

RESOLUTION NO. 35 -2012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,  
OREGON, APPROVING A SETTLEMENT AGREEMENT WITH TRIMET AND  
AUTHORIZING THE COUNCIL PRESIDENT TO SIGN THE AGREEMENT**

**WHEREAS** on December 16, 2008, TriMet and the City (the "Parties") entered into an Intergovernmental Funding Agreement ("Funding IGA") obligating the City to pay Five Million and No/100 (\$5,000,000.00) dollars ("Funding Share") for its share of TriMet's installation of the Portland-Milwaukie Light Rail Transit Project (the "Project");

**WHEREAS**, under paragraph 2 of the section entitled "Milwaukie Obligations" in the Funding IGA, the City is required to pay its Funding Share to TriMet in full within 90 days of Federal Transit Authority ("FTA") approval of the Full Funding Grant Agreement ("FFGA") for the Project ("Due Date");

**WHEREAS**, The City agrees it is legally obligated to fulfill its obligations in the Funding IGA, but is unable to maintain its current service levels to its citizens if it were to provide the full amount of its Funding Share to TriMet by the Due Date;

**WHEREAS**, the City code requires payment of certain land use, construction, filing, review, inspections, other associated fees, and system development charges by TriMet to allow it to install the Project within the City ("Permit Fees and Charges");

**WHEREAS**, ORS 30.395 provides authority for the settlement of claims and the appropriation of money in payment of claims against and between municipal corporations; and

**WHEREAS**, the Parties desire to reach a settlement that permits the City to pay TriMet its Funding Share in a manner that maintains city service levels and provides TriMet certainty with regard to Permit Fees and Charges, and further streamlines the process for payment of obligations between the Parties, and

**WHEREAS**, the City and TriMet have developed a Settlement Agreement and the City shall pay its obligation to TriMet consistent with the terms and conditions of the Settlement Agreement, and

**WHEREAS**, the City Council desires to place a bond measure before the voters to consider whether an alternative method of financing the City's funding share will be made available.

**Now, therefore, the City of Milwaukie, Oregon, resolves as follows:**

- Section 1: That the City Council of the City of Milwaukie agrees to the terms of the Settlement Agreement with TriMet.
- Section 2: The Council President is authorized to sign the Settlement Agreement on behalf of the City of Milwaukie.

Section 3: The City Council will take steps to file a measure to be put before the voters of the City in May 2013 to authorize general obligation bonds to include payment of the City's debt related to the Portland-Milwaukie Light Rail Transit Project.

Section 4: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on <sup>PRO JUNE</sup> ~~May~~ 5, 2012.

By: Greg Chaimov  
Council President Greg Chaimov

APPROVED AS TO FORM  
Jordan Ramis PC

ATTEST:

Pat DuVal  
Pat DuVal, City Recorder

Scott V. Harris  
City Attorney

Exhibit A

**Total Debt Service:**

	<b>Principal</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Balance</b>
7/1/2012				\$ 3,650,000
7/1/2013	9,500	182,500	192,000	3,640,500
7/1/2014	19,500	182,025	201,525	3,621,000
7/1/2015	29,500	181,050	210,550	3,591,500
7/1/2016	39,500	179,575	219,075	3,552,000
7/1/2017	130,000	177,600	307,600	3,422,000
7/1/2018	146,500	171,100	317,600	3,275,500
7/1/2019	161,500	163,775	325,275	3,114,000
7/1/2020	176,500	155,700	332,200	2,937,500
7/1/2021	191,500	146,875	338,375	2,746,000
7/1/2022	206,500	137,300	343,800	2,539,500
7/1/2023	221,500	126,975	348,475	2,318,000
7/1/2024	236,500	115,900	352,400	2,081,500
7/1/2025	251,500	104,075	355,575	1,830,000
7/1/2026	266,500	91,500	358,000	1,563,500
7/1/2027	281,500	78,175	359,675	1,282,000
7/1/2028	296,500	64,100	360,600	985,500
7/1/2029	311,500	49,275	360,775	674,000
7/1/2030	326,500	33,700	360,200	347,500
7/1/2031	347,500	17,375	364,875	-
	<b>\$ 3,650,000</b>	<b>\$ 2,358,575</b>	<b>\$ 6,008,575</b>	

## SETTLEMENT AGREEMENT

**BETWEEN:** The City of Milwaukie, Oregon, a municipal corporation (“City”)

**AND:** TriMet, a municipal corporation (“TriMet”)

**CONCERNING:** Agreement on payment of City funding share, permit fees and development charges, and other obligations associated with the Portland-Milwaukie Light Rail Transit Project, (“Settlement Agreement”)

**DATED:** May \_\_\_\_, 2012 (“Effective Date”)

### RECITALS

**WHEREAS** on December 16, 2008, TriMet and the City (the “Parties”) entered into an Intergovernmental Funding Agreement ( “Funding IGA”) obligating the City to pay Five Million and No/100 (\$5,000,000.00) dollars (“Funding Share”) for its share of TriMet’s installation of the Portland-Milwaukie Light Rail Transit Project (the “Project”);

**WHEREAS**, TriMet has included in the scope of the Portland-Milwaukie LRT Project all of the local enhancements and benefits described in attached Exhibit C;

**WHEREAS**, under paragraph 2 of the section entitled “Milwaukie Obligations” in the Funding IGA, City is required to pay its Funding Share to TriMet in full within 90 days of FTA approval of the Full Funding Grant Agreement (“FFGA”) for the Project (“Due Date”);

**WHEREAS**, The City agrees it is legally obligated to fulfill its obligations in the Funding IGA, but is unable to maintain its current service levels to its citizens if it were to provide the full amount of its Funding Share to TriMet by the Due Date;

**WHEREAS** the City code requires payment of certain land use, construction, filing, review, inspections, other associated fees, and system development charges to install the Project within the City (“Permit Fees and Charges”);

**WHEREAS**, ORS 30.395 provides authority for the settlement of claims and the appropriation of money in payment of claims against and between municipal corporations; and

**WHEREAS**, the Parties desire to reach a settlement that permits the City to pay TriMet its Funding Share in a manner that maintains city service levels and provides TriMet certainty with regard to Permit Fees and Charges, and further streamlines the process for payment of obligations between the Parties.

## SETTLEMENT AGREEMENT

NOW, THEREFORE, based on the foregoing and in consideration of the mutual promises and covenants contained herein, the adequacy of which is hereby acknowledged, the parties agree as follows:

**1. Scope.** The provisions of this Settlement Agreement, made pursuant to ORS 30.395(1), amend the Funding IGA by replacing in its entirety paragraph 2 of the section entitled Milwaukie Obligations in the Funding IGA.

### **2. Consideration for Settlement.**

**2.1 Payment of Permit Fees and Charges.** The City agrees that under its code the total amount of Permit Fees and Charges for the Project will be exactly Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars, as detailed in Exhibit A. The City agrees to pay this amount of Permit Fees and Charges through inter-fund transfers on behalf of TriMet and TriMet agrees that such payments by the City shall be part of the City's payment of its Funding Share. TriMet agrees that it will obtain permits for and include in the scope of the Portland-Milwaukie LRT Project the local enhancements and benefits described in attached Exhibit C.

**2.1.1 No Added Permit Fees and Charges.** In the event the City determines that additional Permit Fees or Charges beyond those shown in Exhibit A are required, the City may reallocate the amounts shown in Exhibit A to cover such additional fees or charges, but in no event shall the sum of Permit Fees and Charges exceed Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars as provided for in Section 2.1.

**2.1.2 Payment Transaction.** The City shall document its payment of the Nine Hundred Eighty-Nine Thousand Nine Hundred One and No/100 (\$989,901.00) dollars described in Section 2.1 above in a manner that will qualify as a local match under Federal Transit Administration (the "FTA") regulations as set forth in Section 3, below.

**2.1.3 Reimbursement of Permit Fees and Charges Previously Paid by TriMet.** The City further agrees that as of the date on which this Settlement Agreement is executed TriMet has paid a total of \$131,115.62 in Permit Fees and Charges. The City agrees to reimburse TriMet for these payments as part of payment due to TriMet under Section 2.2, below.

**2.2 Initial Payment to TriMet.** On or before ninety (90) days from the date on which the FTA executes the Full Funding Grant Agreement for the Project, the City will convey to TriMet Three Hundred Sixty Thousand Ninety-Nine and No/100 (\$360,099.00) dollars.

**2.2.1** In addition, by the date described in Section 2.1 the City will also convey to TriMet \$131,115.62 as reimbursement for Permit Fees and Charges paid by TriMet, as set forth in subsection 2.1.3.

**2.3 Balance of Payments by City to TriMet.** The primary principal obligation of Five Million and No/100 (\$5,000,000.00) dollars of the City after application of the payments in Sections 2.1 and 2.2 above will result in the City owing TriMet a principal amount of Three Million Six Hundred Fifty Thousand and No/100 (\$3,650,000.00) dollars, said principal amount to be paid to TriMet by the City in annual installments as follows: Beginning on July 1, 2013, and annually thereafter until paid in full on July 1, 2031, the City shall make payments to TriMet of the remaining total principal amount plus interest at the rate of Five Percent (5%) in accordance with the payment schedule attached hereto as Exhibit B.

**3. Permit and System Development Fee Documentation.** The City shall prepare and provide to TriMet standard documentation for any and all Permit Fees and Charges as they are issued or incurred. Such documentation shall indicate the cost of each charge or permit issued and shall state "*Paid by City pursuant to Section 2.1 of the Settlement Agreement.*" The City shall also provide such additional documentation of payment of such Permit Fees and Charges as TriMet may reasonably request to comply with FTA and audit requirements.

**4. Appropriation of Funds.** As a Settlement Agreement under ORS 30.395(1), the City shall appropriate funds as required to fulfill its obligations to make annual payments to TriMet under subsection 2.3. The Parties may utilize the provisions of ORS 30.395(2) and ORS 30.295 to satisfy the liabilities herein.

**5. Remedies for Breach.** The parties may remedy any material breach under this Settlement Agreement in accordance with Oregon law. In the event of a breach for nonpayment when due of any amounts required by Section 2.2 or 2.3, interest will continue to accrue on the overdue principal and interest amounts at an interest rate of five (5) percent per annum until paid. In the event of a second or subsequent nonpayment when due of any principal or interest amounts required by Section 2.2 or 2.3, time being of the essence, TriMet may declare the entire principal sum required by Section 2.2 and 2.3 plus any interest payments then unpaid immediately due and payable.

**6. Agreement Made With Advice of Counsel.** The Parties have been represented and advised by independent counsel of their own choice, or have been given the opportunity to be represented and advised by independent counsel, throughout all negotiations that preceded the execution of this Settlement Agreement, and with respect to the execution of this Settlement Agreement.

**7. No Other Representations.** The Parties acknowledge that no other party, nor agent, nor attorney of any other party, has made any promise, representation or warranty, express or implied, not contained in this Settlement Agreement concerning the subject matter of this Settlement Agreement to induce this Settlement Agreement, and the Parties acknowledge that they have not executed this Settlement Agreement in reliance upon any such promise, representation or warranty not contained in this Settlement Agreement.

**8. No Prepayment Penalty.** The City may prepay the total principal plus accrued interest then owing under subsection 2.3 at any time without penalty and TriMet shall accept

such prepayment in full satisfaction of the total principal plus accrued interest then owing.

**9. Severability.** If any provision of this Settlement Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Settlement Agreement shall not be in any way impaired.

**10. Resolution of All Controversies.** This Agreement resolves and releases all disputes between the Parties arising from and related to payment of the City's \$5 million obligation to TriMet and TriMet's payment of Permit Fees and Charges to the City.

**11. Counterparts.** This Settlement Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile and e-mail (scanned) signatures shall operate as original signatures with respect to this Settlement Agreement.

**CITY**

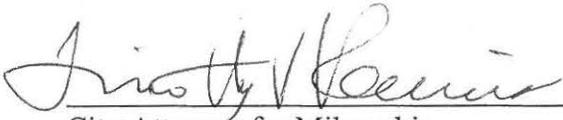
**TRIMET**

By:   
Name: Greg Chaimov  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

  
City Attorney for Milwaukie

\_\_\_\_\_  
Attorney for TriMet

Exhibit A

PORTLAND / MILWAUKIE LIGHT RAIL PERMIT FEE & CHARGES ESTIMATE				
Description	Engineering Fee	Planning Fee	Building Fee	Sub-Total
Planning Fees [CSUs, PLAs, Variances etc.]		\$ 27,000.00		\$ 27,000.00
Planning Review [Signs, Building & Demolition Permits]		\$ 10,750.00		\$ 10,750.00
Elevated Structures [\$15M]			\$ 120,000.00	\$ 120,000.00
Retaining Walls [\$1.3M]			\$ 13,000.00	\$ 13,000.00
Grading [200,000 Cu. Yds]			\$ 6,000.00	\$ 6,000.00
Miscellaneous Structures [\$1M]			\$ 9,243.00	\$ 9,243.00
Demolitions [80,000 sf]			\$ 5,000.00	\$ 5,000.00
Miscellaneous utility reconnections / relocations 24 +/-properties to change connection			\$ 2,975.00	\$ 2,975.00
Erosion Control [15 acres]	\$ 2,500.00			\$ 2,500.00
Right of Way plan review and inspections [\$12M]	\$ 660,000.00			\$ 660,000.00
Impervious Surface SDC [52 ESU]	\$ 59,200.00			\$ 59,200.00
Wastewater SDC [1 EDU for Park Ave Station]	\$ 893.00			\$ 893.00
Water SDC & Connections [20 services for irrigation and maintenance]	\$ 73,340.00			\$ 73,340.00
<b>TOTAL</b>	<b>\$ 795,933.00</b>	<b>\$ 37,750.00</b>	<b>\$ 156,218.00</b>	<b>\$ 989,901.00</b>

Exhibit B

Annual Installment Schedule

	Principal	Interest	Total	Balance
7/1/2012				\$3,650,000
7/1/2013	9,500	182,500	192,000	3,640,500
7/1/2014	19,500	182,025	201,525	3,621,000
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## Exhibit C

The following local enhancements and benefits are included in the scope of the Portland-Milwaukie LRT Project:

- Enhance the Milwaukie LRT station by including a unique railing treatment and a shelter at the station
- Provide an aesthetic treatment of retaining walls in Downtown Milwaukie
- Tubular steel enhancements to the Kellogg Bridge structure
- Reconstruct and widen sidewalks at SE Mailwell, SE Harrison, SE Monroe, SE Washington and SE 21<sup>st</sup> Avenue
- Rebuild intersections along alignment; include new light standards, crosswalks, and curbs
- Provide quiet zone improvements along the alignment at SE Mailwell, SE Harrison, SE Monroe, and SE Washington/21<sup>st</sup> Avenue
- Underground utilities along alignment in portion of downtown
- Provide supplemental tree mitigation at Kronberg Park
- Replace existing water and sewer pipes at intersections along the alignment that are relocated as part of the project with new pipes
- Construct the Trolley Trail between SE River Road and SE Park Avenue.
- Provide vibration mitigation along alignment adjacent to impacted resources
- Provide public art at stations
- Realign SE Lake Road to allow for better bicycle access.
- Develop multi use path on west side of SE 21<sup>st</sup> Avenue between SE Lake and SE Washington
- Remove derelict piles in Kellogg Lake
- Remove invasive species on Kellogg Lake and Milwaukie Presbyterian church property
- Provide habitat mitigation at Crystal Creek
- Provide up to \$1 million for City Staff assigned to the Project