

INTERGOVERNMENTAL AGREEMENT

East Metro Connections Plan Implementation
SHRP-2 TCAPP Pilot Project: 238th/242nd/Hogan: Forging Sustainable Decisions for a Critical
Connection in East Metro

THIS AGREEMENT is made and entered into by and between Metro, an Oregon metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, hereinafter referred to as "Metro," and Multnomah County, Oregon, hereinafter referred to as the "County".

RECITALS

1. By authority granted in ORS Chapter 190.010 units of local government may enter into agreements to perform any functions and activities that the parties to the agreement, or their officers or agents, have the duty or authority to perform.
2. Metro is the recipient of federal Transportation Research Board ("TRB") funds, as administered by the National Academy of Sciences (the "NAS"), to research the impact of the online web resource known as "Transportation for Communities – Advancing Projects through Partnerships" or "TCAPP", may have on the process to advance the East Metro Connections Plan ("EMCP") into the project development phase (the "EMCP Implementation" or the "Project").
3. Metro wishes to enter into this agreement with the County so that the County may help create the EMCP Implementation. Specifically, Metro desires design support and public engagement services from the County, and the County desires to provide these services, as set forth in this agreement.
4. Metro is the local lead agency for the Project, and intends to enter into intergovernmental agreements with each participating agency to further EMCP Implementation. Participating agencies are: City of Gresham and Multnomah County.

NOW, THEREFORE, In consideration of the foregoing and the mutual covenants of the parties set forth in this agreement, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **AGREEMENT TERM.** This agreement shall be effective as of **October XX, 2013**, and shall expire **May 15, 2014**, on which date this agreement shall automatically terminate unless extended by a fully executed amendment in writing and signed by both parties.
2. **PROJECT DESCRIPTION.** The scope of work for this Project, Exhibit A and Exhibit B, are attached hereto and by this reference made a part of this agreement.
3. **COUNTY OBLIGATIONS**
 - A. The County shall cooperatively perform the work described in Subsection (A) of the "Work" Section of Exhibit A, and bear its costs in such performance, subject to the payment required in Section 4.E, below.
 - B. The County acknowledges and agrees that by entering into this agreement, the County will be subcontractor of Metro under its agreement with the NAS, effective March 15,

2013, Contract No. SHRP C-39(A)4, attached as Exhibit C to this agreement (the "Prime Contract"), and that this agreement is subject to the terms and conditions of the Prime Contract, including without limitation, Article VII(d), Article VIII, Article IX, and Article XIII of the Prime Contract. The County understands and agrees that its performance under this agreement is subject to the requirements set forth in Attachment D to the Prime Contract, regarding sexual harassment, and Attachment E to the Prime Contract, which sets forth several requirements of Metro and "lower-tier contractors" that apply to the County. The County hereby certifies to Metro that it is in compliance with the requirements set forth on Attachment E and shall comply with these requirements during the term of this agreement. The County shall also assist Metro in meeting Metro's obligations under Article V of the Prime Contract, relating to Metro's reporting requirements, by promptly providing Metro information regarding the progress of the County's work under this agreement as may be requested by Metro from time to time. Notwithstanding the foregoing provision and the application of Article VII(d) of the Prime Contract to this agreement, neither NAS nor Metro have designated any County staff as "key personnel" for purposes of this agreement.

- C. The County shall maintain all fiscal records relating to this agreement in accordance with generally accepted accounting principles and the requirements of the Prime Contract. In addition, the County shall maintain any other records pertinent to this agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that Metro, the NAS, the Oregon Department of Transportation (ODOT), U.S. Secretary of Transportation, and Comptroller General of the United States or their authorized representative shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this agreement to perform examinations and audits and make copies, excerpts and transcripts. The County also acknowledges and agrees that the County shall retain such documents for a period of six (6) years, or such longer period as may be required by applicable law, after termination of this agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this agreement, whichever date is later. Copies of applicable records shall be made available upon request.
- D. Comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Metro expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation statutes, rules and regulations.
- E. Comply and require the compliance of its subcontractors, if any, and of all employers working under this agreement with ORS 656.017, requiring the provision of workers' compensation coverage for all subject workers.
- F. The County represents and warrants to Metro that:
 - i. The County has full legal right and authority to execute and deliver this agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to undertake and complete the project; and
 - ii. The agreement has been authorized pursuant to its official action that has been adopted and authorized in accordance with applicable state law.
- G. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies, the County

shall indemnify, defend and hold harmless Metro from and against all liability, loss and costs arising out of or resulting from the acts of the County, its officers, employees and agents in the performance of this agreement.

- H. The County has assigned a Project Manager for this agreement who will be the County's principal contact person regarding administration of this agreement. Joanna Valencia is the County's Project Manager for this agreement.

4. METRO OBLIGATIONS

- A. Metro shall cooperate with the County in the County's performance of its work pursuant to this agreement.
- B. Metro has assigned a Project Manager for this agreement who will be Metro's principal contact person regarding administration of this agreement. Brian Monberg is Metro's Project Manager for this agreement.
- C. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Metro shall indemnify, defend and hold harmless the County from and against all liability, loss and costs arising out of or resulting from the acts of Metro its officers, employees and agents in the performance of this agreement.
- D. Metro represents and warrants to the County that:
- i. Metro has full legal right and authority to execute and deliver this agreement and to observe and perform its duties, covenants, obligations and agreements hereunder; and
 - ii. The agreement has been authorized pursuant to its official action that has been adopted and authorized in accordance with applicable state law.
- E. Subject to the exercise by the NAS of its rights to withhold or delay payment, as set forth in Article XI of the Prime Contract, Metro shall pay the County, in consideration for the services the County performs under this agreement, the sum of Fifty Thousand Nine Hundred Dollars (\$50,900) within thirty (30) days of an approved invoice for services performed, which amount includes any necessary staffing, data and service expenses that may be incurred by the County.

5. GENERAL PROVISIONS

- A. Termination.
- 1. Mutual Termination. This agreement may be terminated by mutual written consent of all parties.
 - 2. Early Termination by Metro. Metro may terminate this agreement effective upon delivery of written notice to the County, or at such later date as may be established by Metro, under any of the following conditions:
 - a. If the County fails to perform any of the provisions of this agreement or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from Metro fails to correct such failures within ten (10) days or such longer period as Metro may authorize.
 - b. If federal or state laws, regulations or guidelines, or the Prime Contract, are modified or interpreted in such a way that any agreed upon work is prohibited or Metro is prohibited from paying for such work from the planned funding source;

- c. If Metro fails to receive appropriations, limitations or other expenditure authority sufficient to allow Metro, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this agreement;
3. Effect of Termination. Any termination of this agreement shall not prejudice any right or obligations accrued to the parties prior to termination.
- B. All communications between the parties regarding this agreement shall be directed to the parties' respective Project Managers as indicated below:
- | | |
|--------------------------------------|-----------------------------------|
| Metro: Brian Monberg | Multnomah County: Joanna Valencia |
| 600 NE Grand Avenue | 1600 SE 190 th Avenue |
| Portland, OR 97232-2736 | Portland, OR 97233 |
| Phone: (503) 797-1621 | Phone: (503) 988-5050 x 29637# |
| Fax: (503) 797-1930 | Fax: (503) 988-3389 |
| Email: brian.monberg@oregonmetro.gov | Email: joanna.valencia@multco.us |
- C. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the County and Metro that arise from or relates to this agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by Metro or the County of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.
- D. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. 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 Metro or the County to enforce any provision of this agreement shall not constitute a waiver by Metro or the County of that or any other provision. Neither party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and their seals as of the day and year hereinafter written.

County

Metro

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

REVIEWED:

By Jenny M. Madkour, County Attorney
For Multnomah County, Oregon

By: _____
Assistant County Attorney

Exhibit A

Scope of Work

EMCP Implementation SHRP-2 TCAPP Pilot Project: 238th/242nd/Hogan: Forging Sustainable Decisions for a Critical Connection in East Metro.

Scope of Work 10/02/13 (subject to modification by Metro as needed)

The East Metro Connections Plan, a regionally based corridor study completed in 2012, reached consensus on recommendations between four cities, Multnomah County, Metro, and ODOT that included road improvements connecting two highways. East Metro Connections Plan Implementation will continue project development on the corridor plan by working with local partners to advance development on key priorities of the project. Metro will be utilizing resources developed by the Transportation Research Board and conducting research on their effectiveness, culminating in a final report.

The project is funded through a research contract with the Transportation Research Board and Metro is the lead agency. This project is part of the SHRP 2 – Capacity pilot program. The SHRP 2 - Capacity area is developing a web-based resource to provide more accurate data and collaborative decision-making in the development of new highway capacity, in order to expedite the provision of that capacity while simultaneously addressing economic, community, and environmental objectives associated with new construction. Metro will be conducting a research study, consistent with the contract signed with TRB, to assess the online web resource Transportation for Communities – Advancing Projects through Partnerships (TCAPP).

The project will look at the decision process to move the preferred strategy from the corridor planning stage into project development. The project will identify key partner and stakeholder relationships, and define key decision points from the corridor planning stage into project development. Importantly, East Metro Connections Plan Implementation will continue to engage stakeholders to support and advance project development.

Metro has established a budget not to exceed \$76,800 (\$274,853 total). The project is intended to be complete by May 2014.

Project Goals

- Advance project development for the 238th project area and the Hogan project area, each as depicted on Exhibit B, attached to this agreement, in anticipation of Preliminary Engineering and NEPA environmental review.
- Inform and engage stakeholders on the milestones and decision making for 238th and Hogan.
- Participate in a research report to the Transportation Research Board assessing the quality, usefulness, of TCAPP.

Project Objectives

The final outcome of this pilot will be a final report that assesses the quality, usefulness and helpfulness of TCAPP. The project will test several components of the TCAPP decision guide in the planning context of the East Metro Connections Plan. The final report will be completed by Metro in partnership with Multnomah County..

Research questions to be addressed in the final report:

- To what degree would project partners rely on TCAPP for future planning processes?
- Were the outcomes of the pilot different than what was expected?
- What discernible results can be attributed to the application of TCAPP?

Anticipated Deliverables by May 2014

1. Project design team support in anticipation of preliminary engineering, including survey, geotechnical, and concept engineering.
2. Public Engagement and Stakeholder Support, including public engagement plan for projects.

Tasks

Task 1: Design support for projects to support preliminary engineering

- 1.1 Survey for 238th project area
- 1.2 Geotechnical assessment for 238th project area
- 1.3 design support to advance recommended alignment from East Metro Connections Plan
- 1.4 environmental scan; identify and document potential environmental issues known at this time
- 1.5 traffic engineering support - traffic counts and model projections

Task 2: Public engagement to support project development

- 2.1 Develop public engagement strategy, including definition of stakeholders
- 2.2 Working group meetings
- 2.3 Brief East Multnomah County Transportation Committee on progress
- 2.4 Staff public engagement opportunities

Task 3: Support research and final report

- 3.1 Review findings, data from EMCP
- 3.2 Develop project delivery support/methodology
- 3.4 Assess Transportation for Communities – Advancing Projects through Partnerships (TCAPP)
- 3.5 Attend staff meetings
- 3.6 Review project materials
- 3.7 Finalize report

Work

(A) Multnomah County

The County will responsible for 3 primary outcomes:

1. Design Support for 238th project area to support preliminary engineering
2. Public Engagement to support project development
3. Staff support to review research findings and project materials

(B) Specific contributions are identified in the following tasks:

(a) The County shall meet the requirements of Subsection A.1 above by the completion of the following services identified as Task 1: *Design support for projects to support preliminary engineering*:

- 1.1 As mutually agreed between the parties, conduct survey for 238th project area

- 1.2 As mutually agreed between the parties, conduct geotechnical assessment for 238th project area.
- 1.3 As mutually agreed between the parties, conduct design support to advance recommended alignment from East Metro Connections Plan.

(b) The County shall meet the requirements of Subsection A.2 above by the completion of the following services identified as Task 2: *Public engagement to support project development*:

- 2.1 Develop public engagement strategy, including definition of stakeholders.
- 2.2 Participate in working group meetings.
- 2.3 Brief East Multnomah County Transportation Committee on progress.
- 2.4 County will provide at least one staff member at all scheduled public meetings.

(c) The County shall meet the requirements of Subsection A.2 above by the completion of the following services identified as Task 3: *Support research and final report*:

- 3.5 At least one County representative attend staff meetings.
- 3.6 County staff review project materials.
- 3.7 Assist in preparing the final report.

Exhibit B
238th/242nd/Hogan Corridor

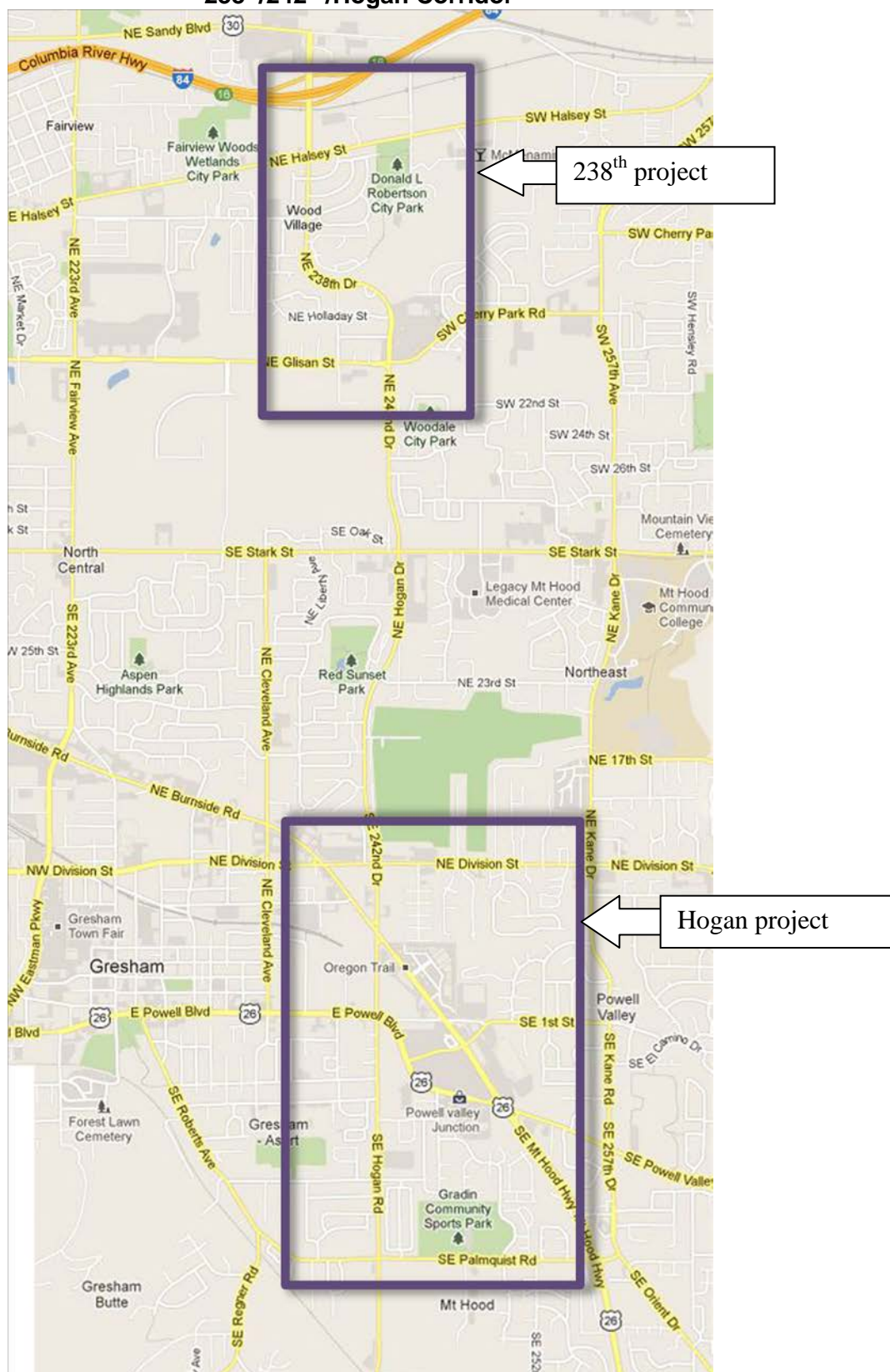


Exhibit C

The Prime Contract

[see attached]