

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 99-2858
A REVENUE NEUTRAL INTERGOVERN-)	
MENTAL AGREEMENT WITH TRI-MET)	
CONCERNING TRANSIT-ORIENTED)	
DEVELOPMENT AND INCREASING THE)	
LEVEL OF TRANSIT SERVICE)	Introduced by
)	Executive Officer
)	Mike Burton

WHEREAS, by Resolution No. 98-2619 The Metro Council authorized startup activities for the Transit-Oriented Development Implementation Program; and

WHEREAS, by Resolution No. 99-2791, the Metro Council allocated federal flexible funds to expand transit service and TOD program activities.

WHEREAS, implementing transit-oriented development is a cost-effective means to increase ridership for transit and an important component in realizing the Region 2040 Growth Concept; and

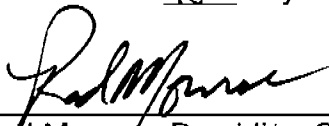
WHEREAS, high quality transit service is an effective means of increasing transit ridership, reducing congestion and improving air quality; and

WHEREAS, certain Federal Transportation funding allocations are not likely to be obligated before expiring, and Metro routinely makes technical amendments to the Metropolitan Transportation Improvement Program to avoid such expiration; and

WHEREAS, both Tri-Met and Metro participate in TOD planning review, advocacy, technical assistance and development review, and they wish to coordinate these TOD activities; now, therefore,

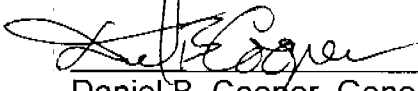
BE IT RESOLVED, that the Metro Council authorizes an intergovernmental agreement between Tri-Met and Metro regarding Transit-Oriented Development (TOD) activities and improving the quality of transit service, (as substantially shown in Exhibit A), provided the budget implications for Metro are revenue neutral.

ADOPTED by the Metro Council this 18th day of November, 1999.



Rod Monroe, Presiding Officer

Approved as to form:



Daniel B. Cooper, General Counsel

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRI-MET AND METRO REGARDING
TRANSIT-ORIENTED DEVELOPMENT (TOD) ACTIVITIES
AND
IMPROVING THE QUALITY OF TRANSIT SERVICE**

THIS INTERGOVERNMENTAL AGREEMENT, dated this ____ day of _____, 1999, is by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon, 97232-2736, and the Tri-County Metropolitan Transit District of Oregon ("Tri-Met"), located at 4012 SE 17th Ave, Portland Oregon 97202.

RECITALS

1. On May 16, 1996, Metro and Tri-Met executed an Intergovernmental Agreement entitled "Transit-Oriented Development Revolving Fund Coordination Agreement" for the purpose of providing Metro certain Tri-Met staff members to assist Metro in securing Federal Transit Authority grant eligibility for a Transit Oriented Development Revolving Fund; transferring Transit-Oriented Development ("TOD") staff members and functions from Tri-Met to Metro upon Metro's receipt of said FTA grants; and assuring the consideration of the effect of TOD projects on Tri-Met facilities and services.
2. After the execution of the Intergovernmental Agreement, Metro secured a grant from the Federal Transit Administration and the Metro Council authorized start-up activities for a revolving fund called the TOD Implementation Program to encourage TOD projects.
3. Subsequently a TOD Steering Committee was established consisting of representatives from state agencies, Tri-Met, Metro and the Portland Development Commission.
4. Metro issued a Request for Proposals, and thereafter a total of six projects were selected for the initial TOD Program activities.
5. Implementing transit-oriented development is a cost-effective means to increase ridership for transit and an important component in realizing the Region 2040 Plan. High quality transit service is an effective means of increasing transit ridership, reducing congestion and improving air quality.
6. Both Tri-Met and Metro participate in TOD planning review, advocacy, technical assistance and development review. Tri-Met also utilizes property acquired for transit system purposes to assist in encouraging and implementing TODs. Metro established the TOD Implementation Program for the purpose of acquiring property adjacent to transit stations to sell or lease to developers for the construction of TODs. As stated in Recital Five above, Tri-Met

and Metro have important reasons to continue to cooperate in encouraging transit-oriented development at transit stations, in coordinating development and implementation of such projects, and in working toward improving transit service for the region.

7. Federal funding from the 1993, '96, and '99 Metropolitan Transportation Improvement Program updates have been allocated to Metro for these TOD purposes.

8. The parties to this Intergovernmental Agreement now wish to coordinate their TOD activities to improve the efficiency of government and to commit to obligate certain flexible federal funds to Tri-Met for bus and rail system purchases.

9. Tri-Met desires to acquire the services of Metro and to compensate Metro for the provision of services to Tri-Met of a TOD Implementation Program designed to increase ridership on the Tri-Met transit system.

10. Section 7(2)(c) of Metro Charter allows Metro to assume a local government service function under mutual agreement provided Metro is compensated.

Now, pursuant to authority granted in ORS 267.200 and 268.300, and in recognition of the mutual interests of the parties and based upon the terms and conditions herein, the parties hereby mutually agree as follows:

AGREEMENT

1. **Definitions.** As used in this agreement, the following terms shall apply:

“CMAQ funds” means federal Congestion Mitigation/Air Quality funds allocated under federal legislation.

“MTIP activities” means the Metropolitan Transportation Improvement Program which is the regional programming of highway and transit projects that use federal funds.

“STIP” means the State Transportation Improvement Program, which is the statewide programming of highway and transit projects that use federal funds.

“STP Flexible funds” means federal type Q-23 Surface Transportation Program funds allocated under federal legislation.

“Transit-Oriented Development” or “TOD” mean a development with three fundamental characteristics that combine to generate a high modal share for transit: a mix of moderate to high intensity land uses; a physical or functional connection to the transit system; and design features that reinforce pedestrian relationships and scale.

“TOD Program” and “TOD Implementation Program” mean the Transit-Oriented Development Implementation Program authorized by the Metro Council and administered by Metro’s Transportation Department.

“TOD activities” means a full range of planning and development activities including land use planning, technical assistance to local jurisdictions and developers, development application review, advocacy and joint development.

2. Authority for Joint Development

- a. Section 7(2)(c) of Metro Charter allows Metro to contract with local governments and special districts to provide services under mutual agreement, provided Metro is compensated. This agreement utilizes these provisions of the Metro Charter and services are hereby contracted with Tri-Met.
- b. Tri-Met’s authority to perform joint development is established under ORS 267.200(2), (4), (7) and (11), and this contract utilizes this authority for Metro to manage the TOD Implementation Program.

3. Activities to be Performed by the Parties

- a. Metro and Tri-Met shall jointly advocate for transit oriented development projects within local, regional and national forums.
- b. Tri-Met shall continue to manage development and to implement joint development of Tri-Met owned or controlled assets, and to review and comment on new development projects located in close proximity to transit service.
- c. Metro shall continue to manage, develop, and implement joint development projects adjacent to the light rail stations through the Metro TOD Implementation Program and provide technical assistance on TOD and joint development.
- d. Metro and Tri-Met will coordinate with each other and/or FTA to establish positive joint development precedent and policies.
- e. Metro and Tri-Met will work jointly to involve private developer perspectives into the regional TOD strategy.

4. Compensation to Metro for Provision of Services

Recognizing the importance of helping to shape the community served by transit and the role of the TOD Program to help achieve those purposes, and subject to the conditions

precedent stated below, Tri-Met shall contribute from its general funds amounts totaling THREE MILLION EIGHT HUNDRED NINETY-SIX THOUSAND DOLLARS (\$3,896,000) to leverage current TOD Program activities to be expended with the concurrence of the TOD Steering Committee. These funds shall be payable as follows:

- a. TWO MILLION DOLLARS (\$2,000,000) of Tri-Met general funds for the STP funds to be in three equal installments, each of which shall be paid, respectively, no later than October 15, 1999, December 30, 1999 and March 30, 2000. In the event that Metro requests earlier payment to be made for an expenditure to allow completion of financing of any specifically stated TOD project, Metro may make a special request for such earlier payment, and Tri-Met shall pay the requested amount within one week of the special request.
- b. ONE MILLION THREE-HUNDRED FIFTEEN THOUSAND DOLLARS (\$1,315,000) of general funds for the various CMAQ and STP funds to be paid in three equal installments, each of which shall be paid respectively on October 15, 1999, December 30, 1999 and March 30, 2000 unless Metro makes a special request for earlier payment. In the event that Metro requires earlier payment to be made for an expenditure to allow completion of financing of any specifically stated TOD project, Metro may make a special request for earlier payment, and Tri-Met shall pay the requested amount within one week of the special request.
- c. FIVE HUNDRED EIGHTY-ONE THOUSAND DOLLARS (\$581,000) of general funds upon transfer from Metro to Tri-Met of land sale proceeds from the TOD Program and following written approval by the FTA to use these land sale proceeds for general transit purposes.
- d. Tri-Met may withhold payment of the above funds only in the event Metro fails to coordinate the obligation of the Federal funds discussed in Section 5 below.

5. Obligation by Metro of FY99 STP Flexible Funds to Tri-Met

- a. Recognizing the region's continued commitment to Tri-Met for providing high quality transit service, Metro shall coordinate the obligation of the following Federal Funds to Tri-Met for transit capital and operating needs to be completed in the FY99 MTIP and STIP update:
 - 1) \$2.0M of STP funds allocated to Metro for the TOD Implementation Program through Priorities 2000;
 - 2) \$0.750M of FY99 CMAQ funds committed to Gresham Civic, but not obligated;
 - 3) \$0.278M of FY99 STP funds committed to Gresham Civic Neighborhood, but not obligated;

- 4) \$0.126M of FY99 CMAQ funds programmed to the Regional TOD Program Reserve, but not obligated;
- 5) \$0.161M of FY99 CMAQ funds - programmed for regional Pedestrian to MAX projects, but not obligated; and
- 6) \$0.581M of land sale proceeds from TOD Program.

b. All funds except those described in Paragraph a.6. of this section shall be reprogrammed as STP Flexible Funds.

6. Separate Governments. The parties hereby agree and acknowledge that Metro is a separate and independent governmental body, and that the activities of Metro its officers, agents and employees shall not constitute actions of Tri-Met for any purpose whatsoever.

7. Indemnification and Release.

a. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, Tri-Met hereby agrees to indemnify and hold harmless Metro and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorneys fees) arising out of the activities of Tri-Met in performance of this Intergovernmental Agreement.

b. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, Metro hereby agrees to indemnify and hold harmless Tri-Met and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorneys fees) arising out of the activities of Metro in performance of this Intergovernmental Agreement.

8. Situs of Agreement. The situs of this Agreement is Portland, Oregon, and any litigation hereto shall be governed by the laws of the State of Oregon and conducted in the Circuit Court for Multnomah County.

9. Non-Transferability. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party.

10. Contacts. The Manager of this Agreement for Metro shall be (until such time as the Executive Officer may name a replacement): Andy Cotugno. Any and all correspondence and reports shall be addressed to the Manager.

The Project Coordinator of this Agreement for Tri-Met shall be: Neil McFarlane. Any and all correspondence and payments shall be addressed to the Project Coordinator.

11. Term of Agreement. The term of the Agreement shall commence upon execution of the Agreement and terminate on December 31, 2003 or until the funds covered in the Agreement have been have been expended on one round of projects, whichever comes first.
12. Entire Agreement. Notwithstanding and succeeding any prior agreements or practices, this Agreement constitutes the entire agreement between the parties and may be only expressly modified in writing signed by both parties.

In witness whereof, the parties have executed this Agreement on the dates hereinafter indicated as follows.

METRO

TRI-MET

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2858 FOR THE PURPOSE OF AUTHORIZING A REVENUE NEUTRAL INTERGOVERNMENTAL AGREEMENT WITH TRI-MET CONCERNING TRANSIT-ORIENTED DEVELOPMENT AND INCREASING THE LEVEL OF TRANSIT SERVICE

Date: October 26, 1999

Presented by: Andrew C. Cotugno

PROPOSED ACTION

It is recommended that the Metro Council authorize the Executive Officer to execute an Intergovernmental Agreement between Tri-Met and Metro regarding Transit-Oriented Development (TOD) activities and improving the quality of transit service, as shown in Exhibit A, provided the budget implications for Metro are revenue neutral.

FACTUAL BACKGROUND AND ANALYSIS

Metro's pioneering TOD Implementation Program is the first in the United States to use federal transit funds for transit-oriented development implementation. Since the Council authorized TOD Program start up activities in April 1998, the program has worked on projects across the region.

Six projects are in various stages of implementation with three currently under construction: Center Commons located at the NE 60th Ave MAX station, Russellville at 102nd Ave. and E. Burnside, and Buckman Terrace located on Sandy Boulevard at NE. 16th Ave. Projects moving towards implementation include the Hillsboro Central in downtown Hillsboro, the Metro Access mixed-use building adjacent to the Millikan Way MAX station, the Madison apartment building in Goose Hollow, The Round at Beaverton Central, and Gresham Civic Neighborhood in Gresham.

The relationships built between transit stops and the surrounding land uses are critical to realizing the potential of our transit system. Tri-Met and Metro work closely together to ensure this land use-transit connection is strong. This IGA benefits both organizations in the following four ways:

Federal funds—which could expire—are kept within the region. In 1996 federal funds were allocated for publicly funded improvements within the Gresham Civic Neighborhood. The timing of these improvements was tied to the construction *by the private sector* of transit supportive development surrounding the station site. This threshold of development has not occurred and the reservation of Federal funds is to expire near the end of 1999. In addition, it may be prudent to acquire the land next to the new station (much as done in Hillsboro) and offer it to the development community by a Request for Proposals.

Under this agreement, the funds are reprogrammed before expiration to Tri-Met for transit projects with Tri-Met, in turn, providing local funds to Metro for the TOD Program. The TOD Program has pledged to be certain station improvements at Gresham Civic are constructed when the requisite private development occurs.

Coordination of TOD activities is improved and authority is strengthened. Both Tri-Met and Metro pursue a wide range of TOD activities. To avoid unnecessary duplication of effort, the IGA clarifies responsibilities. It also calls out areas in which Tri-Met and Metro staff should work more closely together to increase TOD implementation effectiveness. Metro's authority is augmented by utilizing the provision in the Charter to assume a local government service function provided Metro's compensated.

The flexibility and agility of the TOD Program is increased. Under the IGA, Tri-Met compensates Metro for pursuing TODs on land outside of Tri-Met's control within a dollar amount consistent with the funding Metro provides to Tri-Met. This will help Tri-Met achieve its Land Use Goal (Goal Six of the Tri-Met Strategic Plan). It also allows Metro to use funds provided by Tri-Met for any TOD activity approved by the TOD Steering Committee and reviewed by the Metro Council. Currently, the will and creativity of the TOD Steering Committee has been constrained by Federal funding limitations and restrictions.

Funds for new transit projects are provided. Recognizing the region's commitment to Tri-Met, the IGA commits Metro to obligate and transfer Federal funds under Metro control for new capital projects and transit operations. A portion of this amount, \$581,000, consists of land sale proceeds from TOD Program activities in the Center Commons project. The amount of Federal funds that will be transferred to Tri-Met makes the budget implications of the IGA neutral to both Metro and Tri-Met.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Metro Resolution No. 99-2858.

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