

#2790

## INTERGOVERNMENTAL AGREEMENT

This Amendment No. 2 revises the July 1, 2005 Intergovernmental Agreement, as amended by Amendment No. 1, among the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), the City of Gresham ("Gresham"), and the City of Portland ("Portland") for provision of Transit Police Division ("Transit Police") services.

**COPY**

### RECITALS

1. The parties desire to revise certain provisions of the July 1, 2005 Agreement with respect to Transit Police Division services including but not limited to deployment strategy, priority of services and administrative procedures.
2. Specifically, the parties desire to expand the police presence on MAX. As a result, effective April 1, 2008 the parties desire to open an Eastside Precinct located at the Gresham Police Department, 1333 NW Eastman Parkway, Gresham, Oregon 97030. Specific provisions for the Eastside Precinct are set forth in Exhibit 4.
3. The July 1, 2005 Agreement, as revised by this Amendment No. 2 is set forth in its entirety below.

### AGREEMENT

The purpose of this Agreement is to provide officer(s) to the TriMet Transit Police Division, which is operated and administered by the Portland Police Bureau under a separate contract between TriMet and Portland. Commencing April 1, 2008 and during the term of this Agreement, Gresham shall assign officers and personnel to the Division in accordance with the terms of this Agreement, in such numbers and classifications as the parties mutually agree in writing, by letter among Gresham's Chief of Police, the Transit Police Division Commander, and TriMet's Executive Director - Operations, with such letter in the form set forth in Exhibit 3. TriMet, through Portland, will compensate Gresham for the services of the officer(s) assigned to the Transit Police Division.

The parties agree as follows:

1. **TERM:** The initial term of this Agreement shall be from July 1, 2005 through June 30, 2006, and shall automatically renew for successive one-year terms through June 30, 2010, unless terminated sooner under the terms of this Agreement.
2. **RESPONSIBILITIES OF PARTIES:** See attached Exhibit 1.
3. **TERMINATION:** This Agreement may be terminated as follows:
  - a. Any party may terminate this Agreement for its convenience and without penalty upon thirty (30) days written notice of its intention to terminate.
  - b. If TriMet is unable to appropriate sufficient funds to pay Gresham for its services under this Agreement, TriMet must notify Gresham and Portland and the Agreement

terminates as of the end of the last fiscal year for which such appropriations are available.

- c. Any obligations arising prior to the date of termination survive the termination, including any obligation to defend and indemnify any other jurisdictions.

4. INDEMNIFICATION:

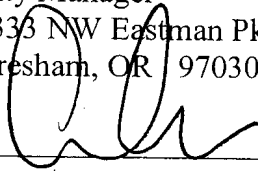
Portland and Gresham will be responsible for the work of the officers assigned to the TriMet Transit Police Division.

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Gresham shall indemnify, defend and hold harmless TriMet and Portland from and against all liability, loss, and costs arising out of or resulting from the acts of Gresham, its officers, employees, and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, TriMet shall indemnify, defend, and hold harmless Gresham and Portland from and against all liability, loss, and costs arising out of or resulting from the acts of TriMet, its officers, employees, and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Portland shall indemnify, defend, and hold harmless Gresham and TriMet from and against all liability, loss, and costs arising out of or resulting from the acts of Portland, its officers, employees, and agents in the performance of this Agreement.

5. INSURANCE: Each party shall be responsible for providing workers' compensation insurance for their respective employees, as required by law, and may elect to commercially insure or self insure for any other liabilities assumed under this agreement.
6. ADHERENCE TO LAW: Each party must comply with all federal, state, and local laws and ordinances applicable to this Agreement.
7. ACCESS TO RECORDS: Each party must have access to the books, documents, and other records of the other parties related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.
8. SUBCONTRACTOR AND ASSIGNMENT: No party shall subcontract or assign any part of this Agreement without the written consent of the other parties.
9. ENTIRE AGREEMENT: This Agreement and Exhibits 1 through 4 constitute the entire agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.
10. ATTORNEY FEES: In the event a lawsuit is filed to obtain performance of any kind under this Agreement, the prevailing party is entitled to additional sums as the court may award for reasonable attorney fees, all costs, and disbursements, including attorney fees, costs, and disbursements on appeal.
11. SEVERABILITY: The parties agree that, if any term of this Agreement, is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.

12. NOTICES: The parties must send any notices, bills, invoices, reports, or other written communications required by this Agreement through the United States Mail, first-class postage paid, or personally delivered to the addresses below:

**GRESHAM**  
City Manager  
1333 NW Eastman Pkwy.  
Gresham, OR 97030



Signature

Erik Kvarsten

Print

City Manager

Title

Approved as to form:

Heather Parley 3-31-08

Gresham Counsel

**TRIMET**  
Executive Director, Operations  
4012 SE 17<sup>th</sup> Avenue  
Portland, OR 97202

Signature

Print

Title

Legal Counsel

**PORTLAND**  
Commander, Transit Police Division  
210 N.W. 1<sup>st</sup> Avenue  
Portland, OR 97209

Signature

Print

Title

By:

Mayor

City Attorney

**APPROVED AS TO FORM**



CITY ATTORNEY

## EXHIBIT 1

### TRANSIT POLICE DIVISION OPERATIONS

#### 1. SERVICE LEVEL

For the term of this Agreement, Gresham will provide one or more full-time officer(s) for assignment to the Transit Police Division (hereinafter Division), in such numbers and classifications as the parties mutually agree in writing, by letter among Gresham's Chief of Police, the Transit Police Division Commander, and TriMet's Executive Director - Operations, with such letter in the form set forth in Exhibit 3. On an annual basis, the parties will agree upon the level of police service including personnel, equipment, and related support, to be provided to the Division. If a vacancy of any of the agreed-upon number of officers is not filled within 90 days, the parties agree that TriMet may reassign the opening to another jurisdiction, to provide officer(s) to the Division. Gresham personnel assigned to the Division will remain employees of Gresham and will not be considered employees or agents of TriMet or the City of Portland (Portland). For purposes of this Agreement, the officer(s) assigned to the Division will be referred to as assigned to the TriMet Transit Police Division.

#### 2. OPERATIONS

- a. Deployment Strategy and Priority for Services: The parties recognize that they have legitimate interests in the management and deployment of officers assigned to the Division. The parties will work together to ensure:
- (1) On-Board Presence: The priority for Transit Police deployment's presence on the transit system vehicles and at transit system public facilities.
  - (2) Calls for Service: In general, response to 9-1-1 calls for transit system incidents shall be responded to by local law enforcement from the respective jurisdiction.
  - (3) Arrests: Arrests on the transit system incidents shall be by the respective Transit Police or local law enforcement which originated action on the incident.
  - (4) Law Enforcement Support: Transit Police and local law enforcement shall be responsible for law enforcement support activities for their respective primary areas of responsibility.
  - (5) Enforcement: Transit Police enforcement shall focus on TriMet ordinances, including fare enforcement, and State and City laws to help ensure the security of passengers, employees, and transit system property.
  - (6) Targeting: Transit Police deployment shall focus on identified problem areas, routes and/or transit centers/transfer points based on data relative to the greatest needs for "preventive action"; using community policing strategies whenever possible.
- b. Agency Cooperation and Coordination:
- (1) The parties will work closely and continuously communicate with each other to ensure that the resources, strategies, work force deployment, and initiatives of TriMet, Portland, and Gresham are coordinated and effective.

- (2) The Commander, TriMet Transit Police Division, or his/her designee, will coordinate contact with the parties to insure that the resources, strategies, work force deployment, and initiatives of the Division and those of the respective law enforcement agencies are coordinated and effective.
  - (3) Gresham agrees to work cooperatively in an effort to increase reporting of TriMet related incidents. Gresham agrees to provide to the Division TriMet coded reports, data, and records. TriMet agrees to make available to Gresham, through the Division, particular date reports, records, etc. that will assist in fulfilling the mission as outlined in this document.
- c. Officer Seniority: Determination of officer seniority for purposes of making shift, vacation, holiday, and overtime assignments shall be according to the attached Exhibit 2.
  - d. K-9 Unit Training Facility: TriMet has entered into a ground lease (hereinafter "Lease") with the Port of Portland effective September 17, 2007 for the use of certain premises (hereinafter "Premises") to house explosives storage magazines in support of TriMet's training requirements to maintain U.S. Department of Homeland Security, Transportation Security Administration ("TSA") certification for K-9 units. Transit Police Division personnel as designated by TriMet and TSA will be authorized to access and utilize the Premises for purposes of TriMet's K-9 unit training in accordance with the Lease terms. Gresham agrees that the work and operations of Gresham's assigned transit police personnel, with respect to activities relating to the Premises, are subject to and shall comply with all provisions and requirements of the Lease, the terms of which are incorporated into and made part of this Agreement, and specifically any obligations of TriMet as Lessee.

### 3. REIMBURSEMENT OF COSTS

- a. Costs: Gresham must pay the salaries, overtime, insurance, retirement, and other benefits of its respective officers serving in the TriMet Transit Police Division. Gresham must bill the Portland Police Bureau, Fiscal Division, monthly for the salaries, overtime, insurance, retirement, other benefits and Indirect (overhead not to exceed 10%) charges incurred by Gresham to provide personnel. Billings will be sent to: PPB Fiscal Division, 1111 SW 2<sup>nd</sup> Avenue, Portland, OR 97204. Portland agrees to compensate Gresham within 30 days after receiving the bill.
- b. Amount: Before April 1<sup>st</sup> of each year of this Agreement, Portland and Gresham must submit to TriMet a proposed annual budget for services under this contract for next fiscal year (July 1 through the following June 30). The parties will then agree on the compensation to be paid by TriMet for services to Portland and Gresham under this Agreement. If the parties cannot agree on such compensation by April 1<sup>st</sup> of each year of this Agreement or at anytime during the term of this Agreement, any party may elect to terminate this Agreement for its convenience and without penalty in accordance with the Termination provision in this Agreement.

## EXHIBIT 2

### TRANSIT POLICE DIVISION PERSONNEL OPERATIONS

It is the intent of this Agreement: (1) to recognize that the TriMet Transit Police Division (Division) is staffed by police officers from multiple jurisdictions, each covered by their respective collective bargaining agreements, but that shifts, days off, vacations and overtime need to be assigned in a fair and equitable manner; (2) to provide for assignment of shifts, days off, vacations and overtime by seniority; (3) to allow for the change of shift hours of operation and to re-allocate positions and days off within certain shifts to maintain an appropriate balance of field strength.

#### THE PARTIES AGREE THAT:

1. Current and future Gresham officers assigned to the Division will use their Gresham date of hire seniority as the means to select shifts, days off, vacations and overtime.
2. Current and future Gresham officers assigned to the Division will abide by the provisions of this Exhibit 2.
3. Seniority shall be defined as the length of uninterrupted service by the officer in his/her agency within the officer's Civil Service classification following the officer's most recent appointment. Time spent in the Armed Forces, on military leaves of absence, other authorized leaves and time lost because of duty-connected disability shall be included in length of service. If an officer who has been promoted reverts to a position s/he formerly held, the officer's seniority shall be the sum of the seniority earned in the promotional class and in the class to which the officer reverts.
4. Subject to manpower needs and maintaining efficiency of the Division, seniority shall be the prime factor in the selection of shifts and days off provided the officer is otherwise qualified. Seniority shall govern in the selection of vacation and holidays.
5. In the case of voluntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacations. The transferring officer may not use seniority to bump another officer's shift or days off until 45 days from the date of the written request.
6. In case of involuntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacation. In the event of an involuntary transfer, the Division shall accommodate the shift and/or days off preferences of transferring officers immediately, and shall not involuntarily bump any other officer for at least thirty (30) days from the time the bumped officer receives notice of the bump. The transferring officer may not use seniority to bump another officer's shift or days off until 30 days from the date of the written request.
7. For the purposes of this Agreement, the phrase "Transferring Officer" shall refer to an officer desiring to change shifts, days off or assignments, or an officer who is involuntarily transferred.
8. The Division shall prepare a form to be used by officers desiring to transfer from one shift, assignment, or day off configuration to another within the same reporting unit. For the purposes of this Agreement, this form shall be referred to as the "Transfer Request Form." The Transfer Request Form shall contain a place for transferring officers to indicate their preferences with respect to shifts and days off.

9. A transferring officer may complete a Transfer Request Form at any time. If the officer is seeking or anticipating a transfer, the officer shall file the Transfer Request Form with the Division supervisor. If the officer is seeking a change in days off or shifts which do not involve a transfer between reporting units, the Transfer Request Form shall be filed with the officer's shift commander. The Division will forward a copy of the Transfer Request Form to the location of the anticipated transfer.
10. In the event of a change in days off or shifts that do not involve a change in reporting units, the time frames referred to in Section 5 and 6 of this Exhibit 2 shall begin to run when the transferring officer submits the Transfer Request Form.
11. When the Division knows that an officer's preferences as indicated on a Transfer Request Form will result in the displacement of the shift or days off of another officer (referred to herein as the Transferred Officer), the Division shall notify the Transferred Officer as soon as possible of the fact that he or she may be bumped.
12. The Division shall accommodate the shift and/or days off preferences of transferring officers on a faster time schedule than that contained in Sections 5 and 6 of this Exhibit 2, if, in the Division's judgment, it is operationally sound to do so, provided that no other affected officer is bumped from his or her days off or shift who objects to the accommodation.
13. An officer may exercise seniority to bump another officer for shift and days off only once in ninety (90) days.
14. **Vacations.** Employees shall be allowed to select two vacation periods on the basis of seniority. Each vacation period must be of a minimum duration of one day. Vacation time shall be scheduled by the Division with due consideration being given to requests from officers which shall be determined among officers of equal rank by seniority; provided, however, that each officer shall be permitted to exercise the right of seniority only once each year. The sign-up deadline for the exercise of seniority in the selection of vacations shall be March 15 for the calendar year running from April 15 through April 14 of the following year.
15. **Holiday Assignment.** Where the shift strength is reduced or increased on holidays, consistent with the needs of the Division, assignments shall be offered to the most senior officer. Except for an emergency, the Division shall provide a minimum of ten (10) days' notice of any deviation from normal shift strength so that officers may plan the use of their time.
  - A. Where shift strength is reduced, the most senior officer scheduled for duty on the shift shall be offered the option of working or not. Where shift strength is increased, the most senior officer on the shift shall be offered the option of working or not.
  - B. For purposes of this section, New Year's Eve and Christmas Eve shall be treated as holidays.
16. **Seniority for Vacation Purposes upon Transfer.** If an officer is involuntarily transferred, the Division shall honor the officer's pre-selected vacation times, and shall not disrupt the pre-selected vacation time for other officers in the division to which the officer is involuntarily transferred. If an officer accepts a voluntary transfer, the Division shall attempt to accommodate, to the extent possible, the officer's pre-selected vacation times.

17. **Shift Overtime.** Where the overtime is not directly related to activities begun by an officer during the officer's regular shift, and where the planned overtime is anticipated to be four (4) hours or more in duration, the overtime shall be offered, in the order of seniority, to officers in the Division. Once each eligible officer has had the opportunity to work shift overtime in a pay period, officers may once again use their seniority to work shift overtime as described above, and the seniority list shall rotate in the same fashion thereafter. The Division shall maintain a list in each reporting unit upon which officers must place their names indicating a willingness to work shift overtime. If an officer is incorrectly passed over for shift overtime, the officer shall be allowed to work a makeup overtime assignment within the next two pay periods following the discovery of the error. The officer and the Division shall mutually agree upon the makeup overtime assignment, which shall not displace another officer's already-selected overtime assignment. An officer who has been incorrectly passed over shall not be otherwise entitled to compensation for the missed overtime.

18. An officer will normally be given adequate advance notice of any change in the officer's regular hours of work, except where an emergency (an emergency is defined as an unforeseen event affecting the Division's ability to perform its mission) exists. Notice given less than forty-eight (48) hours (or seventy-two [72] hours under the Four-Ten Plan) before the officer is to begin work under the changed schedule entitles the officer to compensation at the overtime rate for those hours not exceeding eight (8) hours that are earlier, later, or different from the hours the officer last worked in a work day. A police officer is not entitled to compensation under the overtime rate if the officer is otherwise entitled to compensation under the same hours of work, or if shift changes are the result of a voluntary transfer or promotion.

19. **Discipline.** Discipline and discharge of Gresham officers assigned to the Division will be the responsibility of Gresham and in accordance with the Collective Bargaining Agreement between the Gresham Police Officer's Association and the City of Gresham.

20. **Collective Bargaining Agreement.** All other terms and conditions of any current Collective Bargaining Agreement between the Gresham Police Officer's Association and the City of Gresham shall remain in effect as to other issues not addressed by this Exhibit 2. In the event of a conflict between such Collective Bargaining Agreement and this Exhibit 2, the provisions of such Collective Bargaining Agreement shall govern.



**EXHIBIT 3  
TRANSIT POLICE DIVISION STAFFING LETTER**

(on TriMet letterhead)

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(date of letter)

Chief of Police  
City of Gresham, Oregon  
1333 NW Eastman Parkway  
Gresham, OR 97030

RE: Gresham Police Staffing to TriMet Transit Police Division

Dear \_\_\_\_\_:

This letter is issued pursuant to the July 1, 2005 Agreement among the Tri-County Metropolitan Transportation District of Oregon (TriMet), the City of Gresham (Gresham) and the City of Portland (Portland), for TriMet Transit Police Services, as amended, to establish or change the number of police officers assigned from Gresham Police to the TriMet Transit Police Division.

Prior Staffing from (date of initial transit police staffing letter), To-Date

- from (date of initial transit police staffing letter) to (date) (specify number of officer(s))
- from (date) to (date) (specify revised number of officer(s))
- etc. etc.
- from (date) to (effective date of this staffing change) (specify revised number of officer(s))

Staffing from (effective date of this staffing change)

- from (effective date of this staffing change) (specify revised number of officer(s))

Any future change in the number of officers assigned from Gresham Police to the TriMet Transit Police Division, is subject to mutual agreement by the parties by subsequent letter in similar form.

Sincerely,

Executive Director, Operations  
TriMet

Agreed to by Gresham:

Agreed to by City of Portland:

\_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
date

\_\_\_\_\_  
Transit Police Commander

\_\_\_\_\_  
date

**EXHIBIT 7**  
**EASTSIDE PRECINCT**

1. Effective April 1, 2008, the Transit Police Division will assign three officers and one sergeant to the Eastside Precinct. Effective April 1, 2008, Gresham Police will assign officers to the East Precinct. Transit Police Division will assign two additional officers on or about May 15, 2008 and another two on or about July 1, 2008.
2. Gresham agrees to provide office space for the officers/sergeants assigned to the Eastside Precinct. Gresham agrees to share existing office equipment with these officers and sergeants assigned to the Eastside Precinct. Gresham will not charge for this space.
3. The Transit Police Division Commander, Gresham Police Chief, and TriMet Executive Director, Operations will enter into additional or revised written understandings as needed concerning operations, personnel, facilities and equipment for effective operation of the Eastside Precinct, in form similar to Exhibit 3 of this Agreement.