **ACTION REQUESTED**

Consider a resolution that allows Metro to receive a grant from the State of Oregon to fund the Regional Rail Futures Study.

## **IDENTIFIED POLICY OUTCOMES**

The RTP establishes a strong vision for transit to help the region meet its transportation goals and support local and regional outcomes that address equity, support the economy, improve safety and achieve climate benefits. However, there are still gaps due to implementation constraints illustrated by the fact that the Regional Transportation Plan constrained set of investments ensures that 8% of jobs are accessible by transit in 2045 when our goal is 37%. Reuse of existing freight rail lines is one solution that has already been leveraged in the region (e.g., WES, Council Creek) and this study would provide more information and definition of additional opportunities for future planning efforts.

## **POLICY QUESTION(S)**

The study would assess community needs and readiness of existing freight rail corridors for passenger rail, considering barriers to and opportunities for upgrading and/or

converting existing freight rail assets for commuter and passenger rail use (particularly cost/benefit). The study may also look at supportive infrastructure, such as operations and maintenance facilities.

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Metro's Investment Areas Team has the flexibility and expertise to manage a rail futures study for the region. Metro's regional approach and experience convening partner conversations will support this work in defining potential further investments to improve passenger rail transit to achieve local and regional goals in the greater Portland region.

The current State of Oregon grant is the only identified funding for the Regional Rail Futures Study.

### **STAFF RECOMMENDATIONS**

Staff recommends approving a resolution authorizing Metro to enter into a grant agreement with the State of Oregon in the amount of \$500,000 for the Regional Rail Futures Study.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

This study falls within the scope of the regional transit and corridor planning programs and provides budget to consider future opportunities for expanding the high capacity transit and/or intercity rail regional visions in the future. Transit provides an alternative to driving that is more climate-friendly and equitable to help us meet local and regional transportation and climate goals.

This study would provide insight into opportunities to use existing rail infrastructure to provide additional travel options for the region. With the help of consultants and input from partners, the study must be completed by December 2025. Information from the study, could build support for creative solutions for repurposing existing rail infrastructure such as at Council Creek where a vacated rail line could provide a future light rail extension and trail connection opportunity.

The funding for the Regional Rail Futures Study is included in FY25 Budget Amendments before the Metro Council for consideration.

### **BACKGROUND**

This is the first time that the Regional Rail Futures Study grant has been before the City Council.

### **ATTACHMENTS**

- Resolution 24-5423
- Exhibit A – Grant Agreement