

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES
UNDER CONSTRUCTION EXCISE TAX GRANT
INTERGOVERNMENTAL AGREEMENT

From: Washington County, Oregon
To: City of Tigard, Oregon

WHEREAS, Metro and Washington County (County) have entered into an IGA entitled, *Construction Excise Tax Grant Intergovernmental Agreement* (Agreement), and County and the City of Tigard wish to enter into this Assignment of Rights and Delegations (Assignment) under the Agreement; and

WHEREAS, under the Agreement, Metro grants excise tax funds to Washington County to reimburse the County for the cost of local comprehensive land use planning efforts required for territory that is brought into the Urban Growth Boundary (UGB); and

WHEREAS, Exhibit A to the Agreement grants excise tax funds to Washington County to reimburse the County for land use planning costs incurred in the West Bull Mountain area, which is a territory of approximately 500 acres that Metro brought into the UGB in 2002 with the support of Metro, City of Tigard (City), and Washington County; and

WHEREAS, In 2003, City, County, Clean Water Services, and other providers of urban services, entered into an agreement called the Tigard Urban Service Agreement (“TUSA”) that designated City as appropriate provider of services in the Tigard urban service area, except for those services that are to be provided by other agencies as further set forth in the TUSA; and

WHEREAS, On November 23, 2010, County adopted the West Bull Mountain Concept Plan Resolution and Order (Concept Plan) that established general land use strategies for how the West Bull Mountain Area should become a future urban community. Two areas of the West Bull Mountain Concept Plan are known as Area 63 and Area 64/River Terrace, which were already inside the UGB. A third component of the West Bull Mountain Concept Plan is known as the “Rural Element,” which is not at present inside the UGB except for a subarea of about 50 acres referred to herein as Roy Rogers West, which Metro brought into the UGB on October 11, 2011. These premises are illustrated on the map attached to this Assignment as Exhibit A; and

WHEREAS, There is a need to refine the Concept Plan to provide detailed land use, public infrastructure, governance, and financial planning policies to guide urban development of the concept planned area; and

WHEREAS, For purposes of the Agreement and this Assignment, the refinement of the Concept Plan will be known as the Community Plan. City and County (collectively “Parties”) intend to ask Metro to approve the Community Plan and coordinate approval with the Department of Land Conservation and Development as consistent with the Statewide Planning Goals in the affected territory; and

WHEREAS, under the Agreement, Washington County currently must create the Community Plan for the West Bull Mountain area; and

WHEREAS, a formal assignment is necessary for City to satisfy County’s planning tasks under the Agreement;

NOW, THEREFORE, the Parties agree to the following:

1. Assignment from County to City: County assigns to City, and City accepts, the task to study and adapt the Concept Plan to become a Community Plan for River Terrace, Area 63, Roy Rogers West, and the balance of the Rural Element that satisfies County’s obligation to supply a deliverable Plan under Exhibit A of the Agreement. This assignment is subject to the following conditions subsequent:

- a. County will provide staff resources and services in support of the project as follows:
 - i. Collaborate with City staff to refine the West Bull Mountain Concept Plan into the river Terrace Community Plan. This will involve providing review and comment of refined land use designations, natural resource areas and implementing code standards. It is anticipated the County’s involvement in the land use/natural resource refinement phase shall not involve more than 150 staff hours.
 - ii. Collaborate with City staff to refine the West Bull Mountain Transportation Plan. The transportation element will be limited to 200 hours of County staff time to 1) test the performance of the proposed local street system; 2) propose solutions to any deficiencies in the local street system; 3) identify proportional impacts of River Terrace development on the arterial and collector road system particularly in Tigard and on Highway 99W; 4) work with the City to propose funding mechanisms to address these impacts.
 - iii. Participate on a City Technical Advisory Committee to assist in development of the Community Plan.
 - iv. Provide information to the City pertaining to its citizen engagement effort for the west Bull Mountain Community Plan to assist citizen information and involvement for the Community Plan.
- b. Metro agrees to pay City under this Assignment document; and
- c. County will grant City access to studies, correspondence, professional reports, exhibits, and all other documents that comprise the file of materials developed in connection with County’s creation of the Concept Plan.

2. Assignment of right to grant money: County assigns to City, and City accepts, the right to claim the remaining grant money under the Agreement, which sum is estimated at approximately \$134,000. Metro has acknowledged that the County will assign its rights to this grant money to the City pursuant to this agreement as demonstrated in Attachment “A”.

3. Effect of County nonperformance: County’s failure to supply the document access and in-kind services described in Section 1 does not:

- a. Invalidate City's right to submit Deliverables to Metro and claim the remaining grant money; or
 - b. Create in City a right to claim money damages against County on any legal or equitable theory.
4. Administration of this Assignment document:
- a. This Assignment becomes effective upon execution by both parties and remains in effect until it is cancelled by mutual agreement of the Parties, or the grant money has been fully claimed and received by City.
 - b. This Agreement may be amended by the Parties' written agreement.
5. This Agreement may be terminated, with cause at any time if the City fails to perform any of the other provisions of this Agreement as determined by Metro, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the County, fails to correct such failures within sixty (60) days or other such period as the County may authorize.
6. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
7. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
8. Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
9. This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
10. Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.

Exhibit D

- 11. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

- 12. This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

CITY OF TIGARD, an Oregon Municipal Corporation

WASHINGTON COUNTY, a Political Subdivision of the State of Oregon

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Signature

Signature

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Attachment A
referred to in
Exhibit D

CONSTRUCTION EXCISE TAX GRANT INTERGOVERNMENTAL AGREEMENT Metro – Washington County West Bull Mountain Project

This Construction Excise Tax Grant Intergovernmental Agreement (“CET Grant IGA”) is effective on the last date of signature below, and is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 Northeast Grand Avenue, Portland, OR, 97232-2736 (“Metro”), and Washington County (“County”), located at 155 N. First Ave., Hillsboro, OR 97124, collectively referred to as “Parties.”

WHEREAS, Metro has established a Construction Excise Tax (“CET”) which imposes an excise tax throughout the Metro regional jurisdiction to fund local comprehensive planning needs associated with new inclusions into the urban growth boundary (“UGB”) between 2002 and 2005;

WHEREAS, the CET is collected by local jurisdictions when issuing building permits, and the CET collected is remitted to Metro by the local collecting jurisdictions via Construction Excise Tax Intergovernmental Agreements to Collect and Remit Tax (“CET Collection IGAs”) entered into separately between Metro and the local collecting jurisdictions;

WHEREAS, in creating the purpose and amount of the CET, Metro worked with local jurisdictions, and received their estimates as to the total dollar amounts needed by the local jurisdictions to fund their local comprehensive planning needs associated with new inclusions into the UGB between 2002 and 2005;

WHEREAS, the CET will expire when the total amount of CET collected by all jurisdictions and remitted to Metro is \$6.3 million dollars, which is estimated to take approximately three years; and

WHEREAS, Metro will distribute 100% of the CET expected to be remitted to Metro as grants to local jurisdictions, based on CET Grant Requests submitted by local jurisdictions that set forth their expected completion of certain milestones associated with Title 11 of Metro Code Chapter 3.07, the Urban Growth Management Functional Plan; and

WHEREAS, as part of the CET process Metro has met with all of the applicable local jurisdictions regarding their local comprehensive planning funding needs associated with new inclusions into the urban growth boundary between 2002 and 2005, and the total estimates recently provided by the local jurisdictions greatly exceed the total estimates upon which the CET was based; and

WHEREAS, the CET Administrative Rules set forth certain eligible expenses for CET Grant consideration, and the rules also provide that if the total Grant Requests from participating local governments exceed the total CET expected revenues, Metro shall first consider awarding funds for eligible direct costs, which will have priority for funding over indirect costs; and

WHEREAS, County has submitted a CET Grant Request to Metro, and the parties wish to set forth the funding amounts, timing, and procedures for receiving reimbursement from the CET fund for County’s planning expenditures.

NOW THEREFORE, the Parties hereto agree as follows:

1. Reimbursement by Metro. Metro shall reimburse County for approved eligible expenses, associated with County’s completion of those planning milestones, in the amounts and at the times, as set forth in Exhibit A attached hereto and incorporated herein. Payments shall be in accordance with the “payment

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procedures” set forth below.

2. County Responsibilities. County agrees that it shall take all actions in a timely and diligent manner that are required or necessary to complete and fulfill the milestones set forth in Exhibit A. County also covenants and agrees that it shall use the CET funds it receives under this Agreement only for the work approved to reach the milestones set forth in Exhibit A.

3. Eligible Expenses. As set forth in Metro Code Chapter 7.04 Administrative Rules, the following expenses shall be considered Eligible Expenses for CET Grant consideration, up to a ceiling of the reimbursable amounts set forth in Exhibit A attached hereto: (a) materials directly related to project; (b) consultants’ work on project; (c) County staff support directly related to project; and (d) overhead directly attributable to project.

4. Payment Procedures. Within 30 days after the completion of each milestone as set forth in Exhibit A, County shall submit to Metro a statement describing in reasonable detail the eligible and reimbursable work services performed pursuant to this Agreement. County will furnish Metro with any other statements or reports of expenditures as may be needed to satisfy fiscal requirements. Metro shall reimburse County for the eligible and approved reimbursable work after each milestone is reached, no later than 60 days after the date Metro receives County’s statement. County shall send the statement, and Metro shall send CET payments, to:

Metro
Attention: Ray Valone
600 NE Grand Ave.
Portland OR 997205
(503) 797-1808

Washington County DLUT
Attention: Judy Lynn
Public Services Building, Suite 350, MS 16
155 N. First Ave.
Hillsboro, OR 97124
(503) 846-3718

5. Project Records. County shall maintain all records and documentation relating to the work and tasks involved in the project as set forth in Exhibit A. County shall provide Metro with such reasonable information and documentation as Metro requires for implementation of the CET grant process. County shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement.

6. Audits, Inspections and Retention of Records. Metro and its representatives shall have full access to and the right to examine, during normal business hours and as often as they reasonably deem necessary, all County records with respect to all matters covered by this Agreement and Exhibit A, excepting privileged and other such documents that County may claim to be exempt from disclosure under ORS chapter 192. Nothing herein limits Metro’s right to challenge the withholding of any documents as permitted by law. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the project shall be retained by County and all of its contractors for three years from the later of the date of completion of the project, or expiration of the Agreement, to facilitate any audits or inspection.

7. Funding From CET Funds. Metro’s funding commitment set forth in this Agreement shall be fulfilled solely through the programming of CET funds. The parties recognize and agree that if the CET is ever held to be unenforceable or is terminated through no act or omission of Metro, that Metro shall not be liable in any way for funding the amounts described in Exhibit A.

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Exhibit A

CET Grant IGA Between Metro and Washington County West Bull Mountain Project Milestones, Due Dates, and Reimbursement Rates

Total Requested by County for New Urban Growth Area West Bull Mountain Project: \$670,500

Total Reimbursable Amount:* \$670,500**

<u>Milestone #:</u>	<u>Deliverable</u>	<u>Date Due***</u>	<u>Grant Payment</u>
1.	Execution of CET Grant IGA	x date	\$134,100
2.	Mid-point in Concept Plan development, demonstrating progress toward completion	x date + 210 days	\$134,100
3.	County's Preferred Concept Plan Alternative or Urban Growth Diagram, showing at least those elements set forth in Title 11	x date + 390 days	\$134,100
4.	County's recommended Comprehensive Plan or Comp. Plan amendment, addressing Title 11; the applicable conditions of addition in Metro ordinance for the new urban area; and applicable state laws and regulations	x date + 540 days	\$134,100
5.	County's adoption of Comprehensive Plan or Comp. Plan amendment, addressing Title 11; the applicable conditions of addition in Metro ordinance for the new urban area; and applicable state laws and regulations	x date + 660 days	\$134,100
TOTAL REIMBURSABLE AMOUNT*			\$670,500**

*The Total Reimbursable Amount is a maximum amount that will be reimbursed for Eligible Expenses as set forth in the CET Grant IGA and Metro Code Chapter 7.04 Administrative Rules.

** The CET will fund the project for the full \$670,500 for all eligible expenses. Grant funding is subject to reduction attributed to a reduction in milestone expectations, alternate grants awarded to this project or completion or reduction requests by County.

*** Due dates are intended by the parties to be hard estimates of expected milestone completion dates. If County anticipates that a due date will not be met, it shall inform Metro in writing no later than ten (10) days prior to the due date, and shall provide a revised estimated due date, and Metro and County will mutually revise the milestone due dates set forth in this Agreement.

Exhibit A referenced in Exhibit D

Beaverton

Community Planning Area

S c h o l l s F e r r y R d

River Terrace
(UGB Area 64)

R o y R o g e r s R d

Roy Rogers West

B u l l M t R d

Urban Growth Boundary
Expansion Area 63

West Bull Mt.
Concept Plan
Rural Element

Tigard

B e e f B e n d R d

