



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 43-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AGREEING TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN TRIMET AND THE CITY OF MILWAUKIE RELATED TO THE CLOSE-OUT OF THE PORTLAND-MILWAUKIE LIGHT RAIL TRANSIT PROJECT.

WHEREAS, The City and TriMet worked with their partners the City of Portland and Clackamas County to apply for and receive funding from the United States Government to construct a light rail line linking Portland to Milwaukie and beyond to Park Avenue in Clackamas County; and

WHEREAS, whereas funds were contributed by each party to cause construction to occur; and

WHEREAS, the light rail line was completed and opened for service as of September 12, 2015, and;

WHEREAS, with the project now completed, the parties have worked cooperatively to document and resolve several issues that remain to be completed after opening of the light rail line, and

WHEREAS, an intergovernmental agreement has been negotiated that details the settlement of remaining issues.

Now, Therefore, be it Resolved that

Section 1: The Milwaukie City Council agrees to the terms of the Intergovernmental Agreement with TriMet to close-out the Portland-Milwaukie Light Rail Transit Project.

Section 2: The Mayor is authorized to sign the Intergovernmental Agreement on behalf of the city of Milwaukie.

Introduced and adopted by the City Council on 4/5/16.

This resolution is effective on April 5, 2016..



Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND THE CITY OF MILWAUKIE RELATED TO
THE CLOSE-OUT OF THE PORTLAND-MILWAUKIE
LIGHT RAIL TRANSIT PROJECT**

This intergovernmental agreement ("Agreement"), dated April 15, 2016 ("Effective Date"), is made and entered into by and between the City of Milwaukie ("City") and the Tri-County Metropolitan Transportation District of Oregon ("TriMet") (collectively the "Parties").

RECITALS

1. TriMet and the City are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.
2. TriMet recently completed the Portland-Milwaukie Light Rail Transit Project ("Project"), which runs from Portland State University in downtown Portland to Park Avenue in unincorporated Clackamas County. The Project runs through Milwaukie, and TriMet and the City were partners in the Project and worked cooperatively to construct the portion of the Project in the City in accordance with several other agreements between the parties, and in compliance with City code requirements.
3. With the Project now complete, the Parties wish to document and resolve several issues that remain regarding the Project.
4. TriMet will pay the City a total of \$351,000 as full and final consideration for and satisfaction of all remaining issues related to the Project.

NOW, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

A. STORM WATER MITIGATION

1. The Parties are not in agreement regarding the requirements related to storm water treatment and mitigation, with the City alleging that a treatment area deficit exists. The Parties desire to resolve this disagreement in the manner set out in this section.

2. Within 30 days of the Effective Date, TriMet will submit an application for a "fee in lieu of construction" ("FILOC") for all storm water management and mitigation requirements. The amount of the FILOC will be \$120,000. City agrees to promptly process and approve the FILOC.

3. Within 30 days of City approval of the FILOC, TriMet shall pay City a total of \$120,000 as full and final satisfaction of all TriMet obligations under any City code requirements, Storm Water Master Plan, or other law, code or regulation related to storm water management or mitigation requirements in the City.

B. TRAFFIC SIGNAL SUPPORT AND EQUIPMENT

1. City was required to perform certain work on new traffic signals installed at Washington, 21st and Adams Streets as part of the Project (“Traffic Signals”). Under an agreement between the City and Clackamas County, the County performs all work on the Traffic Signals. The County will perform work totalling approximately \$131,000 for Project-related Traffic Signals work performed for the City. Because this work was required for the Project, TriMet agrees to pay the City \$131,000 as full and final consideration for all costs and expenses related to the Traffic Signals, including any and all future maintenance costs.

2. TriMet shall pay City \$131,000 within 30 days of the Effective Date. TriMet shall have no further responsibility or obligations related to the Traffic Signals.

C. “MILWAUKIE TRIANGLE” PROPERTY DISPOSITION

1. As part of the Project, TriMet purchased property in downtown Milwaukie from the Union Pacific Railroad and the Horton Family Trust. After the property was used for Project purposes, an excess parcel remains. The excess parcel is referred to as the “Milwaukie Triangle” and is shown as “Tract 2” on Exhibit A, which is attached hereto and incorporated by this reference herein.

2. The Parties entered into an Intergovernmental Agreement dated July 14, 2015 “Regarding the Milwaukie Triangle Site,” which sets forth the terms and conditions of the sale of the property to the City. Among other things, that agreement states that the City will pay TriMet the federal share of the property plus \$1.00 for the site. The terms of that agreement shall continue to govern the disposition of the property, including payment from the City to TriMet.

D. RAILROAD CROSSING ADJUSTMENTS

As part of the Project, City will be required to perform certain Railroad Crossing Adjustments work, as set forth below.

1. Existing Crossing Order – 21st/Adams/Washington
 - a. TriMet and the City resolved additional striping required to revise the Crossing Order at SE 21st/Washington/Adams after significant review by all Parties to the existing Crossing Order.
 - b. TriMet agreed to complete drawings and application for the revised Crossing Order.

2. New Crossing Order – Lake Road
 - a. ODOT Rail requires a new Crossing Order for Lake Road due to the change of operation of the roadway from one-way to two-way traffic. TriMet and the City agree that additional signage identified by ODOT Rail at this crossing is a Project related expense.
 - b. TriMet agreed to complete drawings and application for the new Crossing Order.
3. TriMet agrees to pay the City \$50,000 as full and final consideration for all costs and expenses related to the Railroad Crossing Adjustments, including any and all future maintenance costs. TriMet shall have no further responsibility or obligations related to the Railroad Crossing Adjustments.

E. RESOLUTION OF REMAINING ISSUES

1. Punchlist Final Acceptance
 - a. TriMet has completed all construction activity and issued the Certificate of Final Acceptance to its contractor on February 2, 2016. TriMet created a punchlist to remedy minor construction issues before contract closeout (“Punchlist”), which is expected to occur in April 2016. The Punchlist is attached hereto as Exhibit B and incorporated by this reference herein. All Punchlist items were completed as of March 15, 2016
 - b. City agrees that when TriMet’s contractor completes all Punchlist activities, such work is considered accepted for purposes of Permit Closeout.
2. Permit Closeout
 - a. Building Permits
 - i. City agrees to complete all building and engineering inspections related to the Building Permits and finalize all Building Permits by April 30, 2016.
 - b. Land Use Conditions
 - i. All conditions of approval related to the Project that were required prior to Permit Closeout have been met.
3. Completion of Remaining Agreements.
 - i. Both Parties agree to negotiate in good faith and enter into additional agreements and transactions as required by the Project no later than July 1, 2016, including:
 - a. Right of Way Agreement and required real property transactions;

- b. Continuing Control Agreement;
- c. Maintenance Agreement.

4. Consideration

i. TriMet agrees to pay the City \$50,000 full and final consideration for and satisfaction of all remaining issues related to the Project, whether or not enumerated in this Agreement.

GENERAL PROVISIONS

1. 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 a representative, agent, employee 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.
2. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
3. Milwaukie and TriMet are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
4. Except as otherwise set forth herein, this Agreement constitutes 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 both 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
5. 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 Party.

6. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and Milwaukie shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between Milwaukie and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
7. 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.
8. 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.
9. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
10. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.
11. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
1800 SW First Ave, Ste. 300
Portland, OR 97201

With copy to: TriMet Legal Department
1800 SW First Ave, Ste. 300
Portland, OR 97201

City of Milwaukie: Bill Monahan
10722 SE Main Street
Milwaukie, OR 97222

14. Either Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

15. Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

Sandy Bradley on behalf of
By Daniel W. Blocher, PE
Daniel W. Blocher, P.E.

Date April 15, 2016

APPROVED AS TO FORM

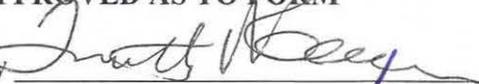
By 
Lance Erz, TriMet Legal Department

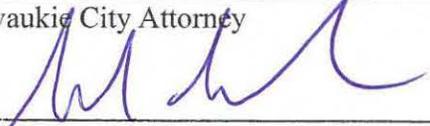
CITY OF MILWAUKIE

By 
Name: William A. Monahan

Date 4/15/16

APPROVED AS TO FORM

By 
Milwaukie City Attorney

By 
Name Mark Gamba
Date 4-22-16

Date: April 12, 2016

To: Capital Projects Directors

From: Daniel W. Blocher *DB*
Executive Director

Subject: Delegated Authority
April 13-18, 2016

I will be out of the office April 13-18, 2016. With this memo I am delegating signature authority for the Capital Projects division to Sandy Bradley on my behalf.

cc: Accounts Payable
Project Control
Procurement