

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 04-3433
OPERATING OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT) Introduced by Councilor Brian Newman
REGARDING MAINTENANCE AND FUNDING FOR)
THE WILLAMETTE SHORE LINE RIGHT-OF-WAY)

WHEREAS, in June 1988, Metro, TriMet, ODOT, the City of Portland, the City of Lake Oswego, Multnomah County and Clackamas County (the Consortium) entered into an Intergovernmental Agreement to Purchase the Jefferson Street Rail Line (also known as the Willamette Shore Line) for the purpose of preserving it for future rail transit use; and

WHEREAS, in November 1994, the parties of the Consortium entered into and Intergovernmental Agreement (IGA) for the management of the Willamette Shore Line right-of-way (Resolution No. 94-1868 For the purpose of adopting an Intergovernmental Agreement for management of the Willamette Shore Line Right of Way, January 1994.); and

WHEREAS, the Management IGA formally established the Consortium of Local Governments to manage the right-of-way, established TriMet as the overall manager of the right of way, and designated Lake Oswego as the responsible party for operations and maintenance of the right-of-way; and

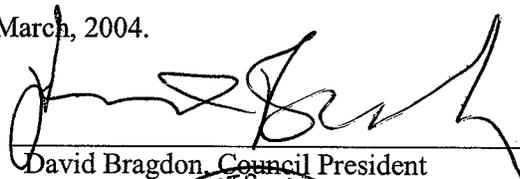
WHEREAS, the current structure of the Consortium requires the approval of all Consortium members for all expenditures relating to the right-of-way; and

WHEREAS, the parties desire to supplement the Purchase IGA and the Management IGA to provide a mechanism to simplify the approval process so that authority is designated to specific Consortium members for expenditures related to specific purposes; and

WHEREAS, staff has drafted an IGA regarding maintenance and funding for the Willamette Shore Line right-of-way (Exhibit A); and the members of the Consortium met in October 2003 and recommended adoption of the draft IGA to the member jurisdictions and agencies; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into an Intergovernmental Agreement (as identified in Exhibit A) for the maintenance and funding of the Willamette Shore Line right-of-way.

ADOPTED by the Metro Council this 11th day of March, 2004.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



**INTERGOVERNMENTAL AGREEMENT
BETWEEN MEMBERS OF WILLAMETTE SHORE CONSORTIUM
REGARDING MAINTENANCE AND FUNDING FOR WILLAMETTE SHORE
LINE RIGHT-OF-WAY**

This Intergovernmental Agreement ("Agreement") is made and entered into between the City of Portland, Oregon ("Portland"); METRO ("Metro"); the City of Lake Oswego, Oregon ("Lake Oswego"); Multnomah County, Oregon ("Multnomah"); Clackamas County, Oregon ("Clackamas"); the Tri-County Metropolitan Transportation District of Oregon ("TriMet"); and the Oregon Department of Transportation ("ODOT") (collectively, the "Parties"), all acting in their capacities as members of the Willamette Shore Line Consortium. (the "Consortium").

RECITALS

- A. The Parties are authorized to enter into this Agreement pursuant to ORS 190.110.
- B. In June 1988, Portland, Metro, Lake Oswego, Multnomah and Clackamas (the "Governmental Bodies") entered into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line for the purpose of preserving the Jefferson Street Rail Line, also known as the Willamette Shore Trolley Line (the "Right-of-Way") for public rail mass transit use (the "Purchase IGA").
- C. Pursuant to the Purchase IGA, the Governmental Bodies have designated Portland as the holder of title to the Right-of-Way, in its capacity as a representative of the Governmental Bodies.
- D. In November 1994, the Governmental Bodies and Tri-Met entered into an Intergovernmental Agreement for the Management of the Willamette Shore Line Right-of-Way (the "Management IGA"). Pursuant to the Management IGA, the Consortium, comprised of the Governmental Bodies and TriMet, was established for the overall management of Right-of-Way.
- E. Pursuant to the Management IGA, the Consortium has designated Lake Oswego as the party responsible for current operation and maintenance of the Right-of-Way, consistent with the June 1990 Lease Agreement for the Jefferson Street Branch Rail Line Corridor between Lake Oswego and Portland.
- F. With the exception of issues relating to operation and maintenance of the Right-of-Way (for which Lake Oswego has been delegated authority to act), the current structure of the Consortium requires the approval of all Consortium members for all expenditures relating to the Right-of-Way.
- G. The Parties desire to supplement and amend the Purchase IGA and the Management IGA, and to provide a mechanism to simplify the approval process, so that authority is delegated to specific Consortium members for expenditures related to specific purposes, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. Work Program and Budget.

a. Annually, the Consortium will adopt a Work Program and Budget related to maintenance and/or improvement of the Right-of-Way. The Budget will establish the amount of each party's annual contribution for maintenance, on a fiscal year basis. The Work Program and Budget shall describe projects to be completed, and shall include an estimated budget for each project.

b. The Consortium shall designate a Project Manager for each maintenance and/or improvement project. The Project Manager shall be vested with authority to make individual expenditures for each project consistent with the budget adopted by the Consortium. For expenditures in excess of the budgeted amount, the Project Manager will need to obtain prior written approval of each member of the Consortium.

c. Consistent with the Management IGA, Lake Oswego shall continue to be the party responsible for maintenance of the Right-of-Way, and shall be the Project Manager for maintenance projects.

d. The Consortium hereby designates TriMet as the Project Manager for capital improvement projects and as the Right-of-Way agent.

2. Oswego Obligations: Operation and Maintenance of Right-of-Way. Lake Oswego shall:

a. Track and dispense all funds budgeted for maintenance of the Right-of-Way ("Maintenance Funds"). Maintenance Funds shall include contributions from the Consortium members, proceeds from real property agreements with third parties, and all other local funds budgeted for maintenance of the Right-of-Way, and shall be deposited into and disbursed from Lake Oswego's "Trolley Fund". Lake Oswego shall make records concerning Maintenance Funds available to Consortium members upon request.

b. Conduct operation and maintenance activities in accordance with the Work Programs and Budgets annually adopted by the Consortium. In order to perform this obligation, Lake Oswego shall have the authority to determine whether operation and maintenance activities shall be performed with its own forces, by the operator of the Willamette Shore Trolley (the "Trolley Operator") (currently the Oregon Electric Railway Historic Society ("OERHS")), or by a contractor selected by Lake Oswego.

c. Bill the Trolley Fund for maintenance expenditures, consistent with the Work Programs and Budgets annually adopted by the Consortium.

d. Bill the Consortium members as provided in the budget for each member's contribution for maintenance, on a fiscal year basis.

e. On behalf of the Consortium, negotiate and execute third party agreements relating to operation of the Willamette Shore Trolley and maintenance of the Right-of-Way.

f. Make periodic progress and financial reports to the members of the Consortium.

3. TriMet Obligations: Capital Improvements. In its capacity as Project Manager for Capital Improvement projects, TriMet shall:

a. File grant application(s) with the Federal Transit Administration ("FTA") for federal grant assistance for capital improvements to the Right-of-Way, and be the FTA grantee. All parties to this Agreement shall cooperate in providing information on a timely basis as is required for any grant application and/or required to provide responses to inquiries from FTA or any other proposed grantor. Notwithstanding the Parties' anticipation that grant application(s) shall be filed with the FTA, nothing in this Agreement shall preclude TriMet from applying for any other federal or state of Oregon grant assistance for funding capital improvements to the Right-of-Way.

b. Conduct capital improvements in accordance with the Work Programs and Budgets annually adopted by the Consortium, including negotiation and execution of appropriate contracts.

c. Track and dispense grant and local match funds by:

- i. First utilizing its own local fund contribution in matching federal funds on capital improvement projects; and
- ii. In the event a Work Program and Budget adopted by the Consortium calls for the contribution of local funds by other members of the Consortium, billing the Trolley Fund for such funds.

d. Make periodic progress and financial reports to the members of the Consortium.

4. Tri-Met Obligations: Right-of-Way Agent. In order to fully effectuate TriMet's ability to act as Right-of-Way Agent for the Consortium, Portland hereby agrees that TriMet shall be substituted as holder of title to the Right-of-Way for the benefit of the Consortium. In its capacity as Right-of-Way Agent, TriMet shall:

a. Act as the single point of contact within the Consortium for all issues involving encroachments into the Right-of-Way, and work with third parties to resolve issues involving such encroachments.

b. On behalf of the Consortium, negotiate and execute real property agreements relating to the Right-of-Way.

c. Work with local jurisdictions concerning public improvement projects that may impact the Right-of-Way.

d. Make periodic reports to the members of the Consortium.

5. General Provisions.

a. Term of Agreement: The term of this Agreement shall be for ten (10) years, commencing July 1, 2003, and may be renewed for a like term upon the approval of each of the Parties hereto.

b. No Third Party Beneficiaries: The Parties are the only parties to this Agreement, and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise, to any third party unless such third party is expressly described herein, or in a modification or amendment to the Agreement, and such third party is intended by the parties hereto to be a beneficiary of this Agreement or of such modification or amendment to this Agreement.

c. Notices: All notices and communications under this Agreement shall be directed to the representatives designated below:

For issues relating to Operation and Maintenance of the Right-of-Way:

Tom Tushner, PE
Assistant City Engineer
City of Lake Oswego
P.O. Box 369
Lake Oswego, Oregon 97034

For issues relating to Capital Improvements:

Amy Fandrich
TriMet
Capital Projects and Facilities
710 NE Holladay Street
Portland, Oregon 97232

For issues relating to Right-of-Way (other than operation and maintenance):

John Baker
TriMet
Capital Projects and Facilities
710 NE Holladay Street
Portland, Oregon 97232

For All Other Issues:

For Lake Oswego:

Tom Tushner, PE
Assistant City Engineer
City of Lake Oswego
P.O. Box 369
Lake Oswego, Oregon 97034

For TriMet:

Neil McFarlane
Executive Director, Capital Projects & Facilities
TriMet
710 NE Holladay Street
Portland, Oregon 97232

For Portland:

Vicky L. Diede
Office of Transportation
1120 SW 5th Avenue, Suite 800
Portland, Oregon 97204

For Metro:

Sharon Kelly
Transportation Planning Supervisor
Metro
600 NE Grand Ave.
Portland, OR 97232-2736

For Clackamas:

Cherie McGinnis
Staff Assistant
Clackamas County Board of Commissioners
906 Main Street
Oregon City, OR 97045

For Multnomah:

Karen Schilling
Planning Manager
Multnomah County
1600 SE 190th Avenue
Portland, OR 97233

For ODOT:

Ralph Drewfs
Light Rail Engineer
ODOT Region 1
123 NW Flanders
Portland, OR 97209

Any notices or communications hereunder shall be in writing and deemed effective if deposited in U.S. Mail (certified return receipt), hand delivered, or transmitted by facsimile with successful confirmation. Any Party may change its notice contact and/or address by giving prior written notice of such change to all other Parties at their notice addresses.

d. Integration: This document constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind.

e. Termination and Amendment: This Agreement may be terminated or amended by mutual written agreement of all Parties.

f. Waiver and Amendment: No waiver of any portion of this Agreement and no amendment, modification or alteration of this Agreement shall be effective unless in writing and signed by the authorized representative of all Parties

g. Interpretation of Agreement: The Parties agree that they jointly contributed to the drafting of this Agreement, and that in the event of any ambiguity, the terms of this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement. Except as modified herein, all other agreements between the parties on the subject matter hereof remain in full force and effect. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement and no waiver by a Party of any right under this Agreement will prejudice the waiving Party's exercise of the right in the future.

h. Binding Effect: This Agreement shall be binding and inure to the benefit of each of the Parties' successors and assigns. No Party may assign its obligations under this Agreement without the express written consent of the other Parties.

i. Laws and Regulations: The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.

j. Indemnification: To the extent permitted by the Oregon Constitution and within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall indemnify and defend the others and their officers, employees, agents and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from its actions under this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.

k. Dispute Resolution: The Parties shall negotiate in good faith to resolve any dispute arising under or relating to this Agreement. If the Parties are not able to resolve a dispute within 30 days after such dispute has arisen, they shall submit the matter to mediation, each Party to pay its own costs and all Parties to share equally in mediation fees and costs. In the event the dispute is not resolved in mediation, the Parties shall submit the matter to binding arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the Parties and subject to appeal only as otherwise provided in Oregon law. The Parties shall each pay their own costs, but will share equally in fees and costs of the arbitration and/or arbitrator service. The Parties shall continue in the performance of their respective obligations under this Agreement notwithstanding any dispute. This dispute resolution procedure may be modified by mutual agreement of the Parties.

l. Choice of Law; Venue: This Agreement, and all rights, obligations and disputes arising out of this Agreement, shall be governed by Oregon law. Venue for all mediation and arbitration shall be in Multnomah County, Oregon.

m. Counterparts: This agreement may be signed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this agreement effective for the dates noted herein.

CITY OF PORTLAND, OREGON

Approved as to Form:

By: _____
Title: _____

Chief Deputy City Attorney for the
City of Portland

CITY OF LAKE OSWEGO, OREGON

Approved as to Form:

By: _____
Title: _____

City Attorney

MULTNOMAH COUNTY, OREGON

Approved as to Form:

By: _____
Title: _____

County Counsel, Multnomah County

CLACKAMAS COUNTY, OREGON

Approved as to Form:

By: _____
Title: _____

County Counsel, Clackamas County

METRO

Approved as to Form:

By: _____
Title: _____

Metro General Counsel

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON

Approved as to Form:

By: _____
Title: _____

Deputy General Counsel, Tri-Met

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3433, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT REGARDING MAINTENANCE AND FUNDING FOR THE WILLAMETTE SHORE LINE RIGHT-OF-WAY

Date: March 3, 2004

Prepared by: Sharon Kelly

BACKGROUND

The Willamette Shore Line right-of-way was purchased from the Southern Pacific Railroad in 1988 by a consortium of local jurisdictions and agencies (ODOT, Tri-Met, Metro, Portland, Lake Oswego, Clackamas County and Multnomah County). The right-of-way was purchased to prevent abandonment of the line and to preserve it for future passenger rail service. The title to the right-of-way is held by the City of Portland on behalf of the Consortium. Since 1990 the City of Lake Oswego has leased the right-of-way from Portland for the purpose of operating a trolley service on the line. Lake Oswego has contracted with a private non-profit operator (the Oregon Electric Railway Historical Society) to run the trolley service (Willamette Shore Trolley). Continuing the trolley operation provides an important reminder to the community that the rail line exists and preserves use rights in the portion that is owned for rail easement purposes.

The corridor is nearly seven miles long with a southern terminus in Lake Oswego and a northern terminus in Portland at RiverPlace. 4.6 miles of the right-of-way is owned through fee title, and the remainder is through a railroad easement. For the portion of the right-of-way that is owned through an easement, the easement is for rail purposes. Interest has been expressed in combining a bicycle/pedestrian path with the rail project in the corridor.

The current organizational structure for the Consortium includes each of the parties assuming different roles. For example, Metro chairs the Consortium and calls meetings as necessary, the City of Portland holds the title on behalf of the Consortium, TriMet acts as the right-of-way manager and manages issues related to the right-of-way, and Lake Oswego has been delegated authority related to operations of the Trolley and maintenance of the right-of-way. The current organizational structure requires the approval of all of the members of the Consortium for all expenditures related to the Right-of-way. The proposed IGA would simplify the process for expenditures for management of the right-of-way.

The resolution would authorize the Chief Operating Officer to execute the IGA (Attachment A to Resolution No 04-3433) with the other members of the Consortium.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition to the proposed IGA.
2. **Legal Antecedents:**
 - Resolution No. 86-715 (December 1986) For the purpose of entering into and Intergovernmental Agreement and extending funds to preserve the Southern Pacific Right-of-way (Jefferson Street Branch) between Portland and Lake Oswego. (Intergovernmental Agreement for an option to purchase and one year lease of the Jefferson Street Rail Line from Southern Pacific Transportation Company).

- Resolution No. 87-834 (December 1987) For the purpose of endorsing the recommendations of the Jefferson Street Project's Policy Advisory Committee and Committing Funds to Purchase of the rail line (Intergovernmental Operations Agreement that Authorized Portland to enter into agreement with Oregon Electric Historical Society for 7/87 to 12/87).
- Resolution No. 88-954 (July 1988) for the purpose of entering into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line.
- June 1990 – Lease Agreement for the Jefferson Street Branch Rail Line Corridor (between Portland and Lake Oswego).
- Resolution No. 94-1868 (January 1994) For the purpose of adopting an Intergovernmental Agreement for management of the Willamette Shore Line Right of Way.
- Resolution No. 03-3375 (October 2003) For the purpose of authorizing an Intergovernmental Agreement with the City of Portland to construct a sewer line within a portion of the Willamette Shore Line Right-of-way.

3. Anticipated Effects: The purpose of this IGA is to make the management of the Willamette Shore Line right-of-way less cumbersome for the jurisdictions and agencies that make up the Consortium of owners. Currently an Intergovernmental Agreement must be prepared and each of the Jurisdictional bodies must adopt a formal resolution to authorize expenditures. This can be a time consuming and costly process. The proposed IGA will expedite the process by authorizing TriMet (as the right-of-way agent for the Consortium) to protect the right-of-way, and Lake Oswego (as the operations and maintenance agent) to receive funds from the other Consortium member jurisdictions and use those funds to manage the operations of the Trolley and do the necessary maintenance.

4. Budget Impacts: There is no budget impact to Metro from this IGA. The IGA will allow for money to be transferred between members of the Consortium such as between Portland, Lake Oswego and TriMet for maintenance of the right-of-way.

RECOMMENDED ACTION

Approval of Resolution No. 04-3433