CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 97-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AND EXTEND THE INTERGOVERNMENTAL AGREEMENT WITH THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON TO PROVIDE POLICE SERVICES TO THE TRIMET POLICE DIVISION .

WHEREAS, the City of Milwaukie is developing strategies to provide high quality livable communities; and

WHEREAS, the City Council has directed city staff to develop cost effective programs to improve the community livability and safety; and

WHEREAS, TriMet and the City of Milwaukie cooperate to provide safety programs on TriMet conveyances and properties;

Now, Therefore, be it Resolved that the City Council authorizes the Mayor to sign and extend the intergovernmental agreement with TriMet to receive reimbursement for personnel services.

Introduced and adopted by the City Council on **October 6th, 2015.**

This resolution is effective on **October 6th, 2015.**

Mark Gamba, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Ramis PC

City Attorney

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

Contract No. GS150817LG

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 granted in 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 September 29, 2015 through June 30, 2016. Thereafter, this Agreement will automatically renew for four successive one-year terms (July 1 through June 30) commencing on July 1, 2016, unless terminated sooner under the terms of this Agreement.

2. RESPONSIBILITIES OF PARTIES: See attached Exhibits A and Exhibits 1 through 4.

3. 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. In addition to the rights afforded under subparagraphs (a) and (b) 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 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 and pursue any available legal or equitable remedies.

    d. 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. 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.

10. 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.

11. This Agreement is funded in part by a U.S. Department of Homeland Security Grant Agreement between TriMet and the U.S. Department of Homeland Security. This Agreement is subject to all provisions prescribed for third party contracts by that financial assistance agreement as set forth in the attached and incorporated Exhibit A.

12. ENTIRE AGREEMENT: This Agreement as set forth herein incorporates by reference all of the terms and conditions of Exhibits A and the Exhibits1 through 4 attached hereto which are made a part of this Agreement and constitutes the entire agreement among the parties. This Agreement may be modified or amended only by the written agreement of the parties.

13. 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

Mark Gamba
Mayor

10-7-15
date

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

Charlie Hales
Mayor

date

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

Harry Saporta
Executive Director, Safety, Security and Environmental Services

date

Mary Hull Cabellero
Auditor

date

Approved as to form:

Legal Counsel

date

Tracy Reeve, City Attorney

date

TriMet Legal Counsel

date

Exhibits:
Exhibit A – U. S. Department of Homeland Security Grant Requirements
Exhibit 1 – Transit Police Division Administration & Operations
Exhibit 2 – Transit Police Division Staffing Letter
Exhibit 3 – Transit Police Division Personnel Operations
Exhibit 4 – SOP A-20 Transit Police Standard Operating Procedure

EXHIBIT A

U.S. DEPARTMENT OF HOMELAND SECURITY GRANT REQUIREMENTS

As used below, the term "Contractor" shall mean the City of Milwaukie.

I. DEFINITIONS

A. Homeland Security Directive includes any Homeland Security circular, notice, order or guidance providing information about Homeland Security grants, programs, application processing procedures, and Project management, including grant requirements and guidelines.

B. Government means the United States of America and any executive department or agency thereof.

C. Homeland Security means the United States Department of Homeland Security (DHS) or its Office for Domestic Preparedness, and including but not limited to the Federal Emergency Management Agency (FEMA).

D. Third Party Subcontract means a subcontract at any tier entered into by Contractor or a subcontractor, financed in whole or in part with Federal assistance originally derived from Homeland Security.

II. FEDERAL REQUIREMENTS

A. Homeland Security requires that a grant recipient require that any contractor employed in completion of a DHS grant project comply with the applicable requirements of Title 2, Part 200 of the Code of Federal Regulations (C.F.R.), the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the terms and conditions of which are incorporated herein by reference. In addition, any such contractor shall require each of its subcontractors employed in the completion of the project to comply with the foregoing requirements

B. Contractor shall at all times comply with all applicable terms, conditions, regulations, policies, procedures and Homeland Security Directives, including without limitation those listed directly or by reference in the financial assistance agreement between TriMet and the Homeland Security, as they may be amended or promulgated from time to time during the term of this Agreement, which shall be deemed to be incorporated herein. Contractor's failure to so comply shall constitute a material breach of this Agreement. Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. All Homeland Security mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail

to perform any act, or refuse to comply with any requests which would cause TriMet to be in violation of the Homeland Security terms and conditions.

III. ACCESS TO RECORDS

A. Contractor agrees to provide TriMet, Homeland Security, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than six years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date Contractor receives final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until TriMet, Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

D. Contractor agrees to include paragraphs A, B, and C above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

IV. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of **2 CFR Part 200**. As such, Contractor is required to verify that none of Contractor, its principals, as defined at **2 CFR Part 180**, or affiliates, as defined at **2 CFR Part 180**, are excluded or disqualified as defined **therein**. By signing this Agreement, Contractor makes a material representation of fact relied upon by TriMet that Contractor has complied with **2 CFR Part 180**. If it is later determined that Contractor knowingly rendered an erroneous representation of compliance with **2 CFR 200**, in addition to and without limitation of the remedies available to TriMet, the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Contractor is required to comply with **2 CFR Part 200** throughout the term of this Agreement, and must include the requirement to comply with **2 CFR Part 200** in any lower tier covered transaction it enters into.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. TriMet and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

B. Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of $2,500 that employ laborers or mechanics*)

A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) and 40 U.S.C. 3701-3708 as applicable, as amended and as supplemented by Department of Labor regulations (29 C.F.R. Part 5), which are incorporated herein.

B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause in Paragraph B of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph B of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph B of this section.

D. **Withholding for unpaid wages and liquidated damages** – TriMet shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C of this section.

E. **Subcontracts -** The contractor or subcontractor shall include in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

VII. NOTICE OF REPORTING REQUIREMENTS

Contractor shall comply with the reporting requirements of Homeland Security stated in 2 CFR Part 200.328 , The Contractor agrees to include the above clause in each third party

subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VIII. COPYRIGHTS

A. Contractor agrees that Homeland Security shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

1. The copyright in any work developed with the assistance of funds provided under this Agreement;

2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

B. Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

IX. PATENT RIGHTS

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, TriMet and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Homeland Security. Unless the Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), TriMet and Contractor agree to take the necessary actions to provide, through Homeland Security, those rights in that invention due the Government in accordance with 44 CFR Part 13.36(i) (8).

B. The Contractor also agrees to include paragraph A above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Homeland Security.

X. ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94-163, 89 Stat.871). Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

In addition, to the extent applicable, Contractor shall comply with the requirements of 2 CFR Part 200.322 regarding procurement of recovered materials.

XI. ENVIRONMENTAL REQUIREMENTS

A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA regional office.

B. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq. Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA Regional Office.

C. Contractor agrees to include the requirements at paragraphs A, B and C above in each third party subcontract exceeding $150, 000 financed in whole or in part with Federal assistance provided by Homeland Security.

CERTIFICATION

REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The City of Milwaukie certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Executed this ____ day of _____ , 20 ___

By: _____

Signature of Authorized Official

_____

Title of Authorized Official

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 - Safety, Security and Environmental Services ("Executive Director") 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) Visible 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) Problem Orienting Policing: 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, and 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 Portland 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.

e. Body Cameras: It is the intent that sworn officers will wear body cameras, subject to a Subsidiary Agreement law enforcement jurisdiction and Portland reaching mutual written agreement regarding the acquisition, implementation, and use of body cameras. Portland shall be responsible for the Division's acquisition, implementation, and use of body cameras. This is subject to additional policy development and legislation.

f. Selection and Assignment of a Lieutenant. In the event of any other Lieutenant position vacancy or proposed re-assignment for any reason, the Transit Police Commander shall solicit from Portland or one or more Subsidiary jurisdictions potential candidates to fill the position. In the case of Subsidiary jurisdictions, the Chief of Police/Sheriff of the Subsidiary jurisdiction shall forward a letter of recommendation to the Transit Police Commander, along with backgrounds and resumes, of potential candidates who can fulfill the obligations of the Lieutenant as set forth in this Agreement. The Transit Police Commander will discuss with the Executive Director the backgrounds and resumes of potential candidates, as well as affording the Executive Director the opportunity to meet

with and interview the candidates. The Executive Director will provide input and recommendations to the Transit Police Commander prior to the Transit Police Commander's appointment to ensure that the candidate can fulfill the obligations of Lieutenant as set forth in this Agreement.

g. Term of Assignment: It is desired that Officers assigned to the Transit Police Division serve a minimum of three (3) years. The assignment shall be periodically reviewed and revised, including extension of assignments, as mutually agreed upon by TriMet and the City of Milwaukie.

h. Supplemental Police Services: TriMet agrees to pay for supplemental Division police services on an intermittent basis to assist the Division in responding to occasional community impacts or surges that require additional policing. The Executive Director must approve the use of supplemental Division police services prior to deployment by the Division Commander. Once approval is received from the Executive Director, the Division Commander will submit in writing to the Executive Director the name of the Subsidiary Agreement jurisdiction providing the supplemental police services, and the number and names of personnel being assigned.

3. REIMBURSEMENT OF COSTS

a. Personnel Costs: The City of Milwaukie must pay the salaries, overtime, insurance, retirement, and other benefits ("Personnel Costs") of its respective personnel serving in the TriMet Transit Police Division. The City of Milwaukie shall invoice TriMet monthly for all actual incurred Personnel Costs for 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 (Personnel Costs) 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. Training/Meeting Costs. Training and meeting costs must be pre-approved by the Commander. Transit Police personnel must follow training protocols established by their respective agencies and complete the necessary paperwork to attend training. Trainings must be scheduled at least 30-days in advance. If approved by the Commander, the Commander shall forward the training/ meeting cost requests to TriMet's Executive Director for final approval.

c. Equipment and Uniforms: City of Milwaukie shall assign officers to Transit Police with a standard uniform and a complement of personal equipment at its own expense. Non-personal equipment purchased at TriMet's expense specifically for Transit Police shall be for the exclusive use of Transit Police, regardless of title. Personal equipment (such as but not limited to TASERs) purchased by TriMet for the use of officers from other agencies that do not provide such equipment shall remain for exclusive use within Transit Police, regardless of title.

Expenses associated with routine replacement of uniform and equipment damaged or worn-out in normal use shall be billed to TriMet subsequent to pre-approval by the Executive Director.

Operating costs for equipment (such as but not limited to telecommunications, radios and mobile telephones) shall be billed to TriMet subsequent to the pre-approval by the Executive Director. Monthly equipment replacement reserve costs for those items Portland manages in that manner shall be billed to TriMet.

Portland shall be responsible for its incurred expenses in performing this Agreement unless authorized and approved by the Executive Director in accordance with this subparagraph d.

d. Any reimbursement by TriMet of costs or expenses incurred by Portland or Subsidiary Agreement jurisdictions in the performance of this Agreement not included in subparagraphs (a) and (b) shall be subject to the Executive Director's prior authorization and approval, including but not limited to expenditures for supplies, vehicles, equipment and uniforms.

e. Amount: Before December 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
The 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 September 29, 2015 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), 2015, To-Date

- from (effective date of agreement), 2015 to (date) (specify number of officer(s))
- from (date) to (date) etc. (specify revised number of officer(s)) etc.
- from (date) to (effective date of this staffing change) (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,

Harry Saporta
Executive Director, Safety, Security & Environmental Services
TriMet

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

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

2. Current and future 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 staffing 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 the 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 Police Employees Association.

20. **Citizen Complaints.** All citizen complaints concerning the City of Milwaukie officers to be referred to the City of Milwaukie Chief of Police with the 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 the City of Milwaukie 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 (Exhibit 4) 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 and appropriate.

21. **Collective Bargaining Agreement.** All other terms and conditions of any current Collective Bargaining Agreement between the City of Milwaukie and the Milwaukie Police Employees 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.

EXHIBIT 4
TRANSIT POLICE STANDARD OPERATING PROCEDURES

SOP: A-20
EFFECTIVE: April 1, 2012
REVIEW: April 1, 2014

SUBJECT: Non-Criminal and Criminal Investigations Involving Transit Police Members

PURPOSE:
To establish a process for handling non-criminal and criminal investigations that respects all rights and privileges under the affected member's collective bargaining agreement and the member's agency policies.

DEFINITIONS:
Partner Agency: Any police agency that has a current Intergovernmental Agreement with the Tri- county Metropolitan Transit Authority to supply law enforcement services.

Non-criminal Complaint: A complaint made against an officer or deputy where there are no allegations of criminal conduct.

Criminal Investigation: An investigation to determine criminal culpability.

Lead Agency: The agency taking primary responsibility for the non-criminal or criminal investigation.

POLICY:
Non-Criminal Investigations
Non-criminal complaints received by the Transit Police Division (TPD), Intemal Police Review (IPR) or any partner agency will be referred to the respective member's agency for disposition. The member's agency will be the lead agency and will be responsible for processing/investigating the complaint using their policies.

Criminal Investigations
Complaints or events that warrant a criminal investigation will be referred to the jurisdiction of occurrence. Thejurisdiction of occurrence will become the lead agency. The lead agency will be responsible for processing/investigating the incident using their policies.

Cooperation
All partner agencies acknowledge that investigations should be thorough and completed without unreasonable delay. Partner agencies will cooperate with the lead agency in an investigation, to the extent allowed by their (partner agency) policies and collective bargaining agreements, to ensure the investigation is thorough and completed in a timely manner.

Notifications

When the lead agency receives a complaint or opens an investigation where there is alleged misconduct by a TPD member, the lead agency will notify the TPD commander and the employing agency as soon as possible.

At the completion of each investigation the lead agency will apprise the TPD commander and the employing agency of the findings.

MICHAEL A. CREBS
Commander Portland Police
Transit Police Division