

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 00-3013A
AN AGREEMENT WITH MULTNOMAH)
COUNTY, CITY OF PORTLAND, AND) Introduced by Executive Officer
VISITOR DEVELOPMENT FUND, INC.,) Mike Burton
REGARDING ADMINISTRATION OF A)
VISITOR DEVELOPMENT FUND)

WHEREAS, the Metro Council adopted Resolution No. 99-2836 on September 9, 1999, approving a Memorandum of Understanding (MOU) among Metro, the City of Portland, Multnomah County, Tri-County Lodging Association, National Car Rental Companies, Car and Truck Rental and Leasing Association, Tri-Met, Portland Development Commission, and Portland Oregon Visitors Association; and

WHEREAS, the MOU called for the preparation of various legally binding actions by Metro, the City of Portland, and Multnomah County, and actions by other parties to the MOU, to provide for financing for a needed major expansion and completion of the Oregon Convention Center (OCC); and

WHEREAS, Multnomah County has increased its transient lodgings and vehicle rental taxes to provide funding for payment of debt service on City-issued bonds to be issued to finance construction of the OCC expansion, and for other capital improvements, operating funds for regional facilities, and enhancements to the visitor industry; and

WHEREAS, an element of the MOU called for establishment of a Visitor Development Fund, to be funded with proceeds of the County taxes; and

WHEREAS, the purpose of the Visitor Development Fund is to expend revenues from its allocation of the proceeds of the additional County taxes to attract visitors to

Portland and Multnomah County that maximize hotel occupancy and vehicle rentals;
and

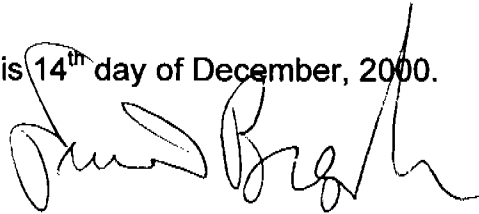
WHEREAS, Visitor Development Fund, Inc. filed articles of incorporation on
March 30, 2000; and

WHEREAS, Metro, Multnomah County, and the City of Portland are to have
obligations and powers regarding the Visitor Development Fund and its board of
directors; now, therefore,

BE IT RESOLVED:

That the Metro Council authorizes the Executive Officer to execute the Visitor
Development Fund Services Agreement in a form substantially similar to the attached
Exhibit A.

ADOPTED by the Metro Council this 14th day of December, 2000.



David Bragdon, Presiding Officer

APPROVED AS TO FORM:


Daniel B. Cooper, General Counsel

VISITOR DEVELOPMENT FUND SERVICES AGREEMENT

THIS AGREEMENT is among VISITOR DEVELOPMENT FUND, INC., an Oregon nonprofit corporation ("VDF"); METRO, a metropolitan service district ("METRO"), MULTNOMAH COUNTY, OREGON, a municipal corporation (the "COUNTY"); and CITY OF PORTLAND, a municipal corporation (the "CITY"), who agree as follows:

RECITALS

WHEREAS, the parties and other entities entered into a Memorandum of Understanding dated September 14, 1999; and

WHEREAS, the Memorandum of Understanding contemplates the creation of a Visitor Development Fund and Visitor Development Fund Board to plan, budget for, and administer the expenditure of certain revenues from the 2.5% increase in the County transient lodging tax and vehicle rental tax for the Purpose as hereinafter defined; and

WHEREAS, the parties enter into this Agreement to implement and otherwise carry out the Memorandum of Understanding; and

WHEREAS, County has adopted ordinances increasing its existing transient lodging tax (Exhibit A) and vehicle rental tax (Exhibit B) and has dedicated the proceeds of the tax increases for visitor facilities and development purposes; and

WHEREAS, County, City, and METRO have entered into an Agreement entitled Visitor Facilities Intergovernmental Agreement (IGA); and

WHEREAS, the County ordinances and the Visitor Facilities Intergovernmental Agreement provide that certain funds collected from the tax increases will be dedicated to visitor development purposes by a nonprofit entity whose board of directors is comprised of representatives of the visitor services industry and government officials; and

WHEREAS, Visitor Development Fund, Inc. (VDF) is a nonprofit corporation with a board of directors comprised of such representatives; and

WHEREAS, County, City, and METRO agree that VDF is a qualified entity capable of carrying out the purposes contemplated by the County ordinances and the Visitor Facilities Intergovernmental Agreement.

AGREEMENT

1. DEFINITIONS AND STATEMENT OF INTENT

1.1. Definitions. For purposes of this Agreement, the following definitions apply:

1.1.1 "Board" means the board of directors of the Visitor Development Fund, Inc. ("VDF").

- 1.1.2 "Ending Fund Balance" means any balance remaining in the Visitors Facilities Trust Account established pursuant to Section I(D)(4)(k) of the IGA, after making all of the payments required under the IGA, including the payments to the Revenue Stabilization Subaccount.
- 1.1.3 "Intergovernmental Agreement" means that certain agreement among METRO, the COUNTY, and the CITY attached as Exhibit C ("IGA").
- 1.1.4 "Memorandum of Understanding" is that certain non-legally binding writing dated September 14, 1999, among the parties hereto, the Private Entities, the Portland Development Commission, and the TriCounty Metropolitan Transportation District.
- 1.1.5 "Private Entities" means the TRI-COUNTY LODGING ASSOCIATION, INC., an Oregon nonprofit corporation ("TCLA"); NATIONAL CAR RENTAL COMPANIES, a coalition comprising Alamo Rent-A-Car, L.L.C., Avis Rent A Car Corporation, Budget Rent A Car Corporation, Enterprise Rent-A-Car Co., Hertz Corporation, and National Car Rental System, Inc. ("NCR"); CAR AND TRUCK RENTAL AND LEASING ASSOCIATION, an Oregon nonprofit corporation ("CATRALA"); and PORTLAND OREGON VISITORS ASSOCIATION, an Oregon nonprofit corporation ("POVA").
- 1.1.6 "Public Bodies" means the City of Portland, Multnomah County, and METRO.
- 1.1.7 "Purpose" as used in this Agreement means that the expenditures of the allocation of revenues from the 2.5% increase in the Multnomah County transient lodging tax and vehicle rental tax to VDF shall be expended to attract visitors to Portland and Multnomah County that maximize hotel occupancy and vehicle rentals.
- 1.1.8 "Taxes" means the transient lodging tax for visitor facilities imposed by MCC 11.441 (E) and the motor vehicle rental tax for visitor facilities imposed by MCC 11.301(C).
- 1.1.9 "Visitor Development Fund, Inc." (VDF) is an Oregon nonprofit corporation that will apply for exemption pursuant to IRC § 501(c)(6).
- 1.2 Statement Of Intent And Repeal Of Ordinances**
- 1.2.1 **Statement of Intent.** The parties intend that this Agreement is an enforceable contract with respect to the subject matter involved. County, City, and METRO agree to execute the Statement of Current Intent which was attached as Exhibit A to the Memorandum of Understanding and is attached as Exhibit D to this Agreement.

1.2.2 Repeal of Tax. The County shall take all action necessary to terminate the taxes imposed by MCC 11.301(C) and 11.401 (E) upon the earliest of:

1.2.2.1 The date that all of the Bonds are paid or defeased;

1.2.2.2 July 1, 2025, if the Convention Center Completion Bonds have been paid or defeased by that date; or

1.2.2.3 The date that the Convention Center Completion Bonds are paid or defeased if that date is after July 1, 2025.

2. VISITOR DEVELOPMENT FUND, INC. AND INCORPORATION

The parties agree that the Visitor Development Fund, Inc. ("VDF") is an Oregon nonprofit corporation, which will apply for exemption from federal and state taxation pursuant to IRC § 501(c)(6).

3. VDF BOARD OF DIRECTORS AND OBLIGATIONS OF VDF

During the term of this Agreement, VDF agrees that its articles of incorporation and bylaws will provide for its board of directors to be appointed as follows:

3.1 Number, Tenure, and Qualifications

3.1.1 Number. The VDF Board of Directors shall consist of 15 members, as follows: Five (5) members who are representatives of TCLA; two (2) members who are representatives of the NCR and CATRALA; two (2) members who are members of its City Council appointed by the City; two (2) members who are members of the County Commission appointed by the County; two (2) members appointed by METRO who shall be the METRO Executive Officer and the METRO Councilor whose district contains the urban area of Multnomah County east of the City of Portland; and two (2) members appointed by Portland Oregon Visitors Association ("POVA").

3.1.2 Term. The terms of the Board members nominated by the Private Entities shall not expire until the Public Bodies have confirmed the successor board member. The Public Bodies shall confirm any nomination by the Private Entities within sixty (60) days of submission of the nominee(s) to the Public Body.

3.1.3 Qualifications. All nominations by the Private Entities shall meet the criteria set forth in 3.2 and 3.3.

3.2 Nominees by Private Entities

- 3.2.1 Nominees by TCLA. TCLA shall nominate as its representatives to the VDF Board of Directors its President, Vice-President, Secretary/Treasurer, and two at-large members, from within Multnomah County. If any of the President, Vice-President, or Secretary-Treasurer are not from within Multnomah County, then TCLA shall nominate alternate members from within the County. One of the at-large members shall be from the urban area of Multnomah County east of the city of Portland.
- 3.2.2 Nominees by NCR and CATRALA. NCR and CATRALA shall each nominate one member from within Multnomah County.
- 3.2.3 Nominees by POVA. POVA shall nominate as its representatives its president and chairperson of the board. If the president and chairperson are not from within Multnomah County, then POVA shall nominate individuals from within Multnomah County.
- 3.2.4 "From Within Multnomah County". "From within Multnomah County" means that the nominee either maintains a business site in Multnomah County or resides in Multnomah County.

3.3 Confirmation and Appointment of Nominees

3.3.1 TCLA Nominees

- 3.3.1.1 The COUNTY shall be responsible for confirming the nominations of the President, Vice-President, and Secretary/Treasurer, or alternate nominees.
- 3.3.1.2 The CITY shall be responsible for confirming the nomination of one of the two at-large members.
- 3.3.1.3 METRO shall be responsible for confirming the nomination of the at-large member appointed from the area of Multnomah County east of the City of Portland.
- 3.3.1.4 NCR and CATRALA Nominees. METRO shall be responsible for confirming the nomination of NCR's and CATRALA's members.
- 3.3.1.5 POVA Nominees. The CITY shall be responsible for confirming the two POVA members.

4. POWERS AND FUNCTIONS OF THE BOARD

During the term of this Agreement, VDF shall:

4.1 Powers and Functions. The Board shall:

4.1.1 Supervise, oversee, and approve expenditures that achieve the Purpose as defined herein;

4.1.2 Formulate and develop programs that will achieve the Purpose as herein defined;

4.1.3 Prepare and submit a budget for approval by the Public Bodies that achieve the Purpose as herein defined and is in a format consistent with the format used by POVA pursuant to its contract with the City;

4.1.3.1 The proposed budget shall include the portion of net revenues, as defined in Exhibit C, allocated to the Visitor Development Fund pursuant to the ordinances and the Intergovernmental Agreement and any anticipated and accumulated Ending Fund Balance.

4.1.3.2 The proposed budget shall be accompanied by an audited report showing the expenditures from the VDF and the Ending Fund Balance for the current fiscal year to date.

4.1.3.3 For the first fiscal year that there exists a sufficient Ending Fund Balance consistent with this Agreement, the Board shall budget up to \$100,000 to contribute to a study of the feasibility of extending the current Fareless Square to the central eastside and the Civic Stadium MAX station, which study shall be conducted jointly by the CITY and the TriCounty Metropolitan Transportation District. The Board shall consider the recommendations resulting from that study.

4.1.3.4 Funds received from the City pursuant to Section III (F) of the IGA will be expended on visitor development projects that benefit the East County Cities.

4.1.3.5 Any proposed budget shall be deemed approved if two of the Public Bodies hereto approve such budget.

4.1.4 The Board shall use the administrative services of POVA, which shall provide such services within POVA's available resources. POVA shall administer the VDF and Ending Fund Balance at the direction and under the supervision of the Board.

4.2 Audit

4.2.1 The Board shall cooperate with and provide the COUNTY Auditor,

METRO auditor, and CITY Auditor all information necessary and appropriate so that said auditors are able to audit the expenditures of the VDF as agreed by the Public Bodies' auditors, and file their respective reports to the parties. The first audit shall be performed by the City and subsequently, thereafter, shall be rotated among the three Public Bodies.

4.3 OCC Operating Deficits and Participation in Dispute Resolution

4.3.1 VDF, through its Board, may object to any projected OCC Operating Deficit as provided in the IGA and may participate in the Dispute Resolution process established in the IGA in the manner provided for herein below.

5. CONFORMANCE OF ARTICLES OF INCORPORATION AND BYLAWS AND DISSOLUTION OF PRIVATE ENTITIES

5.1 **Conformance of Articles of Incorporation and Bylaws.** The articles of incorporation and bylaws of VDF shall, at all times during the term of this Agreement, conform to Sections 3, 4, and 5 of this Agreement.

5.2 Dissolution of Private Entities

5.2.1 Approval of Successor/Assign. In the event of a successor-in-interest to a Private Entity or assignment of the rights and obligations of a Private Entity pursuant to this Agreement, any such assignment or succession shall be considered null and void unless approved in writing by two of the Public Bodies and a majority of the remaining Private Entities. For purposes of this Agreement, the addition or deletion of members of NCR shall not be considered an assignment. A change in the constituent companies or members of a Private Entity shall under no circumstances, however, be deemed to be an assignment or change in interest requiring such approval.

5.2.2 Approval. In the event of the dissolution of a Private Entity, or a Private Entity ceases to do business, or an assignment or successor is not approved, then the remaining Private Entities shall follow the notice and other requirements for special meetings of members as set forth in ORS Chapter 65. Each Private Entity shall have one vote for this purpose only. Two (2) votes shall be considered a quorum for purposes of a meeting and affirmative action. The affected Private Entity shall be allowed to participate and vote. The Private Entities shall agree regarding the appointment of the board of directors seats filled by persons nominated by the dissolving Private Entity without the participation of the Public Bodies.

5.3 Powers and Duties of Public Bodies

5.3.1 The Public Bodies may confirm and remove Board Members.

5.3.1.1 Confirmation and nomination of private entity Board Members.

5.3.1.2 Removal of Members. Each of the Public Bodies will only refuse to appoint and confirm nominees submitted by the Board submitted by the private entities for "good cause." "Good cause" exists when the appointee fails to meet the qualifications provided for above, or when the appointee:

5.3.1.2.1 Has been convicted of any felony, or a misdemeanor related to the duties of a Board Member; or

5.3.1.2.2 For demonstrated actions or failures to act that bring serious questions regarding the ethical or legal integrity of the appointee's ability to perform the duties of a Board Member.

5.3.1.3 Public Bodies may remove any public Board Member they appoint and remove any Board Member nominated by a private entity subject to the Public Body's appointment and confirmation authority for any grounds which would be "good cause" for not confirming the appointment or for habitual absence from meetings of the VDF Board.

5.3.1.4 The Public Bodies will allow the VDF to participate in any matter submitted to the Dispute Resolution Committee ("DRC") pursuant to the IGA. VDF participation will be as follows:

5.3.1.4.1 The Public Body initiating the Dispute Resolution process will give notice of any matter submitted to the DRC by giving written notice to the VDF to each member of the VDF Board at the same time and in the same manner as is required under the IGA for the initiation of the Dispute Resolution process.

5.3.1.4.2 When the DRC is convened the Multnomah County Executive shall give notice of all meetings of the DRC to the VDF and its Board Members. The VDF may submit written material to the DRC regarding its views on the matter, and may through a Board Member or other representative be selected by the

Board participate in the meetings of the DRC. The VDF representative will not be a voting member of the DRC.

5.3.1.5 METRO, City and County shall not modify nor amend the IGA without first giving sixty (60) days' advance written notice to VDF. Any such notice shall include an explanation with reasonable particularity of the proposed modification or amendment and, if available, a copy of the proposed modification or amendment.

5.4 Metro Obligations and Powers

5.4.1 Metro will appoint, confirm and may remove VDF Board Members as specified in Section 5.3 above.

5.4.2 Metro will give written notice to VDF and each of its Board Members of any request for funds from the Visitor Facilities Trust Account pursuant to the IGA for any annual projected OCC operating deficit.

5.5 County Obligations and Powers

5.5.1 County will appoint, confirm and may remove VDF Board Members as specified in Section 5.3 above.

5.5.2 County will make payments to the VDF as provided for in the IGA. In so doing, County will act in its capacity as Trustee as specified in the IGA.

5.6 City Obligations and Powers

5.6.1 City will appoint, confirm and may remove VDF Board Members as specified in Section 5.3 above.

5.6.2 City shall not issue the Civic Stadium Bonds except as provided for in Exhibit C.

5.6.3 City Representations. Any representations made by City in connection with the issuance of the Bonds that discuss or refer to projections of income to be raised by the tax increases or rental income provided in the Visitor Facilities Intergovernmental Agreement will make it clear that those projections are not based upon and do not rely upon information provided by either the vehicle rental or transient lodging industries, except to the extent that the County tax records include such information.

5.6.4 City will make payments to the VDF equal to the amount utilized to pay Civic Stadium debt service derived from transient lodging taxes collected in the East County Cities as provided for in Section III (E) of the IGA.

The payment amount will be calculated in the manner provided in Attachment F.

6. AMENDMENT

No amendment, change, or modification of this Agreement shall be valid unless in writing and agreed to by all of the parties hereto.

7. TERM

This Agreement shall commence on the first day following the effective date of the County's ordinance authorizing the 2.5% increase in the transient lodging tax and vehicle rental tax and its duration shall be perpetual unless terminated as set forth in Section 8. The parties acknowledge, however, that the Charter of the City of Portland limits the duration of the contracts that may be entered by the City (with certain exceptions not applicable here) to 5 years with one 5-year renewal. Therefore, as to the City of Portland, this contract shall extend for 5 years and at the end of that term shall be automatically renewed for an additional 5 years without further action of the parties. If, at the end of each 10-year period, the City Council re-authorizes City participation in this Agreement, the other parties agree to enter into another agreement with the City on the same terms contained in this Agreement, as it may have been amended at that time, for an additional 5-year term, with an additional 5-year renewal. If the City Council does not re-authorize City participation in this Agreement, the Agreement shall continue in effect as to the remaining parties, who shall make such modifications to the Agreement as are required by the fact that the City is no longer a party.

8. TERMINATION

- 8.1 **Termination by Agreement.** This Agreement may be terminated by the unanimous agreement of the parties, which agreement shall be in writing and signed by the parties.
- 8.2 **Sunset.** This Agreement shall terminate when the taxes imposed by Multnomah County Ordinance No. MCC 11.401(E) and Ordinance No. MCC 11.301(C) are repealed and there are no Net Revenues, as defined in Exhibit C, to be expended by the VDF.
- 8.3 **Default and Termination.** "Default" means any material breach of a party's obligations under this Agreement, which the defaulting party does not fully cure within sixty (60) days of written receipt of notice thereof. This Agreement may be terminated by the nondefaulting party(ies) by written notice of termination specifying the reason for such termination and a termination date. Such termination shall become effective upon the sixtieth (60th) day following receipt of written notice by the defaulting party. Termination of this Agreement shall not in any way affect those continuing obligations of the parties pursuant to this Agreement which are specifically stated to survive the termination of this Agreement.

9. CONDITION PRECEDENT

This Agreement is subject to the condition precedent that Multnomah County enact Ordinance No. MCC 11.401(E) and Ordinance No. MCC 11.301(C), and such ordinances become law.

10. MEDIATION AND ARBITRATION

10.1 Arbitration and Mediation in Lieu of Litigation. The parties agree that all claims, controversies or disputes, whether they be statutory, contract and/or tort claims between or among the parties hereto which arise out of or are related to this Agreement, or which relate to the formation, interpretation, breach or invalidity of this Agreement, whether arising before, during or after termination, including jurisdiction of the Arbitrator(s) or arbitrability (hereinafter collectively referred to as "Claims"), shall be resolved in accordance with the mediation and arbitration procedures specified herein. The parties shall have in arbitration all remedies for breach of contract provided by Oregon law, including injunctive relief and specific enforcement.

10.1.1 Mediation. All "Claims" defined in the foregoing paragraph shall be submitted to mediation. The parties shall agree to a mediator. If the parties cannot agree as to the selection of a mediator, then either party may request appointment of a mediator from the American Arbitration Association or the Arbitration Service of Portland, Inc., whichever organization is selected by the party which first initiates mediation by filing a claim in accordance with the filing rules of the organization selected. The parties shall share equally the cost of the mediation process.

10.1.2 Arbitration. Any "Claims" that have not been resolved by mediation shall be resolved by compulsory and binding arbitration in accordance with the then-effective Commercial Arbitration Rules of the American Arbitration Association or the then-effective arbitration rules of the Arbitration Service of Portland, Inc., whichever organization is selected by the party which first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, except that the following shall apply:

10.1.2.1 Every person nominated or recommended to serve as an arbitrator shall be a lawyer who has had experience as an arbitrator for at least ten (10) years and at least ten (10) years' experience as a practicing attorney with expertise in municipal and contract law;

10.1.2.2 If the dispute involves more than \$500,000, or a claim regarding termination for default, three (3) arbitrators

having such qualifications and experience shall be appointed, each of whom shall be selected in the same manner as set forth for the selection of a single arbitrator;

10.1.2.3 The arbitrator(s) shall base the award on this contract and applicable law and judicial precedent and shall accompany their award with a written explanation of the reasons for their award. The arbitration shall be governed by the substantive laws of the State of Oregon applicable to contracts made and to be performed therein.

10.1.2.4 Judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties shall share equally the fees and costs charged by the arbitration entity. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs, including reasonable attorney's fees, for having to compel arbitration or defend or enforce the award.

10.1.3 Place of Arbitration and Venue. The place of arbitration shall be Portland, Oregon. In the event that this arbitration clause is inapplicable or not enforceable for any reason and either party chooses to file an action or suit, then such action or suit shall be brought and heard in the appropriate court (state or federal) in the City of Portland, State of Oregon. The parties expressly consent to the jurisdiction of such court.

11. GENERAL PROVISIONS

11.1 **Notice.** Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when sent via overnight air courier or deposited in the United States mail, certified, first-class postage prepaid, addressed to each party at the addresses listed at the end of this Agreement, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. A courtesy copy may be sent by facsimile or electronic means but such notification shall not be deemed lawful "notice" as required hereby.

11.2 **Severability.** Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between

any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but, the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, and all other provisions of this Agreement shall remain in full force.

- 11.3 **Neutral Interpretation.** This Agreement constitutes the product of negotiations of the parties hereto and any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of the draftmanship hereof.
- 11.4 **Waiver.** Failure of any party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- 11.5 **Time.** TIME IS OF THE ESSENCE with respect to the performance of the duties and obligations of this Agreement.
- 11.6 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same Agreement.
- 11.7 **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday, or such holiday.
- 11.8 **Attorney Fees.** If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorney fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.
- 11.9 **Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.
- 11.10 **No Assignment.** This Agreement may not be assigned by operation of law or otherwise. Any attempted assignment in violation hereof shall be null and void.

11.11 **Schedule of Exhibits.** The following exhibits are attached and incorporated herein by reference:

Exhibit	Description
A	Multnomah County Ordinances Regarding Transient Lodging Tax
B	Multnomah County Ordinances Regarding Vehicle Rental Tax
C	Visitor Facilities Intergovernmental Agreement Statement of Current
D	Intent Calculation of Amount of Civic Stadium Debt Service
E	Derived From East County Cities

11.12 **Entire Agreement.** This Agreement and the exhibits described in Section 11.11 constitute the entire agreement among the parties, integrate all of the terms and conditions mentioned herein or incidental hereto, and supersede all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

This Agreement is executed as of the date year set forth below.

VISITOR DEVELOPMENT FUND, INC.,
an Oregon nonprofit corporation

METRO, a Metropolitan Service District

By: _____

By: _____

Date: _____

Date: _____

MULTNOMAH COUNTY, OREGON, a
Municipal Corporation

THE CITY OF PORTLAND, a Municipal
Corporation

By: _____

By: _____

Date: _____

Date: _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 941

Amending MCC 11.400-11.499, increasing the Transient Lodging Tax for Visitor Facilities

The Multnomah County Board of Commissioners Finds:

- a. Ordinance 56 effective July 15, 1972 imposes a 5% transient lodging tax and allocates all revenues to the County general fund.
- b. The voters adopted Ordinance 171 effective January 1, 1979 that imposes a 1% surcharge tax dedicated to promote county convention business and tourism.
- c. Ordinance 488 effective April 1, 1986 raises the transient lodging tax to 8% from the original 5%. It imposes an additional 3% tax allocated to a Convention and Trade Show Center Special Fund, and authorizes uses for the fund.
- d. Ordinance 501 also effective April 1, 1986 defined "lead agency" as the governmental unit with authority to seek voter approval of general obligation bonds that formally declared its intent to build and operate a convention center. It authorized the lead agency to make expenditures from the fund only for construction and operation of the center.
- e. Under a June 24, 1986 intergovernmental agreement between the County and Metro, Metro became the lead agency under the County code. The County agreed to pay to Metro the 3% lodging tax revenues, and Metro agreed to spend them for the purposes listed in the County transient lodging tax code.
- f. Ordinance 569 effective February 28, 1988 amended the code to permit the lead agency to spend \$70,000 from the fund for the 1988 International Association of Chiefs of Police Convention.
- g. Ordinance 593 effective October 29, 1988 amended the code to add two exemptions from the tax and other technical changes.
- h. Ordinance 790 effective July 16, 1994 amended the code to authorize fund expenditures of \$600,000 per year for three years for operation of the Portland Center for the Performing Arts, and \$100,000 per year for three years for the Metropolitan Arts Commission. It also changed the definition of lead agency to Metro.
- i. Ordinance 811 effective January 26, 1995 amended the code to substitute the Regional Arts and Culture Council for the Metropolitan Arts Commission.

- j. Ordinance 845 adopted March 14, 1996 amended the code to permit Metro to spend \$9,000,000 for construction of a new exhibit hall at the Portland Exposition Center.
- k. Ordinance 870 adopted January 2, 1997 amended the code to rename the fund the Transient Lodging Tax Fund. It defines "facilities" to include the Portland Center for the Performing Art, the Exposition Center, the Civic Stadium and neighborhood arts programs as well as the Oregon Convention Center. It deleted the term "lead agency." Beginning fiscal year 1997-98, it authorizes yearly payments of \$3,800,000 to the Oregon Convention Center, \$1,200,000 to the Portland Center for the Performing Arts, and \$200,000 for cultural tourism. The payments increase for inflation. Also authorized is a yearly payment of up to \$200,000 to the Regional Arts and Culture Council. The ordinance provides for review of those amounts by the Board every five years.
- l. Ordinance 893 adopted December 18, 1997 amended the code to impose an additional 0.5% transient lodging tax to be allocated to an Oregon Convention Center Completion Fund. This tax did not take effect because in November 1998 voters did not approve general obligation bonds to finance completion of the center.
- m. The County has approved a September 14, 1999 Memorandum of Understanding relating to the expansion of the Oregon Convention Center, improvements to the Portland Center for the Performing Arts and Civic Stadium, and enhancements to the county visitor industry. The County has agreed to amend its code to impose a 2.5% surcharge transient lodging tax and a 2.5% surcharge motor vehicle rental tax to fund these activities.

Multnomah County Ordains as follows:

Section 1. MCC §§ 11.402 and 11.421 are repealed and MCC §§ 11.400-11.499 are

amended to read as follows:

TRANSIENT LODGINGS TAX

§ 11.400 Definitions.

For the purpose of this subchapter, the following definitions apply unless the context requires a different meaning.

ACCRUAL ACCOUNTING. An accounting method where the operator enters the rent due from a transient on the records when the rent is earned, whether or not it is paid.

ADMINISTRATIVE FEE. The County Trust Account Fee that is the Indirect Flow-Through Rate that is published annually in the County Indirect Cost Rates and Countywide Cost Allocation Plan and charged to internal accounts.

***BONDS.** Collectively, the Convention Center Completion Bonds, the Civic Stadium Bonds and the Portland Center for Performing Arts (PCPA) Bonds.*

***CASH ACCOUNTING.** An accounting method where the operator does not enter the rent due from a transient on the records until rent is paid.*

***CIVIC STADIUM BONDS.** Bonds or other obligations issued by the City of Portland (City) to fund Civic Stadium improvements in an amount not to exceed \$33,000,000 and any bonds issued to refund those bonds.*

***CONVENTION CENTER COMPLETION BONDS.** Bonds or other obligations issued by the City to fund the Convention Center Completion Project in an amount not to exceed \$100,000,000 and any bonds issued to refund those bonds.*

***CONVENTION CENTER COMPLETION PROJECT.** The expansion of the Oregon Convention Center (OCC) facilities to include approximately 115,000 square feet of exhibit space, a 35,000 square foot ballroom, 40 meeting rooms, 35,000 square feet of lobby space, a 1,350 space parking garage and 10 loading docks.*

***CPI.** The annual average percent change in the Portland Salem OR-WA CPI-U as issued by the U.S. Department of Labor, Bureau of Labor Statistics for the most recent 12-month calendar year period, or a comparable measure of price change if this index is not available.*

***CULTURAL TOURISM.** A program or programs to attract visitors to the Portland area to attend cultural and recreational events and exhibits.*

***FACILITIES.** The Oregon Convention Center, the Portland Center for the Performing Arts, the Exposition Center, and neighborhood arts programs.*

***HOTEL.** Any structure, or any portion of any structure that is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, lodginghouse, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, and also includes space in mobile home or trailer parks, or similar structure or space if occupancy is for less than a 30-day period.*

***NEIGHBORHOOD ARTS.** Arts programs aimed at increased community and educational exposure to arts and involvement in artistic endeavors to enhance the quality of life in the region thus increasing tourism and increasing support for cultural programs.*

***NET REVENUES.** The collections (including delinquent interest and penalties) from the 2.5% surcharge transient lodging tax (MCC 11.401(E)), the collections (including delinquent interest and penalties) from the 2.5% surcharge vehicle rental tax (MCC 11.301(C)), and earnings on amounts in the Visitors Fund Trust Account, less the Administrative Fee.*

OCCUPANCY. The use or possession, or the right to use or possess for lodging or sleeping purposes any room or rooms in a hotel, or space in a mobile home or trailer park or portion thereof.

OPERATING EXPENSES. The total cost of all labor, benefits, overhead, maintenance, materials and services incurred by the operator or operators of the facilities in encouraging attendance, administering, and operating events held in the facilities and in obtaining events to be held there or as part of the neighborhood arts programs.

OPERATOR. The person who is proprietor of the hotel in any capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent will also be considered an operator for the purposes of this subchapter and will have the same duties and liabilities as the principal. Compliance with the provisions of this subchapter by either the principal or the managing agent is compliance by both.

PCPA BONDS. Bonds or other obligations issued by the City to fund capital improvements to the PCPA in an amount not to exceed \$2,100,000, and any bonds issued to refund those bonds.

RENT. The consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

RENT PACKAGE PLAN. The consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this subchapter is the same charge made for rent when not a part of a package plan.

TAX. Either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator is required to report collections.

TAX ADMINISTRATOR. The Finance Director of the county.

TRANSIENT. Any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel will not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual occupying space in a hotel will be considered to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. A person who pays for lodging on a monthly basis, irrespective of the number of days in any month, is not considered transient.

VISITORS FACILITIES TRUST ACCOUNT (VFTA). The excise tax account created by MCC 11.401(E) to receive and disburse Net Revenues as provided in the Visitor Facilities Intergovernmental Agreement.

§ 11.401 Tax Imposed.

(A) For the privilege of occupancy in any hotel in the county, each transient shall pay a tax of 11.5% of the rent charged by the operator. The tax constitutes a debt owed by the transient to the county that is extinguished only by payment by the operator to the county. The transient will pay the tax to the operator of the hotel at the time the rent is paid. The operator will record the tax when rent is collected if the operator keeps records on the cash accounting basis, and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, the transient will pay a proportionate share of the tax to the operator with each installment. In all cases the rent paid or charged for occupancy will exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and space occupancy in mobile home parks or trailer parks. After deductions for administration costs and any refunds or credits authorized by this subchapter the proceeds of the tax will be allocated as provided for in subsections (A), (B), (C), (D) and (E) of this section.

(B) The base rate of the tax imposed by subsection (A) is equal to 5%. It will be allocated to the county general fund, and is available for general fund expenditures.

(C) A surcharge rate of the tax imposed by subsection (A) is equal to 1% and will be used exclusively for contracting with private organizations for the promotion, solicitation, procurement and service of county convention business and tourism.

(D) A surcharge rate of the tax imposed by subsection (A) is equal to 3% and will be allocated to the Excise Tax Fund.

(1) Before paying the tax imposed by subsection (D), as required by § 11.407, the operator may deduct an amount equal to 5% of that portion of the tax that is allocated to the Excise Tax Fund. This 5% may be retained by the operator as reimbursement for the operator's expenses in collecting the tax.

(2) The county will pay from the proceeds of the tax that is allocated to the Excise Tax Fund:

(a) To Metro, for the operation of the Oregon Convention Center, \$3,800,000 in fiscal year 1997-98 and, in each fiscal year thereafter, that amount plus annual percentage increases equal to the greater of the change in the CPI or the overall change in the proceeds of the tax. If the overall increase in the proceeds of the tax in any given year exceeds 7%, any additional funds beyond the 7% increase will be allocated as specified in subsection (e) of subsection (D). *Metro may also utilize the proceeds to pay debt service on Bonds issued for the purpose of making capital improvements to the Oregon Convention Center.*

(b) To the government entity responsible for the operation of the Portland Center for the Performing Arts, \$1,200,000 in fiscal year 1997-98 and, in each fiscal year thereafter, that amount plus annual percentage increases equal to the lesser of the change in the CPI or the overall change in the proceeds of the tax.

(c) To the government entity responsible for operating the Portland Center for the Performing Arts for a program or programs for cultural tourism, to be administered through a contract with the Portland Oregon Visitor's Association, and in collaboration with the Regional Arts and Culture Council, \$200,000 in fiscal year 1997-98 and, in each fiscal year thereafter, that amount plus annual percentage increases equal to the lesser of the change in the CPI or the overall change in the proceeds of the tax;

(d) To the Regional Arts and Culture Council, any remaining balance up to \$200,000 of the proceeds of the tax after the payments in subsections (a) through (c) are made, to be allocated as follows:

1. \$100,000 for neighborhood arts;
2. \$100,000 to broaden participation in and visitors to the region's cultural and artistic assets by residents of outlying areas of the greater Portland metropolitan region.

(e) To Metro for any remaining balance of the proceeds from the tax after the payments in subsections (a) through (e) are made will be allocated towards replacement, renewal, expansion, and other capital needs of the facilities managed by Metro, on an as-needed basis to be determined by Metro.

(3) Earnings on proceeds allocated to the Excise Tax Fund will be credited to the Excise Tax Fund.

(4) The amounts specified in subsection (2) above are subject to review by the Board every five years.

(5) The tax imposed by subsection (D) is separate and independent of the tax imposed by subsection (C). Nothing in this subsection (D) modifies the 1% tax provided for by subsection (C).

(E) A surcharge rate of the tax imposed by subsection (A) is equal to 2.5% and will be allocated to the VFTA that is separate from the Excise Tax Fund. This 2.5% surcharge will terminate if the 2.5% motor vehicle rental tax surcharge imposed by MCC 11.301(C) is terminated before issuance of the Bonds.

(1) Before paying the tax imposed by subsection (E) as required by § 11.407, the operator may deduct an amount equal to 5% of the portion of the tax allocated to VFTA. This 5% may be retained by the operator as reimbursement for expenses for collecting the tax.

(2) The tax imposed by subsection (E) is separate and independent of the tax imposed by subsections (C) and (D). Nothing in this subsection modifies the taxes imposed by subsections (C) and (D).

(3) In addition to imposing a tax, this subsection (E) specifically authorizes the Board under Home Rule authority to enter into an intergovernmental agreement with the

City, pledging the County to maintain the tax surcharge to pay the Bonds and other obligations of this subsection (E). Any pledge of tax revenues in such an intergovernmental agreement is binding under ORS 288.594 from April 1, 2000, and as long as the Bonds set out in subsection (E) are outstanding.

(4) Taxes imposed by subsection (E) will be allocated in the following order of priority:

(a) First, to the City in the amount required to pay debt service on the Convention Center Completion Bonds;

(b) Second, to the City in the amount required to pay debt service on the PCPA Bonds;

(c) Third, to the City in the amount, if any, required to pay the remaining debt service on Civic Stadium Bonds after application of Civic Stadium Revenues;

(d) Fourth, to Metro in the amount, if any, required to pay reasonable operating, capital repair and maintenance cost of the OCC in excess of revenues collected by the OCC and the tax received by Metro from subsection (D);

(e) Fifth, to Tri-County Metropolitan Transportation District (Tri-Met), \$300,000 in the fiscal year 2000-01, increased each subsequent fiscal year by the CPI, for costs of extending the fareless square to the Lloyd Center Max station;

(f) Sixth, to the Visitor Development Fund (VDF), \$250,000 in the fiscal year 2000-01, \$500,000 in fiscal year 2001-02, increased each subsequent fiscal year by the CPI, to attract visitors to the county and City that maximize hotel occupancy and vehicle rentals;

(g) Seventh, to Metro for the operator of the PCPA, \$500,000 each fiscal year, increased by the CPI, for costs of PCPA operations;

(h) Eighth, to Metro to pay OCC operating deficits in excess of \$8,840,000 that accumulate during the first six fiscal years (2000-01 through 2005-06) after the effective date of the tax imposed by subsection (E);

(i) Ninth, to a revenue stabilization subaccount sufficient to pay subsection (a) through (h) disbursements for at least one fiscal year, and that may be used to redeem or defease Convention Center Completion Bonds and PCPA Bonds.

(j) Tenth, any subsection (E) taxes remaining after the (a) through (h) payments including subaccounts may be spent according to budgets proposed by the Visitor Development Board.

§ 11.403 Collection of Tax by Operator.

(A) Every operator renting rooms or space for lodging or sleeping purposes in this county, the occupancy of which is not exempted under the terms of this subchapter, must collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owing by the operator to the county.

(B) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator will not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectable taxes.

(C) The tax administrator will enforce provisions of this subchapter and has the power to adopt rules consistent with this subchapter that aid enforcement.

(D) For rent collected on portions of a dollar, fractions of a penny of tax will not be remitted.

§ 11.404 Operator's Duties.

Each operator must collect the tax imposed by this subchapter at the same time the rent is collected from each transient. The amount of tax must be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel will advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except as provided by this subchapter.

§ 11.405 Exemptions.

No tax imposed by this subchapter will be collected from:

- (A) Any occupant for more than 30 successive calendar days;
- (B) Any person who pays for lodging on a monthly basis, irrespective of the number of days in any month;
- (C) Any occupant whose rent is of a value less than \$2 per day;
- (D) Any person who rents a private home, vacation cabin or similar facility from any owner who rents the facility incidentally to the owner's own use of it;
- (E) Any federal government employee renting a room for official governmental business; or
- (F) Any persons renting and occupying a space in a recreational vehicle park or campground.

§ 11.406 Registration Of Operator; Certification Of Authority.

(A) Every person engaging or about to engage in business as an operator of a hotel in the county must register with the tax administrator on a form provided by the administrator. Operators starting businesses must register within 15 calendar days after commencing business.

(B) The privilege of registration after the date of imposition of the transient lodgings tax will not relieve any person from the obligation of payment or collection of tax regardless of registration.

(C) Registration must set forth the name under which an operator transacts or intends to transact business, the location of place or places of business and such other information as the tax administrator may require to facilitate the collection of the tax. The operator must sign the registration.

(D) The tax administrator will, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, with a duplicate for each additional place of business of each registrant.

(E) Certificates are not assignable or transferable and must be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer.

(F) Each certificate and duplicate will state the place of business to which it is applicable and must be prominently displayed to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(G) The certificate will, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date upon which the certificate was issued; and
- (4) A notice reading as follows:

This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Lodgings Tax Ordinance of Multnomah County, Oregon, by the registration with the tax administrator to collect from transients the county lodgings tax. This certificate does not authorize any person to conduct any business or operate a hotel without strictly complying with all applicable laws, including those requiring any other county permit. This certificate is not a permit.

§ 11.407 Due Date; Returns And Payments.

(A) The transient must pay the tax imposed by this subchapter to the operator at the time that the rent is paid. All taxes collected by any operator are due and payable to the tax administrator on a quarterly basis on the fifteenth day of the following month for the preceding three months, and are delinquent on the last day of the month in which they are due. The tax administrator has authority to classify or district the operators for determination of applicable tax periods, and will notify each operator of the due and delinquent dates for the operator's returns. The initial return under this subchapter may be for less than the three months preceding the due date. Thereafter, returns must be made for the applicable quarterly period.

(B) On or before the fifteenth day of the month following each quarter of collection, a return for the preceding quarter's tax collections must be filed with the tax administrator. The return must be filed in such form as the tax administrator may prescribe by every operator liable for payment of tax.

(C) Returns must show the amount of tax collected or otherwise due for the period. The tax administrator may require returns to show the total rentals upon which tax was collected or otherwise due, the gross receipts of the operator for the period, and an explanation of any discrepancy between those amounts and the rents exempt, if any.

(D) The person required to file the return must deliver the return, together with the remittance of the amount of the tax due, to the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark will be considered the date of delivery for determining delinquencies.

(E) For good cause, the tax administrator may extend for up to one month the time for making any return or payment of tax. No further extension will be granted. Any operator to whom an extension is granted must pay interest at the rate of 1% per month on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, the interest will become part of the tax for computation of penalties described in § 11.420.

(F) If the tax administrator considers it necessary to insure payment or facilitate collection by the county of the amount of taxes in any individual case, the tax administrator may require returns and payment of the amount of taxes for other than quarterly periods.

§ 11.408 Tax Deficiency Determination.

(A) The tax administrator may compute and determine the amount required to be paid upon the facts contained in the return, or other information. One or more deficiency determinations may be made of the amount due for one, or more than one period. The amount so determined is due and payable immediately upon service of notice, after which the amount determined is delinquent. Penalties on deficiencies will be applied under § 11.420.

(B) In making a determination, the tax administrator may offset overpayments for previous periods, against any underpayment for subsequent periods, or against penalties and interest on the underpayments. The interest on underpayments will be computed under § 11.420.

(C) The tax administrator will give to the operator or occupant a written notice. The notice may be served personally or by mail. If by mail, the notice will be addressed to the operator as it appears on the records of the tax administrator. In case of service by mail of any notice required by this subchapter, the service is complete at the time of deposit in the United States post office.

(D) Except in the case of fraud or intent to evade this subchapter or applicable rules, every deficiency determination will be made and notice mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires later.

(E) Any determination will become due and payable immediately upon receipt of notice and becomes final within ten days after the tax administrator has given notice. The operator may petition for redetermination if the petition is filed before the determination becomes final.

§ 11.409 Fraud; Refusal To Collect; Evasion.

If any operator fails or refuses to collect the tax or to make within the time provided in this subchapter any report and remittance of the tax required by this subchapter, or makes a fraudulent return or otherwise willfully attempts to evade this subchapter, the tax administrator will obtain facts and information for an estimate of the tax due. The tax administrator will determine and assess against the operator the tax, interest and penalties provided by this subchapter. The tax administrator will give a notice as provided in § 11.408 of the amount assessed. The determination and notice will be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade or failure or refusal to collect the tax, or failure to file a return. Any determination becomes due and payable immediately upon receipt of notice and becomes final within ten days after the tax administrator has given notice. The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

§ 11.410 Operator Delay.

If the tax administrator believes that the collection of any tax required to be collected and paid to the county will be jeopardized by delay, or if any determination will be jeopardized by delay, the tax administrator may determine the amount of tax required to be collected. The amount so determined will be immediately due and payable, and the operator must immediately pay the determination to the tax administrator after service of notice. The operator may petition, after payment has been made, for redemption and refund of the determination, if the petition is filed within ten days from the date of service of notice by the tax administrator.

§ 11.411 Redeterminations.

(A) Any person against whom a determination is made under §§ 11.408 through 11.410 or any person directly interested may petition for a redetermination within the time required in §§ 11.408 through 11.410. If a petition for redetermination is not filed within that time, the determination becomes final at the expiration of the allowable time.

(B) If a petition for redetermination is filed within the allowable period, the tax administrator will reconsider the determination, and, if the petition requests, grant an oral hearing and give ten days' notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as may be necessary.

(C) The tax administrator may decrease or increase the amount of the determination because of the hearing and if an increase is determined the increase will be payable immediately after the hearing.

(D) The order or decision of the tax administrator upon a petition for redetermination becomes final ten days after service upon the petitioner of notice, unless appeal of the order or decision is filed with the tax administrator within the ten days after service of notice.

(E) No petition for redetermination or appeal will be effective for any purpose unless the operator has first complied with the payment provisions of this subchapter.

§ 11.412 Security For Collection Of Tax.

(A) The tax administrator may require any operator to deposit security in the form of cash, bond or other security as the tax administrator may determine. The amount of the security will be fixed by the tax administrator but will not be greater than twice the operator's estimated average quarterly liability for the period, determined as the tax administrator considers proper, or \$5,000, whichever is less. The amount of the security may be increased or decreased by the tax administrator subject to the limitations of this subsection.

(B) At any time within three years after any tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the county to collect the amount delinquent together with penalties and interest.

§ 11.413 Records Maintained By Operator; Administrator Examination.

(A) Every operator must keep guest records of room sales and accounting books and records of the room sales. The operator must retain all records for a period of three years and six months after they are created.

(B) The tax administrator may examine during normal business hours the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax. The tax administrator may investigate the business of the operator in order to verify the accuracy of any return made, or if the operator makes no return, to ascertain and determine the amount required to be paid.

§ 11.414 Confidential Character Of Information; Disclosure Prohibited.

It is unlawful for the tax administrator or any person having an administrative or clerical duty under this subchapter to make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate or pay a transient occupancy tax, or the amount or source of income, profits, losses, expenditures or to permit any statement, application, or other private record to be seen or examined by any person. Nothing in this section will prevent:

(A) The disclosure to, or the examination of records and equipment to another county official, employee or agent for collection of taxes for the purpose of administering or enforcing this subchapter, including the collection of taxes.

(B) The disclosure, after the filing of a written request to that effect, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties. The District Attorney must approve each disclosure and the tax administrator may refuse to make any disclosure when the public interest would suffer.

(C) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.

(D) The disclosure of general statistics regarding taxes collected or business activity.

§ 11.415 Appeals To Board.

Any person aggrieved by any decision of the tax administrator may appeal to the Board by filing a notice of appeal with the tax administrator within ten days of the serving or the mailing of the notice of the decision given by the tax administrator. The tax administrator will transmit the notice of appeal, together with the file of the appealed matter to the Chair, who will fix a time and place for hearing the appeal from the decision. The Chair will give the appellant not less than ten days' prior written notice of the time and place of hearing on the appealed matter.

§ 11.416 Refunds By County To Operator.

When any tax, penalty or interest is erroneously paid, it may be refunded. A verified claim in writing, stating the specific reason for the claim must be filed with the tax administrator within three years from the date of payment. The claim must be made on forms provided by the tax administrator. If the tax administrator approves the claim, the excess amount collected or paid may be refunded or may be credited on any amounts then due from the operator and the balance may be refunded to the operator.

§ 11.417 Refunds By County To Transient.

When the tax required by this subchapter is collected by the operator and deposited with the tax administrator and is later determined erroneously paid, it may be refunded by the tax administrator to the transient. A verified claim in writing, stating the specific reason for the claim must be filed with the tax administrator within three years from the date of payment.

§ 11.418 Refunds By Operator To Tenant.

When the tax required by this subchapter is collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 days without interruption, the operator must refund to the tenant the tax collected. The operator must account for the collection and refund to the tax administrator. If the operator remits the tax before refund or credit to the tenant, the operator is entitled to a corresponding refund under § 11.416.

§ 11.419 Credit Against City Tax.

(A) Any person subject to the payment or collection of the 11.401(B) 5% base tax and the 11.401(C) 1% surcharge is entitled to a credit against the payment of the tax in the amount due any city within the county for a transient lodgings tax for the same occupancy.

(B) No person subject to the surcharge taxes imposed by 11.401(D) and 11.401(E) is entitled to a credit against the payment of those taxes. The 3% surcharge imposed by 11.401(D) and the 2.5% surcharge imposed by 11.401(E) are due and payable in accordance with this subchapter regardless of the amount due any city within the county for a transient lodging tax for the same occupancy made taxable under this subchapter.

§ 11.420 Delinquency And Interest.

(A) Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this subchapter prior to delinquency must pay a penalty of 10% of the amount of the tax due in addition to the amount of the tax.

(B) Any operator who has not been granted an extension of time for remittance of tax due and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent must pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed.

(C) If the tax administrator determines that the nonpayment of any remittance due under this subchapter is due to fraud or intent to evade, a penalty of 25% of the amount of the tax will be added to the penalties stated in divisions (A) and (B) of this section.

(D) In addition to the penalties imposed, any operator who fails to remit any tax imposed by this subchapter must pay interest at the rate of 0.5% per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date the remittance first became delinquent until paid.

(E) Every penalty imposed and interest under this section is merged with and becomes part of the tax required to be paid.

(F) Any operator who fails to remit the tax levied within the time required by this subchapter must pay the penalties. However, the operator may petition the tax administrator for waiver and refund of the penalty or any portion thereof and the tax administrator may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

§ 11.499 Penalty.

Any operator or other person who fails to register as required by this subchapter, or who fails to furnish any return, supplemental return or other data required by this subchapter or by the tax administrator, or, with intent to defeat or evade the determination or any amount due under this subchapter, makes, renders, signs or verifies any false or fraudulent report, commits an offense that is a violation of this subchapter punishable by fine in an amount to be fixed by the court, not exceeding \$500.

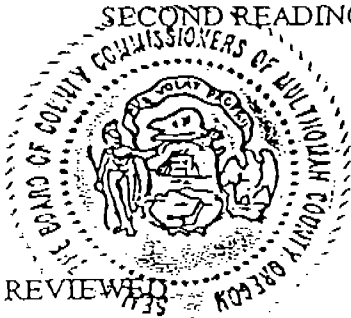
Section 2. This ordinance is effective on April 1, 2000.

FIRST READING:

February 3, 2000

SECOND READING AND ADOPTION:

February 17, 2000



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

Thomas Sponsler
Thomas Sponsler

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 942

Amending MCC 11.300-11.305, increasing the Motor Vehicle Rental Tax for Visitor Facilities

The Multnomah County Board of Commissioners Finds:

- a. Ordinance 122 imposed a 10% car rental tax effective July 1, 1976. All revenues go to the general fund.
- b. Ordinance 407 adopted December 22, 1983 amended definitions and increased the required license fee from \$2 to \$15.
- c. Ordinance 417 effective May 1, 1984 repealed subsections to avoid possible application to transactions outside of the county.
- d. Ordinance 519 adopted June 19, 1986 amended the definition of "director."
- e. Ordinance 627 adopted August 17, 1989 amended code to exempt replacement vehicle rental by "residents."
- f. Ordinance 849 adopted April 11, 1996 amended code to implement County Auditor suggestions to improve administration of the tax.
- g. Ordinance 934 adopted July 29, 1999 amended the code to exempt vehicles rented from "car sharing organizations."
- h. The County has approved a Memorandum of Understanding relating to the expansion of the Oregon Convention Center, improvements to the Portland Center for the Performing Art and Civic Stadium, and enhancements to the county visitor industry. The County has agreed to amend its code to increase the motor vehicle rental tax and the transient lodging tax to partially fund these activities.

Multnomah County Ordains as follows:

Section 1. MCC §§ 11.300-11.305 are amended to read as follows:

MOTOR VEHICLE RENTAL TAX

§ 11.300 Definitions.

For the purpose of this subchapter, the following definitions apply unless the context requires a different meaning.

CAR SHARING ORGANIZATION. A profit or non-profit organization with membership requirements that provides the use of motor vehicles exclusively to its members for a fee.

COMMERCIAL ESTABLISHMENT. Any person or other entity, any part of whose business consists of providing the use of motor vehicles for a rental fee.

DIRECTOR. The Finance Director of the county.

DOING BUSINESS IN THE COUNTY. Any of the following conduct by a commercial establishment whose business address is within or outside the county:

- (1) Delivery of a rented vehicle to a location within the county for use by a person within the county; or
- (2) Presenting for execution within the county by any person a car rental agreement.

EXEMPTION AREA. Multnomah, Washington and Clackamas Counties.

MOTOR VEHICLE. Without limitation, automobiles, trucks having a manufacturer's gross vehicle weight not exceeding 24,000 pounds, motor homes, motorcycles, pickup campers and any motorized passenger vehicles designed to carry fewer than ten persons, which are capable of being used on the highways of the state.

PARITY OBLIGATIONS. County bonds or obligations up to \$8,500,000 in aggregate principal amount that pledge motor vehicle rental tax on a parity with the Regional Children's Campus Bonds, and any bonds or obligations issued to the refund Regional Children's Campus Bonds.

REGIONAL CHILDREN'S CAMPUS (RCC) BONDS. County Revenue Bonds, Series 1998 (Regional Children's Campus, Inc.) that are dated October 1, 1998.

RENTAL FEE. The gross fee and charges, whatever the basis of their calculation, paid to a commercial establishment by any person for the rental of a motor vehicle.

RENTAL or RENTING. Obtaining in the county the use of a motor vehicle from a commercial establishment in the county for a rental fee, and includes all services, supplies and commodities furnished by the commercial establishment in connection with providing the use of the vehicle, but does not include leasing or other transactions where title of a motor vehicle is permanently or temporarily transferred from the commercial establishment to any other person or entity.

§ 11.301 Imposition of Tax.

(A) A tax is imposed on every person renting a motor vehicle from a commercial establishment doing business in the county, if the rental is for a period of 30 days or less. A rental must have a duration of 30 days or less if the actual possession or use by the person renting the vehicle terminates not later than the end of a 30-day period or if any contract governing the rental has a duration of 30 days or less.

(B) The base rate of the tax imposed by subsection (A) is equal to 10% of the rental fee charged by the commercial establishment for the rental.

(C) The surcharge rate of the tax imposed by subsection (A) is equal to 2.5% of the rental fee charged by the commercial establishment for the rental. This 2.5% surcharge will terminate if the 2.5% transient lodging tax imposed by MCC 11.401(E) is terminated before the issuance of the bonds defined in MCC 11.400.

(D) If, with respect to any rental fee, the tax imposed under this section does not equal an amount calculable to a whole cent, the commercial establishment must charge a tax equal to the next highest whole cent. However, the amount remitted to the Director by the commercial establishment for each quarter must equal 12.5% of the total rental fees collected by the commercial establishment during the quarter.

§ 11.302 Collection of Tax; Remittance Records; Tax as Debt.

(A) The commercial establishment must collect the tax imposed by § 11.301 at the time it collects a rental fee.

(B) On or before the last business day of January, April, July and October of each year, each commercial establishment must remit to the Director all taxes collected during the preceding calendar quarter. The remittance must be accompanied by a report showing:

(1) The amount of the rental fees collected by the commercial establishment during the preceding quarter;

(2) The amount, if any, of those rental fees that is attributable to and identified on the records or billings of the commercial establishment for gasoline sales;

(3) Such further information as the Director may prescribe;

(C) The report and all such additional information as required from the commercial establishment accompanying remittance of the collected tax is exempt from public disclosure and remains confidential in the possession of the Director.

(D) All commercial establishments must maintain accurate records of rental fees assessed and of taxes collected, and such records are subject to review, inspection and audit within the county by the Director or the director's designee at all reasonable times.

(E) The commercial establishment that rents a vehicle in the county is responsible for remittance of the tax, based on the total rental fee, wherever collected, as well as maintenance of the appropriate records of the fees.

(F) The tax imposed by § 11.301 is a debt owed by the commercial establishment to the county until remitted under this section.

§ 11.303 Tax Evasion Or Deficiency Determination.

(A) If the Director determines that the report required in § 11.302(B) has not been filed or is incorrect, the Director may compute and determine the amount required to be paid upon the basis of the facts contained in any report or reports, or upon the basis of any available information. One or more deficiency or evasion determinations may be made of the amount due for one or more than one period. The amount so determined is due and payable immediately upon service of notice, after which the amount determined is delinquent. Penalties on deficiencies will be applied under § 11.399.

(B) In making a determination, the Director may offset any overpayments previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. Interest on underpayments will accrue at the rate of one percent per month pro rata from the date the tax became delinquent until the date paid.

(C) The Director will give written determination notice to the commercial establishment, served personally or by certified mail. If mail service is employed, service is deemed made upon mailing.

(D) Except where fraud or intent to evade this subchapter exists, every deficiency determination must be made and notice given within three years after the last day of the month following the close of the quarterly reporting period for which the amount is proposed to be determined, or within three years after the report reflecting an underpayment is filed, whichever period expires later.

§ 11.304 Use of Taxes.

(A) The 10% base taxes collected under this subchapter are general fund revenues of the county, except that the portion of taxes attributable to gasoline sales are subject to the limitations on use prescribed by the constitution and laws of the state.

(B) The base taxes, and to the extent necessary also surcharge taxes, will be used by the County to pay any debt service on the RCC Bonds and any Parity Obligations. All 2.5% surcharge taxes collected under this subchapter not needed for that purpose will be deposited in the Visitors Facilities Trust Account (VFTA) created by 11.401(E) and allocated as provided by 11.401(E)(4). The Board is authorized under Home Rule authority to enter an intergovernmental agreement with the City of Portland to pledge the County to maintain this surcharge to pay the bonds and other obligations identified in 11.401(E). Such pledge is binding under ORS 288.594 from April 1, 2000 as long as the 11.401(E) bonds are outstanding.

§ 11.305 Exemptions.

The tax imposed by 11.301 is not applicable to:

- (A) A rental fee that state or federal law exempts from the tax.
- (B) A rental fee for a motor vehicle used for official governmental business by an employee of the federal government.
- (C) A motor vehicle rented by a resident of the exemption area to temporarily replace a vehicle being repaired or serviced.
- (D) A motor vehicle rented in the county by a member of a car sharing organization who is a resident of the exemption area

Section 2. This ordinance is effective April 1, 2000:

FIRST READING:

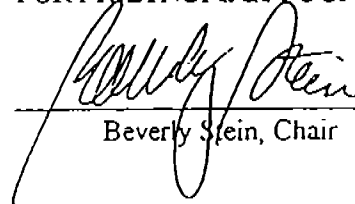
February 3, 2000

SECOND READING AND ADOPTION:

February 17, 2000.

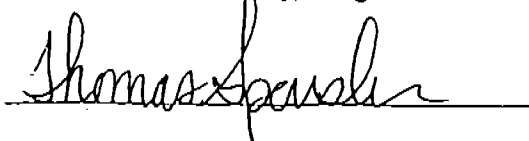


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon



Vehicle Rental Tax Ordinance - Page 5 of 5

EXHIBIT A

STATEMENT OF CURRENT INTENT

Although government bodies may not contract away their taxing authority, the undersigned, on behalf of their respective government bodies, state that they do not now intend to increase or impose an additional transient lodgings tax or vehicle rental tax.



Vera Katz
Mayor

Beverly Stein
County Chair

Rod Monroe
Metro Presiding Officer

ATTACHMENT E		
Calculation of Amount of Civic Stadium Debt Service Derived from East County Cities		
	Formula Values	Example Calculation
Calculation of Prior Year Hotel/Motel Tax Collections:		
Total Amount Collected from new 2.5% surcharge	A	\$5,000,000
Amount Collected within the East County Cities(1)	B	\$250,000
Percent of Hotel/Motel Revenues Collected Within East County Cities	B/A	5.00%
Calculation of Ratio of East County Hotel/Motel Collections to Total Revenues for the Prior Fiscal Year:		
Total Hotel/Motel Tax Collections	C	\$5,000,000
Total Vehicle Rental Tax Collections	D	\$3,000,000
Total East County Cities Hotel/Motel Tax Collections	B	\$250,000
East County Cities Hotel/Motel Tax Collections as a Percent of Total Revenues (2)	E=B/(C+D)	3.13%
Calculation of Civic Stadium Prior Fiscal Year Contribution Attributable to the East County Cities:		
Civic Stadium Debt Service Payment	F	\$3,000,000
Civic Stadium Revenues Contributed to Civic Stadium Debt Service	G	\$1,000,000
Civic Stadium Debt Service Paid From Net Revenues	H	\$2,000,000
Civic Stadium Debt Service Contributed by the East County Cities (3)	E x H	\$62,500
Notes:		
(1) The East County Cities include Fairview, Troutdale, Wood Village and Gresham.		
(2) The derived factor "E" is used in subsequent calculations to determine the amount of Civic Stadium contribution attributable to the East County Cities.		
(3) Paid directly to the VDF from Net Civic Revenues, if available.		

STAFF REPORT

RESOLUTION NO. 00-3013, APPROVING AN AGREEMENT WITH MULTNOMAH COUNTY, CITY OF PORTLAND, AND VISITOR DEVELOPMENT FUND, INC., REGARDING ADMINISTRATION OF A VISITOR DEVELOPMENT FUND

Date: November 2, 2000

Presented by: Jennifer Sims
Dan Cooper

DESCRIPTION OF RESOLUTION

Resolution No. 00-3103 would authorize a Visitor Development Services Agreement among Metro, Multnomah County, the City of Portland, and a newly-formed non-profit corporation called Visitor Development Fund, Inc. (VDF), which establishes the purpose and intent of the VDF, provides for appointment of VDF board members, and describes the powers and obligations of the board.

EXISTING LAW

Metro is authorized by Oregon law to enter into contracts with non-profit entities and local government jurisdictions.

BACKGROUND AND DISCUSSION

This resolution is a companion to Resolution No. 00-3011, the intergovernmental agreement among Metro, Multnomah County, and the City of Portland regarding funding for construction of Oregon Convention Center (OCC) expansion and other programs. Establishment of a Visitor Development Fund and a board of directors to oversee the fund's operations was one of the terms of the Memorandum of Understanding (MOU) dated September 14, 1999, in which all parties to the MOU agreed on a series of actions to fund the OCC expansion and other projects and programs.

The Visitor Development Fund is established to pay for activities to promote visitors to the region and increase hotel occupancy and vehicle rentals in Multnomah County. It is to be funded with proceeds from Multnomah County's 2.5% surcharge on its transient lodgings and vehicle rental taxes, but only after all other obligations for this money have been met.

The Board is to consist of 15 members, including the Metro Executive Officer and the Councilor who represents the area containing the cities of East Multnomah County. Other board members include 5 representatives of the Tri-County Lodging Association, 2 representatives of vehicle rental associations, 2 members appointed by the Portland Oregon Visitors Association, 2 members of the Portland City Council, and 2 members of the Multnomah County Commission. Metro is responsible for confirming the nomination of the two vehicle rental association members, and has the right to remove private entity members for cause, as described in the agreement.

Metro also may request that the VDF approve funds from the Visitor Facilities Trust Account to cover operating deficits at the Oregon Convention Center, after FY 2005-06.

FINANCIAL IMPACT

There is no direct financial impact. Indirectly, creation of the Visitor Development Fund provides a mechanism for Metro to request additional operating support for OCC if it is needed.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-3013.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 00-3013
AN AGREEMENT WITH MULTNOMAH)
COUNTY, CITY OF PORTLAND, AND) Introduced by Executive Officer
VISITOR DEVELOPMENT FUND, INC.,) Mike Burton
REGARDING ADMINISTRATION OF A)
VISITOR DEVELOPMENT FUND)

WHEREAS, the Metro Council adopted Resolution No. 99-2836 on September 9, 1999, approving a Memorandum of Understanding (MOU) among Metro, the City of Portland, Multnomah County, Tri-County Lodging Association, National Car Rental Companies, Car and Truck Rental and Leasing Association, Tri-Met, Portland Development Commission, and Portland Oregon Visitors Association; and

WHEREAS, the MOU called for the preparation of various legally binding actions by Metro, the City of Portland, and Multnomah County, and actions by other parties to the MOU, to provide for financing for a needed major expansion and completion of the Oregon Convention Center (OCC); and

WHEREAS, Multnomah County has increased its transient lodgings and vehicle rental taxes to provide funding for payment of debt service on City-issued bonds to be issued to finance construction of the OCC expansion, and for other capital improvements, operating funds for regional facilities, and enhancements to the visitor industry; and

WHEREAS, an element of the MOU called for establishment of a Visitor Development Fund, to be funded with proceeds of the County taxes; and

WHEREAS, the purpose of the Visitor Development Fund is to expend revenues from its allocation of the proceeds of the additional County taxes to attract visitors to

Portland and Multnomah County that maximize hotel occupancy and vehicle rentals;
and

WHEREAS, Visitor Development Fund, Inc. filed articles of incorporation on
March 30, 2000; and

WHEREAS, Metro, Multnomah County, and the City of Portland are to have
obligations and powers regarding the Visitor Development Fund and its board of
directors; now, therefore,

BE IT RESOLVED:

That the Metro Council authorizes the Executive Officer to execute the Visitor
Development Fund Services Agreement attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of November, 2000.

David Bragdon, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel