

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 82-363
THE METROPOLITAN SERVICE DISTRICT)	
(METRO) TO ENTER INTO AN INTER-)	Introduced by the Regional
GOVERNMENTAL AGREEMENT WITH)	Development Committee
MULTNOMAH COUNTY, MULTNOMAH)	
COUNTY CENTRAL SERVICE DISTRICT,)	
CITY OF GRESHAM, AND TRI-MET TO)	
DELINEATE THE ROLES AND RESPONSI-)	
BILITIES OF EACH PARTY IN)	
FINANCING AND CONSTRUCTING A)	
SANITARY SEWER DRY LINE IN EAST)	
BURNSIDE.)	

WHEREAS, Metro unanimously passed Resolution No. 82-344 on July 22, 1982, authorizing Metro to apply for a loan to the Oregon Department of Environmental Quality (DEQ) on behalf of the Central County Service District of Multnomah County and the city of Gresham for the purpose of constructing a sanitary sewer dry line in East Burnside; and

WHEREAS, On September 2, 1982, the legislative Emergency Board ordered DEQ to make a \$3 million loan to Metro for the purpose of constructing said sanitary sewer dry line subject to certain conditions; and

WHEREAS, One of those conditions is that participating parties enter into contracts delineating their roles and responsibilities for financing and constructing said sanitary sewer dry line; now, therefore,

BE IT RESOLVED,

That the Executive Officer is hereby authorized to enter into an intergovernmental agreement which exempts Metro from any loan repayment responsibilities, delineates Metro's responsibilities

and relationships in handling the loan proceeds and provides for reimbursement for Metro's services.

ADOPTED by the Council of the Metropolitan Service District
this 28th day of October, 1982.



Presiding Officer

SB/gl
6934B/318

INTERGOVERNMENTAL AGREEMENT

This Agreement is by and between the Metropolitan Service District (METRO), 527 S. W. Hall Street, Portland, Oregon 97201; the Tri-County Metropolitan Transportation District (TRI-MET), 4012 S. E. 17th Avenue, Portland, Oregon 97202; the City of Gresham, Oregon (the "CITY"), 1333 N. W. Eastman Avenue, Gresham, Oregon 97030; the Multnomah County Central County Service District (the "DISTRICT"), 2115 S. E. Morrison Street, Portland, Oregon 97214; and Multnomah County, Oregon (the "COUNTY"), 1021 S. W. Fourth Avenue, Portland, Oregon 97204. This Agreement is effective as of November 1, 1982.

RECITALS

1. In order to provide for future urban growth along the Banfield light rail line in East Multnomah County, it is necessary that sewer lines be installed in that area.

2. Tri-Met is presently beginning construction of the Banfield Light Rail Transit (LRT) project, a portion of which runs along East Burnside Street. Such construction will include excavation in that right-of-way, which excavation could include the installation of sanitary sewer lines. Such sewer line installation after construction of the LRT would necessitate duplicative excavation of the same area resulting in possible disruption of the LRT system, Burnside Street auto traffic, and require additional excavation. Consequently, it would be in the public interest to install necessary sanitary sewer lines in the corridor in conjunction with construction of the LRT.

3. In addition to sewer line construction in the LRT corridor by Tri-Met, it is also contemplated that the City and the District will construct and install connecting sewer lines within their drainage basins in conjunction with the lines to be constructed by Tri-Met.

4. The Oregon Department of Environmental Quality (DEQ) has been authorized by the State Emergency Board to loan not to exceed \$3 million from the Pollution Control Bond Fund for construction of sanitary sewers in the East Burnside LRT Corridor, subject to certain conditions provided in a letter of August 10, 1982, from the DEQ to the State Emergency Board, a copy of which is attached hereto as Attachment A and incorporated herein.

5. It is the purpose of this Agreement, which is authorized by ORS ch. 190, to specify the relationship and obligations of the parties hereto with respect to the receipt, investment, expenditure and repayment of the above-mentioned DEQ loan and the design, engineering, construction, inspection, use and ownership of the sewer lines to be installed and financed by that loan.

6. The sewer lines to be financed and constructed pursuant to this Agreement are as described in Attachments B, C, D and E hereto which are incorporated herein.

Wherefore, the parties agree as follows:

A. Responsibility of Metro.

1. Metro shall be the applicant for and recipient of the DEQ loan and shall hold and invest the proceeds of said loan in a prudent manner and in accordance with Oregon State law regulating investment by municipal corporations.

2. Metro's role in providing loan funds to other parties hereto shall be that of pass-through agent. Metro shall provide funds, not to exceed \$3 million, plus accrued interest thereon, from the DEQ loan to Tri-Met, the City and the District for the design, engineering, construction, installation and associated costs of the sewer lines. Such provision of funds shall be made based upon detailed monthly billings from Tri-Met, the City and the District in such amounts as are necessary to defray Tri-Met's, District's and City's costs of constructing the sewer lines provided for herein. Billings for work performed by Tri-Met under Attachment B shall be approved by the City before submission to Metro. Billings for work performed by Tri-Met under Attachment C shall be approved by the

District before submission to Metro. All such billings from Tri-Met shall be approved by the City or District, within seven (7) days of presentation by Tri-Met and prior to submission to Metro for payment, and Metro shall pay approved billings within seven (7) days of receipt thereof. All billings from the City and District under Attachments D and E shall be submitted to Metro for payment and Metro shall pay such billings within seven (7) days of receipt thereof.

3. Metro shall in no way be obligated to repay the DEQ loan or the accrued interest thereon from its own funds or resources or otherwise; provided however, that Metro shall return to DEQ all loan funds and interest income received by Metro but not needed, obligated or expended for design, inspection, administration, and construction of the sewer lines. Return of such excess funds shall require the written consent of all parties hereto. Such return shall be credited to the City and the District in the same proportion that the total amount of each jurisdiction's obligation bears to the total amount of the loan.

4. Metro shall be entitled to reimbursement of its necessary and appropriate legal and administrative expenses, incurred in preparation of and as a result of this Agreement, from the proceeds of the loan or, paragraph 3 above notwithstanding, from the interest income earned and received by Metro from investment of loan proceeds. Such reimbursement shall be in the total amount of \$10,000 and shall be in the form of two transfers of \$5,000 each from the loan funds to the Metro general fund, such transfers to be made in June 1983 and June 1984.

B. Responsibilities of Tri-Met.

1. Tri-Met shall construct and install, or cause to be constructed and installed, the sewer lines described in Attachments B and C. Such construction and installation shall be accomplished in conjunction with the construction of the LRT in the East Burnside Corridor. Tri-Met will carry out its responsibility to construct the sanitary sewer lines fully described in Attachments B and C in accordance with the detailed plans and specifications submitted by the County and City and shall obtain all City and County permits and approvals required for the sewer lines. Tri-Met will competitively bid and award a Construction Contract to a single General Contractor for constructing the LRT in the East Burnside Corridor and the sewer lines on East Burnside. In performing the work required by this Agreement, Tri-Met shall comply with all terms and conditions for third party contracts as required by the UMTA Third-Party Contracting Guidelines. Tri-Met will provide staff consultants to administer contracts for constructing the sewer lines.

2. Tri-Met will award the construction contract for construction of the LRT in the East Burnside Corridor to the lowest responsive and responsible bidder. Tri-Met shall require the contractor to bid the project separately from any Light Rail improvements and require contractor's invoices to separate out costs for the City and District's portion of the sewers associated with construction.

3. Tri-Met shall provide detailed monthly billings to Metro for work performed on the construction and installation of the sewer lines and shall certify therewith that said work has been

performed pursuant to the specifications of the project.

4. Tri-Met shall have no financial obligation to DEQ or any of the parties hereto with respect to repayment of the loan.

5. Tri-Met shall maintain detailed and accurate records and accounts of all funds expended and all work performed in pursuance of this Agreement, and shall make such records and accounts available to any party hereto and to the State of Oregon for inspection at any reasonable time. In addition, Tri-Met shall provide to the parties and to the DEQ monthly progress reports on the construction and installation of the sewer lines.

6. Tri-Met shall permit the District or City project managers and any other City or District personnel directly associated with this project access to the project site to observe and inspect the work during construction.

C. Responsibilities of the City, County and District.

1. Project plans and specifications shall be provided by the District and the City. Such plans and specifications, and all bids and bid documents, shall be approved by the parties hereto in writing prior to execution of any subcontracts for construction and installation of the sewer lines. All design changes, change orders and extra work orders shall be approved by the City and District. All such approvals shall be by the City and District engineers. Any changes or modifications requested by the District or City in the Construction Documents relative to the project subsequent to District submission of plans and written authorization to proceed shall be made at City or District expense. District and City shall hold Tri-Met harmless from any damages or additional cost as a result of a District or City directed change.

2. The City and District shall construct and install, or cause to be constructed and installed, the sewer lines described in Attachments D and E. Such construction and installation shall be accomplished in conjunction with construction of the LRT in the East Burnside Corridor and shall be in accordance with the plans and specifications provided by the City and District therefore. The City and District shall provide detailed monthly billings to Metro for payment from loan funds. The City and District shall maintain detailed and accurate records and accounts of all funds expended and all work performed in pursuance of this Agreement, and shall make such records and accounts available to all parties and to the State of Oregon at any reasonable time.

3. The City, County and District shall have full financial responsibility for the repayment of the DEQ loan not to exceed a total of \$3 million plus accrued interest. Said financial responsibility shall be apportioned, and repayment shall be made, as indicated in the loan agreement between DEQ, Metro, City, County and District. The amount apportioned to the City shall be the responsibility of the City. The amount apportioned to the District and the County jointly shall be the primary responsibility of the District; provided, however, that should the District be unable for any reason to make timely repayment of the County's and District's allocated share of the loan, the County shall have full responsibility for repayment of that share.

4. The District and the City shall own in fee simple absolute interest in the sewer lines to be installed and constructed pursuant to this Agreement. Specifically, the District and the City shall separately own that portion of the sewer line designated in

Attachments B, C, D and E as being the responsibility and property of each respectively. All parties agree to execute any and all deeds, easements or other documents of title which may be necessary to carry out the purpose of this paragraph. District and City shall be responsible for maintenance of the sewer lines and all costs associated therewith.

5. The City, County and District hereby certify that the placement of the sewer lines described in Attachments B, C, D and E is consistent with their respective comprehensive plans, zoning ordinances and other applicable plans, ordinances and regulations.

6. It shall be the responsibility of the County and City to inspect their respective portions of the construction and installation of the sewer lines and to accept and certify the lines, once completed, as being in compliance with applicable state and local construction and specialty codes and as being consistent with the approved plans and specifications therefor. Upon receipt of Tri-Met's notice that the project is ready for final inspection and acceptance and upon receipt of a final invoice, District and City will make inspection, and when District and City find the work acceptable under this Agreement, District and City will approve final payment to Tri-Met and forward to Tri-Met and Metro a written letter accepting the Project. The date of this letter shall be the Date of Final Completion.

7. Repayment of the loan by City, County and District shall be made directly to the State of Oregon in accordance with the loan agreement between DEQ, Metro and other parties.

8. The City and District shall each designate in writing a representative who shall have authority to approve billings prior

to submission to Metro.

9. District and City shall have the responsibility of providing any relocation assistance and any such relocation shall be accomplished pursuant to Titles II and III of the Uniform Relocation Assistance and Real Property Policies Act of 1970 or other applicable state law. Notwithstanding any other agreement between or among any of the parties, District and City shall bear any and all costs associated with the relocation of any utilities required as a result of the project, and such costs may be recovered by the City and District from DEQ loan funds.

D. Miscellaneous Provisions.

1. Coordination and Disputes: Disputes which may arise between or among the parties shall be resolved by submission of the dispute by any party to a committee of the parties. Such committee shall consist of a designated representative of Tri-Met, the City and the District. A decision of a majority of the committee members shall be binding on all parties and shall be implemented by the party responsible pursuant to this Agreement. The designated representatives shall also be responsible for project coordination and shall be the official contact persons by whom and through whom the parties shall communicate.

2. Liability: Liability for damages for injury to persons or property resulting from the design and engineering of the sewer lines shall be with the City or District depending upon which agency prepared the design and engineering documents which result in such injury. Liability for injury to persons or property resulting from construction and installation of the sewer lines shall be with

Tri-Met for the portion of the lines to be installed by Tri-Met, and with the City for the portion of the lines to be installed by the City, and to the District for the portion to be installed by the District. Tri-Met, the City and the District shall defend and hold all other parties harmless from any claims of negligence or injury arising from the design, engineering, construction or installation of the lines which are the responsibility of Tri-Met, the District or the City respectively. Tri-Met shall require its Contractor and Subcontractors to hold Metro, County, City and District harmless, in sums not less than each party's maximum liability under the Oregon Tort Claims Act and to post a 100 percent Performance Bond for Project work.

3. Delays and Overruns: The parties understand that installation of the sewer lines may cause some delays, alterations and consequential cost increases in the construction of the LRT, and that Tri-Met should not bear the amount of such cost increases over and above that amount which is reasonably foreseeable as a necessary consequence of joint construction of the LRT and the sewer lines. Therefore, Tri-Met will be responsible only for increased LRT construction costs which are reasonably foreseeable as a necessary consequence of joint construction; provided, however, that cost increases on the LRT construction which occur as a direct result of joint construction of the sewer lines and which are beyond the costs which could reasonably have been anticipated by Tri-Met shall be paid by Metro from the DEQ loan funds in accordance with section A2 of this Agreement. Conversely, construction of the LRT may cause delays, alterations, deficiencies and consequent cost increases in construction of the sewer lines which cost increases should not be

borne by the City and County over and above the amount which could reasonably be foreseen as a necessary consequence of joint construction. Therefore, increased costs of sewer line construction which result from delays, alterations or deficiencies in construction of the LRT shall be the responsibility of Tri-Met and shall not be charged to the DEQ loan funds. Disputes relating to the allocation of such costs shall be resolved pursuant to section D1 of this Agreement.

4. Inspections: Inspections of construction and installation shall be performed by the District and City with respect to sewer lines in their respective jurisdictions. Inspectors shall have authority to order any termination, suspension or alteration of project work through Tri-Met and shall not give instructions directly to contractors.

5. The parties understand that funds to pay for the construction of the Light Rail Project will be made available from the United States Department of Transportation through the Urban Mass Transportation Administration (UMTA) and in accordance with UMTA Grant Agreement with Tri-Met. If this Agreement is disapproved by UMTA, Tri-Met is not liable for performance and may suspend or terminate this Agreement, without penalty, until such time as this Agreement is approved. Tri-Met shall notify the parties promptly in writing of the nonallocation, delay, or disapproval of funding.

6. All notices provided for hereunder shall be in writing and sufficient if deposited in the United States Mail, postage prepaid, to the parties addressed as indicated on page 1 of this Agreement.

7. This constitutes the entire, complete, and final expression of the Agreement of the parties, and this Agreement shall be interpreted under the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated.

For Metro:

Date: _____

For District:

Date: _____

For County:

Date: _____

For Tri-Met:

Date: _____

For City:

Date: _____

Approved as to form:

(Metro General Counsel)

(Multnomah County Counsel)

(Gresham City Attorney)

(Tri-Met Legal Counsel)

AJ/g1/6877B/242

STAFF REPORT

Agenda Item No. 5.4

Meeting Date 10/28/82

CONSIDERATION OF RESOLUTION NO. 82-363, FOR THE PURPOSE OF AUTHORIZING METRO TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT DELINEATING THE RESPONSIBILITIES OF THE REPAYMENT OF A \$3 MILLION LOAN FROM DEQ AND METRO'S ROLE IN THAT LOAN AGREEMENT

Date: October 28, 1982

Presented by: Phillip Whitmore

FACTUAL BACKGROUND AND ANALYSIS

On July 22, 1982, the Metro Council adopted Resolution No. 82-344, authorizing Metro to apply to the Oregon Department of Environmental Quality (DEQ) for Pollution Control Bond funds to construct sanitary sewer dry lines under Burnside Street. This application was on the behalf of the Central County Service District, Multnomah County and the City of Gresham.

On September 2, 1982, the legislative Emergency Board authorized DEQ to loan \$3 million to Metro for that project subject to certain conditions. One of the conditions was that Metro, Multnomah County, the Central County Service District, the City of Gresham, and Tri-Met execute contracts (Intergovernmental Agreements) which lay out the responsibilities of each local jurisdiction and the repayment plan.

This Intergovernmental Agreement is attached.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer has reviewed the Intergovernmental Agreement and is satisfied that it is useful and prudent for Metro to enter into the Agreement.

COMMITTEE CONSIDERATION AND RECOMMENDATION

On October 11, 1982, the Regional Development Committee unanimously approved passage of Resolution No. 82-363.

On October 18, 1982, the Council Coordinating Committee unanimously approved passage of Resolution No. 82.363.

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6934B/318




METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: October 19, 1982

To: Oregon Department of Environmental Quality

From: Andrew Jordan, Metro General Counsel 

Regarding: AUTHORITY OF METRO TO EXECUTE SEWER LOAN
CONTRACT

This is to certify that Metro is statutorily authorized to execute that intergovernmental agreement between DEQ, Metro and others, and a loan agreement with DEQ, under which Metro will receive a \$3 million loan from DEQ as pass-through agent for construction of sewer lines in the East Burnside Light Rail Corridor. ORS 268.310(1), ORS 268.300(1) and (2), ORS 268.330(1), ORS 268.350.

AJ:ef