

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING A MULTI- ) RESOLUTION NO. 10-4133  
YEAR COMMITMENT OF REGIONAL )  
FLEXIBLE TRANSPORTATION FUNDS FOR ) Introduced by Councilor Carlotta Collette  
THE PORTLAND TO MILWAUKIE LIGHT RAIL )  
TRANSIT PROJECT AND SUPPLEMENTAL )  
COMMITMENT TO THE BEAVERTON TO )  
WILSONVILLE COMMUTER RAIL PROJECT )

WHEREAS, Metro is the Metropolitan Planning Organization (MPO) for the Portland metropolitan region, and as such is authorized by the U.S. Department of Transportation to program federal transportation funds allocated by federal law to the Portland region in the Metropolitan Transportation Improvement Program (MTIP); and

WHEREAS, Metro is authorized by the Oregon Department of Transportation (ODOT) to program Congestion Management/Air Quality (CMAQ) funds allocated to the Portland metropolitan region by ODOT in the MTIP; and

WHEREAS, TriMet is the duly authorized public transportation provider for the Portland metropolitan region and as such is an eligible recipient of federal transportation funds through the MTIP; and

WHEREAS, at the recommendation of the Joint Policy Advisory Committee on Transportation (JPACT), the Metro Council adopted Resolution No. 08-3942 “For the Purpose of Proposing Allocation of Regional Flexible Funding to Regional Transportation Programs for the Years 2012 and 2013, and to Bond Payments for Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Projects for the Years 2012-2025 Pending Public Comment Period and Air Quality Conformity; and

WHEREAS, at the recommendation of the Joint Policy Advisory Committee on Transportation (JPACT), the Metro Council adopted Resolution No. 09-4017 “For the Purpose of Allocating \$67.8 million of Regional Flexible Funding for the Years 2012 and 2013, Pending Air Quality Conformity Determination” which documented the public comment process for the allocation of regional flexible funds to the projects; and

WHEREAS, these actions establish a multi-year commitment by Metro, as the MPO, to provide a sum of regional flexible funds to TriMet totaling \$144.8 million over the course of years 2012 through 2025 for the purpose of providing a net present value contribution of \$72.5 million to the Milwaukie Light Rail Transit Project and a \$13.3 million supplemental contribution to the Beaverton to Wilsonville Commuter Rail Project; and

WHEREAS, consistent with provisions of Resolution No. 08-3942 TriMet has provided \$13.3 million to the Commuter Rail Project and has agreed to provide \$72.5 million to the Milwaukie Light Rail Transit Project; and

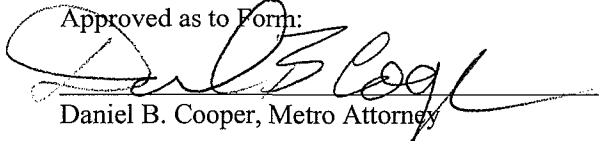
WHEREAS, TriMet anticipates issuing revenue bonds secured by the commitment of regional flexible transportation funds set forth in Resolution No. 08-3942 and Resolution No. 09-4017 to fulfill all or part of its funding commitments; and


WHEREAS, an agreement between Metro and TriMet regarding the regional flexible funds funds committed in Resolution No. 08-3942 and Resolution No. 09-4017 will facilitate borrowings that pledge these funds; and

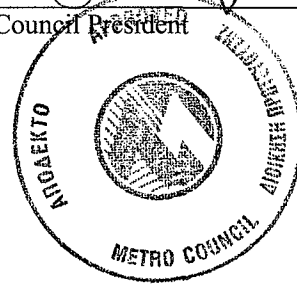
WHEREAS, these agencies have negotiated such an agreement as shown in Exhibit A; now therefore

BE IT RESOLVED that the Metro Council hereby adopts the recommendation of JPACT to approve the Intergovernmental Agreement to Provide and Utilize Regional Flexible Funds to Implement the Milwaukie light rail transit and Commuter Rail Funding Plan, as shown in Exhibit A, and authorizes the Chief Administrative Officer to execute the agreement.

ADOPTED by the Metro Council this 18 day of March 2010.

Approved as to Form:  
  
Daniel B. Cooper, Metro Attorney

  
\_\_\_\_\_  
David Bragdon, Council President



## EXHIBIT A

### **Intergovernmental Agreement to Provide and Utilize MTIP Funds to Implement the Milwaukie LRT and Commuter Rail Funding Plan**

This **Intergovernmental Agreement to Provide and Utilize Regional Flexible Funds to Implement the Milwaukie Light Rail (“LRT”) and Commuter Rail Funding Plan** (the “Agreement”) is made and entered into by and between Metro and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”). This Agreement is effective as of the last date of signature below.

#### **RECITALS**

1. On January 23, 1997 the Metro Council adopted Resolution No. 96-2422 “*For the Purpose of Endorsing a Regional Position on Resolution of the Intermodal Surface Transportation Efficiency Act (ISTEA)*” that established a multi-year commitment of Metropolitan Transportation Improvement Program (MTIP) funds totaling \$55 million over the period of FY 1999-2009 for the South-North LRT Project; and
2. On June 24, 1999 the Metro Council adopted Resolution No. 99-2804A “*For the Purpose of Endorsing the Interstate Max Light Rail (LRT) Project and South Corridor Financing Strategy and Amending MTIP*” that added \$12.5 million to the multi-year commitment of MTIP Funds making a total allocation of MTIP funds of \$67.5 million available for the “North LRT/South Corridor Financing Strategy;” and
3. On March 20, 2003 the Metro Council adopted Resolution No. 03-3290 “*For the Purpose of Endorsing a Multi-Year Commitment of MTIP Funds for a Regional Funding Plan*” and added \$50.0 million over the period of Fiscal Year (FY) 2006-2014 to the multi-year commitment of MTIP Funds; making a total allocation of MTIP Funds of \$117.5 million available for a regional funding plan consisting of Interstate MAX, South Corridor, Commuter Rail, and North Macadam projects; and
4. On July 15, 2004 the Metro Council adopted Resolution No. 04-3468 “*For the Purpose of Endorsing a Supplemental Multi-Year Funding Commitment of Metropolitan Transportation Improvement Program Funds for the I-205/Mall LRT Project and Endorsing a Refined Regional Funding Plan.*” This resolution supplemented the multi-year commitment of funds made in Resolution No. 03-3290 with an additional commitment of \$10.4 million in MTIP Funds between FY 2008-2015, making a total of \$127.9 million of MTIP Funds available to the Interstate MAX, South Corridor (I-205/Mall LRT), Commuter Rail, and North Macadam projects, of which \$41.5 million was applied to the Interstate MAX Project; and
5. Resolution No. 04-3468 also provided that in exchange for the funds remaining in the multi-year commitment of MTIP Funds after the \$41.5 million commitment to Interstate MAX was fulfilled, TriMet would provide a net contribution of \$48.5 million to the South Corridor

(I-205/Mall) LRT Project, \$10.0 million to the Commuter Rail Project, and \$10.0 million to the North Macadam Project; and

6. On March 24, 2005 the Metro Council adopted Resolution No. 05-3559, which authorized execution of the “Intergovernmental Agreement to Provide and Utilize MTIP Funds for the Regional Funding Plan for the South Corridor, Commuter Rail, and North Macadam Projects” between Metro and TriMet. The execution of this intergovernmental agreement was completed on April 4, 2005; and

7. On May 15, 2008, the Metro Council adopted Resolution No. 08-3942 “*For the Purpose of Proposing Allocation of Regional Flexible Funding to Regional Transportation Programs for the Years 2012 and 2013, and to Bond Payments for Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Projects for the Years 2013 - 2025 Pending Public Comment Period and Air Quality Conformity Determination,*” which provided an additional multi-year commitment of MTIP Funds to TriMet in the amount \$3.7 million per year between 2012 and 2015 and \$13.0 million per year from 2016 through 2025 to provide an additional net contribution to the Beaverton-Wilsonville Commuter Rail Project of \$13.3 million and to provide a net contribution to the Milwaukie LRT Project of \$72.5 million, which is the net present value of the yearly installments through 2025 totaling \$144,800,000 as set forth in Table 1 Column B, assuming a 5% interest rate; and

8. The parties have determined that a formal agreement regarding the commitment, schedule, and utilization of MTIP Funds set forth in Resolution No. 08-3942 is required to successfully and effectively implement the funding commitments to be made to the Commuter Rail Project and Milwaukie LRT Project. This Agreement will be separate from but coordinated with the formal agreement executed on April 4, 2005 in support of the MTIP funding commitment made under Resolution No. 04-3468; and

9. TriMet intends to issue revenue bonds that are secured in whole or part by a pledge of Regional Flexible Funds committed under this Agreement. These initial bonds, together with any bonds that are issued to refund the initial bonds and any obligations of TriMet to providers of credit enhancements or derivative products in connection with the initial bonds or any refunding bonds (and any renewals or replacements thereof) are referred to collectively in this Agreement as “TriMet MTIP Bonds.” Timely receipt of the amounts of Regional Flexible Funds described in Section 2.1, below, is essential to permit TriMet to issue the TriMet MTIP Bonds and to preserve the ability of TriMet to borrow for and fund other regional transportation priorities. The proceeds of TriMet MTIP Bonds are referred to herein as “Bond Proceeds.”

**NOW THEREFORE**, the premises being in general as set forth in the foregoing recitals, it is agreed by and between the parties as follows:

## **TERMS OF AGREEMENT**

### **1. Purpose and Term**

- 1.1 This Agreement sets forth a commitment by Metro and TriMet to provide and utilize certain funds for the Milwaukie LRT Project and the Commuter Rail Project as set forth in Resolution No. 08-3942; herein referred to as “Regional Flexible Funds.” Funds allocated by Metro through the MTIP process which were previously committed to TriMet by Resolution No. 04-3468 and the intergovernmental agreement between Metro and TriMet dated April 4, 2005 are herein referred to as MTIP Funds. As used throughout this Agreement, “Regional Flexible Funds” shall mean Surface Transportation Program (STP) funds, Congestion Mitigation/Air Quality (CMAQ) funds, and funds provided under any successor or comparable federal urban transportation funding programs that are authorized for distribution by Metro as the Portland Metropolitan Planning Organization (MPO) to projects in the Portland MPO area. For purposes of this Agreement, Regional Flexible Funds shall only include funds from the federal funding programs described in the previous sentence and do not include any other funds allocated to Metro as the MPO that may be reported on in the MTIP process.
- 1.2 This Agreement shall be effective on the date of last signature below and shall terminate when the total multi-year commitment of Regional Flexible Funds provided herein is fulfilled and expended or as otherwise provided in accordance with and for the purposes set forth herein.

**2. Metro Rights and Obligations.**

- 2.1 As the Portland region’s MPO and regional government, Metro shall take all actions under its control to facilitate TriMet’s receipt of the full aggregate annual amounts of MTIP Funds and Regional Flexible Funds shown in Column C of Table 1 by the dates shown below, together with any additional amounts described in Section 2.4, subject only to the terms and conditions set forth herein.

**Table 1  
Multi-Year Commitment of MTIP Funds and Regional Flexible Funds to TriMet (1)**

Column:	A	B	C
Federal Fiscal Year (3)	Schedule of MTIP Funds Committed to TriMet for Interstate MAX, South Corridor, Commuter Rail, North Macadam Projects under Res. No. 04-3468	Schedule of Regional Flexible Funds Committed to TriMet for Milwaukie LRT, Commuter Rail, Projects under Res. No. 08-3942	Total Amount of MTIP Funds and Regional Flexible Funds Committed to TriMet (2)
<b>1999</b>	\$1,500,000		\$1,500,000
<b>2000</b>	\$6,000,000		\$6,000,000
<b>2001</b>	\$6,000,000		\$6,000,000
<b>2002</b>	\$6,000,000		\$6,000,000
<b>2003</b>	\$6,000,000		\$6,000,000
<b>2004</b>	\$6,000,000		\$6,000,000
<b>2005</b>	\$6,000,000		\$6,000,000

2006	\$8,000,000		\$8,000,000
2007	\$8,000,000		\$8,000,000
2008	\$9,300,000		\$9,300,000
2009	\$9,300,000		\$9,300,000
2010	\$9,300,000		\$9,300,000
2011	\$9,300,000		\$9,300,000
2012	\$9,300,000	\$3,700,000	\$13,000,000
2013	\$9,300,000	\$3,700,000	\$13,000,000
2014	\$9,300,000	\$3,700,000	\$13,000,000
2015	\$9,300,000	\$3,700,000	\$13,000,000
2016		\$13,000,000	\$13,000,000
2017		\$13,000,000	\$13,000,000
2018		\$13,000,000	\$13,000,000
2019		\$13,000,000	\$13,000,000
2020		\$13,000,000	\$13,000,000
2021		\$13,000,000	\$13,000,000
2022		\$13,000,000	\$13,000,000
2023		\$13,000,000	\$13,000,000
2024		\$13,000,000	\$13,000,000
2025		\$13,000,000	\$13,000,000
<b>\$127,900,000</b>			<b>\$144,800,000</b>
<b>\$127,900,000</b>			<b>\$272,700,000</b>

(1) The rights and obligations of Metro and TriMet regarding the multi-year commitment of MTIP Funds shown in Column A are set forth in the intergovernmental agreement executed April 4, 2005. This Agreement sets forth the rights and obligations of Metro and TriMet regarding the multi-year commitment of Regional Flexible Funds shown in Column B. Column C shows the sum of Columns A and B, which represents the total amount of MTIP Funds and Regional Flexible Funds to be programmed each year by Metro and allocated to TriMet based on both the April 4, 2005 intergovernmental agreement and this Agreement.

(2) Amounts shown are prior to any additional amounts allocated to TriMet pursuant to Section 2.4.

(3) The MTIP Funds shown for fiscal years 1999 through 2009, inclusive, have already been received by TriMet.

- 2.2 Each year during the term of this Agreement, the allocation to TriMet of the Regional Flexible Funds due TriMet under this Agreement shall have precedence over all other allocations of Regional Flexible Funds by Metro to other projects in the Metropolitan Transportation Improvement Program (MTIP). Each year Metro shall program, prioritize in project selection, and prioritize for allocation of Regional Flexible Funds and obligational authority the full amount of MTIP Funds and Regional Flexible Funds committed to TriMet in such year under this Agreement, as shown in Table 1, Column C in Section 2.1, plus any additional amounts pursuant to Section 2.4, subject to the conditions set forth in Section 2.3.
- 2.3 In any year in which either the (a) federal authorization of Regional Flexible Funds to the Portland MPO, (b) annual appropriation of Regional Flexible Funds to the Portland MPO, or (c) annual allocation of obligational authority for Regional Flexible Funds to the Portland MPO is insufficient to provide TriMet the full amount of Regional Flexible Funds due in such year under this Agreement, Metro shall provide TriMet the maximum amount of Regional Flexible Funds permitted by the amounts of

federal authorization, appropriation, and obligational authority provided to the Portland MPO in such year, and an additional amount of Regional Flexible Funds shall be allocated to TriMet in the subsequent year as set forth in Section 2.4 of this Agreement

2.4 If the full amount due TriMet in any Federal Fiscal Year is not paid to TriMet, the following provisions shall apply:

2.4.1 If for any reason (except in cases caused by the acts or omissions of TriMet) the full amount of Regional Flexible Funds provided under this Agreement in any Federal Fiscal Year to TriMet is less than the amount shown in Table 1, Column C in Section 2.1, including any additional amounts to be provided TriMet pursuant to this Section 2.4, the amount of Regional Flexible Funds due TriMet under Table 1, Column C in Section 2.1 for the Federal Fiscal Year first following the year in which a Difference occurs shall be increased by 105% of that Difference. "Difference" shall mean (i) the annual amount of committed Regional Flexible Funds for a Federal Fiscal Year shown in Table 1, Column C, including any additional amounts pursuant to this Section 2.4, minus (ii) the annual amount actually provided to TriMet by the Portland MPO under this Agreement for such Federal Fiscal Year.

2.4.2 The intent of this Section 2.4 is to ensure that (i) TriMet receives a total amount of Regional Flexible Funds under this Agreement that has a present value equal (as of the effective date of this Agreement) to the initial schedule of Regional Flexible Funds shown in Table 1, Column C in Section 2.1, based on a five (5) percent discount rate and (ii) the full amount of Regional Flexible Funds committed to TriMet under this Agreement are accounted for separately from the MTIP Funds committed to TriMet by Resolution No. 04-3468 and the agreement between the parties dated April 4, 2005. In the event TriMet does not receive the full amount of Regional Flexible Funds committed under this Agreement from Metro, as the Portland MPO, Metro shall take all necessary actions, including but not limited to the reprogramming of Regional Flexible Funds as set forth in this Agreement, to facilitate TriMet's receipt of the amounts described in Table 1 in Section 2.1, including any additional amounts owed TriMet pursuant to this Section 2.4.

2.4.3 The parties recognize and agree that any additional amounts required by this Section 2.4 may cause Metro's payment schedule to TriMet to extend beyond the dates shown in Section 2.1. This Agreement shall terminate when TriMet receives all monies due to TriMet under this Agreement, or on the date Metro is no longer designated the Portland MPO. In the event an entity other than Metro is designated the Portland MPO prior to the termination of this Agreement, Metro shall take all reasonable steps to assign this Agreement to the successor Portland MPO.

- 2.4.4 Metro shall not be liable in any way for funding the amounts described in Column B, Table 1 in Section 2.1, except from Regional Flexible Funds as set forth above. In the event the federal government permanently ceases to authorize, appropriate, or allocate Regional Flexible Funds to Metro as the Portland MPO, Metro shall have no obligation whatsoever to provide any funding to TriMet under this Agreement after the last fiscal year in which Regional Flexible Funds are authorized, appropriated, and allocated to Metro.
- 2.5 Each year throughout the term of this Agreement, Metro's funding commitment set forth in this Agreement shall be fulfilled solely by (i) prioritizing the funding commitments hereunder for allocation of authorization, appropriation, and obligational authority for Regional Flexible Funds, (ii) programming the Regional Flexible Funds committed hereunder, and (iii) taking such other actions as may be necessary or desirable under federal and regional rules and procedures to facilitate TriMet's receipt from FHWA and/or FTA of the annual amounts of Regional Flexible Funds due to TriMet under this Agreement. As used hereunder, "programming" means each year (i) taking all actions required of a MPO by FHWA and FTA statutes and rules, including without limitation 23 CFR 450 and 49 CFR 613, as they may be amended from time to time, and (ii) providing all documentation in a timely manner to FHWA Oregon Division office, FTA Region X office, and ODOT that are required by FHWA, FTA, and ODOT protocols and procedures to facilitate TriMet's receipt of a grant award and obligation of the Regional Flexible Funds from FHWA and/or FTA for the amounts and in the years shown in Table 1 in Section 2.1 of this Agreement, including any additional amounts pursuant to Section 2.4.
- 2.6 Metro shall diligently fulfill the duties assigned to it under this Agreement, including executing and delivering all such documents and instruments as shall be required to enable the Parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement.

### **3. TriMet Rights and Obligations**

- 3.1 TriMet shall take all actions in a timely manner that are required of grantees by the Federal Highway Administration (FHWA) and/or Federal Transit Administration (FTA) for TriMet's receipt of Regional Flexible Funds provided under this Agreement.
- 3.2 TriMet shall prepare and implement a financing program to use, through direct grants to projects and/or bonds, the Regional Flexible Funds committed to TriMet under this Agreement to provide \$72.5 million in net project funding to the Milwaukie LRT Project, and to repay itself for the \$13.3 million in net project funding it has already provided to the Commuter Rail Project in anticipation of this Agreement.
- 3.2.1 TriMet may employ the Regional Flexible Funds provided under this Agreement to provide the amounts shown in this Section 3.2 in any manner that facilitates the funding and borrowing program. TriMet may pledge all or



any portion of the Regional Flexible Funds committed to it under this Agreement to any TriMet MTIP Bonds it deems necessary or desirable to provide the funding amounts shown in this Section 3.2. In addition, TriMet may, in its sole discretion, employ any portion of the Regional Flexible Funds provided under this Agreement for preventative maintenance, capital improvements, or procurements that make TriMet general funds available to provide all or a portion of the funding amounts shown in this Section 3.2, provided that TriMet shall through one or more of these funding options provide the full amounts shown in Section 3.2 to the respective uses.

- 3.2.2 TriMet shall provide the amounts shown in this Section 3.2 to the Milwaukie LRT Project and to reimburse itself for its previous contribution to the Commuter Rail Project regardless of the borrowing costs it incurs in providing the funds. TriMet will neither be provided additional Regional Flexible Funds to fulfill its obligations under this Section 3.2 nor be required to reimburse the MTIP program if the borrowing costs differ from those assumed in determining the annual amounts of Regional Flexible Funds set forth in Column B, Table 1 in Section 2.1. In the event that interest rates do not permit the borrowings backed by a pledge of Regional Flexible Funds to provide the full amount of funding described in Section 3.2 from the Regional Flexible Funds committed in Section 2.1, TriMet will provide the difference between its funding obligation described in Section 3.2 and the amounts attributable to the Regional Flexible Funds described in Section 3.2 with other TriMet revenues or borrowings. Notwithstanding the previous sentences, if the TriMet MTIP Bonds require materially higher interest rates than anticipated due to unexpected conditions in the municipal bond market, TriMet may seek approval from JPACT and the Metro Council to amend this Agreement to (i) reduce the amount of net project funds TriMet is obligated to provide to the Milwaukie LRT Project and/or (ii) increase the amount of Regional Flexible Funds committed to TriMet under this Agreement.
- 3.2.3 The parties acknowledge and agree that the Commuter Rail Project has been completed and TriMet has, prior to the execution of this Agreement, provided the \$13.3 million for the Commuter Rail Project, thereby fulfilling its obligation to provide funding for the Commuter Rail Project as required by Section 3.2 of this Agreement. The portion Regional Flexible Funds or TriMet MTIP Bonds attributable to the funding commitment for the Commuter Rail Project in Section 3.2 shall be reimbursement to TriMet for its provision of funds for the Commuter Rail Project and TriMet may in its sole discretion use such portion of Regional Flexible Funds or TriMet MTIP Bonds for other capital improvements or procurements. In the event the Milwaukie LRT Project is terminated prior to completion, the portion of the Regional Flexible Funds attributable to principal and interest associated with the contribution to the Commuter Rail Project under Section 3.2 shall not be subject to reallocation under Section 3.2.4.

3.2.4 If the Milwaukie LRT Project is terminated prior to completion of construction, the amount of Bond Proceeds repayable from the Regional Flexible Funds provided under this Agreement that are associated with the Milwaukie LRT Project that (i) have not been expended to pay Milwaukie LRT Project costs prior to the date of termination (“unexpended”), and (ii) are not required to pay Milwaukie LRT Project costs that become due after the date of termination or as a result of the termination or pledge to interim borrowing (“unobligated”), if any, shall be made available by TriMet for reallocation to other regional projects through an allocation process recommended jointly by the JPACT Chair and the TriMet General Manager to JPACT, and approved by JPACT and the Metro Council.. In the event of early termination of the Milwaukie LRT Project, Metro, as the Portland MPO, shall continue to provide to TriMet the revenue stream from Regional Flexible Funds as set forth in Sections 3.2.4.1 and 3.2.4.2 of this Agreement, with TriMet providing the unexpended and unobligated bond proceeds from the terminated project to the regional process for reallocation as set forth above. If the project is terminated prior to completion of construction, all Regional Flexible Funds pledged by TriMet to holders of TriMet MTIP Bonds at the time the project is terminated shall be considered to be obligated to project costs and such pledged Regional Flexible Funds shall not be subject to reallocation to other projects under this Section 3.2.4.

3.2.4.1 If at the time of Milwaukie LRT Project termination: (i) TriMet has issued the full amount of TriMet MTIP Bonds required to provide \$72.5 million in net Bond Proceeds for the Milwaukie LRT Project (i.e. the total amount of Bond Proceeds issued for the Milwaukie LRT Project excluding any amounts required to pay issuance costs, reserves, capitalized interest, discounts, or other similar expenses that reduce the amount of bond proceeds available to pay direct project costs) and (ii) a portion of the \$72.5 million in net Bond Proceeds issued for the Milwaukie LRT Project is unexpended and unobligated at the time of termination, then:

(a) The amount of net Bond Proceeds that would be made available for reallocation under this Section 3.2.4 shall be calculated as \$72.5 million minus the amount of net Bond Proceeds that have been expended or obligated to be expended on the Milwaukie LRT Project as of the date on which the Milwaukie LRT Project is terminated by TriMet; and

(b) Metro shall throughout the entire term of this Agreement provide to TriMet the full annual amounts of Regional Flexible Funds set forth in Table 1.

3.2.4.2 If at the time of Milwaukie LRT Project termination TriMet has not issued and will not need to issue the full amount of TriMet MTIP

Bonds required to provide \$72.5 million in net Bond Proceeds for the Milwaukie LRT Project, then:

(a) The amount of Bond Proceeds that shall be made available for reallocation under this Section 3.2.4 shall be calculated as the amount of net Bond Proceeds issued or to be issued for the Milwaukie LRT Project minus the amount of net Bond Proceeds that have been expended or are obligated to be expended on the Milwaukie LRT Project as of the date on which the Milwaukie LRT Project is terminated by TriMet; and

(b) In lieu of the amounts of Regional Flexible Funds shown in Table 1, Metro shall each year provide an amount of Regional Flexible Funds to TriMet equal to (i) the amount that TriMet certifies is or will be pledged in each year to holders of TriMet MTIP Bonds plus (ii) the amount needed to pay for any direct (non-bonded) expenditures of Regional Flexible Funds to be made in each year for the Milwaukie LRT Project or the reimbursement of the \$13.3 million previously expended on the Commuter Rail Project; provided that TriMet may not request more Regional Flexible Funds in any year than the amount set forth for that year in Table 1. Any amounts of Regional Flexible Funds retained by Metro pursuant to this paragraph shall be allocated to projects in such manner as JPACT and Metro may determine.

- 3.2.5 The parties acknowledge and agree that the finance plan for the Milwaukie LRT Project relies on interim borrowing to address the likelihood that federal New Start Funds will not be available to the project in accordance with needs of the construction schedule. All or a portion of the Regional Flexible Funds provided by this Agreement may, in TriMet's discretion, be pledged as security for interim borrowing for the project, to the extent permitted by other borrowing agreements, if any, in which TriMet pledges to bondholders or lenders the Regional Flexible Funds provided under this Agreement.
- 3.2.6 To expedite the project construction schedule, the Regional Flexible Funds or TriMet MTIP Bonds backed by Regional Flexible Funds provided by this Agreement may, in TriMet's discretion, be obligated or used to pay project costs for the Milwaukie LRT Project prior to receipt of a FFGA for the project. The parties acknowledge and agree that TriMet shall not be required to repay or reimburse the MTIP for such funds disbursed or obligated to pay project costs prior or subsequent to receipt of a FFGA for the Milwaukie LRT Project in the event the project terminates for any reason.
- 3.2.7. Within thirty (30) days of Project termination, Tri Met shall send written notice to Metro and the JPACT chair of said termination; the written notice shall

describe any additional obligations TriMet must make to pay Milwaukie LRT Project costs after the termination date. TriMet shall make no further obligations of any Regional Flexible Funds beyond those described in the notice of termination.

- 3.3 Each year TriMet and Metro shall work cooperatively to determine the appropriate annual mix of STP, CMAQ, and/or any successor or comparable federal urban transportation funding programs that comprise Regional Flexible Funds that will be utilized to provide TriMet the amounts of Regional Flexible Funds committed to TriMet under this Agreement.

#### **4. General Provisions**

- 4.1 The parties acknowledge and agree that:

4.1.1 Metro shall not be considered to have failed to comply with its obligations under this Agreement if the amounts received by TriMet are less than those required by Section 2.1, including any additional amounts pursuant to Section 2.4, if the shortfall is due to (i) an insufficient amount of federal authorization or appropriation of Regional Flexible Funds to Metro as the Portland MPO or (ii) an insufficient state allocation of Regional Flexible Funds obligation authority to Metro as the Portland MPO or (iii) the fact that Metro is no longer the regional MPO.

4.1.2 TriMet will rely on the commitment of Regional Flexible Funds made hereunder if and when it issues the TriMet MTIP Bonds to provide the project funding set forth in Section 3.2 of this Agreement.

4.1.3 TriMet will have sole responsibility for determining the validity and security of any TriMet MTIP Bonds it issues or causes to be issued related to this Agreement.

- 4.2 The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particulate term r provision held to be invalid.

- 4.3 That parties agree that neither party may assign any of the responsibilities under this Agreement without the written consent of the other party, that Metro and TriMet are the only parties entitled to enforce the terms of this Agreement, and that nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right to any third party, except as provided in Section 4.4 of this Agreement.

- 4.4 Notwithstanding Section 4.3 of this Agreement, the parties acknowledge that the owners of the TriMet MTIP Bonds and their representatives (including any TriMet

bond trustees) and any providers of credit enhancements for the TriMet MTIP Bonds shall be third party beneficiaries to the representations and agreements set forth in this Agreement.

- 4.5 If a dispute arises between the parties, Metro agrees that so long as TriMet MTIP Bonds are outstanding it shall not take any action that would reduce the amounts that are to be paid to TriMet under this Agreement as a set-off for damages Metro may claim it is owed. To the extent Metro is entitled to any damages for any breach by TriMet of the terms of this Agreement, Metro shall seek payment of those damages solely from funds of TriMet that are not pledged to pay TriMet MTIP Bonds.
- 4.6 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.

IN WITNESS WHEREOF, the parties hereby acknowledge that they have the authority granted by their respective governing body to execute this Agreement and hereto have set their hands and affixed their seals as of the day and year hereinafter written.

**APPROVED BY METRO**

**APPROVED BY TRIMET**

By \_\_\_\_\_  
Michael Jordan, Chief Operating Officer

By \_\_\_\_\_  
Fred Hansen, General Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM BY METRO**

**APPROVED AS TO FORM BY TRIMET**

By \_\_\_\_\_  
Alison Kean Campbell, Deputy Metro  
Attorney

By \_\_\_\_\_  
M. Brian Playfair, TriMet General Counsel

Date \_\_\_\_\_

Date \_\_\_\_\_

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4133, FOR THE PURPOSE OF  
ENDORING A MULTI-YEAR COMMITMENT OF REGIONAL FLEXIBLE  
TRANSPORTATION FUNDS FOR THE PORTLAND TO MILWAUKIE LIGHT RAIL  
TRANSIT PROJECT AND SUPPLEMENTAL COMMITMENT TO THE BEAVERTON TO  
WILSONVILLE COMMUTER RAIL PROJECT

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Date: March 18 , 2010

Prepared by: Ted Leybold and Ross Roberts

### BACKGROUND

The Metro area has constructed a series of regional rail transit capital improvements over the course of the last 25 years. The last several projects, beginning with the Interstate Avenue MAX project, has utilized revenue bond financing of regional flexible transportation funds to contribute to the development and construction of the projects. This allows anticipated federal transportation revenues that come to Metropolitan Planning Organizations (MPOs) to be bonded to allow an immediate contribution to the project as costs are incurred. The Metro Council, advised by the Joint Policy Advisory Committee on Transportation (“JPACT”) serve as the decision-making bodies of the Portland Metropolitan area MPO. Agreements between Metro and the bonding agency are established to execute the bonding of the funds.

The decision to commit regional flexible transportation funds to the Milwaukie light rail and Beaverton to Wilsonville commuter rail transit projects was adopted through Resolutions 08-3942 and 09-4017.

TriMet, the lead agency for final design and construction of the rail transit projects, has agreed to serve as the agency that issues the revenue bond on behalf of the region. In order to administer the bonding of these funds, an intergovernmental agreement must be entered into between Metro, acting in the capacity of the Metropolitan Planning Organization of the Portland metropolitan area designated by the United States Department of Transportation to allocate Urban Surface Transportation Funds and as authorized by the Oregon Department of Transportation to sub-allocate Congestion Management / Air Quality federal funding programs, and TriMet as a public transportation provider in the Portland metropolitan region.

The Intergovernmental Agreement to Provide and Utilize MTIP Funds to Implement the Milwaukie LRT and Commuter Rail Funding Plan (“IGA”), shown in Exhibit A to Resolution No. 10-xxxx, sets forth the rights and obligations of Metro and TriMet regarding the multi-year commitment of regional flexible transportation funds established in Resolutions 08-3942 and 09-4017.

Consistent with previous intergovernmental agreements committing a stream of regional flexible transportation fund contributions to regional rail projects, the Metro-TriMet Intergovernmental Agreement, attached hereto as Exhibit A, does the following:

- The IGA commits Metro, as the MPO, to provide a specific stream of annual amounts of regional flexible funds that must be provided to TriMet, in the amounts set forth in Table 1, Column B of the IGA, totaling One Hundred Forty Four Million, Eight Hundred Thousand Dollars (\$144,800,000.00) from 2012 to 2025;

- The IGA commits TriMet to provide \$13.3 million to the Commuter Rail Project, (which TriMet has already done), and \$72.5 million to the Milwaukie LRT Project,;
- The IGA provides that in the event that there is insufficient federal authorization or annual appropriation in any year in which TriMet is scheduled to receive the regional flexible funds as set forth in the IGA, Table 1, Column C, that priority shall be given to providing the regional flexible funds to TriMet over all other projects or programs that are scheduled to receive an allocation of regional flexible funds;
- The IGA provides that in the event that there is insufficient federal authorization or annual appropriation to provide TriMet the full amount of regional flexible funds due in a year, that Metro shall fulfill the funding commitment by supplementing future year allocations to TriMet of regional flexible funds by a five percent (5%) fixed interest rate.
- The IGA provides that in the event that the Milwaukie LRT Project is terminated prior to completion, unexpended and unobligated funds remaining after project termination, if any, shall be reallocated to other projects in the region through JPACT and the Metro Council; regional flexible funds pledged by TriMet to bondholders shall continue to be provided to TriMet in the event of an early termination.

## ANALYSIS/INFORMATION

1. **Known Opposition** None known at this time.
2. **Legal Antecedents** Implements the decision to dedicate funds to the Milwaukie light rail and Beaverton to Wilsonville Commuter Rail projects as adopted through Resolution 08-3942 “For the Purpose of Proposing Allocation of Regional Flexible Funding toe Regional Transportation Programs for the Years 2012 and 2013, and to Bond Payments for Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Projects for the Years 2012-2025 Pending Public Comment Period and Air Quality Conformity” and Resolution 09-4017 “For the Purpose of Allocating \$67.8 million of Regional Flexible Funding for the Years 2012 and 2013, Pending Air Quality Conformity Determination”. Supplements an existing agreement on the multi-year commitment of regional flexible funds to the I-205/Mall light rail project as adopted by Resolution No. 04-3468 “For the Purpose of Endorsing a Supplemental Multi-Year Funding Commitment of Metropolitan Transportation Improvement Program Funds for the I-205/Mall LRT Project and Endorsing a Refined Regional Funding Plan”.
3. **Anticipated Effects** Adoption of this resolution would allow TriMet to proceed with issuing revenue bonds based on the commitment of \$144.8 million of future regional flexible transportation funds for an immediate contribution to the Milwaukie light rail and Beaverton-Wilsonville commuter rail projects.
4. **Budget Impacts** Funding for this agreement is solely dependent on the award of flexible federal funds. Any shortfall in funds in one year must be made up, with interest, in a subsequent year. No Metro funds are obligated by this agreement.

## RECOMMENDED ACTION

Metro staff recommends the approval of Resolution No. 10-4133.