

**RESOLUTION No. 6159**

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

This Intergovernmental Agreement (Agreement) for a Student Transit Youth Pass Program is entered into by and between Multnomah County School District 1J, Multnomah County, Oregon (Portland Public Schools or PPS), and the Tri-County Metropolitan Transportation District of Oregon (TriMet), a mass transit district organized under the laws of the state of Oregon (each referred to herein as a Party, and jointly as the Parties).

**RECITALS**

- A. The Parties previously entered into Student Transit Pass Project 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 such passes provide to PPS high school students, the Parties subsequently agreed to replacement funding for a Student Transit Pass Program.
- C. The Parties now desire to implement a Student Transit Pass Program (Program) 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 in PPS High Schools that do not currently provide regular yellow school bus service, including designated programs within the Education Options Department, over the period from September 1, 2020, through June 30, 2021.
- D. The Parties' agreements as to their respective roles and responsibilities for implementation of the Program are set forth below.

**AGREEMENT** Therefore,

the Parties hereby agree to the following terms: **ARTICLE I - COST**

**OF STUDENT TRANSIT PASS PROGRAM**

- A. Due to the Covid-19 pandemic, the needs of virtual learning, expected in-class instruction levels of less than 50% of normal, and schools facing inconsistent and uncertain student attendance, TriMet has agreed to provide PPS the following Covid-19 contract option for a 10-month Student Transit Pass Program (Program) for the 2020-2021 academic year. For the period from September 1, 2020 through June 30, 2021 the Total Program Cost of the Program shall not exceed terms of \$1,933,333. The Total Program Cost is based on revenue that TriMet estimates it would receive during the current Covid-19 pandemic if the Program were not in place. The Program will be funded by payment from PPS and in-kind contributions from TriMet as set forth in this Agreement.
- B. Therefore, effective September 1, 2020, PPS agrees to participate in a pay-by-tap procedure to pay for the costs of the Program, and shall deposit the amount of \$966,666 on or before September 30, 2020, which shall be applied to costs of students paying by-tap during the 2020-2021 academic year.
- C. Taps will be charged at \$1.25 per tap, and TriMet will calculate total taps at the conclusion of each academic quarter. When and if actual tap usage exceeds \$966,666, TriMet will invoice PPS for additional taps at \$1.25 per tap, but the total charge to PPS for taps shall not exceed

\$1,933,333 for the 2020-2021 academic year. Payment of said invoices will be due within 30 days of the date on the invoice.

If levels of in-school instruction were to resume at or above 50% of normal in-school instruction during any quarter of the academic year, Total Program Cost will be reinstated at the beginning date of the subsequent quarter, at the amount of \$483,333 per quarter. Total taps in the previous quarters shall be calculated, as noted above, at \$1.25 per tap, total taps exceeding the initial deposit will be charged at \$1.25 per tap. Any amount of the initial deposit remaining will be applied toward the following quarter(s)' obligation (\$483,333 per quarter).

- D. The Total Program Cost does not include the non-refundable amount of \$12,750 that PPS agrees to pay for the initial Hop Fastpass™ Fare Cards provided by TriMet. TriMet will provide PPS with the initial order of 15,000 cards at a significantly reduced cost of \$0.85/card. PPS shall pay TriMet the amount of \$12,750 to cover this upfront cost, on or before September 30, 2020. The amount of \$12,750 will be payable to TriMet by September 30, 2020, for a total payment of \$979,416 due September 30, 2020. These cards will be "owned" by PPS and do not expire. Notwithstanding this initial payment, additional Hop Fare Cards ordered by PPS through the year will be charged at \$2 per card.

## **ARTICLE II - DIVISION OF RESPONSIBILITIES**

### **A. PPS Obligations:**

1. PPS shall 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.
  - 1) Using the Services, Program Administrators shall be able to perform certain tasks including, but not limited to:
    - a. Order fare instruments.
    - b. Manage and edit PPS's account profile, such as maintaining contact information.
    - c. Manage their students' fare cards, including blocking cards (deactivate) in case of loss or theft, and unblocking cards (reactivate).

- 2) PPS's use of the Services is subject to TriMet's Privacy Policy, located at: [myhopcard.com](http://myhopcard.com).
- 3) 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.
- 4) TriMet hereby 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.
- 5) Unless laws prohibit these restrictions or you have our written permission, PPS may not:
  - a. Copy, modify, distribute, sell, or lease any part of our Services or included software;
  - b. Reverse engineer or attempt to extract the source code of our software or copy the scripts of the website;
  - c. Download, print, copy, distribute or otherwise use Materials for commercial purposes, including commercial publication, sale or personal gain;
  - d. 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;
  - e. 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;
  - f. 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;
  - g. 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
  - h. 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.
- 6) With respect to any content submitted or made available to TriMet (including through TriMet's "Contact Us" web 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 content provided by PPS without any obligation or credit to PPS.

- 7) **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. Under the terms of this Agreement, TriMet will initially provide 15,000 blank Youth Hop Fastpass™ Fare Cards at a cost of \$0.85 per card, for a total of \$12,750. This amount will be paid to TriMet by September 30, 2020. This payment obligation shall survive any termination or cancellation of this Agreement. Any cards subsequently requested by PPS in excess of this initial number will be at the expense of PPS at a cost of \$2 per card. The actual cost of these cards is subsidized by TriMet and shall not be subject to further discount within the period of this Agreement.
3. Prior to providing the student with a contactless Youth Hop Fastpass™ 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.

  - 1) 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 1<sup>st</sup>, 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.
4. PPS shall produce a contactless fare card student photo ID with embedded TriMet fare media design, which shall be distributed to each participating student. PPS shall pay the costs of producing the photo ID cards. Prior to distribution of photo ID 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 TriMet passes (see Article II (D)(3)) below.
5. PPS shall provide TriMet with a written procedure for distribution and tracking of TriMet school term 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.
6. PPS shall develop an “opt-out” notification form to students and families that will include TriMet’s “How to Ride” 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 a student photo ID as proof of fare payment, and use of the TriMet transit system is subject to TriMet Code regulations.

7. PPS shall distribute the TriMet developed "How to Ride" materials to each student. These materials shall include any required Program terms, including statements that photo ID cards are non-transferable, and that the student must tap the Youth Hop Fastpass™ Fare Card at card readers prior to each boarding.
8. PPS shall make every effort to provide school start times for participating high schools to TriMet for transit service planning purposes.

**B. TriMet Obligations:**

1. TriMet shall assign a Program Manager for TriMet's work under this Agreement who will serve as TriMet's Program contact.
2. TriMet shall authorize free travel on regular TriMet service routes for students enrolled at participating Schools, for the fall and spring terms during the period of September 1, 2020 through June 30, 2021. In addition to a TriMet Youth Hop Fastpass™ school term pass issued pursuant to this Agreement, TriMet shall only recognize a PPS-issued, high school Youth Hop Fastpass™ Fare Card embedded with TriMet fare media design with student photo ID as valid only when tapped at card readers at each boarding, 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 the individual whose name and photo appears on the front of the card when the card has been validated by a card reader prior to boarding.
3. TriMet shall develop "How to Ride" and other informational materials as necessary for the Program and deliver them to PPS.

**C. 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 for 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 printed on a Youth Hop Fastpass™ Fare Card with embedded TriMet fare media design. If at any time a participating school does not issue student photo IDs, the school will issue each student a TriMet generic Youth Hop Fastpass™ Fare Card with a pre-loaded school term pass.
4. 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 30, 2021. The Parties agree that after expiration of the Program any future student transit pass program would be subject to agreement by the Parties to the terms and conditions of a future student transit pass program through a subsequent Intergovernmental Agreement.

**D. Program Managers**

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

Jamie Surface  
Senior Coordinator, Fare Policy and  
Programs TriMet  
1800 SW 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' Program Managers.

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

Teri Brady  
Assistant Director, Transportation Services  
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 Program Managers.

### **ARTICLE III- PROGRAM FARE INSTRUMENTS**

#### **A. Hop Fastpass™ Fare Cards**

1. TriMet issued contactless fare cards containing a valid fare product shall be used as the valid fare instrument. Fare cards are intended to be used by PPS for the duration of the school year. PPS shall keep fare instruments in secure locked storage, accessible only to the designated Program Administrator(s). PPS shall be required to maintain a record associating the fare card ID number (16-digit card number) with a unique student identifier (such as name and/or email address). PPS shall be required to upload this list via CSV file to the Institutional Web Portal to facilitate the purchase and loading of fare products to cards. PPS's students are required to tap their contactless card at card readers prior to each vehicle boarding and upon occupying any TriMet district areas requiring proof of fare payment.
2. PPS issued Youth Hop Fastpass™ Fare Cards are valid only on TriMet buses, MAX, and WES when tapped on a card readers prior to boarding. Fare cards are not valid on C-TRAN.
3. Fare instruments are non-refundable and non-transferable. However, PPS may replace lost, stolen, or damaged fare cards for PPS's students. To be eligible for replacement, the

student's fare card must first be disabled by PPS's Program Administrator. PPS may also request that TriMet disable the fare card, and in this case, TriMet reserves the right to require PPS to provide additional information about the lost, stolen or damaged fare card, such as card ID number.

## **ARTICLE IV- 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**

Pursuant to the provisions and limits of liability set forth in the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each Party shall indemnify and defend the other and that Party's 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. In no event shall TriMet's total liability to PPS in connection with this agreement 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 (D) 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 September 1, 2020 through June 30, 2021, unless otherwise modified by the terms of this Agreement or in accordance with the provisions herein, or by operation of law.

**S. Authority**

Each individual signing below represents and warrants that each has the authority to bind the Party for which each signs.

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

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

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

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

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

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

Approved as to Form:

Approved as to Form:

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

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

Legal Counsel

TriMet Legal Counsel