

RESOLUTION NO. 3069

A RESOLUTION OF THE CITY OF WILSONVILLE REPEALING RESOLUTION NO. 3055 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON FOR THE ADJUSTMENT OF TRIMET DISTRICT BOUNDARIES.

WHEREAS, prior to 1988, the City of Wilsonville (“City”) was part of the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) service boundary; and
WHEREAS, the Wilsonville business community and the City recognized, in the 1980s, that TriMet offered minimal public transit service to the Wilsonville community while Wilsonville businesses paid significant payroll taxes to TriMet; and

WHEREAS, in 1988, the Wilsonville Innovative Transportation Association successfully petitioned TriMet to withdraw and form an independent City-owned transit system; and

WHEREAS, the City, through its South Metro Area Regional Transit Department (“SMART”), provides nationally recognized and award-winning public transit for the Wilsonville community and larger Portland and Salem-metro area regions; and

WHEREAS, according to TriMet, it currently collects approximately \$273,800 annually in payroll taxes from certain employers within the Wilsonville city limits while providing no transit service to those properties; and

WHEREAS, SMART currently offers service to these properties while receiving no payroll tax contribution because the City believes that public transit should be made available to all who seek to utilize it; and

WHEREAS, TriMet also currently collects nominal income through its payroll tax within the City of Wilsonville urban growth boundary (“UGB”) in the area known as Basalt Creek because the area is within TriMet’s service boundary; and

WHEREAS, as the Basalt Creek UGB area develops, properties will annex into the City of Wilsonville; and

WHEREAS, the Basalt Creek UGB area is identified by the Metro regional government as a Regionally Significant Industrial Area; and

WHEREAS, the City has invested significant resources in the planning and visioning of Basalt Creek with strategies to provide millions of dollars' worth of infrastructural investments to spur industrial growth in the area that will offer high-wage commercial and industrial jobs; and

WHEREAS, the City has previously reached out to TriMet to discuss a boundary adjustment wherein current and future Wilsonville city limits would become part of the SMART service boundary and removed from the TriMet service boundary; and

WHEREAS, such attempts by the City have not resulted in meaningful negotiations to adjust transit service boundaries; and

WHEREAS, after these attempts by the City to work collaboratively failed, the City sought a legislative remedy to adjust the transit service boundaries through the introduction of HB 2666 (2023); and

WHEREAS, after the introduction of HB 2666, TriMet expressed willingness to negotiate a transit service boundary adjustment with the City; and

WHEREAS, the City's goal, in negotiating with TriMet regarding the transit service boundaries, is to find a global solution that will address both the properties within the Wilsonville city limits and the properties within the Wilsonville UGB that are currently within the TriMet service district; and

WHEREAS, at the March 20, 2023 Council meeting, the City approved Resolution No. 3055, which articulated the City's proposed processes for removing the properties within the Wilsonville city limits from the TriMet service district and for removing the properties within the Wilsonville UGB from the TriMet service district; and

WHEREAS, after that meeting, the parties further negotiated the terms of the agreements to effectuate these withdrawals, wherein TriMet proposed changes that are more aligned with the City's goal to incorporate properties that are, or will be, within the Wilsonville city limits, into the SMART service district; and

WHEREAS, the parties are generally in agreement regarding a process for the adjustment of TriMet’s boundary regarding the properties within the Wilsonville city limits to occur within this fiscal year and also a process for the withdrawal of the Wilsonville UGB from TriMet’s boundary; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

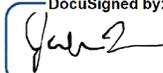
Section 1. Findings. The City Council adopts by reference and incorporates as if fully set forth herein the above recitals and the staff report accompanying this Resolution.

Section 2. The City Manager is hereby authorized to execute an intergovernmental agreement (IGA) with the Tri-County Metropolitan Transportation District of Oregon that is substantially similar to Exhibit A attached hereto and incorporated by reference herein, subject to the following condition – that the memorandum of understanding that must be executed contemporaneously with the IGA properly addresses a process to withdraw the Wilsonville UGB from the TriMet service district that is aligned with the City’s goal to find a global solution that will address both the properties within the Wilsonville city limits and the properties within the Wilsonville UGB that are currently within the TriMet service district.

Section 3. Resolution No. 3055 is hereby repealed.

Section 4. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 15th day of May, 2023, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

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JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Excused
Councilor Berry	Yes
Councilor Dunwell	Yes

EXHIBIT:

A. Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF WILSONVILLE AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
FOR THE ADJUSTMENT OF TRIMET DISTRICT BOUNDARIES**

This Intergovernmental Agreement (IGA) between the City of Wilsonville (Wilsonville), an Oregon municipal corporation, and the Tri-County Metropolitan Transportation District of Oregon (TriMet), an Oregon mass transportation district, also referred to herein as a “Party,” or “Parties,” is entered into on the date last executed below.

RECITALS

WHEREAS, TriMet is an Oregon mass transit district established pursuant to ORS Chapter 267 to provide transportation services within Washington, Multnomah and Clackamas counties, and Wilsonville is an Oregon municipal corporation located in Clackamas and Washington counties; and

WHEREAS, the Parties have authority to enter into this IGA pursuant to ORS Chapter 267 and ORS Chapter 190; and

WHEREAS, TriMet provides commuter rail service to Wilsonville by the Westside Express (WES), but does not currently provide transit service to any other areas within the Wilsonville city limits; and

WHEREAS, Wilsonville intends to undertake municipal investments and provide city services, including SMART transit services, to certain areas within its city limits and the TriMet transit district that are not currently served by TriMet; and

WHEREAS, Wilsonville has proposed House Bill 2666, which would statutorily remove certain areas from the TriMet transit district that are within Wilsonville’s city limits but not currently served by TriMet; and

WHEREAS, TriMet and Wilsonville wish to make a voluntary adjustment of the TriMet transit district boundary in order to exclude those areas of the transit district that are within the Wilsonville city limits but not served by TriMet;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which the Parties deem fair and reasonable, TriMet and Wilsonville make the following Agreements:

AGREEMENTS

1. **Wilsonville Budget Approval.** At its March 20, 2023 City Council meeting, the Wilsonville City Council adopted a budget supplemental in the amount of \$2,738,00 (Two Million, Seven Hundred and Thirty-Eight Thousand Dollars) in anticipation of its payment to TriMet as reasonable consideration for the agreements contemplated in this IGA and the corresponding Memorandum of Understanding discussed in Section 9 below.
2. **Resolution to Approve IGA.** At its April 26, 2023 meeting, the TriMet Board of Directors authorized TriMet's General Manager to execute an IGA with the City of Wilsonville with terms substantially similar to this IGA.
3. **Withdrawal Ordinance.** After the IGA is fully executed by the Parties, TriMet will submit a Withdrawal Ordinance as described in paragraph 4 below to its Board of Directors for its First Reading and Public Hearing at the May 24, 2023 Board meeting. The Second Reading and vote to adopt the Ordinance shall be scheduled for the June 28, 2023 Board meeting.
4. **Areas to be Withdrawn by Ordinance.** TriMet's Withdrawal Ordinance shall be adopted pursuant to ORS 267.207(1) and shall adjust the boundaries of the transit district to exclude the Wilsonville areas known as Coffee Creek, SW Elligsen Road, and Frog Pond West from the TriMet transit district. The Coffee Creek, SW Elligsen Road and Frog Pond West areas are shown generally on the attached Exhibit A map, and each is more particularly described on the attached Exhibit B, both of which have been prepared by Wilsonville and approved by TriMet.
5. **Legislation to be Withdrawn.** Wilsonville agrees that, not later than 30 days after the TriMet Board's adoption of the Withdrawal Ordinance, it will withdraw HB 2666 and any other legislation pending in the 82nd Legislative Assembly that would withdraw areas from the TriMet transit district.
6. **Payment to TriMet.** Not later than 30 days after the TriMet Board's adoption of the Withdrawal Ordinance, Wilsonville will initiate an electronic funds transfer to TriMet for a one-time payment of \$2,738,000 (Two Million, Seven Hundred and Thirty-Eight Thousand Dollars) to TriMet, which the Parties agree constitutes a good-faith negotiation of fair and reasonable compensation for the current and estimated future tax revenue that TriMet would receive over the next ten years from the areas shown in Exhibit A and described in Exhibit B. If Wilsonville fails to timely make the payment, TriMet shall rescind the Withdrawal Ordinance and this IGA shall terminate.
7. **Incorporation of Areas into SMART.** Wilsonville agrees that, after the adoption of TriMet's Withdrawal Ordinance, it will incorporate the areas shown on the Exhibit A map

and described in Exhibit B into its SMART transit service territory and begin providing transit service to those areas, to the extent it is not already providing such service.

8. **Collection of Payroll Tax.** After Wilsonville makes the electronic funds transfer described in paragraph 6 above, TriMet will collect the payroll tax for the areas described in Exhibits A and B incurred through the end of the then-current quarter (e.g., June 30, 2023; September 30, 2023; or December 31, 2023). Thereafter, beginning on the first day of the next quarter (e.g., July 1, 2023; October 1, 2023; or January 1, 2024), the payroll earned in the areas described in Exhibits A and B will be subject to the City of Wilsonville’s payroll tax and will be collected by the City of Wilsonville.

9. **Memorandum of Understanding.** Contemporaneous with the execution of this IGA, TriMet and Wilsonville will enter into a Memorandum of Understanding (MOU) to guide their negotiations for future voluntary withdrawal of other areas near Wilsonville’s northern boundary from the TriMet transit district, pursuant to the adoption of a future Withdrawal Ordinance by the TriMet Board. A draft of the MOU is attached hereto as Exhibit C. The fully executed MOU must be substantially similar to Exhibit C.

10. **Right to Petition to Withdraw.** Nothing in this IGA or the MOU shall preclude Wilsonville from working with registered electors to initiate a petition pursuant to ORS 267.250 to 267.263 to withdraw other areas from the TriMet transit district.

11. **Right to Modify.** Nothing in this IGA shall preclude TriMet from otherwise modifying its service district boundaries pursuant to ORS 267.207 et seq., except to the extent such modification would re-incorporate the properties identified in Exhibits A and B into the TriMet transit district.

12. **Designated Representatives.** Each Party designates the representative named below for all purposes of this IGA:

<p>J.C. Vannatta Executive Director TriMet Public Affairs 1800 SW 1st Avenue, Ste. 300 Portland, Oregon 97201 Phone: (971) 806-4804 Email: vannattj@trimet.org</p>	<p>Bryan Cosgrove City Manager City of Wilsonville 29799 SW Town Center Loop E Wilsonville, Oregon 97070 Phone: (503) 570-1504 Email: cosgrove@ci.wilsonville.or.us</p>
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The above-named representatives or their designees are authorized to give notices, execute amendments or terminate this IGA, and to cause any other act described herein to

be implemented. Either Party may designate a different representative at any time by giving written notification to the other Party.

13. **Independent Contractors.** For the purposes of this IGA, each Party is an independent contractor and no representative, agent, employee or contractor of one Party shall be deemed to be an employee, agent or contractor of the other Party for any purpose. Nothing herein is intended, nor shall it be construed, to create any relationship of principal and agent, partnership, joint venture or any similar relationship between the Parties.
14. **No Assignment.** Neither Party shall assign this IGA, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other Party.
15. **No Third-Party Beneficiary.** Except as set forth herein, this Agreement is solely between the Parties and nothing herein shall be construed to give or provide any benefit, direct, indirect or otherwise to any third-party beneficiary.
16. **Severability / Survivability.** If any provision of this IGA is found to be illegal or unenforceable, this IGA nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity shall survive any termination of this IGA.
17. **Compliance with Law.** The Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this IGA, and if a Party is not in compliance with any such law, regulation, executive order or ordinance, it shall take immediate steps to gain compliance.
18. **Mutual Indemnity.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each Party shall hold harmless, indemnify and defend the other Party and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this IGA, including claims in favor of any person on account of personal injury, death, damage to property, or violation of law that arise or result from the negligent act or omission of the indemnitor, its officers, employees, or agents. All provisions concerning indemnity shall survive any termination of this IGA.
19. **Oregon Law.** This IGA shall be construed according to the laws of the State of Oregon. If any dispute arises from this IGA, the Parties shall negotiate in good faith to resolve the dispute. If the Parties are unable to resolve any dispute within fourteen calendar days, the Parties shall be free to engage in mediation, binding arbitration or to pursue any other legal remedy available.

20. **Jurisdiction and Venue.** Jurisdiction and venue for any legal action between the Parties that may arise from the performance or failure to perform any obligation described herein shall be in the Washington County Circuit Court or the United States District Court for the District of Oregon, located in Portland, Oregon. In any legal action between the Parties concerning this IGA, each Party shall bear its own attorney fees and costs.
21. **Entire Agreement.** This IGA constitutes the entire agreement between the Parties on the subject matter herein and supersedes all prior or contemporaneous written or oral understandings, representations or communications of any kind. There are no understandings, agreements, or representations, oral or written, not specified herein concerning this IGA.
22. **Modification / Waiver.** This IGA may not be modified unless in a writing, signed by each Party. No waiver, consent, modification or change of terms of this IGA shall bind either Party unless in writing and signed by both Parties. The failure of a Party to enforce any provision of this IGA shall not constitute a waiver by a Party of that or any other provision.
23. **Interpretation.** This IGA shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision.
24. **Effective Date / Term.** This IGA shall be effective as of the last date executed below, and shall remain in effect until the completion of all obligations created herein or unless earlier terminated as provided in this IGA.

25. **Authority.** Each person signing below represents that he or she has the authority to sign this IGA on behalf of the Party for which each signs.

IN WITNESS WHEREOF, the Parties hereto have executed this Intergovernmental Agreement as of the last date written below.

Tri-County Metropolitan Transportation District of Oregon (TriMet)

Signature: _____

Title: _____

Date: _____

Approved as to form: _____
TriMet Senior Deputy General Counsel

City of Wilsonville

Signature: _____

Title: _____

Date: _____

Approved as to form: _____
Attorney for City of Wilsonville