

**CITY OF TIGARD, OREGON**  
**TIGARD CITY COUNCIL**  
**RESOLUTION NO. 11-09**

A RESOLUTION OF THE CITY COUNCIL APPROVING AN AGREEMENT WITH YAMHILL COUNTY TRANSIT AREA TO PROVIDE A DEDICATED ON-STREET BUS STOP ON COMMERCIAL STREET IN DOWNTOWN TIGARD.

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WHEREAS, Yamhill County Transit Area has received funding to provide transit service between McMinnville and Tigard; and

WHEREAS, Yamhill County Transit Area provides weekday and Saturday service between McMinnville and Tigard, with stops in Lafayette, Dayton, Dundee, Newberg, and Sherwood; and

WHEREAS, ridership on Yamhill Transit line serving downtown Tigard increased more than 40% in the last year, with more than 60,000 passenger trips in the year ending February 2011; and

WHEREAS, Yamhill County Transit Area desires to serve bus passengers at a dedicated bus stop in Tigard with convenient access to Tigard Transit Center; and

WHEREAS, the City of Tigard has a stated goal of providing a balanced transportation system, incorporating all modes of transportation; and

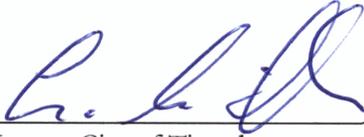
WHEREAS, the agreement will enhance access to downtown Tigard and the Tigard Transit Center, including WES.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The agreement attached as Exhibit A to this Resolution is hereby approved, and the City Manager is authorized to sign the agreement documents.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 22<sup>nd</sup> day of March, 2011.

  
\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

  
\_\_\_\_\_  
City Recorder - City of Tigard

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN CITY OF TIGARD AND YAMHILL COUNTY TRANSIT AREA FOR A DEDICATED BUS STOP ON COMMERCIAL STREET IN DOWNTOWN TIGARD

THIS AGREEMENT is entered into between the City of Tigard, a municipal corporation, acting by and through its City Council, hereafter referred to as TIGARD, and Yamhill County Transit Area, hereafter referred to as YAMHILL TRANSIT, a County Service District formed pursuant to ORS Chapter 451.

**RECITALS**

1. Commercial Street is a public right of way within the city limits of the City of Tigard that connects Main Street and Hall Boulevard along a line running generally from the northeast to the southwest in the vicinity of the Tigard Transit Center.
2. The Tigard Transit Center is located at 8900 SW Commercial Street.
3. YAMHILL TRANSIT provides public transit service between McMinnville and the Tigard Transit Center on weekdays and Saturdays.
4. YAMHILL TRANSIT desires to provide passenger boarding/alighting at a location convenient to the Tigard Transit Center
5. It is the desire of TIGARD and YAMHILL TRANSIT to enter into an agreement to dedicate a location on SW Commercial Street for use as a bus stop by YAMHILL TRANSIT.
6. Both parties understand and acknowledge that the dedicated bus stop agreement is of limited duration and terminates on December 31, 2012, unless earlier terminated or extended by agreement of both parties pursuant to paragraph 4, herein.
7. ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform.

**AGREEMENT**

NOW, THEREFORE, the parties hereto agree as follows:

**1. TIGARD OBLIGATIONS**

- 1.1 TIGARD agrees to restrict approximately 40 feet of curb length on SW Commercial Street, at a location beginning approximately 10 feet to the southwest of the fire hydrant located on the southern side of Commercial Street, for use by YAMHILL TRANSIT buses only.
- 1.2 TIGARD agrees to install appropriate bus stop signage, as provided by YAMHILL TRANSIT, at said location.

## 2. YAMHILL TRANSIT OBLIGATIONS

- 2.1 YAMHILL TRANSIT agrees to provide bus stop signage consistent with TIGARD standards and requirements.
- 2.2 YAMHILL TRANSIT agrees to use the dedicated on-street bus stop location during regular service hours for boarding/alighting passengers. Short-term parking not to exceed one hour shall also be allowed to accommodate bus driver breaks.

## 3. GENERAL PROVISIONS

### 3.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279B to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

The parties agree to comply with all local, state, and federal ordinances, statutes, laws, and regulations that are applicable to the services provided under this agreement.

### 3.2 DEFAULT

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if such party fails to comply with any material provision of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

### 3.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify, defend and hold harmless the other parties, and their officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature (including all attorney fees and costs) on account of or arising out of services performed, or in any way resulting from the negligent acts or omissions of the indemnifying party, its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution. In addition, each party shall be solely responsible for any contract claims, delay

damages or similar items arising from or caused by the action or inaction of the party under this agreement.

Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

#### 3.4 INSURANCE

Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

#### 3.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by all parties.

#### 3.6 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation of resolution.

#### 3.7 REMEDIES

Any party to this Agreement may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

#### 3.8 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, restrictions required for construction or law enforcement activities, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar basis for excused performance that are not within the reasonable control to the party to be excused.

after mailing of written notice to the other party, or at such time as the parties may otherwise agree.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011 .

**CITY OF TIGARD, OREGON**

**YAMHILL COUNTY TRANSIT AREA**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Aeshe A. Glenn  
Title: Chair, Board of Directors

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Danell Butt  
Title: Deputy

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

nic  
\_\_\_\_\_  
Yamhill County Counsel

## **2. YAMHILL TRANSIT OBLIGATIONS**

- 2.1 YAMHILL TRANSIT agrees to provide bus stop signage consistent with TIGARD standards and requirements.
- 2.2 YAMHILL TRANSIT agrees to use the dedicated on-street bus stop location during regular service hours for boarding/alighting passengers. Short-term parking not to exceed one hour shall also be allowed to accommodate bus driver breaks.

## **3. GENERAL PROVISIONS**

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The parties agree to comply with all local, state, and federal ordinances, statutes, laws, and regulations that are applicable to the services provided under this agreement.

### **3.2 DEFAULT**

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if such party fails to comply with any material provision of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

### **3.3 INDEMNIFICATION**

This Agreement is for the benefit of the parties only. Each party agrees to indemnify, defend and hold harmless the other parties, and their officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature (including all attorney fees and costs) on account of or arising out of services performed, or in any way resulting from the negligent acts or omissions of the indemnifying party, its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution. In addition, each party shall be solely responsible for any contract claims, delay

damages or similar items arising from or caused by the action or inaction of the party under this agreement.

Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

### 3.4 INSURANCE

Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

### 3.5 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by all parties.

### 3.6 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation of resolution.

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In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, restrictions required for construction or law enforcement activities, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar basis for excused performance that are not within the reasonable control to the party to be excused.

### 3.9 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

### 3.10 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

### 3.11 INDEPENDENT CONTRACTOR STATUS OF PARTIES

Each party is an independent contractor with regard to each other party and agrees that the non-performing party has no control over the work and the manner in which it is performed. Neither party is an agent or employee of the other. Neither party nor any of its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party by sole reason of this intergovernmental agreement.

### 3.12 NOTICES

Any notice required pursuant to this agreement shall be given in writing and shall be effective when received and may be given by hand delivery or United States mail, first class postage pre-paid, addressed to the parties as follows:

CITY OF TIGARD:	YAMHILL COUNTY TRANSIT AREA
Attention: Craig Prosser	Attention: Transit Coordinator
12135 SW Hall Blvd.	535 NE Fifth
Tigard, Oregon 97223	McMinnville, Oregon 97128

### 3.13 COUNTERPARTS

This agreement may be executed in any number of counterparts, any one of which shall constitute an agreement between and among the parties.

## 4. TERM OF AGREEMENT

- 4.1 This Agreement shall terminate on December 31, 2012, unless otherwise earlier terminated or extended by the parties.
- 4.2 This Agreement may be extended in increments of two years by mutual agreement by the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days

after mailing of written notice to the other party, or at such time as the parties may otherwise agree.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY OF TIGARD, OREGON**

**YAMHILL COUNTY TRANSIT  
AREA**

By: *Craig Prosser*  
Title: *City Manager*

By: *Ashley A. Lewis*  
Title: *Chair, Board of Directors*

ATTEST:

ATTEST:

By: *Catherine Wheatley*  
Title: *City Recorder*

By: *Dannel Butt*  
Title: *Deputy*

APPROVED AS TO FORM:

APPROVED AS TO FORM:

*Jimmy V. Kaurin*  
City Attorney

*Mich*  
Yamhill County Counsel