RESOLUTION NO. 42-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF MILWAUKIE AN INTERGOVERNMENTAL AGREEMENT AMONG THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, THE CITY OF PORTLAND, AND THE CITY OF MILWAUKIE FOR TRANSIT POLICE SERVICES.

WHEREAS, the City of Milwaukie has participated in this cooperative policing model known as the TriMet Transit Police Division since 1998; and

WHEREAS, the City of Milwaukie wishes to continue participating in cost-effective law enforcement delivery service programs to ensure community livability and safety; and

WHEREAS, jurisdictional partnerships help all parties in addressing growth and more complex service delivery requirements as well as provide excellent officer training opportunities.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Milwaukie, Oregon, that:

Section 1. The City Council hereby authorizes the Mayor to sign the Intergovernmental Agreement among the Tri-County Metropolitan Transportation District of Oregon, the City of Portland, and the City of Milwaukie on behalf of the City of Milwaukie.

Section 2. The term of the proposed intergovernmental agreement shall be from July 1, 2010 through June 30, 2011 with automatic renewals for successive one-year terms through June 30, 2015 unless terminated sooner under the terms of the agreement shown as Exhibit 1 to this Resolution.

Section 3. This Resolution is effective immediately.

Introduced and adopted by the City Council on June 1, 2010.

Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

City Attorney

INTERGOVERNMENTAL AGREEMENT AMONG THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, THE CITY OF PORTLAND AND CITY OF MILWAUKIE FOR TRANSIT POLICE SERVICES

Contract No. 10-10-0812

This Agreement is entered into among the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), the City of Portland (Portland) and the City of Milwaukie, pursuant to authority grantedin ORS Chapter 190.

RECITAL

TriMet, Portland and the City of Milwaukie ("the parties") desire to enter into an Agreement with respect to Transit Police Division services including but not limited to deployment strategy, priority of services and administrative procedures.

AGREEMENT

The parties agree as follows:

1. TERM: The initial term of this Agreement shall be from July 1, 2010 through June 30, 2011. Thereafter, this Agreement will automatically renew for successive one-year terms through June 30, 2015, unless terminated sooner under the terms of this Agreement.

2. RESPONSIBILITIES OF PARTIES: See attached Exhibits 1 through 3.

2. TERMINATION:

   a. Any party may terminate this Agreement for its convenience and without penalty by giving the other parties thirty (30) days written notice of its intention to terminate.

   b. If TriMet is unable to appropriate sufficient funds to pay the City of Milwaukie for their services under this Agreement, TriMet must notify the City of Milwaukie and Portland and this Agreement shall automatically terminate as of the end of the last fiscal year for which such appropriations are available.

   c. Any obligations arising prior to the date of termination survive the termination, including any obligation to defend, indemnify and hold harmless any other jurisdiction.

4. INDEMNIFICATION:

   Portland and the City of Milwaukie will be responsible for the work of the officers assigned to the TriMet Transit Police Division.

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City of Milwaukie shall indemnify, defend and hold harmless TriMet and Portland from and against all liability, loss, and costs arising out of or resulting from the acts of the City of Milwaukie, its officers, employees, and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, TriMet shall indemnify, defend, and hold harmless the City of Milwaukie and Portland from and against all liability, loss, and costs arising out of or resulting from the acts of TriMet, its officers, employees, and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Portland shall indemnify, defend, and hold harmless the City of Milwaukie and TriMet from and against all liability, loss, and costs arising out of or resulting from the acts of Portland, its officers, employees, and agents in the performance of this Agreement.

5. INSURANCE: Each party shall be responsible for providing workers' compensation insurance for their respective employees, as required by law, and may elect to commercially insure or self insure for any other liabilities assumed under this Agreement.

6. ADHERENCE TO LAW: Each party must comply with all federal, state, and local laws and ordinances applicable to this Agreement.

7. ACCESS TO RECORDS: Each party must have access to the books, documents, and other records of the other parties related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

8. SUBCONTRACTOR AND ASSIGNMENT: No party shall subcontract or assign any part of this Agreement without the written consent of the other parties.

9. ENTIRE AGREEMENT: This Agreement incorporates by reference and makes all of the terms and conditions of the Exhibits 1 through 3 attached hereto a part of this Agreement and constitutes the entire agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

10. ATTORNEY FEES: In the event a lawsuit is filed to obtain performance of any kind under this Agreement, the prevailing party is entitled to additional sums as the court may award for reasonable attorney fees, all costs, and disbursements, including attorney fees, costs, and disbursements on appeal.

11. SEVERABILITY: The parties agree that, if any term of this Agreement, is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.

12. NOTICES: The parties must send any notices, bills, invoices, reports, or other written communications required by this Agreement through the United States Mail, first-class postage paid, or personally delivered to the addresses below:

The parties have caused this Agreement to be executed by their duly appointed officers, authorized to bind the party for which they sign.

CITY OF MILWAUKIE
10722 SE Main St.
Milwaukie, OR 97222

Jeremy Ferguson
Mayor

June 1, 2010
date

CITY OF PORTLAND
1221 SW 4TH Ave.
Portland Or. 97204

Sam Adams
Mayor

date

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET)
4012 SE 17th Ave.
Portland, OR. 97202

Shelly Lomax
Executive Director, Operations

date

Lavone Griffin-Valade
Auditor

date

Approved as to form:

Legal Counsel

June 1, 2010
date

Linda Meng, City Attorney

date

TriMet Legal Counsel

date

Exhibits:

Exhibit 1 – Transit Police Division Administration & Operations
Exhibit 2 – Transit Police Division Staffing Letter
Exhibit 3 – Transit Police Division Personnel Operations

EXHIBIT 1

TRANSIT POLICE DIVISION ADMINISTRATION & OPERATIONS

1. SERVICE LEVEL

For the term of this Agreement, the City of Milwaukie will provide one or more full-time officer(s) for assignment to the Transit Police Division (hereinafter Division), in such numbers and classifications as the parties mutually agree in writing, by letter among the City of Milwaukie Chief of Police, the Transit Police Division Commander and TriMet's Executive Director - Operations, with such letter in the form set forth in Exhibit 2. If a vacancy of any of the agreed-upon number of officers is not filled within 90 days, the parties agree that TriMet may reassign the opening to another jurisdiction, to provide officer(s) to the Division. The City of Milwaukie personnel assigned to the Division will remain employees of the City of Milwaukie and will not be considered employees or agents of TriMet or the City of Portland (Portland). For purposes of this Agreement, the officer(s) assigned to the Division will be referred to as assigned to the TriMet Transit Police Division.

2. OPERATIONS

a. Deployment Strategy and Priority for Services: The parties recognize that they have legitimate interests in the management and deployment of officers assigned to the Transit Police Division. The parties will work together to ensure:

(1) On-Board Presence: The priority for Transit Police deployment is presence on the transit system vehicles and at transit system public facilities.

(2) Calls for Service: In general, response to 9-1-1 calls for transit system incidents shall be responded to by local law enforcement from the respective jurisdiction.

(3) Arrests: Arrests on the transit system incidents shall be by the respective Transit Police or local law enforcement that originated action on the incident.

(4) Law Enforcement Support: Transit Police and local law enforcement shall be responsible for law enforcement support activities for their respective primary areas of responsibility.

(5) Enforcement: Transit Police enforcement shall focus on TriMet ordinances, including fare enforcement, and State and City laws to help ensure the security of passengers, employees, and transit system property.

(6) Targeting: Transit Police deployment shall focus on identified problem areas, routes and/or transit centers/transfer points based on data relative to the greatest needs for "preventive action"; using community policing strategies whenever possible.

b. Agency Cooperation and Coordination:

(1) The parties will work closely and continuously communicate with each other to ensure that the resources, strategies, work force deployment, and initiatives of TriMet, Portland, the City of Milwaukie are coordinated and effective.

(2) The Commander, TriMet Transit Police Division, or his/her designee, will coordinate contact with the parties to insure that the resources, strategies, work force deployment, and initiatives of the Division and those of the respective law enforcement agencies are coordinated and effective.

(3) The City of Milwaukie agrees to work cooperatively in an effort to increase reporting of TriMet related incidents. The City of Milwaukie agrees to provide to the Division TriMet coded reports, data, and records. TriMet agrees to make available to the City of Milwaukie, through the Division, particular data, reports, records, etc. that will assist in fulfilling the mission as outlined in this document.

c. Officer Seniority: Determination of officer seniority of the Transit Police Division for purposes of making shift, vacation, holiday, and overtime assignments shall be according to the attached Exhibit 3.

d. K-9 Unit Training Facility: TriMet has entered into a ground lease (hereinafter "Lease") with the Port of Portland effective September 17, 2007 for the use of certain premises (hereinafter "Premises") to house explosives storage magazines in support of TriMet's training requirements to maintain U.S. Department of Homeland Security, Transportation Security Administration ("TSA") certification for K-9 units. Certain Transit Police Division personnel as designated by TriMet and TSA will be authorized to access and utilize the Premises for purposes of TriMet's K-9 unit training in accordance with the Lease terms. The City of Milwaukie agrees that the work and operations of the Division including assigned transit police personnel, with respect to activities relating to the Premises, are subject to and shall comply with all provisions and requirements of the Lease, the terms of which are incorporated into and made part of this Agreement, and specifically any obligations of TriMet as Lessee.

3. REIMBURSEMENT OF COSTS

a. Costs: The City of Milwaukie must pay the salaries, overtime, insurance, retirement, and other benefits of its respective officers serving in the TriMet Transit Police Division. The City of Milwaukie shall invoice TriMet monthly for all such Division personnel. Administrative fees charged by the City of Milwaukie to TriMet in connection with billings shall not exceed the sum of 5% of direct costs of salaries, overtime, insurance, retirement and other benefits paid to its personnel assigned to the Division. TriMet agrees to compensate the City of Milwaukie within thirty (30) days after receiving the invoice. Invoices should be submitted to TriMet, Attn: Accounts Payable-FN4, 4012 SE 17th Avenue, Portland, OR 97202.

b. Amount: Before April 1st of each year of this Agreement, the City of Milwaukie must submit to TriMet a proposed annual budget for services under this contract for next fiscal year (July 1 through the following June 30). The parties will then agree on the compensation to be paid by TriMet for services to the City of Milwaukie under this Agreement. If the parties cannot agree on such compensation by June 1st, any party may elect to terminate this Agreement without penalty.

EXHIBIT 2
TRANSIT POLICE DIVISION STAFFING LETTER

(on TriMet letterhead)

_____

(date of letter)

Chief of Police
City of Milwaukie
10722 SE Main St.
Milwaukie, Or. 97222

RE: The City of Milwaukie Police Staffing to TriMet Transit Police Division

Dear _____:

This letter is issued pursuant to the July 2010, Agreement among the Tri-County Metropolitan Transportation District of Oregon (TriMet), the City of Portland and the City of Milwaukie, for TriMet Transit Police Services, as amended, to establish or change the number of police officers assigned from the City of Milwaukie to the TriMet Transit Police Division.

Prior Staffing from (effective date of agreement), 2010, To-Date

- from (effective date of agreement), 2010 to (date) (specify number of officer(s))
- from (date) to (date) etc.

.from (date) to (effective date of this staffing change) (specify revised number of officer(s))
etc.
(specify revised number of officer(s))

Staffing from (effective date of this staffing change)

- from (effective date of this staffing change) (specify revised number of officer(s))

Any future change in the number of officers assigned from the City of Milwaukie Police to the TriMet Transit Police Division, is subject to mutual agreement by the parties by subsequent letter in similar form.

Sincerely,

Shelly Lomax
Executive Director, Operations
TriMet

Agreed to by the City of Milwaukie: Agreed to by City of Portland:

_____ _____ _____ _____
Chief of Police date Transit Police Commander date

EXHIBIT 3

TRANSIT POLICE DIVISION PERSONNEL OPERATIONS

It is the intent of this Agreement: (1) to recognize that the TriMet Transit Police Division (Division) is staffed by police officers from multiple jurisdictions, each covered by their respective collective bargaining agreements, but that shifts, days off, vacations and overtime need to be assigned in a fair and equitable manner; (2) to provide for assignment of shifts, days off, vacations and overtime by seniority; (3) to allow for the change of shift hours of operation and to re-allocated positions and days off within certain shifts to maintain an appropriate balance of field strength.

THE PARTIES AGREE THAT:

1. Current and future the City of Milwaukie officers assigned to the Division will use their the City of Milwaukie date of hire seniority as the means to select shifts, days off, vacations and overtime.

2. Current and future the City of Milwaukie officers assigned to the Division will abide by the provisions of this Exhibit 3.

3. Seniority shall be defined as the length of uninterrupted service by the officer in his/her agency within the officer's Civil Service classification following the officer's most recent appointment. Time spent in the Armed Forces, on military leaves of absence, other authorized leaves and time lost because of duty-connected disability shall be included in length of service. If an officer who has been promoted reverts to a position she/he formerly held, the officer's seniority shall be the sum of the seniority earned in the promotional class and in the class to which the officer reverts.

4. Subject to manpower needs and maintaining efficiency of the Division/Detail, seniority shall be the prime factor in the selection of shifts and days off provided the officer is otherwise qualified. Seniority shall govern in the selection of vacation and holidays.

5. In the case of voluntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacations. The transferring officer may not use seniority to bump another officer's shift or days off until 45 days from the date of the written request.

6. In case of involuntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacation. In the event of an involuntary transfer, the Division shall accommodate the shift and/or days off preferences of transferring officers immediately, and shall not involuntarily bump any other officer for at least thirty (30) days from the time the bumped officer receives notice of the bump. The transferring officer may not use seniority to bump another officer's shift or days off until 30 days from the date of the written request.

7. For the purposes of this Agreement, the phrase "Transferring Officer" shall refer to an officer desiring to change shifts, days off or assignments, or an officer who is involuntarily transferred.

8. The Division shall prepare a form to be used by officers desiring to transfer from one shift, assignment, or day off configuration to another within the same reporting unit. For the purposes of this Agreement, this form shall be referred to as the "Transfer Request Form." The Transfer Request Form shall contain a place for transferring officers to indicate their preferences with respect to shifts and days off.

9. A transferring officer may complete a Transfer Request Form at any time. If the officer is seeking or anticipating a transfer, the officer shall file the Transfer Request Form with a Division Lieutenant. If the officer is seeking a change in days off or shifts which do not involve a transfer between reporting units, the Transfer Request Form shall be filed with the officer's shift commander. The Division will forward a copy of the Transfer Request Form to the location of the anticipated transfer.

10. In the event of a change in days off or shifts that do not involve a change in reporting units, the time frames referred to in Sections 5 and 6 of this Exhibit 3 shall begin to run when the transferring officer submits the Transfer Request Form.

11. When the Division knows that an officer's preferences as indicated on a Transfer Request Form will result in the displacement of the shift or days off of another officer (referred to herein as the Transferred Officer), the Division shall notify the Transferred Officer as soon as possible of the fact that he or she may be bumped.

12. The Division shall accommodate the shift and/or days off preferences of transferring officers on a faster time schedule than that contained in Sections 5 and 6 of this Exhibit 3, if, in the Division's judgment, it is operationally sound to do so, provided that no other affected officer is bumped from his or her days off or shift who objects to the accommodation.

13. An officer may exercise seniority to bump another officer for shift and days off only once in ninety (90) days.

14. **Vacations.** Employees shall be allowed to select two vacation periods on the basis of seniority. Each vacation period must be of a minimum duration of one day. Vacation time shall be scheduled by the Division with due consideration being given to requests from officers which shall be determined among officers of equal rank by seniority; provided, however, that each officer shall be permitted to exercise the right of seniority only once each year. The sign-up deadline for the exercise of seniority in the selection of vacations shall be March 15 for the calendar year running from April 15 through April 14 of the following year.

15. **Holiday Assignment.** Where the shift strength is reduced or increased on holidays, consistent with the needs of the Division, assignments shall be offered to the most senior officer. Except for an emergency, the Division shall provide a minimum of ten (10) days' notice of any deviation from normal shift strength so that officers may plan the use of their time.

A. Where shift strength is reduced, the most senior officer scheduled for duty on the shift shall be offered the option of working or not. Where shift strength is increased, the most senior officer on the shift shall be offered the option of working or not.

B. For purposes of this section, New Year's Eve and Christmas Eve shall be treated as holidays.

16. **Seniority for Vacation Purposes upon Transfer.** If an officer is involuntarily transferred, the Division shall honor the officer's pre-selected vacation times, and shall not disrupt the pre-selected vacation time for other officers in the division to which the officer is involuntarily transferred. If an officer accepts a voluntary transfer, the Division shall attempt to accommodate, to the extent possible, the officer's pre-selected vacation times.

17. **Shift Overtime.** Where the overtime is not directly related to activities begun by an officer during the officer's regular shift, and where the planned overtime is anticipated to be four (4) hours or more in duration, the overtime shall be offered, in the order of seniority, to officers in the Division. Once each eligible officer has had the opportunity to work shift overtime in a pay period, officers may once again use their seniority to work shift overtime as described above, and the seniority list shall rotate in the same fashion thereafter. The Division shall maintain a list in each reporting unit upon which officers must place their names indicating a willingness to work shift overtime. If an officer is incorrectly passed over for shift overtime, the officer shall be allowed to work a makeup overtime assignment within the next two pay periods following the discovery of the error. The officer and the Division shall mutually agree upon the makeup overtime assignment, which shall not displace another officer's already-selected overtime assignment. An officer who has been incorrectly passed over shall not be otherwise entitled to compensation for the missed overtime.

18. **Work Hours.** An officer will normally be given adequate advance notice of any change in the officer's regular hours of work, except where an emergency (an emergency is defined as an unforeseen event affecting the Division's ability to perform its mission) exists. Notice given less than forty-eight (48) hours (or seventy-two [72] hours under the Four-Ten Plan) before the officer is to begin work under the changed schedule entitles the officer to compensation at the overtime rate for those hours not exceeding eight (8) hours that are earlier, later, or different from the hours the officer last worked in a work day. A police officer is not entitled to compensation under the overtime rate if the officer is otherwise entitled to compensation under the same hours of work, or if shift changes are the result of a voluntary transfer or promotion.

19. **Discipline.** Discipline and discharge of City of Milwaukie officers assigned to the Division will be the responsibility of the City of Milwaukie and in accordance with the Collective Bargaining Agreement between the City of Milwaukie and the Milwaukie Portland Police Officer's Association.

20. **Citizen Complaints.** All citizen complaints concerning the City of Milwaukie officers to be referred to the City of Milwaukie and finding copied to the Commander, Transit Police Division. The City of Milwaukie agrees to:

A. Maintain a police accountability system as described at subsections (B) through (G) below.
B. Provide an accountability system intake point to which the other participating Transit Police jurisdictions ("jurisdictions") can refer or deliver complaints about City of Milwaukie name) officers working in the Transit Police Division.
C. Receive, review and evaluate all complaints referred or delivered by the other jurisdictions concerning its officers who work in the Transit Police Division.
D. Deliver all complaints about an officer who works in the Transit Police Division received from citizens or generated by peace officers to the accountability system intake point of the subject officer's employing jurisdiction.

E. Absent a conflict with ORS 181.854 (3), permit investigators from other jurisdictions to share information with their counterparts investigating or reviewing an incident involving a Transit Police Division officer.
F. Adhere to Portland Police Bureau Transit Police Division SOP A-20 to the extent it does not conflict with the City of Milwaukie labor agreement and agency procedures or directives.
G. Conduct joint investigations when necessary an appropriate.

21. **Collective Bargaining Agreement.** All other terms and conditions of any current Collective Bargaining Agreement between the City of Milwaukie and Milwaukie Police Officer's Association shall remain in effect as to other issues not addressed by this Exhibit 3. In the event of a conflict between such Collective Bargaining Agreement and this Exhibit 3, the provisions of such Collective Bargaining Agreement shall govern.