

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 09-4014
INTERGOVERNMENTAL AGREEMENT WITH TRIMET)
PROVIDING FOR FUNDING COORDINATION FOR) Introduced by Chief Operating
METRO'S TRANSIT-ORIENTED DEVELOPMENT AND) Officer Michael J. Jordan, with the
URBAN CENTERS PROGRAM) concurrence of Council President
) David Bragdon

WHEREAS, on April 9, 1998, the Metro Council adopted Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development (TOD) Implementation Program at Metro), which authorized start-up activities and set forth the operating parameters of the TOD Program in a Work Plan providing for selection criteria for TOD projects; and

WHEREAS, implementing transit-oriented development is a cost-effective means to increase transit ridership, reduce congestion, and improve air quality, and is an important component in realizing the Region 2040 Plan; and

WHEREAS, both TriMet and Metro participate in TOD planning review, advocacy, technical assistance and development review, and they wish to coordinate TOD funding to improve the efficiency of government; and

WHEREAS, by Resolution No. 99-2858 (For the Purpose of Authorizing a Revenue Neutral Intergovernmental Agreement with TriMet Concerning Transit-Oriented Development and Increasing the Level of Transit Service), adopted November 18, 1999, the Metro Council authorized an intergovernmental agreement (IGA) between TriMet and Metro obligating Congestion Mitigation Air Quality (CMAQ) and Surface Transportation Program (STP) funds to TriMet for capital and operating needs in return for a commitment to contribute TriMet General Funds to the TOD Program; and

WHEREAS, by Resolution No. 01-3114A on November 8, 2001, and by Resolution No. 03-3314 on May 15, 2003; by Resolution No. 04-3478 on July 15, 2004 and by Resolution No. 05-3627 on October 27, 2005 (For the Purpose of Authorizing Amendment Nos. 1-4 to an Intergovernmental Agreement with TriMet Concerning Transit-Oriented Development and Increasing the Level of Transit Service), Metro and TriMet amended the IGA to modify the source and amount of funding and to increase the level of transit service; and

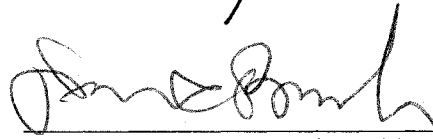
WHEREAS, the TOD Work Plan was amended: (1) to include provision for a site improvements category by Resolution No. 00-2906 (For the Purpose of Amending the TOD Program Procedures to Facilitate TOD Projects Including the Round at Beaverton Central,) adopted March 9, 2000; (2) to include additional light rail corridors, streetcar, frequent bus, urban centers and green buildings by Resolution No. 04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program Work Plan to Expand the TOD Program Area and Initiate An Urban Centers Program,) adopted July 15, 2004; (3) to add selection criteria for frequent bus line projects by Resolution No. 05-3563 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program Work Plan to Apply Additional Selection Criteria to TOD Program Frequent Bus Line Projects), adopted May 19, 2005; (4) to allow a process for unsolicited proposals by Resolution No. 05-3617 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program Work Plan to Allow a Process for Consideration of Unsolicited Development Proposals for Metro TOD & Centers Program Owned Land), adopted September 13, 2005; and (5) to designate focus centers, establish an urban living infrastructure program, and make technical changes by Resolution No. 07-3861 (For the Purpose of Amending the Transit-Oriented Development (TOD) and Urban Centers Implementation Program to Designate Focus Centers, Establish an Urban Living Infrastructure Program, and Make Technical Changes), adopted November 1, 2007; and

WHEREAS, TriMet and Metro acknowledge the desire and need to continue to cooperate in encouraging TOD around transit stations, along transit corridors, and in Urban Centers served by transit, to coordinate development and implementation of such projects, and to work toward improving transit service for the region and wish to continue to coordinate and periodically transfer TriMet General Funds for the TOD Program to improve the efficiency of government in exchange for an equivalent commitment to obligate certain flexible federal funds to TriMet for bus and rail system purchases, and other TriMet uses; and

WHEREAS, Metro Council's consideration of this resolution is subject to the Metro Council's passage of the companion Ordinance No. 08-1204A (For the Purpose of Determining that Implementing Transit-Oriented Development is a Matter of Metropolitan Concern); now therefore


BE IT RESOLVED, that the Metro Council hereby authorizes the Chief Operating Officer to enter into the Intergovernmental Agreement for the Transit-Oriented Development & Urban Centers Program Funding Coordination between Metro and TriMet, attached herein to this resolution as Exhibit A.

ADOPTED by the Metro Council this 15th day of January 2009.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

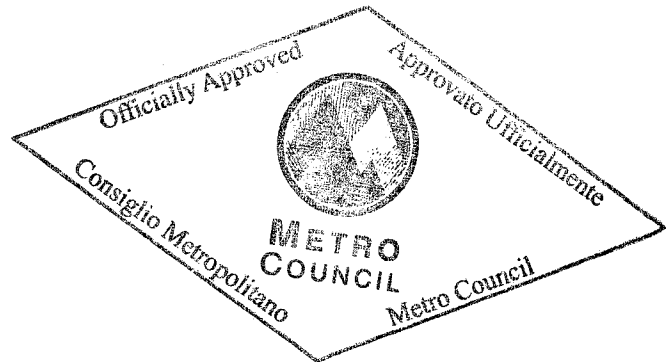


Exhibit A-1 of 4 to Reso. No. 09-4014
Intergovernmental Agreement
Transit-Oriented Development & Urban Centers Program
Funding Coordination

**Intergovernmental Agreement
Transit-Oriented Development & Urban Centers Program
Funding Coordination**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated this ____ day of _____ 2008, is by and between Metro, a municipal corporation and political subdivision of the state of Oregon ("Metro"), and the Tri-County Metropolitan Transit District of Oregon ("TriMet").

RECITALS

- A. Metro's Region 2040 Vision and Metro's long-range plan encourage mixed use development along light rail lines and mass transit routes and in compact regional and town centers – higher density areas that combine housing, employment, retail, cultural, and recreational activities in a walkable environment that is well served by transit, (hereafter "Transit-Oriented Development"). The regional benefits of Transit-Oriented Development in centers include: increased transit, walk and bike trips; reduction in congestion and VMT; better air quality; protection of farm and forest land; and more efficient provision of public services. Mixed-use centers also maintain property values, create a sense of community, and attract new business.
- B. Because they enhance the effectiveness of a public transportation, the Federal Transit Administration ("FTA") has approved joint development improvements that meet established criteria and enhance economic development or incorporate private investments in the improvement.
- C. On May 16, 1996, Metro and TriMet executed an Intergovernmental Agreement entitled "Transit-Oriented Development Revolving Fund Coordination Agreement" for the purpose of transferring Transit-Oriented Development staff members and functions from TriMet to Metro upon Metro's receipt of FTA grants; and assuring the consideration of the effect of Transit-Oriented Development projects on TriMet facilities and services.
- D. On April 9, 1998, via Metro Council Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development ("TOD") Implementation Program at Metro), Metro established the TOD Implementation Program for the purpose of acquiring property adjacent to transit stations to sell or lease to developers for the construction of TODs.
- E. On November 22, 1999, TriMet and Metro entered into an Intergovernmental Agreement between TriMet and Metro Regarding Transit-Oriented Development (TOD) Activities and Improving the Quality of Transit Service, providing for, among other things, the exchange between Metro and TriMet, of various Congestion Mitigation Air Quality (CMAQ) and Surface Transportation Program (STP) funds allocated to Metro for TriMet General Funds.

**Exhibit A-2 of 4 to Reso. No. 09-4014
Intergovernmental Agreement
Transit-Oriented Development & Urban Centers Program
Funding Coordination**

- F. Subsequently, by Resolution Nos. 00-2906, 04-3479, 05-3563 and 07-3861, the Metro Council expanded the role of the Transit-Oriented Development Program to fund the following: (i) site improvements, (ii) projects near Frequent Bus Lines, (iii) projects adjacent to Interstate MAX, Airport MAX, MAX South Corridor, Portland Streetcar and in Regional and Urban Centers; and (iv) Urban Living Infrastructure elements, (hereafter "TOD Program").
- G. Concurrently, by Amendment Nos. 1-4 to the Intergovernmental Agreement between TriMet and Metro Regarding TOD Activities, set forth in Section E, above, TriMet and Metro extended the term of said IGA and periodically ratified and coordinated annual exchanges of STP Flexible Funds for TriMet General Funds, to provide for continuing TOD Program implementation.
- H. TriMet and Metro acknowledge the desire and need to continue to cooperate in encouraging TOD around transit stations, along transit corridors, and in Urban Centers served by transit, to coordinate development and implementation of such projects, and to work toward improving transit service for the region. Therefore, the parties to this Agreement wish to continue to coordinate and periodically transfer TriMet General Funds for the TOD Program to improve the efficiency of government in exchange for an equivalent commitment to obligate certain flexible federal funds to TriMet for bus and rail system purchases, and other TriMet uses.

NOW THEREFORE, pursuant to authority granted in ORS Chapters 267 and 268 and the Metro Charter, and in recognition of the mutual interests of the parties and based upon the terms and conditions herein, the parties hereby mutually agree as follows:

AGREEMENT

1. Definitions.

"MTIP" means the Metropolitan Transportation Improvement Program, which is the regional programming of highway and transit projects that use federal funds.

"STIP" means the State Transportation Improvement Program, which is the statewide programming of highway and transit projects that use federal funds.

"STP Flexible funds" means federal type Q-23 Surface Transportation Program funds allocated under federal legislation.

2. Metro Obligations

- a. Metro shall advocate for TOD projects within local, regional and national forums.

Exhibit A-3 of 4 to Reso. No. 09-4014
Intergovernmental Agreement
Transit-Oriented Development & Urban Centers Program
Funding Coordination

- b. Metro shall continue to manage, develop, and implement TOD Program projects adjacent to the light rail stations and corridors, along Frequent Bus Lines and in Urban Centers, in accord with the TOD Urban Centers Implementation Work Plan, as amended by the Metro Council.
 - c. Metro will coordinate with TriMet from time to time and/or the Federal Transit Authority (FTA) to establish positive joint development precedent and policies. Metro further agrees that, on a biennial basis, if STP funds are allocated to Metro for the TOD Program it will, at its sole discretion, obligate said funds to TriMet for transit capital and operating needs, in exchange for a like amount of TriMet General Funds transferred to Metro.
2. TriMet Obligations. TriMet agrees that, in support of the TOD Program, if TriMet General Funds are reasonably available for an exchange, TriMet will periodically every two years, at its sole discretion, exchange TriMet General Funds for STP funds allocated to Metro for the TOD Program, TriMet may, in its sole discretion, seek authorization from the TriMet Board of Directors to participate in such an exchange of TriMet General Funds for TOD Program STP funds allocated to Metro through the MTIP process.
3. Identification and Obligation of Funds. Biennially, by the end of November, Metro and TriMet shall by joint letter or memorandum establish the appropriate amounts and timing of each recurring funding exchange set forth in Sections 2 and 3 above.
4. Separate Governments. The parties hereby agree and acknowledge that Metro is a separate and independent governmental body, and that the activities of Metro, its officers, agents and employees shall not constitute actions of TriMet for any purpose whatsoever.
5. Indemnification and Release.
 - a. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, TriMet hereby agrees to indemnify and hold harmless Metro and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorney fees) arising out of the activities of TriMet in performance of this Agreement.
 - b. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, Metro hereby agrees to indemnify and hold harmless TriMet and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorney fees) arising out of the activities of Metro in performance of this Agreement.
6. Situs of Agreement. The situs of this Agreement is Portland, Oregon, and any litigation hereto shall be governed by the laws of the State of Oregon and conducted in the Circuit Court for Multnomah County.

Exhibit A-4 of 4 to Reso. No. 09-4014
Intergovernmental Agreement
Transit-Oriented Development & Urban Centers Program
Funding Coordination

7. Non-Transferability. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party.

8. Contacts.

The Manager of this Agreement for Metro shall be (until such time as the Chief Operating Officer may name a replacement):

Robin McArthur, Regional Planning Director
Metro
600 NE Grand Avenue
Portland, OR 97232

Any and all correspondence and reports shall be addressed to the Manager.

The Project Coordinator of this Agreement for TriMet shall be:

Neil S. McFarlane, Executive Director
TriMet
4012 SE 17th Avenue (check if this address or 710 NE Holladay, Portland, OR 97232)
Portland, OR 97202

Any and all correspondence and payments shall be addressed to the Project Coordinator.

9. Term of Agreement. The term of this Agreement shall commence upon the last date of signature herein below and shall be one (1) year in duration. This Agreement shall automatically renew every year until terminated. This Agreement may be terminated mutually in writing, or unilaterally, preceded by ninety (90) days written notice.

10. Compliance with Laws. Metro and TriMet shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the parties, and shall award all contracts in accordance with these laws, including without limitation the provision required in public contracts under the Oregon Public Contracting Code.

11. Entire Agreement. Notwithstanding and succeeding any prior agreements or practices, this Agreement constitutes the entire agreement between the parties and may be only expressly modified in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated as follows.

Metro

TriMet

By: _____

By: Ired Hawzen

Title: _____

Title: General Manager

Date: _____

Date: 12/17/08

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4014, FOR THE PURPOSE OF AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH TRIMET PROVIDING FOR FUNDING COORDINATION FOR METRO'S TRANSIT-ORIENTED DEVELOPMENT AND URBAN CENTERS PROGRAM

Date: December 29, 2008

Prepared by: Megan Gibb
Contact No.: 503-797-1753

BACKGROUND

Metro's pioneering TOD Implementation Program is the first in the United States to use Federal Transit Administration (FTA) funds to acquire sites and write down land value for transit-oriented development that is higher density and mixed-use. Since the Metro Council authorized TOD Program start up activities in April 1998, work has begun on 36 projects and the program has been expanded to encompass streetcar lines, frequent bus routes, regional and town centers, and all of the MAX lines.

Projects funded by the TOD & Centers Implementation Program average more than three times the housing density than typical suburban apartment development. While most of these projects are 65-85 units/acre, some are significantly higher: the Merrick mixed-use (MLK Boulevard and Multnomah Street) is 198 units/acre; the Prescott mixed-use (North Prescott and North Interstate) is 163 units/acre; Buckman Terrace (Sandy and 16th) is 137 units/acre; and One 19 Towers (Southeast 119th and East Burnside) is 92 units/acre. These kinds of high-density projects with mixed-use and high quality transit service result in nearly 10 times more transit ridership and nearly 3 times more walking trips than development in the remainder of the region. A survey by Portland State University showed that 47% of trips by Merrick residents are by transit and walking.

In November 1999, Tri-Met and Metro entered into an Intergovernmental Agreement (IGA) for the purpose of improving transit service and further local funding of the TOD program. Metro provided State Transportation Improvement Program (STP) flexible funds and other federal funds for improving transit service. Tri-Met provided a like amount of local funds to Metro to leverage TOD program activities. The IGA has been amended biannually four times to reflect updated funding amounts. The fourth amendment is soon to expire. This resolution would authorize Metro's entry into an updated IGA with TriMet.

ANALYSIS/INFORMATION

- 1. Known Opposition:** There have been five previous actions: an initial IGA with TriMet in November 1999, an amendment in November 2001, an amendment in May 2003, an amendment in July 2004; and an amendment in November 2005. None of these actions had opposition, and no opposition is expected.
- 2. Legal Antecedents:** The Metro Council authorized startup activities on April 9, 1998, by "Resolution No. 98-2619, for the Purpose of Authorizing Start-up Activities for the Transit Oriented Development (TOD) Implementation Program at Metro" for the Metro TOD Program.

The Metro Council authorized an Intergovernmental Agreement (IGA) between TriMet and Metro regarding Transit-Oriented Development (TOD) activities and improving the quality of transit service on November 22, 1999, by Resolution 99-2858 For the Purpose of Authorizing a Revenue Neutral Intergovernmental Agreement with Trimet Concerning Transit Oriented Development and Increasing the Level of Transit Service. This IGA was extended by amendment four times, providing new sources and funding amounts: 1) on November 8, 2001 by Resolution No. 01-3114A; 2) on May 15, 2003 by Resolution No. 03-3314; 3) by Resolution 04-3478 on July 15, 2004; and 4) by Resolution No. 05-3627 on October 27, 2005. The fourth amendment is soon to expire.

3. **Anticipated Effects:** This proposed resolution and IGA follows the companion Ordinance No. 08-1204A, which establishes TOD Implementation as a matter of metropolitan concern and assumes TOD Implementation as a Metro function. This new IGA will alter the pre-existing relationship established in the current IGA and amendments set forth above, by removing the now unnecessary TriMet delegation of TOD Implementation authority, and clarifying that Metro Council, and not TriMet, provides oversight for the TOD and Urban Centers Program. The IGA will resolve the need for recurring IGA amendments, by providing for an annual automatic renewal of its one-year term, unless earlier terminated by either party. As in the past, the new IGA provides that if STP funds are allocated to Metro for the TOD Urban Centers Program through the MTIP process, Metro and TriMet may, if they so choose, obligate those funds to TriMet for transit capital and operating needs, in exchange for a like amount of TriMet General Funds transferred to Metro for TOD Implementation. Following the conclusion of each biennial MTIP allocation process, the parties may elect to discuss and settle upon a mutually satisfactory exchange. The proposed IGA then calls for the funding arrangement to be documented by joint letter or memorandum establishing the appropriate amounts and timing of the exchange.

4. **Budget Impacts:** Since the IGA amendment is revenue neutral, there is no budget impact from this IGA.

RECOMMENDED ACTION

Concurrent with Metro Council's approval of Ordinance No. 08-1204A, Metro staff recommends the adoption of the Resolution No. 09-4014.