

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 00-18

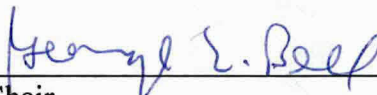
Authorizing the General Manager to sign a Memorandum of Understanding on behalf of MERC with the Tri-County Metropolitan Transportation District.

The Metropolitan Exposition-Recreation Commission finds:

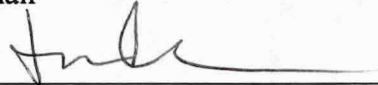
1. The Commission manages the Portland Metropolitan Exposition Center on behalf of Metro.
2. The Metro Council Transportation Planning Committee approved Metro Resolution No. 00-2948 on May 16, 2000, authorizing the Metro Executive Officer to enter into a Memorandum of Understanding with Tri-Met on a light rail station at Expo.
3. MERC and Metro staff have negotiated an acceptable agreement with Tri-Met which provides that there shall be fair compensation for all land used by Tri-Met for the light rail station, based on the economic value of the land to MERC and Metro. Tri-Met has also agreed to contribute \$600,000 toward the construction of a covered pedestrian walkway from the light rail station to Expo.
4. It is desirable for the Commission to ratify the Memorandum of Understanding so that Tri-Met will have all necessary assurances of availability of a site for the light rail station so that further progress on the funding arrangements for light rail can be made.
5. The MOU is not a land sale agreement. Such an agreement is subject to further negotiations and will be brought back to MERC and the Metro Council for further consideration and approval.

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission authorizes the General Manager to sign the Memorandum of Understanding attached as Exhibit A.

Passed by the Commission on May 17, 2000.



Chair



Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 

Kathleen Pool, Senior Assistant Counsel

MEMORANDUM OF UNDERSTANDING
Between
METRO
and
The Tri County Metropolitan Transportation District
(For Real Estate Only)

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made between Metro, the Metropolitan-Exposition and Recreation Commission (MERC) and the Tri County Metropolitan Transportation District of Oregon (Tri Met).

RECITALS:

Tri-Met owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail line composed of the commonly known segments of Eastside/Banfield and Westside/Hillsboro lines.

The Regional Transportation Plan for the Portland metropolitan region and the Transportation Element of the City of Portland's Comprehensive Plan each anticipate the development of an additional light rail line commonly known as the South/North line.

In July of 1998, Metro adopted the Locally Preferred Strategy (LPS) and the Land Use Final Order (LUFO) for the South/North light rail project as a project alignment from Hayden Island to Clackamas Town Center.

In June of 1999, the Metro Council, as an amendment to the LPS for the South-North Light Rail LPS, adopted a Resolution approving the alignment for the North Interstate Light Rail Project.

In October of 1999, with the endorsement of the City of Portland and ODOT, Metro approved a modification to the Land Use Final Order (LUFO) showing the North Interstate Avenue alignment for the project (Project), which alignment showed the use of certain Metro property.

As part of the Project, Tri Met wishes to use parcels or portions of property currently owned or under jurisdiction and control of Metro, said property being under the day to day oversight and management of MERC . Said parcels or portions of property are

identified in the drawings attached to this MOU, Drawing #CXP103, attached and marked Attachment 1. At this point, the Project is in final design and the specific property and property interests needed will be identified during the final design process.

The Parties anticipate that Tri-Met will be entering into a Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA) as the vehicle through which the Project will receive the federal funding component of the Project. As the grant recipient, Tri-Met will be the entity responsible for performing, or contracting for, the necessary right of way for the project work.

Tri-Met and Metro are authorized to enter into this Memorandum of Understanding pursuant to the provisions of ORS 190.010.

This Agreement is for the purpose of memorializing the Parties' commitment regarding the property and property interests necessary for the project.

NOW THEREFORE, the parties understand that:

Property or Property Interests

Metro intends to transfer or allow the fixed term or permanent use of certain portions of its property for purposes of the Project, subject to the approval of the final plans and specifications showing the specific impact to and interests needed in the property, negotiation of the value to be paid for the property or property interests, and the terms of a written conveyance document or documents. The areas of property needed for the Project shall be collectively referred to as the "Property".

The Property is generally shown on Attachment 1. The portion of the Property highlighted in yellow is needed for the permanent use of trackway, station improvements, electrical substation, electrical catenary and supporting poles, signals and communication facilities, bus access lane and kiss and ride areas (collectively "Permanent Use Area"). The portion of the Property the boundaries of which are highlighted in orange is the representative portion needed for a park and ride lot consisting of approximately 300 spaces.

The parties understand that at the time of this MOU, the design of the Project has not been completed and the areas or boundaries drawn on the attached Exhibit are preliminary, including the station location. Upon completion of the final design

of the Project, Tri-Met will cause to be prepared a boundary survey and legal description for the Property. Metro will either transfer the Property in fee or grant such easements or other rights as are necessary for Tri-Met's use and operation, which rights will be subject to negotiation and agreement of the parties. Such interests granted shall be sufficient to provide satisfactory continuing control as is necessary to comply with the requirements of Federal law as administered by the Federal Transit Administration.

Valuation of Property

The parties understand that the value of the property or property interests needed by Tri-Met for the Project has not been determined at the time of this MOU. However, the parties have arrived at the conceptual basis on which the just compensation for the property or property interests will be determined. For purposes of the valuation process, Metro and MERC shall be deemed to be one party and their understandings and undertakings provided in this valuation section shall be jointly carried out as if they were one party. The agreed conceptual approach is that Metro/MERC will be compensated for the use of the underlying land used for the Permanent Use Area, the valuation of which is more particularly described below and that Metro will continue to own the land that will be used for the park and ride lot.

The underlying land values of the areas of real property needed for the Permanent Use Area will be appraised by an appraiser selected by the parties. The appraiser shall be licensed in the state of Oregon and experienced in industrial, recreational and special use property and familiar with the requirements of the Uniform Relocation Assistance and Property Acquisition Act of 1970, as amended. The parties shall collectively appoint the appraiser from a list of appraisers provided by each party and shall share equally in the fees for and costs of the appraisal. In the event the parties cannot agree on the appraiser, the parties may apply to the Presiding Judge of the Multnomah County Circuit Court for appointment of such an appraiser from the lists provided by each party which shall be the same lists initially prepared by the parties. Such appointment shall not be subject to appeal, unless the parties can by clear and convincing evidence demonstrate that fraud or corruption has been involved in the appointment of such appraiser.

Once the appraiser has been selected or appointed, the parties shall within 20 calendar days of the selection or appointment, develop joint appraisal instructions for the appraiser. The appraisal instructions shall include, at a minimum, the following provisions: that the property will be valued on a cost approach and an income

approach, that the income approach shall consider the lost revenues of the parking spaces to be eliminated as a result of the Project, and that the appraisal is to be completed not later than 60 days after the award of the contract for the appraisal. The parties agree to negotiate the valuation in good faith. If the parties cannot, in good faith, agree on the joint instructions or the appraised valuation, the matter shall be resolved under the Dispute Resolution provisions of this MOU.

The parties also understand that the area identified for the park and ride lot will continue to be owned by Metro. The conveyance shall either be a fixed term easement or lease which provides for a joint use facility, the term of which is yet to be negotiated but will not be for a period less than 15 years. The parties understand that the specific area needed for the park and ride is yet to be determined through final design. The parties will negotiate in good faith on the valuation of this parcel. The process of establishing just compensation for the park and ride lot shall be the same as provided above for the Permanent Use Area.

The parties understand that a covered, unenclosed walkway is an important aspect of maintaining the transit rider connection to the Expo Center Pavilion. Such walkway is still under design and that the costs have not yet been determined. MERC's architect shall be designated as the lead designer for the walkway but shall be instructed that the goal of the parties is to design a functional, minimum structure capable of providing overhead protection to people from the weather. It is the intent of Tri-Met, Metro and MERC that the design criteria for the walkway include a budget of \$600,000. The parties shall also coordinate to provide appropriate art work along the covered walkway. Tri-Met will reimburse MERC for the actual construction costs of the walkway which are currently estimated at \$600,000. In the event that the construction costs of the walkway are estimated during final design to exceed \$600,000, or the actual construction costs exceed \$600,000, the parties will negotiate in good faith for a reasonable cost allocation of such excess costs. In the event the parties decide that Tri-Met's contractor is to install or construct the walkway, MERC agrees to issue a license or permit to allow Tri-Met and its contractor access to the site for purposes of such installation or construction.

It is the intent of the parties that any revenues derived by Metro/MERC from the conveyance of the property or property interests under this MOU or the eventual conveyance documents be used for capital projects at the MERC facility.

Construction of Tri-Met's Facilities

The parties understand that Tri-Met will be constructing trackway, station facilities, an electrical substation, and pedestrian access pathways on the portion of the property identified for permanent use for the Project. Metro and MERC have reviewed the preliminary plans for the project, the drawings of which have been published in the drawing set for the Project dated April 5, 2000. During the final design process, Tri-Met agrees to submit its Project plans and drawings to MERC for review and comment at the 90% point of completion and the 100% point of completion. No construction will commence without a written approval of MERC which will be contained in a construction permit or license. The parties understand and agree that to maintain the Project schedule construction may need to commence prior to the final conveyance documents being prepared.

Operation and Maintenance of the ROW

To the extent that less than fee title is conveyed for Tri-Met's use of the Property, Tri-Met and Metro/MERC will negotiate in good faith for their respective maintenance obligations. It is anticipated by the parties that Tri-Met will maintain all its improvements that are needed for operation of its light rail system and supporting facilities such as substations and station areas. It is anticipated that MERC will maintain all other areas, including the joint use areas such as pedestrian walkways. Upon completion of the final design, the parties agree to negotiate an Operation and Maintenance agreement which will include the rights and responsibilities of the parties for their respective facilities and the joint use park and ride lot.

Insurance

The parties understand that Tri-Met will maintain a self insurance program or a commercial general policy of insurance, naming Metro and MERC as additional named insureds, to provide insurance coverage over its and its contractor's activities on the Property in an amount not less than the Oregon Tort Claims limits for public agencies. To the extent provided by the Oregon Constitution and Statutes each party agrees to indemnify and hold harmless the other party for damages, losses or costs incurred as a result of damage caused by the other party's activities on or near the Property.

Dispute Resolution and Remedies

In the event that either party has a claim or dispute under this MOU, that party will notify the other party's representative of such claim. The matter shall be first presented to Management representatives of the parties at the Executive Director or Director level for resolution, provided that Metro and MERC shall designate one representative. In the event that the management representatives cannot resolve the dispute, the matter shall be submitted to the Executive representatives for each party, that being the General Manager of Tri-Met and the Executive Officer of Metro for resolution. In the event that the parties cannot resolve the issue at the Executive representative level, the parties shall have the right to exercise any and all remedies available under the law or in equity.

Assignment

The rights and responsibilities of the parties provided in this MOU are personal to the parties and shall not be assigned or delegated without the prior written consent of the other party, which consent shall be unreasonably withheld or delayed. The parties understand that the construction obligations will be carried out through contracts and/or subcontracts but the obligation for performance shall remain with the party to this agreement.

Legal Effect

This MOU is intended to be a binding agreement and to have legal effect between the parties according to its terms. The provisions of this MOU, to the extent not modified by the parties by mutual agreement, shall be included in the document or documents transferring the applicable Property or property interests.

Effective Date

This MOU shall be effective as of the date of the signature of the party last to sign.

IN WITNESS HEREOF, the parties have signed this MOU on the dates reflected next to

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their signatures.

METRO

**TRI COUNTY METROPOLITAN
TRANSPORTATION DISTRICT
OF OREGON**

By: _____

By: _____

Date: _____

Date: _____

**METROPOLITAN-EXPOSITION AND
RECREATION COMMISSION**

By _____

Date: _____

APPROVED FOR LEGAL SUFFICIENCY:

By: _____
Metro Counsel

Date: _____

By: _____
Tri Met Counsel

Date: _____

By *Kathleen Rose*
MERC Counsel

STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH TRI-MET REGARDING THE RIGHT-OF-WAY FOR THE INTERSTATE MAX PROJECT AND NEGOTIATE A REAL ESTATE TRANSFER AGREEMENT.

Date: May 9, 2000

Presented by: Richard Brandman

PROPOSED ACTION

This action would authorize the Executive Officer to enter into a Memorandum of Understanding with Tri-Met regarding the use of right-of-way owned by Metro for the Interstate Max Project and negotiate a Real Estate Transfer Agreement.

EXISTING LAW

Metro Code Section 2.14 Facility-Related Parking Policy and Regulations notes that parking lots and structures used for other than MERC/Metro employees or visitors are allowed if they are operated in an entrepreneurial manner that generates revenues for Metro and its facilities. Agreement for the compensation for areas currently used by Expo for parking will be a component of a future Real Estate Transfer agreement between the affected parties.

FACTUAL BACKGROUND AND ANALYSIS

Tri-Met has been required by the Federal Transit Administration to demonstrate continuing control over property on which the Interstate Max Project will be constructed and operated. The Interstate Max Project includes a light rail station, light rail alignment, bus shelters, bus roadway and park-and-ride spaces on Expo Center property that is currently owned by Metro and operated by the Metropolitan Exposition-Recreation Commission (MERC).

MERC, Metro and Tri-Met staff have prepared a draft Memorandum of Understanding (MOU) to meet the Federal Transit Administration requirements. The attached Memorandum of Understanding indicates that Metro, MERC and Tri-Met agree in principal to allow the project to be constructed and operated on Expo Property and that Tri-Met, MERC and Metro will develop a mutually agreed upon compensation package for the valuation of the land and loss of parking. This compensation package is yet to be determined and will be detailed in a future Real Estate Transfer Agreement between the agencies. The MOU also specifies a mediation process that will be adhered to in the event that the parties can not mutually agree to fair compensation.

The Memorandum of Understanding notes that Tri-Met will pay for the construction of a covered walkway, which is currently estimated to cost \$600,000, that will connect the light

rail station to the building located on the west side of the parking lot, and include appropriate art work. The parties agree to negotiate in good faith for any costs that exceed \$600,000.

BUDGET IMPACT

No budgetary impacts are anticipated as a result of this MOU; however, the related Real Estate Transfer Agreement between Tri-Met and Metro would be expected to raise capital for Metro and MERC. Details of the compensation package will be a component of future Real Estate Transfer Agreement that will be adopted by the Metro Council at a later date.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2948.

RB:DU:rmb

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