

**FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO, ACTING BY AND THROUGH ITS METROPOLITAN-
EXPOSITION AND RECREATION COMMISSION AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
FOR PARK & RIDE LEASE**

THIS FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR PARK & RIDE LEASE AGREEMENT (this "Agreement") is entered into by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district ("TriMet") and METRO, acting by and through its METROPOLITAN-EXPOSITION AND RECREATION COMMISSION ("MERC") effective the ____st day of _____, 2019.

RECITALS

A. TriMet and MERC are parties to an Intergovernmental Agreement between TriMet and MERC for Park & Ride Lease dated May 28, 2003 (the "Original IGA"), whereby MERC granted TriMet the right to use certain parking spaces located at the Portland Expo Center, which is located at 2060 N. Marine Drive (the "Property"), as further described in and subject to the terms of the Original IGA.

B. The term of the Original IGA will now expire on October 31, 2019, and in lieu of exercising the option to extend the term of the Original IGA, the parties desire to amend and restate the Original IGA in its entirety.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the parties hereby agree to amend and restate the Original IGA as provided below, effective _____, 2019:

1. Park & Ride Lease; Compensation.

a. MERC hereby leases and grants to TriMet, its successors and assigns, and TriMet hereby agrees to lease and accepts from MERC, a nonexclusive lease to use solely for the purposes set forth in Section 3 below, 100 parking spaces in Parking Lower Lots 1, 2, and 3 on the Property (the "Park & Ride Spaces"), in accordance with and upon satisfaction of the terms and conditions set forth herein. As of the date of execution, the location of the Park & Ride Spaces are shown on the map attached hereto as **Exhibit A**. However, the parties acknowledge that currently there are approximately 1,380 parking spaces in Parking Lower Lots 1, 2, and 3 and that MERC shall have the right to relocate the Park & Ride Spaces and designate which specific parking spaces in such lots are for TriMet's park and ride use.

b. TriMet shall pay MERC the following annual lease consideration (the "Initial Lease Amount") for the Initial Term, (as defined in Section 2 below), which shall be due and payable in advance, commencing on the first day of September, 2019, and on the first day of September of each year of the Initial Term:

Lease Year	Annual Rent/Lease Amount
September 1, 2019 to August 31, 2020	\$65,072
September 1, 2020 to August 31, 2021	\$66,072
September 1, 2021 to August 31, 2022	\$67,072
September 1, 2022 to August 31, 2023	\$68,072
September 1, 2023 to August 31, 2024	\$69,072

The parties acknowledge that the Initial Lease Amount for the Initial Term includes consideration for approximately \$200,000 in improvements for a covered walkway between the parking lot and Exhibit Hall B, which MERC agrees to perform. The parties acknowledge that this is a MERC project, not a TriMet project. In no event shall TriMet be obligated to contribute any additional funds, pay for any other improvements or pay any increases in costs for the covered walkway improvements, except as included in the above Initial Lease Amount.

c. If TriMet exercises the Extension Option (as defined in Section 2 below), TriMet shall pay MERC the following annual lease consideration (the "Extension Lease Amount") for the Extension Term, (as defined in Section 2 below), which shall be due and payable in advance, commencing on the first day of September, 2024, and on the first day of September of each year of the Extension Term:

Lease Year	Annual Rent/Lease Amount
September 1, 2024 to August 31, 2025	\$30,072
September 1, 2025 to August 31, 2026	\$31,072
September 1, 2026 to August 31, 2027	\$32,072
September 1, 2027 to August 31, 2028	\$33,072
September 1, 2028 to August 31, 2029	\$34,072

2. Term; Termination.

a. Term. This Agreement shall be in effect for a period of five (5) years, commencing September 1, 2019, and expiring on August 31, 2024 (the "Initial Term"), unless otherwise extended or terminated hereunder. TriMet shall have the right (the "Extension Option") in its sole discretion to renew this Agreement for one additional five (5) year lease extension period ("Extension Term") on the same terms and conditions as provided in this Agreement, with the Annual Rent as provided in Section 1(c) above. The Extension Option shall be exercised, if at all, by TriMet's written notice to MERC no later than the expiration of the Initial Term. After the expiration of the Extension Term, the parties may extend the Term of this Agreement by mutual agreement. The Initial Term, the Extension Term, and any additional extensions shall be included in the definition of "Term".

b. Early Termination. If either party wishes to terminate this Agreement prior to the expiration of the Term, the terminating party shall notify the other at least one (1) year prior to the date on which it wishes the termination to be effective. MERC will refund TriMet any prepaid rent accruing after such termination date, based on a prorata basis.

c. Termination for Default. If either party fails to perform in the manner called for in this Agreement or fails to comply with any other provisions of this Agreement, the non-defaulting party may, with 90 days' written notice, with opportunity to cure, terminate this Agreement for default. Termination shall be effected by delivering a written notice of termination on the defaulting party, setting forth the manner in which the party is in default. Within the 90 days from written notice, MERC and TriMet shall endeavor to correct any problem giving rise to the default notice. The parties agree to bargain in good faith regarding curing the default. If at the end of the 90-day period, or such other period as agreed to by the parties, the default is not cured, then this Agreement and all rights hereunder shall terminate. In the case of termination, either party will be paid only the amounts due for work performed or occupancy already granted and terminating on the date of termination, unless in the termination agreement the parties specify to the contrary.

3. Use of Park & Ride Spaces; Cooperation and Coordinated Use.

a. Use of Park & Ride Spaces. TriMet and its patrons may use, on a non-exclusive basis, the identified 100 Park & Ride Spaces located within the Property, Monday through Friday during the hours of train operations ("Hours of Operation") for a Park & Ride Lot solely for the parking of passenger vehicles. MERC shall not grant to any third-party use of the Park & Ride Spaces which interferes with TriMet's rights hereunder. It is expressly agreed to and acknowledged by the parties that TriMet patrons will have first priority for parking at the Park & Ride Spaces prior to 10 a.m., during which time MERC shall not charge a parking fee to TriMet Park & Ride patrons. After 10 a.m. daily, MERC may utilize all unoccupied Park & Ride Spaces for general parking, and MERC may charge a parking fee to all who park there after that time.

b. Cooperation and Coordinated Use. The parties shall cooperate and provide mutual reasonable notice for coordinating landscaping activities, security actions, custodial efforts, capital improvements, maintenance, scheduled events or other activities that may impact the use of the Park & Ride Spaces by the other party. In addition, at no charge to either party, (i) TriMet may use the Park & Ride Spaces for ride and drive activities other than parking purposes (e.g. bus driver training, safety procedures, staging or other ride and drive activities) provided that such use is coordinated with MERC to ensure that it does not conflict with MERC's operations or any events taking place at the Expo Center; and (ii) upon thirty (30) days' prior notice to TriMet, MERC shall have the right to designate up three (3) blackout days per year for weekday Expo Center events (e.g. Portland Swap Meet), during which the Park & Ride Spaces will not be available for use by TriMet.

4. Access to Park & Ride Spaces. TriMet and its patrons may use adjacent walkways and roadways belonging to MERC for reasonable vehicle and pedestrian ingress to and egress from the Park & Ride Spaces.

5. Signs; Security. TriMet may install signs on the Property at locations approved by MERC indicating that the Park & Ride Spaces are available for use as a Park & Ride Lot, individual signs stating "Lot Full", and any other restrictions or limitations related to use consistent with this Agreement. TriMet shall be responsible for providing security to TriMet's facilities and to the Park & Ride Spaces during the Hours of Operation.

6. Maintenance. MERC shall be responsible for maintaining the Park & Ride Spaces from all normal wear and tear and for maintaining MERC's other property used for ingress to or egress from the Park & Ride Spaces. However, this provision shall not create or form the basis of any MERC liability nor shall it create any third-party rights or a duty to any third party. TriMet shall be responsible for periodically examining the Park & Ride Spaces and TriMet accepts the Park & Ride Spaces in its condition as of the date of execution of this Agreement. MERC shall notify TriMet of any major damage to the Park & Ride Spaces occurring during the Hours of Operations beyond normal wear and tear that MERC attributes solely to TriMet and/or its patrons ("Major Park & Ride Damage"). TriMet and MERC shall negotiate in good faith to share the cost of repairing Major Park & Ride Damage. With respect to normal wear and tear maintenance, a portion of the annual rent/lease amount for each year of the Lease Term includes a fixed annual amount of \$4,268, which the parties acknowledge covers the maintenance and stormwater fees attributable to the Park & Ride Spaces.

7. Removal upon Termination. Upon termination of this Agreement, TriMet shall cease using the Park & Ride Spaces. TriMet shall remove all signs and any structures placed on the Property by TriMet and shall repair any damage to the Property caused by the removal of TriMet's signs or structures.

8. Insurance; Indemnification.

a. Each party is responsible for the wages and benefits of its respective employees performing any work or services related to this Agreement. Metro will maintain for the duration of the Agreement (i) self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.272 and 30.273 and (ii) Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan. TriMet will maintain for the duration of the Agreement the following insurance, covering TriMet, its employees, subcontractors and agents:

i. The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability assumed under this Agreement, premises and products/completed operations. TriMet's coverage will be primary and non-contributing as respects Metro;

ii. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 combined single limit;

iii. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease; and

iv. Any combination of excess or umbrella insurance to bring the CGL and Auto to \$5,000,000 per claim

Metro and its respective elected officials, departments, employees, volunteers and agents must be covered as ADDITIONAL INSURED on TriMet's Commercial General Liability policy. TriMet will include the additional insured endorsement along with the certificate of insurance. TriMet will provide to MERC thirty (30) days' notice prior to any material change, termination, cancellation, potential exhaustion of aggregate limits, or non-renewal of policy coverage. TriMet will make all subcontractors working on the Property carry insurance required in subsections (i), (ii), and (iii) above as well as providing Metro as additional insured status on CGL and auto insurance.

TriMet must provide MERC with a Certificate of Insurance complying with this section upon execution of this Agreement. TriMet must email the Certificate of Insurance to submitdocuments@oregonmetro.gov. MERC reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsement evidencing the coverage required.

b. TriMet shall hold harmless, indemnify and defend MERC and Metro and their officers, agents, and employees from and against any and all claims, liability, settlements, damages, losses, costs and expenses arising out of TriMet's negligent actions, errors and omissions and willful misconduct in connection with the use and/or occupancy of the Property by TriMet, its employees, officers, agents, invitees or contractors under this Agreement, within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution. MERC shall hold harmless, indemnify and defend TriMet and its officers, agents, and employees from and against any and all claims, liability, settlements, damages, losses, costs and expenses arising out of MERC's negligent actions, errors and omissions and willful misconduct in connection with the use and/or occupancy of the Property by MERC, its employees, officers, agents, invitees or contractors under this Agreement, within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution.

9. General Provisions.

a. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

For MERC:

Matthew Rotchford
Clark Moss
The Portland Expo Center
2060 N. Marine Drive
Portland, Oregon 97217
Phone: 503-736-5200

For TriMet:

Phone: _____

b. **Dispute Resolution.** If the Project Managers from each party cannot resolve any dispute arising out of this Agreement, the matter will be referred to their respective supervisors for resolution. If the supervisors are unable to resolve the dispute within 30 days of referral, the matter will be referred to MERC's General Manager and TriMet's General Manager, who will attempt to resolve the issue. If the General Managers are not able to resolve the dispute, the parties will submit the matter to arbitration with the Commercial Arbitration Rule of the American Arbitration Association. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as provided in Oregon law. The parties shall each pay their own costs but will share equally in fees and costs of the arbitration and/or arbitration service provided, however, that the arbitration may award costs to the prevailing party. The parties shall continue in the performance of their respective obligations notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the parties.

c. **Authority.** The parties signing below represent that they have authority to bind the party for which they sign.

d. **Interest of Members of Congress.** No member of, or delegate to, the Congress of the United States shall be permitted to any share or part of this Agreement or to any benefit arising there from.

e. **Equal Employment Opportunity and Adherence to Law.** In connection with the execution of this Agreement neither party shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

f. **Audit and Inspection for Records.** Each party shall allow the authorized representatives of the other party, the United States Department of Transportation, and the controller General of the United States to inspect and audit all data and records relating to its performance under the Agreement. Each party shall be responsible for its own auditing costs incurred.

g. **No Third-Party Beneficiaries.** MERC and TriMet are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

h. **Amendment.** This Agreement may only be expressly modified or amended in writing(s) signed by duly authorized representatives of TriMet and MERC.

IN WITNESS HEREOF, the parties have agreed to all provisions of this Agreement effective as of _____, 2019.

METROPOLITAN EXPOSITION-
RECREATION COMMISSION

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A