

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 05- 3559
CHIEF OPERATING OFFICER TO ENTER INTO)
AN INTERGOVERNMENTAL AGREEMENT) Introduced by Rex Burkholder
BETWEEN METRO AND TRIMET FOR THE
IMPLEMENTATION OF THE REGIONAL
FUNDING PLAN AND A MULTI-YEAR
FUNDING COMMITMENT OF
METROPOLITAN TRANSPORTATION
IMPROVEMENT PROGRAM FUNDS

WHEREAS, on January 23, 1997, the Metro Council adopted Resolution No. 96-2442 For the Purpose of Endorsing a Regional Position on Reauthorization 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

WHEREAS, 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 the 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

WHEREAS, 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 that added \$50.0 million over the period of Fiscal Year (FY) 2006-2015 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 the Interstate MAX, South Corridor, Commuter Rail, and North Macadam projects; and

WHEREAS, on July 15, 2004, the Metro Council adopted Resolution 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 and the Exhibit A Regional Funding Plan set forth in Resolution 04-3468 (“Regional Funding Plan”) supplemented the multi-year commitment made in Metro Resolution No. 03-3290 with a \$10.4 million additional commitment of MTIP funds, 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. The Regional Funding Plan set forth in Exhibit A to Resolution 04-3468 also delineated certain requirements and authorities regarding the use of the MTIP funds that superseded certain requirements and authorities in Resolution No. 03-3290; and

WHEREAS, Resolution 04-3468 included a Refined Regional Funding Plan that included \$48.5 million for the I-205/Mall LRT Project, \$10 million for the Commuter Rail Project and for North Macadam Projects and Exhibit A describes the need for the preparation of an Intergovernmental Agreement between TriMet and Metro; and

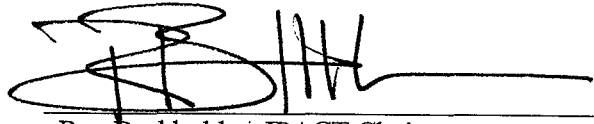
WHEREAS, TriMet has requested an intergovernmental agreement between TriMet and Metro for the purpose of documenting the commitment of MTIP funds and describing conditions for the Regional Funding Plan and that an agreement has been developed and is included in Exhibit A; and

WHEREAS, JPACT has reviewed and approved the IGA, and JPACT has authorized Metro to commit future MTIP funds in the amounts and in accordance with the provisions set forth in the IGA; now therefore

BE IT RESOLVED that the Metro Council hereby:

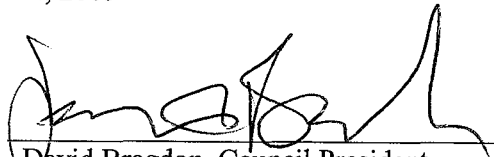
Authorizes Metro's Chief Operating Officer to enter into an intergovernmental agreement with TriMet that is substantially similar to the intergovernmental agreement included in Exhibit A for a multi-year commitment of MTIP funds to be used by TriMet for the Regional Funding Plan.

APPROVED by JPACT on March 17, 2005



Rex Burkholder, JPACT Chair

ADOPTED by the Metro Council this day of March 24, 2005

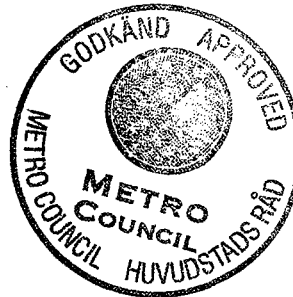


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



**Intergovernmental Agreement
To Provide and Utilize MTIP Funds to Implement the Regional Funding Plan
for the South Corridor, Commuter Rail, and North Macadam Projects**

THIS Intergovernmental Agreement To Provide and Utilize MTIP Funds to Implement the Regional Funding Plan for the South Corridor, Commuter Rail, and North Macadam Projects (“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. 96-2442 *For the Purpose of Endorsing a Regional Position on Reauthorization 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 the 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* that added \$50.0 million over the period of Fiscal Year (FY) 2006-2015 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 the Interstate MAX, South Corridor, Commuter Rail, and North Macadam projects; and
4. On July 15, 2004, the Metro Council adopted Resolution 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*. The Exhibit A Regional Funding Plan set forth in Resolution 04-3468 (“Regional Funding Plan”) supplemented the multi-year commitment made in Metro Resolution No. 03-3290 with a \$10.4 million additional commitment of MTIP funds, 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. The Regional Funding Plan set forth in Exhibit A to Resolution 04-3468 also delineated certain requirements and authorities regarding the use of the MTIP funds that superseded certain requirements and authorities in Resolution No. 03-3290; and
5. The Parties have determined that a formal agreement regarding the commitment, schedule, and utilization of MTIP funds set forth in the Regional Funding Plan adopted by Resolution No.

04-3468 is required to successfully and effectively implement said Regional Funding Plan. This Agreement was authorized by the Joint Policy Advisory Committee on Transportation (“JPACT”) on March 17, 2005 and by the Metro Council on March 24, 2005, pursuant to Resolution No. 05-3559; and.

6. TriMet intends to issue revenue bonds that are secured in part by a pledge of the amounts described in this Agreement. These initial bonds, together with any bonds that are issued to refund the initial bonds, and any obligations of TriMet to the providers of credit enhancement or derivative products in connection with the initial bonds and any refunding bonds (and any renewals or replacements thereof), are referred to collectively in this Agreement as the “TriMet Bonds.” Timely receipt by TriMet of the amounts described in Section 2.1, below, is essential to permit TriMet to pay the TriMet Bonds and to preserve the ability of TriMet to borrow for other regional transportation projects.

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

TERMS OF AGREEMENT

1. This Agreement sets forth a commitment by Metro and TriMet to provide and utilize certain MTIP funds, as defined in Section 2.2(a) below, to implement the “*Regional Funding Plan for the South Corridor, Commuter Rail, and North Macadam Projects*” set forth in Exhibit A to Metro Resolution No. 04-3468, dated July 15, 2004 (the “Regional Funding Plan”), which is attached hereto, incorporated herein, and fully made part of this Agreement. In case of conflict between Sections 1 through 9 this Agreement and the Regional Funding Plan, the provisions in Section 1 though 9 of this Agreement shall govern. This Agreement shall be effective on the date it is executed and shall terminate when the total multi-year commitment of MTIP funds provided herein is fulfilled and expended or as otherwise provided in accordance with and for the purposes set forth herein.

2. Metro shall:

2.1 As the Portland region’s Metropolitan Planning Organization (MPO) and regional government, take all actions under its control (including, without limitation, programming the annual amounts of certain MTIP funds shown below for use by TriMet for the purposes permitted hereunder), subject to the exceptions set forth in this Agreement, to facilitate TriMet’s receipt of the full annual amounts of MTIP funds set forth below, together with any additional amounts described in Section 2.3, on the dates shown below, subject only to reauthorization of MTIP funds and the provisions set forth in herein:

Federal Fiscal Year	Committed Schedule of MTIP Funds to be made Available to TriMet
2006	\$ 4,000,000

Federal Fiscal Year	Committed Schedule of MTIP Funds to be made Available to TriMet
2007	\$ 8,000,000
2008	\$ 9,300,000
2009	\$ 9,300,000
2010	\$ 9,300,000
2011	\$ 9,300,000
2012	\$ 9,300,000
2013	\$ 9,300,000
2014	\$ 9,300,000
2015	\$ 9,300,000
TOTAL	\$86,400,000

2.2 (a) Metro’s funding commitment set forth in this Agreement shall be fulfilled solely through (i) programming of MTIP funds and (ii) taking such other actions as may be necessary under federal and regional rules and procedures to facilitate TriMet’s receipt of the annual amounts of MTIP funds due to TriMet under this Agreement. As used everywhere in this Agreement, the term “MTIP 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 solely by Metro as the Portland MPO to projects in the Portland MPO area.

(b) Metro shall program and prioritize in project selection the annual committed amounts to TriMet as shown Section 2.1 in a given year, conditioned solely on (i) Federal authorization of MTIP funds to the Portland MPO, (ii) an annual appropriation of MTIP funds to the Portland MPO in an amount equal to or greater than the annual committed amount shown in Section 2.1 for such year, and (iii) an annual allocation of obligational authority for MTIP funds to the Portland MPO in an amount equal to or greater than the amount shown in Section 2.1 for such year. In any year in which (i) MTIP funds are not authorized or are not appropriated to the Portland MPO in an amount equal to or greater than the amount shown in Section 2.1 of this Agreement for such year, or (ii) insufficient obligational authority is allocated to the Portland MPO for MTIP funds for such year, the difference between the annual amount of MTIP funds TriMet receives from the Portland MPO under this Agreement in such year and the annual amount committed to TriMet in Section 2.1 for such year shall be reprogrammed for TriMet as described in Section 2.3.

2.3 (a) If for any reason (except in cases caused by the acts or omissions of TriMet) the full amount of MTIP funds provided to TriMet by the Portland MPO under this Agreement in any Federal Fiscal Year is less than that shown in the schedule set forth in Section 2.1 of this Agreement, the amount of funds due under Section 2.1 for the Federal Fiscal Year first following the year in which such a Difference occurs shall be increased by 105% of that Difference. The Difference is defined as the annual amount actually provided to TriMet under this Agreement for a Federal Fiscal Year and the

applicable annual amount for the Federal Fiscal Year as set forth in Section 2.1 as it may be adjusted from time to time under this paragraph. The schedule shown in Section 2.1 shall be adjusted in each year as provided in this paragraph if the full amount due in any Federal Fiscal year, after adjustment under this paragraph, is not paid to TriMet.

(b) The intent of this Section 2.3 is to ensure that TriMet receives a total amount of MTIP funds under this Agreement that has a present value equal to the present value (as of the start of fiscal year 2006) of funds anticipated by the initial schedule of MTIP funds shown in Section 2.1, based on a five (5) percent discount rate. In the event that TriMet does not receive the full amount of MTIP funds from Metro as the Portland MPO due in any year, Metro shall take all necessary actions, including without limitation the reprogramming of MTIP funds as defined in this Agreement, to facilitate TriMet's receipt of the amounts described in Section 2.1, after those amounts are adjusted pursuant to this Section 2.3.

(c) The parties recognize and agree that this may cause Metro's payment schedule to TriMet to extend beyond the dates set forth in Section 2.1. This Agreement shall terminate when TriMet receives all monies due to TriMet under this Agreement, or on the date that Metro is no longer designated as the Portland MPO.

(d) The parties also recognize and agree that if the federal government ceases to authorize, appropriate or allocate MTIP funds to Metro as the Portland MPO, Metro shall not be liable in any way for funding the amounts described in Section 2.1, except from MTIP funds as set forth above, and that in such case of federal cancellation of MTIP funds, TriMet will be solely responsible for fulfilling any obligations it undertakes as a result of this Agreement.

2.4 Diligently fulfill the duties assigned to Metro in the Regional Funding Plan, including without limitation, providing such assurances, legal opinions, or agreements reasonably requested by TriMet to effectuate the financing strategy required to implement the Regional Funding Plan.

3. TriMet shall:

3.1 Take all actions in a timely manner that are required of grantees by the Federal Highway Administration (FHWA) and/or the Federal Transit Administration (FTA) for receipt of said MTIP funds;

3.2 Diligently fulfill the duties assigned to TriMet in the Regional Funding Plan, including without limitation:

(a) Preparing and undertaking the financing program(s) required to implement the Regional Funding Plan;

- (b) Use the funds provided under this Agreement in the manner described in the Regional Funding Plan to make the following amounts available to the Commuter Rail, I-205/Mall LRT and North Macadam Projects:

<u>Project</u>	<u>Millions</u>
I-205/Mall LRT Project	\$48.5
Commuter Rail Project	\$10.0
North Macadam Project	\$10.0

- (c) Providing to the I-205/Mall LRT, Commuter Rail, and North Macadam Projects the amounts shown in Section 3.2(b) above, regardless of the borrowing costs incurred in implementing the Regional Funding Plan. TriMet will neither be provided additional MTIP funds nor be required to reimburse MTIP funds in the event borrowing costs differ from those assumed in the Regional Funding Plan. In the event that interest rates do not permit MTIP-backed bonds to provide the full \$68.5 million anticipated in Section 3.2(b) from the multi-year commitment of MTIP funds under this Agreement, TriMet will provide the difference and, if borrowing is necessary to provide the difference, will secure such borrowing with other TriMet revenues or TriMet's general fund to provide the difference to the applicable project(s).
- (d) In the event that one or more of the projects described in the Regional Funding Plan do not proceed to construction, the difference between the actual expenses incurred on those projects and the amounts shown in section 3.2(b) herein shall be made available by TriMet for reallocation to other regional projects through a regional process agreed to by the TriMet General Manager and the JPACT Chair. In such event, Metro as the Portland MPO shall continue to provide to TriMet the revenue stream from MTIP funds as set forth in Section 2 herein, with TriMet providing the funds to the regional process for reallocation from the terminated project(s).
- (e) Work with Metro each year to determine the appropriate annual mix of STP, CMAQ, or any successor or comparable federal urban transportation funding programs that comprise MTIP funds will be utilized to provide the total amounts of MTIP funds committed to TriMet under Section 2 of this Agreement.

4. The Parties acknowledge and agree that:

- (a) 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 and the shortfall results from an insufficient federal authorization or appropriation of MTIP funds to Metro as the Portland MPO or an insufficient state suballocation of MTIP obligation authority to Metro as the Portland MPO

below the amounts described in Section 2.1, and not from any action or omission by Metro;

- (b) The funding commitments by the other state, regional and local contributors, as contemplated in the Regional Funding Plan have been obtained, all requirements in the Regional Funding Plan for such commitments have been satisfied, and the City of Portland has made a sufficient commitment of funds for the I-205/Mall LRT Project to fulfill the prerequisite described in the Regional Funding Plan for City's receipt of funds from TriMet for the North Macadam Project;
 - (c) TriMet will rely on the commitment of MTIP funds made hereunder, as well as other TriMet funds if TriMet so chooses, when it issues the TriMet bonds to provide the project funding set forth in Section 3.2(b) of this Agreement; and
 - (d) TriMet will have sole responsibility for determining the validity and security of any bonds it issues or causes to be issued related to this Agreement.
5. Metro and TriMet 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 particular term or provision held to be invalid.
6. Metro and TriMet agree that neither party shall 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 person or party, except as provided in Section 7 of this Agreement.
7. Notwithstanding Section 6 of this Agreement, the parties acknowledge that the owners of the TriMet Bonds and their representatives (including any TriMet Bond trustees) and any providers of credit enhancement for the TriMet Bonds shall be third party beneficiaries to the representations and agreements set forth in this Agreement.
8. If a dispute arises between the parties, Metro agrees that, so long as the TriMet 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 that 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 the TriMet Bonds.
9. 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 AS TO FORM BY METRO

By _____
Michael Jordan, Chief Operating Officer

By _____
Daniel B. Cooper, Metro General Counsel

Date: _____

Date: _____

APPROVED BY TRIMET

APPROVED AS TO FORM BY TRIMET

By _____
Fred Hansen, General Manager

By _____
M. Brian Playfair, TriMet General Counsel

Date _____

Date _____

Attached Hereto and Incorporated Herein: Exhibit A to Metro Resolution No. 04-3468
“Regional Funding Plan for the South Corridor, Commuter Rail, and North Macadam Projects.”

**Exhibit A to Resolution No. 04-3468
Regional Funding Plan for the South Corridor, Commuter Rail,
and North Macadam Projects**

1. Multi-Year Commitment of MTIP Funds to Regional Funding Plan

1.1 Metro hereby supplements the multi-year commitment of Metropolitan Transportation Improvement Program (MTIP) funds set forth in Resolution No. 03-3290, and amends the MTIP, as follows:

<u>Fiscal Year</u>	<u>CURRENT</u> Multi-Year Commitment of MTIP Funds under Resolution No. 03-3290	<u>PREVIOUS</u> MTIP Funds Applied to Interstate MAX Project	<u>PROPOSED</u> Supplemental Multi-Year Commitment of MTIP Funds to Refined Regional Funding Plan	<u>TOTAL</u> Multi-Year Commitment of MTIP I-205/Mall LRT, Commuter Rail, No. Macadam Projects
FY '99	\$1,500,000	\$1,500,000	\$ -	\$ -
FY '00	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '01	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '02	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '03	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '04	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '05	\$6,000,000	\$6,000,000	\$ -	\$ -
FY '06	\$8,000,000	\$4,000,000	\$ -	\$4,000,000
FY '07	\$8,000,000	\$ -	\$ -	\$8,000,000
FY '08	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '09	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '10	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '11	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '12	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '13	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '14	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
FY '15	\$8,000,000	\$ -	\$1,300,000	\$9,300,000
Total	\$117,500,000	\$41,500,000	\$10,400,000	\$86,400,000

As used in this Regional Funding Plan, the term MTIP funds includes Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds, or any successor federal transportation funding programs allocated by formula to metropolitan regions.

1.2 TriMet will prepare and implement a financing program to use, through direct federal grants to projects and/or a borrowing strategy, the MTIP funds committed in Section 1.1 to provide the following amounts, net of borrowing costs, to the following projects:

Project	Millions
I-205/Mall LRT Project	\$48.5
Commuter Rail Project	\$10.0
North Macadam Project	\$10.0

TriMet may employ the multi-year commitment of MTIP funds to provide the amounts shown to the respective projects in any manner that facilitates its funding and borrowing program. TriMet may pledge any portion of the multi-year commitment of MTIP funds to any borrowing or borrowings it deems necessary or desirable to achieve the purpose of this Regional Funding Plan. TriMet may employ any portion of the multi-year commitment of MTIP funds to pay preventative maintenance or capital costs required to make TriMet general funds available to provide the amounts shown above to the respective projects.

- 1.3 TriMet will enter binding agreements with FTA and local governments committing TriMet to provide the amounts shown in Section 1.2 to the respective projects. To provide such amounts, TriMet will enter loan agreements relying on receipt of the annual amounts shown in Section 1.1 to help repay such obligations. Accordingly, the annual amounts shown in Section 1.1 are fully committed to TriMet; subject only to authorization and appropriation of MTIP funds.
- 1.4 TriMet will provide to the I-205/Mall LRT, Commuter Rail, and North Macadam Projects the amounts shown in Section 1.2, above, regardless of the borrowing costs incurred in implementing this regional funding plan. TriMet will neither be provided additional MTIP funds nor be required to reimburse MTIP funds in the event borrowing costs differ from those assumed in preparing this plan. In the event that interest rates do not permit MTIP-backed bonds to provide the full \$68.5 million anticipated in Section 1.2 from the multi-year commitment of MTIP funds, TriMet will employ general fund borrowing to provide the difference to the applicable project(s). Because the multi-year commitment of MTIP funds will be used directly or in a revenue-bonding or borrowing strategy in accordance with the finance plans for these Projects, Metro will provide assurances, legal opinions, or enter into appropriate IGA's reasonably requested by TriMet that are requested by third parties to effectuate the bonding strategy and that are consistent with the purposes set forth in this Exhibit A.
- 1.5 A mix corresponding to the needs of TriMet's financing program of Surface Transportation Program (STP) and Congestion Mitigation Air Quality (CMAQ) funds will be used to fulfill the multi-year commitment of MTIP funds. Representatives of Metro and TriMet will cooperatively determine the appropriate mix of CMAQ and STP funds to be used to fulfill the multi-year commitment of MTIP funds.

2. I-205/Mall LRT Project

- 2.1 The finance plan for Final Design and construction of the I-205/Mall LRT Project is currently anticipated to be as follows:

Funding Source	\$Millions
Federal Sec. 5309 Funds (3)	\$296.2
MTIP (TriMet bonds)	\$48.50
TriMet General Fund	\$25.33
Clackamas County	\$35.33
ODOT (4)	\$23.00
City of Portland (2)	\$65.33
Total Project Revenues (1)	\$493.70

Note 1: Does not include contributions for Preliminary Engineering

Note 2: Includes \$2 million for shelter replacement on Mall.

Note 3: Includes \$3 million for shelter replacement on Mall.

Note 4: Does not include more than \$10 million in Project savings resulting from the purchase of ODOT ROW.

This finance plan is preliminary, and subject to change due to Preliminary Engineering, Final Design, Full Funding Grant Agreement negotiations with FTA, and other future adjustments. The funding plan is based on an assumed schedule for receiving Section 5309 and local funds. The finance plan contemplates interim borrowing costs resulting from the unavailability of federal funds when required by the construction schedule. In the event federal funds are appropriated to the project at a slower rate than assumed or local funds are not received when scheduled, interim borrowing costs and the total project cost may be higher than anticipated in the finance plan. Any such cost increase will be counter-balanced by either additional local funding contributions or cost reductions from project scope reductions.

- 2.2 The commitment of MTIP funds to the I-205/Mall LRT Project is subject to funding commitments by the other state, regional and local contributors, as contemplated in the finance plan, as it may be amended from time to time.
- 2.3 FTA procedures require that Final Design be between 60 and 100 percent complete prior to commencing Full Funding Grant Agreement (FFGA) negotiations. The finance plan anticipates that about \$35 million of Final Design and related engineering and administration costs will be incurred prior to executing a FFGA, and that such cost will be paid with proceeds from MTIP-backed bonds and/or MTIP grant funds. MTIP will not be repaid or reimbursed for such expenditures, should the project not proceed to construction.
- 2.4 In the event that the City of Portland cannot commit sufficient funds to construct a mall segment, the \$10 million (net of borrowing costs) allocated to the North Macadam Project in Section 1.2 will be reallocated to the I-205/Mall LRT Project. In the event that even with the addition of this \$10 million there remains insufficient funding to construct a mall segment, a FFGA for a minimum operable segment between Gateway and the Clackamas Regional Center will be sought, and the finance plan adjusted accordingly.
- 2.5 The proposed ODOT \$3M supplemental commitment to the project, raising ODOT's contribution from \$20 million to \$23 million, presumes that the region will assist ODOT in seeking replacement federal funds for the I-205 auxiliary lane project. The \$23 million contribution to the project from ODOT requires amending the FY'04 – FY'07 MTIP and STIP to ensure that the funding is available in a timely manner.

3. Commuter Rail Project

- 3.1 \$10 million, net of debt service, will be provided to the Commuter Rail Project in accordance with the finance plan set forth in the *Definitive Agreement* between Washington County and TriMet, as may be amended by the FFGA. The County will provide a sufficient amount of County funds and state lottery bond proceeds to achieve a 50 percent local share of total capital costs for the Commuter Rail Project.
- 3.2 The portion of the multi-year commitment of MTIP funds required to provide \$10 million (net of borrowing cost) to the Commuter Rail project is currently fully committed to TriMet, and is currently being spent to pay the costs of Final Design for the Commuter Rail project. MTIP will not be repaid or reimbursed for such expenditures, should the Commuter Rail project not proceed to construction.

4. North Macadam Project

- 4.1 The *South Waterfront Central District Project Development Agreement* among the Portland Development Commission, Oregon Health & Science University, and several private entities sets forth a \$102.9 million program of public transportation, infrastructure, greenway, housing, research facility, neighborhood, and parks improvements; and a finance plan to accomplish this program. A key element of the improvement program is the extension of the Portland Streetcar between SW Moody and SW Gibbs; which is currently estimated to cost \$15.8 million. The finance plan for this project consists of \$5.8 million in tax increment and LID funds, and \$10 million provided by TriMet as a result of the multi-year commitment of MTIP funds shown in Section 1.1. As part of managing the overall program budget, the TriMet funds may be made available to other projects in the improvement program, provided the recipient project is an eligible project under TriMet statutes.
- 4.2 The obligation to provide to TriMet the portion of the multi-year commitment of MTIP funds required to provide \$10 million (net of borrowing cost) to North Macadam improvements is subject only to the City of Portland's binding commitment of \$60 million (assuming the mall to PSU option) to pay a share of the capital costs of the I-205/Mall LRT Project. Subject to such a binding commitment, TriMet will borrow funds relying on this portion of the multi-year commitment of MTIP funds and, in FY2006, provide to PDC \$10 million to design and build North Macadam improvements. Such funds will be provided to PDC independent of whether the I-205/Mall LRT Project advances to Final Design or construction. In the event the City of Portland is unable to provide such a binding commitment, the \$10 million will be reallocated to the I-205/Mall LRT Project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 05-3559 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND TRIMET FOR THE IMPLEMENTATION OF THE REGIONAL FUNDING PLAN AND A MULTI-YEAR FUNDING COMMITMENT OF METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM FUNDS

Date: March 24, 2005

Prepared by: Andy Cotugno
Dave Unsworth

BACKGROUND

The purpose of this resolution is to authorize the Chief Operating Officer to enter into an intergovernmental agreement (IGA) between TriMet and Metro. In this agreement, Metro will provide a multi-year commitment of Metropolitan Transportation Improvement Program (MTIP) Funds that totals \$86.4 million and TriMet will provide \$48.5 million to the I-205/Portland Mall Project, \$10 million to the Commuter Rail Project and \$10 million to the North Macadam projects. TriMet intends to use the MTIP funds to provide a revenue stream for the issuance of bonds. These bond proceeds will be used to provide early funding for these transit projects. Exhibit A to Resolution 04-3486 identifies the need for an IGA to formalize the funding commitments and to facilitate the flow of bond revenue funds to the I-205/Portland Mall, Commuter Rail and North Macadam projects. The IGA included in Exhibit A addresses this need. On an annual basis, the distribution of the amounts detailed in Section 2.1 of Exhibit A and shown in the table below, will have first priority over other MTIP funding needs.

Federal Fiscal Year	Committed Schedule of MTIP Funds to be made Available to TriMet
2006	\$ 4,000,000
2007	\$ 8,000,000
2008	\$ 9,300,000
2009	\$ 9,300,000
2010	\$ 9,300,000
2011	\$ 9,300,000
2012	\$ 9,300,000
2013	\$ 9,300,000
2014	\$ 9,300,000
2015	\$ 9,300,000
TOTAL	\$86,400,000

Previously, Metro has allocated flexible MTIP funds to provide funds for the South/North LRT Project and Interstate Max Project and plans to use these funds for future transit projects. The Metro Council and JPACT have approved a number of resolutions that address the use of MTIP funds for Regional Funding Plan in support of major transit projects. The IGA in Exhibit A, provides more definition to the

conditions related to the transfer of funds and is consistent with Resolution 04-2486 approved by the Metro Council on July 15, 2004.

The IGA indicates that Metro will commit the MTIP funds described in Section 2.1 of the IGA. The sole reason for not providing these funds as described by this schedule is if actual Federal authorization and appropriations are less than the schedule of committed funds described in Section 2.1 and in the table above. If this shortfall occurs, in the next federal fiscal year that the federal authorization and appropriations of MTIP funds are available in an adequate amount, Metro will make up this deficit plus an annual rate of five percent multiplied to the deficit, plus the amount scheduled for that year. This interest rate will come from the MITP funds.

This IGA was reviewed and approved by JPACT and JPACT has authorized the Metro to commit future MTIP dollars as outlined in the IGA.

ANALYSIS/INFORMATION

1. **Known Opposition** There is no known opposition to this resolution
2. **Legal Antecedents** Metro is vested with the authority to implement MTIP by the State of Oregon through the requirements of the Statewide Transportation Planning Rule. Metro has the legal authority to enter into an IGA with TriMet.
3. **Anticipated Effects** This resolution would authorize an IGA that would provide the mechanism to formalize the transfer of MTIP dollars to TriMet and the funding of the Regional Funding Plan.
4. **Budget Impacts** Commitments for these funds have been previously approved by JPACT and the Metro Council. MTIP funds allocated to TriMet through this IGA and described in Exhibit A will be the first priority of MTIP funds. Allocations less than current levels may affect Metro's ability to allocate MTIP funds for Metro planning activities.

RECOMMENDED ACTION

Metro Council approve Resolution 05- 3559