
MEMORANDUM

DATE: APRIL 20, 2013
TO: TRIP97 PARTNERSHIP
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FROM: STEVEN SIEGEL, SIEGEL CONSULTING
SUBJ: GOVERNANCE OPTIONS FOR TRIP97

1 INTRODUCTION

1.1 Background

One of the consequences of the difficulties besieging major transportation projects/programs is the emergence of multi-jurisdictional alliances or partnerships. The Trip97 Partnership ("Trip97") follows this trend. Trip97 is a cooperative effort of the Oregon Department of Transportation (ODOT), Jefferson and Deschutes Counties, and the Cities of Bend, Redmond, La Pine, and Madras to address issues surrounding Highway 97 between La Pine and Madras (the "Trip97 Corridor" or the "Corridor").

Prior to forming the partnership, the participating local governments each had transportation and land use plans to achieve their independent goals. These plans were enacted in conformance with Oregon land use laws and ODOT's rules and plans, including the Transportation Planning Rule ("TPR"). However, the result of these independent plans and rules was a series of projects along the Corridor with unaffordable aggregate price tag and local economic development initiatives that cannot be implemented without practical plan for the Corridor. The purpose of Trip97 is to identify and implement affordable transportation program that balances mobility, safety, economic development, and livability objectives along the Corridor.

Trip97 engaged the services of a multi-disciplinary consulting team, led by Kittelson & Associates (KAI), which also includes ECONorthwest (ECO) and Siegel Consulting, to assist in identifying and evaluating tools, organizational structures, funding sources, and strategies to achieve the objectives of the partnership. Previous work by the consulting team has yielded: (i) proposed performance measures to evaluate projects and programs, (ii) a preliminary identification of priority projects and programs, and (iii) a preliminary assessment of funding options. Taken together these products have laid the foundation for taking an integrated, corridor-wide approach to addressing issues in the Corridor.

1.2 Purpose of this Memorandum

This memorandum provides a preliminary comparison of the governance options available to Trip97. The term "governance" concerns the institutional structure by which Trip97 decisions are made with regard to project priorities, funding decisions, program administration, and other factors. These institutional structures incorporate the underlying legal authorities, rights, and obligations of the participating governments, and the processes for making decisions.

A wide range of governance options is available to Trip97. For example, a governance structure can be as basic as an agreement between ODOT and the participating cities and counties to cooperate with each other regarding a series of independent Trip97 project decisions (similar to what is now in place). At the other edge, it can be a new special district that supplants local decision-making with regard to corridor decisions. And, there are endless possibilities within these limits.

Within this context, this memorandum is intended to provide information on various governance structure options that can be used to develop a governance structure tailored to fit the unique issues and opportunities facing Trip97. This memorandum does not make a specific recommendation, but rather provides the technical foundation for deliberations by the Trip97 PMT and Steering Committee.

1.3 Organization of this Memorandum

This memorandum has six additional sections:

- Section 2: Framework provides a context for consideration of governance structures, including key issues to consider in determining appropriation options for Trip97. This section also introduces the framework for comparing the governance structure options outlined in Sections 3-5.
- Section 3: Intergovernmental Agreement Structure Option describes the legal parameters, a prototypical example of its application to Trip97, and an assessment of the intergovernmental agreement structure.
- Section 4: Intergovernmental Entity Structure Option describes the legal parameters, a prototypical example of its application to Trip97, and an assessment of the intergovernmental entity structure.
- Section 5: Special District Structure Option provides an example of proposed legislation, a prototypical example of the application of the example of legislation, and an assessment of the special district structure.
- Section 6: Summary Comparison of Governance Options provides an abridged comparison of the governance options.

2 FRAMEWORK

2.1 Governance Structures: General

A common theme in developing effective governance structures is that the tough issues need to be resolved through direct involvement of affected parties. Readiness to compromise, treating all participants as equal partners, and keeping all parties to the agreement informed of substantive developments throughout the process are all requirements. A related theme is the importance of establishing a shared vision of the corridor and for each party to look at the corridor as a whole—not just from a jurisdictional or parochial perspective. The willingness of each party to work toward a common vision and to compromise for mutual benefit is needed to form the basis of a lasting and effective governance structure.

There is no one governance structure option that all parties will agree is clearly superior to the others; thereby making it the only worthwhile governance structure to consider. On one hand, it would appear that a corridor-wide governance structure (such as a special district covering the corridor) makes sense since the transportation issues are corridor-wide. Fulfillment of Trip97's environmental and sustainability objectives also support such an approach. On the other hand, equity considerations and a focus on local issues augurs for a governance structure offering more local control. However, one cannot expect multiple jurisdictions to spend political capital on behalf of Trip97 and/or help fund Trip 97 improvements without assurance that future actions of the other jurisdictions will not undercut the benefits of the political capital and/or funding investment. Thus the governance structure for Trip97 needs to exhibit the proper balance between elements of local control, multi-jurisdictional coordination, and centralized project management.

2.2 Governance Structures: Guiding Principles and Observations

Before diving into the details of specific governance structures, it pays to consider factors and lessons learned from other efforts that may affect how the Trip97 governance options should be structured. These include the following:

- The better the funding prospects, the greater the likelihood of a successful governance structure: Generally the stronger the institutional structure, the greater the likelihood of implementing recommendations. Coalitions operate to pursue shared interests; members will not relinquish their individual prerogatives regarding coalition decisions unless there is a direct benefit in doing so. The success of a multi-jurisdictional coalition is based primarily on its ability to build a strong structure to implement coalition efforts. The strength of the governance structure largely correlates to the level of commitment of its members. And, the level of the members' commitment to the coalition largely depends on the perceived ability of the governance structure to secure funding.
- The improvement program and funding plan are pre-requisites to the governance structure, not the other way around: The success of most coalitions depends on their ability to: (a) set priorities; (b) balance these priorities with the individual needs of the members of the coalitions; and (c) secure funding. Because of the difficulty that multiple jurisdictions have in reaching agreement on project lists and funding mechanisms, multi-jurisdictional alliances can fall victim to first focusing on the governance structure as if that will resolve the larger issues. This approach is tantamount to the tail wagging the dog and is rarely successful. The governance structure implements a project program and funding strategy. While the precise program and funding sources do not need to be finalized to start work on the governance structure, these factors must be sufficiently addressed to provide a meaningful context for the governance structure.
- The governance structure will evolve over time: While it may be tempting to select one governance structure to implement, it is more likely that a series of structures will be used as the project planning and funding matures. For example, a structure based on intergovernmental agreements may be best for a planning and engineering stage, where a special district structure may be best for the funding and construction of the plan.

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- The governance structure will be multi-layered: The governance structure options discussed below are not necessarily alternatives to each other. It is possible that several will be in effect at any one time. For example, if Trip97 implements the special district, it is anticipated that the underlying legislation would grant substantial decision-making authority to the board of the special district. However, the special district may also have intergovernmental agreements with the Trip97 Partners (for example for funding contributions) that assign decision-making rights to the Trip97 Partners (for example, the special district may provide a local government the right to approve designs of improvements within its boundaries). In this case the governance structure would consist of the authorities granted in the legislation and the terms and conditions of the intergovernmental agreements.

2.3 Framework for Considering Governance Structure Options

2.3.1 Assumed Trip97 Program

Governance structures can only be identified and evaluated within the context of the objectives they seek to accomplish and the programs they seek to implement. For the purpose of this memorandum, it is assumed that the Trip97 governance structure would have to address the following general elements:

- The development and implementation of a corridor-wide program of interrelated projects with a substantial total cost that is implemented in phases over time;
- The development and on-going operations of a corridor management program;
- The implementation of a funding strategy that likely incorporates the pooling of funding contributions from the Trip97 Partners; and
- Intergovernmental coordination or administration of land use issues affecting the intergovernmental-funded corridor programs.

To be clear, these elements are assumed only for the purpose of illustrating governance issues. They may or may not be included in the final Trip97 recommendation.

2.3.2 Basic Governance Structure Options

Three basic governance structure options are considered in this memorandum:

- An “intergovernmental agreement” governance structure option in which the rights and the obligations of the parties, such as funding, are spelled-out in the terms and conditions of the agreements. In this structure:
 - The authority for decision-making is largely retained by the Governing Bodies of the partnering agencies, and a Steering Committee provides for general coordination;
 - Funding is likely to be from the partnering agencies based on a cost sharing arrangement; the structure is not likely to have a funding source of its own.
- An “intergovernmental entity” governance structure option in which the Trip97 Partners establish through intergovernmental agreements a quasi-independent agency to plan, design, construct, and operate the Trip97 improvements and programs. In this structure:

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- The partnering agencies would appoint a board of directors for the entity, which would make most decisions;
 - Decision-making authority on major matters may be retained by the parties;
 - Funding can from the partnering agencies and/or the levies of the intergovernmental entity.
- A “special district” governance structure option in which the Trip97 Partners secure legislation to establish a special district specifically tailored to achieve Trip97 objectives. In this structure:
 - The partnering agencies would take steps to implement the special district;
 - Once implemented the special district would be overseen by a board of directors operating mostly independently from the governing boards of the Trip97 Partners;
 - Implementation of the Trip97 programs would be facilitated by special provisions in the legislation related to funding and land use regulation.

2.3.3 Factors Used in Examples of Governance Structure Options

Beyond the basic structures themselves, there are numerous detailed provisions that can be incorporated within each of the structures. The possible provisions are too numerous to address in isolation. Therefore, this memorandum describes for each of the governance structure options an example of provisions that could be incorporated in the structure. These examples are intended to help the reader focus attention on main trade-offs and opportunities – the examples are not intended to be recommendations. For each of the governance structure options, the examples address the following factors:

- Establishment of Governance Structure
- Governing Board, Decision-Making Structure
- Staffing and Project Management
- Start-Up Issues
- Budget Process
- Development and Approval of the Capital Improvement and Corridor Management Programs
- Capital Improvement Program Design and Engineering
- Capital Improvement Program Construction
- Capital Improvement Program Funding and Financing
- Corridor Management Program Funding
- Land Use Planning Considerations

While the examples in this memorandum address the factors above, many other factors must be addressed in the actual governance structures.

2.3.4 Factors Used in Comparing the Examples of Governance Structure Options

To further focus the reader on key issues and trade-offs, the examples of the governance structure options are assessed using the following criteria:

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- Ability to Establish Governance Structure
 - Ability to Implement Projects and Programs
 - Ability to Facilitate Project and Program Funding
 - Ability to Finance Debt
 - Impact on Existing Decision-Making Processes
 - Minimize Administrative Costs
 - Ability to Facilitate Land Use Requirements
 - Adaptability

2.3.5 Definitions

The following definitions are used throughout this memorandum:

- Governing Bodies means the Board of County Commissioners for Deschutes and Jefferson Counties, the City Councils of Bend, La Pine, Madras, and Redmond, and the Oregon Transportation Commission (or its representative).
- Trip97 Corridor means the segment of Highway 97 between Madras and La Pine, and includes intersecting roads, nearby parallel facilities, and related transit, passenger air, pedestrian and bicycle facilities.
- Trip97 Partners means ODOT, Bend, La Pine, Madras, Redmond, Deschutes County, and Jefferson County.

3 THE INTERGOVERNMENTAL AGREEMENT GOVERNANCE STRUCTURE OPTION

3.1 Introduction

Intergovernmental Agreements are a well-known and frequently used method for two or more governmental entities to create what amounts to a partnership-style governance structure. A wide variety of governance issues can be addressed through intergovernmental agreements, although for certain issues it may be more efficient to establish a joint or separate entity in lieu of intergovernmental agreements. Even if an intergovernmental entity or special district is created for Trip97, intergovernmental agreements will almost certainly be part of the governance structure.

3.2 Authority

The statutes for intergovernmental agreements between two or more local governments are different than those for agreements between ODOT and local governments; although from a practical perspective there is little difference. Both are explained below.

3.2.1 Intergovernmental Agreements under ORS 190

Cities, counties, and other units of local governmental may enter into intergovernmental agreements under ORS 190.010 for the performance of functions that a party to the agreement is authorized to

perform.¹ The agreement under must specify the functions or activities to be performed and the means by which they will be performed. Where applicable, the agreement must also provide for²:

- a. The apportionment among the parties of the responsibility for providing funds to pay expenses
- b. The apportionment of fees or other revenue derived from the functions or activities and the manner in which such revenue will be accounted for
- c. The transfer of real or personal property
- d. The term or duration of the agreement (which may be perpetual)
- e. The rights of the parties to terminate the agreement

When an agreement under ORS 190.010 has been entered into, the governmental unit or administrative officer designated in the agreement to perform specified functions or activities is vested with all powers, rights, and duties relating to those functions and activities that are vested by law in each separate party to the agreement.³

3.2.2 Local Government-ODOT Agreements

The authority for local governments to enter cooperation agreements with ODOT is set forth in ORS 190.110, ORS 366.572, and ORS 366.576. Taken together, ODOT may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement has the authority to perform.

Specifically, ORS 190.110 provides the general authority for state agencies and local governments to enter agreements to cooperate *"in performing a duty imposed upon it, in exercising a power conferred upon it or in administering a policy or program delegated to it."* Under ORS 366.572 ODOT may *"enter into a cooperative agreement with any one or more cities, counties, road districts or other municipalities of the state for the construction, reconstruction, improvement, repair or maintenance of any state highway, and provide for an allocation of the cost of the project to the contracting parties."* ORS 366.576 more widely authorizes ODOT to enter into agreements with counties, cities, towns, or road districts for *"the construction, reconstruction, improvement, repair, or maintenance of any road, highway, or street upon terms and conditions mutually agreed to by the contracting parties."*

Portions of Highway 97 are designated as a "throughway."⁴ Throughways are subject to additional state laws set forth in ORS 374.005 to 374.095. Under ORS 374.065 ODOT is responsible for the intersections of county roads with throughways, may only close an intersecting county road if the county commission approves, and must approve the design of any new intersecting county road. Under ORS 374.070 cities have the ability to designate and approve designs for access points within their boundaries for throughways designed by ODOT, after a throughway is established new local

¹ ORS 190.010

² ORS 190.020

³ ORS 190.030

⁴ ORS 374.010 As used in ORS 374.005 to 374.095, "throughway" means a highway or street especially designed for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that their property abuts upon the throughway or for any other reason.

street access must be approved by ODOT, and cities have the authority to close local access streets without ODOT approval. Cities and counties have the authority to cooperate in any way necessary to plan, design, acquire, and construct any street or highway within their jurisdiction as a throughway and to convert any existing street or highway into a throughway.⁵ ODOT may enter into cooperative agreements with counties or cities for the location, adoption, construction, and maintenance of a throughway with respect to state highways, county roads, and city streets.⁶

3.3 Illustrative Example of Intergovernmental Agreement Structure

Numerous approaches are possible to use intergovernmental agreements alone to provide a governance structure for Trp97. This memorandum uses as an example, for discussion and evaluative purposes, the approach outlined below. This prototypical structure is based on using ODOT as the lead agency of the consortium consisting of the Trip97 Partners to plan, engineer, fund through funding contributions, and implement capital improvement corridor management programs. While in the example ODOT is provided latitude to perform the functions assigned to it, the authority to make major policy decisions is retained by the Governing Bodies.

3.3.1 Establishment of Governance Structure

This governance structure is established in two stages of intergovernmental agreements. In Stage 1 ODOT, as the lead agency, would enter agreements with each of the other Trip97 Partners to prepare a detailed capital improvement program and corridor management program, including associated budget estimates, implementation schedules, and funding plans. While this could be accomplished with one omnibus agreement, it is assumed that there would be compatible but separate agreements between ODOT and each of the other Trip97 Partners. These agreements would require approval by the applicable Governing Bodies.

In Stage 2 ODOT, again as the lead agency, would enter a second round of agreements with the Trip97 Partners to engineer and construct the capital improvement program and operate the corridor management programs resulting from the Stage 1 agreements. Similar to Stage 1, a series of compatible agreements between ODOT and each of the other Trip97 Partners is envisioned; each agreement requiring approval by the applicable Governing Body.

3.3.2 Governing Board, Decision-Making Structure

A Steering Committee, required by the Stage 1 and Stage 2 intergovernmental agreements, would be established). Each of the Trip97 Partners would appoint a policy-level representative to the Steering Committee. It is anticipated the members appointed to the Steering Committee would be members of the associated governing board.

The intergovernmental agreements would set forth the decision-making authorities of the Steering Committee and the Governing Bodies. All major decisions, as defined in the agreements⁷, would require approval from the Governing Bodies. The Steering Committee would be charged with making

⁵ ORS 374.075

⁶ ORS 374.080

⁷ Such as funding contributions, capital improvement plan approval, etc.

decisions other than those classified as major, and recommending major decisions to the Governing Bodies. A Project Management Committee, consisting of senior transportation officials from the Trip97 Partners, would oversee the general administration and technical direction of the work activities.

3.3.3 Staffing and Project Management

In the example ODOT is the lead agency and provides overall project management. As lead agency, ODOT would be responsible for activities specifically assigned to it in the intergovernmental agreements, which include such activities as:

- Staffing the Steering Committee and Project Management Group
- Administering the pool of funds created by the contributions of the parties, and other funding secured for the effort
- Contracting for services and overseeing consultants and contractors
- Preparing budgets
- Providing budget and schedule control
- Making recommendations to the parties
- And other functions, some of which are addressed in the paragraphs that follow

It should be noted that the lead agency function could be performed by any of the other Trip97 Partners, if desired. While potentially less efficient, the lead agency role can also be divided among several agencies, where different agencies serve as project manager for various discrete components of the overall effort.

3.3.4 Start-Up Issues

There are no major start-up issues with the intergovernmental agreement governance structure. The funding allocation in the Stage 1 intergovernmental agreements would address the early funding requirements. The larger contributions would not be needed until the Stage 2 agreements are approved.

3.3.5 Budget Process

The Stage 1 intergovernmental agreements would provide for a budget process that could work as follows:

- Included in the Stage 1 intergovernmental agreements would be a preliminary multi-year work plan and budget for all Stage 1 work. The budget would include a funding contribution allocation for each of the Trip97 Partners.
- The Stage 1 agreements would require each of the Trip97 to make an initial contribution by a date certain by transferring the amount due to the lead agency, and for the lead agency to deposit these funds in a discrete account solely for the purpose of Trip97.
- In approving the Stage 1 intergovernmental agreements, the governing boards of the Trip97 Partners formally approve the budget and work plan.

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- Funds in the Stage 1 account could be used as required by the multi-year work plan and overall budget. ODOT, as lead agency, would be responsible for day-to-day budget management, and the Steering Committee would be responsible for overall oversight of the budget and work plan.
 - Changes to the work plan and budget described in the Stage 1 intergovernmental agreement that were 'not significant' would be recommended by the Project Management Group and approved by the Steering Committee without further approval by the Governing Bodies. The agreement would define what constitutes 'significant.'
 - Significant changes to the work plan, budget, and/or funding contribution allocation would be initially recommended by the Project Management Group, finally recommended by the Steering Committee, and approved by the Governing Bodies.

The budgeting process would be generally similar for Stage 2; the following differences or observations should be noted:

- The preliminary work plan and budget (including the proposed funding contributions of the Trip97 Partners) incorporated in the Stage 2 agreements would be those resulting from the Stage 1 activities. By approving the Stage 2 agreements, the Governing Bodies are approving these preliminary work plans and budgets.
- Significant changes to the Stage 2 budget would require approval by the Governing Bodies of the partners; lesser changes would require approval only by the Steering Committee.
- ODOT, as lead agency, would be granted certain authority to approve budget changes based on change orders required during construction. This is addressed further in paragraphs below.

3.3.6 Development and Approval of the Capital Improvement and Corridor Management Programs

The Stage 1 agreements would provide for the development and approval of the capital improvement program and corridor management programs as follows:

- The agreement would specify the performance measures to be used to evaluate project and program options
- The agreement would require the lead agency or agencies to undertake the specific work required to develop and evaluate capital improvement and corridor management options and to recommend improvements, programs, cost estimates, schedule, and funding plan.
- The lead agency or agencies would make its recommendations regarding the capital improvement and corridor management programs to the Project Management Group.
- The Project Management Group would make its recommendation to the Steering Committee.
- The Steering Committee recommendation would be incorporated in the Stage 2 intergovernmental agreements, which would have to be approved by the Governing Bodies.

The Stage 2 agreement would allow for revisions to the programs as more detailed work is completed. Changes not deemed to be 'significant,' based on the definition included in the agreements, would be finalized with Steering Committee approval; significant changes would require approval by the Governing Bodies.

3.3.7 Capital Improvement Program Design and Engineering

The Stage 2 agreements would provide for the design and engineering of the projects in the preliminary capital improvement plan incorporated in the Stage 2 agreements, as it may be revised, as follows:

- The lead agency or agencies would be charged with undertaking the required studies, including any environmental work required to be eligible for federal funds, if federal funding is part of the funding plan.
- Technical representatives of the Trip97 Partners would be provided the right to approve the engineering designs of the capital improvements at various points in the process (for example, at 60%, 90%, and 100% design).
- Neither Steering Committee nor Governing Body approvals would be required, unless the engineering design results in a significant change to the intent or cost of the project.

3.3.8 Capital Improvement Program Construction

The Stage 2 agreements would provide for construction of the capital improvement program as follows:

- ODOT, as the lead agency, would contract for and oversee construction of the capital improvements in conformance with approved the engineering drawings and budget estimates.
- ODOT would be provided latitude to adjust budgets and approve change orders within a specified range.
- If ODOT determines a cost overrun is likely, it would work with the Trip97 Partners to identify value engineering opportunities or scope reductions to bring anticipated project costs in line with the approved budget.
- If it does not require a 'significant' change, the Project Management Group or Steering Committee would approve the changes required to bring costs within budget. The Governing Bodies would approve such changes if they are 'significant.'
- The agreement would require ODOT to maintain a contingency fund. If value engineering fails and cost overruns occur, the contingency fund would be used to pay the cost overrun.
- If the contingency fund is insufficient, the cost overrun would be paid by additional funding contributions from the Trip97 Partners. The Stage 2 agreements would provide a cost sharing formula for this happenstance; no additional approvals would be required. The Trip97 Partners would be invoiced for their shares of the cost overrun based on the cost allocation formula.

3.3.9 Capital Improvement Program Funding and Financing

Because the intergovernmental agreement structure is the structure that is least able to establish its own funding sources, this governance structure is the option most reliant on securing funding contributions from the Trip97 Partners and federal and state grants. By an intergovernmental agreement between Deschutes and Jefferson Counties the counties can jointly impose a local

vehicle registration fee under ORS 801.041 (as will take effect on July 1, 2013)⁸, subject to voter approval. If approved, at least 40 percent of the moneys must be provided to cities within the counties unless a different distribution is agreed upon by the counties and the cities.

The Stage 2 agreement will:

- Require ODOT to seek federal and/or state grants to fund a portion of the capital improvement program
- Describe the additional funding allocations and/or capital improvements to be deferred or eliminated if no grant funds are secured
- Prescribe for each of the Trip 97 partners a payment plan to provide their share of funding for the capital improvement program.
- Require each of the Trip97 Partners to transfer to the lead agency the amount of its funding contribution by a stated due date.
- Require ODOT to deposit these contributions in a dedicated account, with interest accruing for the benefit of Trip97 activities
- Provide a formula for determining refunds to the Trip97 Partners, if the cost of the project construction is less than expected.
- Provide a formula for allocating additional funding contributions, if the cost overruns exceed budgeted reserves.
- If applicable, incorporate a measure to impose a local vehicle registration fee.

3.3.10 Corridor Management Program Funding

The Stage 2 agreements will incorporate a preliminary description, multi-year budget, and multi-year funding plan for the corridor management programs to be undertaken by Trip97, and the entity assigned the responsibility for operating the program. In some cases, the operation of the program may occur outside of the Trip97 umbrella. The agreements will primarily address only those corridor management programs operated under the auspices of Trip97. While the budgeting and funding of corridor management plan are similar to that for the capital improvement program described in Section 3.3.9, there are a few key differences. First, the funding shares for programs, which would be incorporated in the Stage 2 agreements, would be annual on-going annual payments to fund the cost of annual operations. Second, if the annual cost of the program exceeds the funding shares, the program itself can be curtailed. The agreements would provide a process for rebalancing program levels with budget when the budget is not sufficient to meet originally desired program levels. The Steering Committee would have to approve of these changes to program levels. If 'significant,' approval would also be required by the Governing Bodies.

3.3.11 Land Use Planning Considerations

The Stage 2 agreements would incorporate a recommendation to the Trip97 Partners to amend their comprehensive plans, transportation system plans, and other relevant plans, if necessary to conform to the preliminary capital improvement and corridor management programs. It would be the

⁸ This analysis is based on the amendment to ORS 801.041 by section 3, chapter 145, Oregon Laws 2011, which becomes operative July 1, 2013, and apply only to ordinances that take effect on or after July 1, 2013

responsibility of the Governing Bodies to consider these recommended amendments as land use or administrative regulators following a process outside of the Trip97 agreements. Since the capital improvement and corridor management programs could not be implemented if inconsistent with comprehensive and transportation system plans, approval of all required conforming amendments to comprehensive plans, transportation system plans, and similar regulations would be a condition precedent to payment of any Stage 2 contributions by the Trip97 Partners.

3.4 Assessment of Intergovernmental Agreement Structure Example

3.4.1 Ability to Establish Governance Structure

The intergovernmental agreement governance structure is the easiest structure to establish. The Trip97 Partners are all familiar with intergovernmental agreements. Enactment requires only approval of the Governing Bodies. This option does not require any voter approval (although the Trip97 Partners can choose to seek voter approval) and it does not require approval by governing boards of other governmental entities that are not a Trip97 Partner.

The establishment of the intergovernmental agreement structure for Trip97 is somewhat complicated by the number of governmental entities involved. There are two ways to proceed with multi-party agreements: (a) there can be a single multi-party agreement approved and executed by all parties or (b) there can be a series of two party agreements between the lead agency and each of the partnering agencies. In this second scenario the agreements need not be identical on all matters, but must not be inconsistent.

3.4.2 Ability to Implement Projects and Programs

Except for its inability to utilize certain potentially desirable funding and financing options, the intergovernmental agreement governance structure can support the activities required to develop and implement the Trip97 improvement program and operate a related corridor management program.

Some have questioned whether the party performing an activity under an intergovernmental agreement must have the authority to perform such activity or if that authority can be obtained through the agreement. For example, if a county and city enter into an agreement whereby the city is to perform an activity which the county is authorized to perform and absent the intergovernmental agreement the city is not authorized, can the city perform the function? The Attorney General has opined that the city could perform the activity, in essence "borrowing" the authority from the county⁹ because the city would not be acting in its own right, but as "agent" for the county and would derive the necessary authority through its principal.¹⁰

3.4.3 Ability to Facilitate Project and Program Funding

There is a long and successful history of using Intergovernmental agreements to facilitate the pooling funds among multiple governmental entities to fund projects or programs. However

⁹ 35 Op Atty Gen 227 (1970); 36 Op Atty Gen 274 (1972)

¹⁰ AG Opinion on Use of County Revenues under IGA 1978; Op-7619, May 10, 1978

intergovernmental agreements are not efficient vehicles for creating new revenues through the imposition of taxes or fees.

An intergovernmental agreement may not provide for payment by one party government for functions to be performed by the other unless the functions to be performed are a proper purpose of the paying government.¹¹ The statutory authorization to enter into an intergovernmental agreement does not expand the authority of either government to spend its funds for purposes beyond its governmental interests. The public purpose for which a funding contribution is made must pertain to the tax levying district.¹² For example, if Government A is authorized by ORS 190.010 to perform a function for Government B, but if it is beyond the scope of A's governmental interests, A must receive adequate compensation from B or its taxpayers' funds will be improperly spent. And if B pays A to perform a function, that function must be within the scope of B's governmental interests or B's funds are being improperly spent.¹³ This may be an issue for the Trip97 program, but more likely this issue can be addressed as part of the adoption of an intergovernmental agreement by having each of the Governing Bodies include a finding that the Trip97 program is within their local interest.

To successfully implement a project or program, the lead agency must be able to rely on funding contributions being paid by the due date in the intergovernmental agreement. This is particularly important to Trip97, which is likely to consist of a program of projects that are developed over a number of years, as well as on-going corridor management programs. These factors clearly raise the risk that a partnering entity may seek to terminate its funding obligation as its elected officials, local priorities, or budget conditions change. This raises the question as to whether an intergovernmental agreement provides the necessary assurance of payment. The answer appears to be that a properly constructed intergovernmental agreement can provide the necessary assurance, but in a worse case situation it can require a messy legal battle.

By way of example, Clackamas County entered an intergovernmental agreement committing to pay TriMet \$25 million by a specified date¹⁴ to help meet the local match requirement for the Portland-Milwaukie LRT Project. Payment was only subject to TriMet's receipt of a federal funding commitment for the project. In May 2012 the federal funding commitment was provided, satisfying the condition for the County's grant. Shortly afterwards an initiative petition was placed on the September 2012 ballot that proposed a County ordinance intended to prohibit any County resources from being spent on the LRT Project without prior voter authorization.¹⁵ Attorneys for the County and TriMet concluded that the ballot measure could not prevent payment of the County funding contribution without constituting an unconstitutional impairment of a contract under the contracts clauses of the US and Oregon Constitutions.^{16 17 18} In addition the lawyers concluded that failure to

¹¹ AG Opinion on Use of County Revenues under IGA 1978; Op-7619, May 10, 1978

¹² 38 Op Atty Gen 1093, 1095-1096 (1977). Also, Supplemental Opinion Ho. 7573, 38 Op Atty Gen 1728 (1978)

¹³ AG Opinion on Use of County Revenues under IGA 1978; Op-7619, May 10, 1978

¹⁴ The agreement required payment by September 3, 2012 provided that Clackamas County could defer payment for up to one year by paying 5% annual interest on the amount deferred.

¹⁵ This measure was approved by voters. However, just before the election the County paid TriMet the large majority of what it initially committed under an amended IGA with TriMet.

¹⁶ "No State shall ... pass any ... ex post facto Law, or Law impairing the Obligation of Contracts ..."

¹⁷ "No ex-post facto law, or law impairing the obligation of contracts shall ever be passed ..."

¹⁸ Oregon's constitutional provision has been interpreted to apply to political subdivisions within the State. *Campbell et al v. Aldrich*, 159 Or 208 (1938); *Nicoll v. Eugene*, 52 Or App 379 (1981).

meet its funding obligation under the intergovernmental agreement constituted a breach of contract. A law suit has been filed in this case, but oral arguments have not yet been held. If the court rules that the County's failure to fulfill its funding contribution is a breach, the court can require the County to perform under the agreement (i.e.; pay the contribution) and possibly award damages.¹⁹

3.4.4 Ability to Finance Debt

Intergovernmental agreements can be used to pool funding from several governmental entities to repay debt or to provide a debt reserve for borrowing purposes. Each of the governmental entities pledging such revenue would have to make an irrevocable and unconditional pledge of its portion of the pooled revenues. But even with these commitments, it is likely that the capital markets would require a back-up revenue pledge to either issue the bonds or to offer cost-effective financing terms. Like the primary pledge, the back-up pledge can also consist of a pool of funds from the partnering governments. But the political difficulty and structural complexity of the intergovernmental agreement is magnified by layers of pledges. Thus it is more customary in these circumstances to have a "lead" party to the agreement undertake the borrowing and provide the back-up pledge(s). If a partnering entity failed to pay its obligation when due, the lead entity would use its resources to pay the bondholders and then seek recompense from the defaulting party.

3.4.5 Impact on Existing Decision-Making Processes

The decision-making process for an intergovernmental consortium is defined in the applicable agreement(s). A broad range of decision-making options is available; these decision options vary by the amount of (a) centralized control given to a lead agency or a steering committee and (b) the amount of local control retained by participating governmental entities. Since in the example the significant decisions are reserved for the governing boards of the Trip97 Partners, this governance structure does not have a material impact on local decision-making.

3.4.6 Minimize Administrative Costs

The intergovernmental agreement structure is the least costly to administer. Since no new administrative entity is required to implement the intergovernmental agreement governance structure, there are no additional public budgeting, accounting, record keeping, and audit requirements to pay for.

3.4.7 Ability to Facilitate Land Use Requirements

Other than serving to coordinate the efforts of multiple agencies impacting the Trip97 Corridor, the intergovernmental governance structure does not incorporate mechanisms to facilitate land use compliance.

3.4.8 Adaptability

¹⁹ "Article I, section 21, protects contractual interests by obliging the state to compensate for its breach of those contracts." *Eckles v State of Oregon*, 306 Or 380, 401 (1988)

Since less process is required to amend intergovernmental agreements than to modify the other governance structure options, the intergovernmental agreement structure is most adaptable in that respect. However this comes at the price of requiring approvals of significant actions by the Governing Bodies, and a limited list of funding and financing options.

4 THE INTERGOVERNMENTAL ENTITY GOVERNANCE STRUCTURE OPTION

4.1 Introduction

Intergovernmental entities are quasi-independent agencies created by local jurisdictions through intergovernmental agreements authorized under ORS 190.010. ODOT can participate in an intergovernmental entity under its authorities to enter agreements with local governments.

4.2 Authority

In order to have an intergovernmental entity covering the full length of the Trip97 Corridor, both Deschutes County and Jefferson County must be parties to the authorizing intergovernmental agreement. ORS 190.083 applies when a county is party to an agreement creating an intergovernmental entity to operate, maintain, repair, and modernize transportation facilities. ORS 190.083 also allows the intergovernmental entity to have broader authorities than entities created under only ORS 190.010. This memorandum focuses on creating a Trip97 intergovernmental entity under ORS 190.010 and ORS 190.083.²⁰

4.2.1 Establishment and Termination of Governance Structure

Before the effective start date for an intergovernmental entity, each of the parties to the authorizing the intergovernmental entity must enact an ordinance ratifying the creation of the entity. At a minimum, the ordinance must:²¹

- a. Declare the intent to create an intergovernmental entity by intergovernmental agreement;
- b. Specify the effective date of the intergovernmental agreement;
- c. Set forth the public purposes for which the intergovernmental entity is created; and
- d. Describe the powers, duties, and functions of the intergovernmental entity.

In addition counties must obtain approval of the terms and conditions of the agreement from the governing boards of a majority of the cities within its boundary before it can create an intergovernmental entity under ORS 190.083.²²

As with any intergovernmental agreement under ORS 190.010, an agreement authorizing an intergovernmental agreement must specify the functions or activities to be performed and the means by which they will be performed. Where applicable, the agreement must also provide for:²³

²⁰ Under ORS 190.083(7), an intergovernmental entity created by a county to operate, maintain, repair, and modernize transportation facilities is not a special district subject to ORS 198 or a County Service District subject to ORS 451.

²¹ ORS 190.085

²² ORS 190.083(1)

²³ ORS 190.020

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- a. The apportionment of the responsibilities for providing funds to pay expenses
 - b. The apportionment of fees or other revenue of the entity and the manner in which such revenue will be accounted for
 - c. The transfer of personnel and the preservation of their employment benefits
 - d. The transfer of real or personal property
 - e. The term or duration of the agreement
 - f. The rights of the parties to terminate the agreement

An intergovernmental entity may be terminated by unanimous vote of all parties to the authorizing intergovernmental agreement or as otherwise provided by the terms of the agreement.²⁴ The agreement creating the entity must provide a procedure for: (a) the disposition of any assets of the intergovernmental entity and (b) the assumption of any outstanding indebtedness or other liabilities of the entity by the parties to the authorizing intergovernmental agreement, if and when the entity is terminated.²⁵

4.2.2 Governing Board

An intergovernmental entity is governed by a board or commission that is appointed by, responsible to, and acting on behalf of the units of local government that are parties to the authorizing agreement.²⁶

4.2.3 Ability to Implement Projects and Programs

The specific purpose of an intergovernmental entity created under ORS 190.083 is to operate, maintain, repair, and modernize transportation facilities. By statute the entity may exercise the powers necessary to carry out the purposes of the intergovernmental agreement, including but not limited to the authority to enter into agreements and to expend tax proceeds and other revenues the entity receives.²⁷ In addition, the intergovernmental entity to perform specified functions or activities is vested with all powers, rights, and duties relating to those functions and activities that are vested by law in each separate party to the agreement, subject to the terms of the agreement.²⁸

4.2.4 Funding Authority

Generally an intergovernmental entity may not levy taxes.²⁹ Funding for intergovernmental entities is frequently provided by cost sharing between the participating governments, state or federal grants, and/or fees or other revenue derived from the functions or activities of the entities. However, an intergovernmental entity created by a county for transportation purposes under ORS 190.083 may assess, levy, and collect taxes within its boundary, subject to the following:³⁰

²⁴ ORS 190.080(6)

²⁵ ORS 190.080(5)

²⁶ ORS 190.010(5)

²⁷ ORS 190.083(6)

²⁸ ORS 190.030

²⁹ ORS 190.080(2)

³⁰ ORS 190.083

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- a. The agreement establishing the entity must provide (or at least not prohibit) the entity with the authority to levy taxes to the entity;
 - b. If the agreement requires certain conditions to be met before the entity can levy taxes (for example, approval by the governing boards of the partnering agencies, enactment of a plan, etc.), those conditions must be met;
 - c. A majority of the cities within the counties establishing the entity must approve the terms and conditions in the agreement;
 - d. The electors within the boundary of the entity must approve valorem property tax rate for the entity pursuant to section 11 (3)(c), Article XI of the Oregon Constitution; and
 - e. The entity is subject to “Local Budget Law” requirements³¹ for each fiscal year or budget period in which the entity proposes to impose or imposes ad valorem property taxes.

The intergovernmental entity can be provided the authority to impose, subject to voter approval, a local vehicle registration fee as described in Section 3.3.9. As a legal matter, an intergovernmental entity can also be authorized to impose System Development Charges (SDC), assuming there are no limitations or inconsistencies in the charters or codes of the parties to the agreement that would disallow such an authorization. However, this has proven difficult as a practical matter. Instead intergovernmental entities have recommended the imposition of SDCs to the cities and counties that are parties to the agreement, and, if approved, have received the resulting SDC revenues (see for example the *Metropolitan Wastewater Management Commission*, which was created by an agreement between Lane County, Eugene, and Springfield).

4.2.5 Financing Authority

Subject to statutory requirements and the terms of the authorizing agreement, an intergovernmental entity created under ORS 190.083 can issue general obligation bonds, revenue bonds, and participate in other forms of borrowing to fund its projects and programs.

Generally an intergovernmental entity may not issue general obligation bonds.³² However, ORS 190.083 allows intergovernmental entities created by counties for transportation purposes to issue general obligation bonds, subject to the following:³³

- a. The agreement establishing the intergovernmental entity must grant the GO bonding authority to the entity, and, as stated above, a majority of the cities within the counties must approve the agreement.
- b. If GO bonds are issued, the entity must first receive approval of a majority of voters within the entity’s district; voter participation must meet the requirements of Article XI, Section 11(8) of the Oregon Constitution.
- c. The outstanding bonds may never exceed in the aggregate two percent of the real market value of all taxable property within the entity’s district.

Under ORS 190, an intergovernmental entity can issue revenue bonds if authorized as follows:

³¹ ORS 294.305 to 294.565

³² ORS 190.080(2)

³³ ORS 190.083

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- a. After a public hearing the governing body of each of the units of local government that are parties to the agreement approves, by resolution or order, the issuance of the revenue bonds or entering into the financing agreement;³⁴ or
 - b. As authorized by the electors of the entity.³⁵

However, ORS 287 provides an additional method for issuing revenue bonds that can be approved by the intergovernmental entity without either Governing Body or electoral approvals. An intergovernmental entity is a “special governmental body” under ORS 174.117. A “special governmental body” is a “public body” under ORS 287A.001(13). ORS 287A.150 allows a “public body” to authorize revenue bonds by:

- a. Adopting a non-emergency ordinance and not issuing the bonds until after the referral period has expired. If referred, bonds cannot be issued unless the electors approve the issuance of the bonds; or
- b. Adopting a resolution, providing public notice, and waiting up to sixty days to determine if a petition with signatures from at least five percent of the electorate is filed. If filed, voter approval will be required to issue the bonds.³⁶

In addition, and intergovernmental entity may:

- a. Subject to certain limitations, engage in short-term borrowing³⁷ by issuing revenue bonds in anticipation of tax revenues or other moneys or to provide interim financing for capital projects to be undertaken by the public body.
- b. Enter into financing agreements for the leasing, rental or financing of any real or personal property.³⁸ If authorized, the contracts may:
 - i. Provide that the obligation is secured by a mortgage on or other security interest in the property to be leased, rented, purchased, or financed under the contract.
 - ii. Provide that the obligation is payable out of available funds and the available funds may be pledged to the payment of those obligations.
 - iii. Contain a covenant to budget and appropriate in each fiscal year the amounts owed under the contract.
 - iv. Provide for certificates of participation in the payment obligations and contain other covenants to better secure the obligations.

4.2.6 Liabilities of the Parties to the Agreement

Any party to an intergovernmental agreement creating an intergovernmental entity may assume responsibility for specific debts, liabilities, or obligations of the intergovernmental entity.³⁹ Unless the agreement specifically provides otherwise, the debts, liabilities, and obligations of the intergovernmental entity are jointly and severally the debts, liabilities, and obligations of the parties to

³⁴ ORS 190.080(1)(a)

³⁵ ORS 190.083(4)

³⁶ ORS 287A.150

³⁷ ORS 287A.160

³⁸ ORS 271.390

³⁹ ORS 190.080(4)

the intergovernmental agreement that created the entity.⁴⁰ Since the Trip97 partners would not likely find joint and several liabilities to be acceptable, the agreement would need to address the division of these liabilities. In addition, as stated earlier, the agreement creating the entity must provide a procedure for the assumption of any outstanding indebtedness or other liabilities of the entity by the parties to the authorizing agreement upon termination of the entity.⁴¹

4.3 Illustrative Example of Intergovernmental Entity Structure

Similar to the intergovernmental agreement structure, there are numerous approaches to formulating an intergovernmental entity governance structure for Trip97. This memorandum uses as an example, for discussion and evaluative purposes, the approach outlined below. The example is structured under the assumption that the primary reasons the Trip97 Partners would pursue and intergovernmental entity are to:

- a. Take advantage of the broader funding and financing provisions available to entities,
- b. Buffer the Governing Bodies from the decision-making associated with implementing Trip97, and
- c. Establish an operationally more efficient governance structure than the intergovernmental agreement structure.

4.3.1 Establishment of Governance Structure

Because of the superior funding and financing authorities provided to intergovernmental entities under ORS 190.083 (entities created by counties for transportation facilities), this example is based on using that statutory authority. After addressing the 'start up issues' discussed in Section 4.3.4, the Trip97 Partners would establish an intergovernmental entity by approving an intergovernmental agreement creating the entity. As required by ORS 190.083, both Jefferson and Deschutes County must obtain approval of the agreement from a majority of the cities within their respective county before the intergovernmental entity is created. An election will be required after the entity is established to employ key funding and bonding provisions available to such an entity.

4.3.2 Governing Board, Decision-Making Structure

The agreement would establish a Board of Directors to oversee the intergovernmental entity. The Board would consist of one representative of each of the Trip97 Partners, appointed by the governing body of the applicable Trip97 partner. The authorizing agreement would establish the length of the terms (i.e.; initially there would be two and four year terms to stagger the positions and all subsequent appointments would be four years), term limits (if any), and perhaps who can be appointed (i.e.; no members of the governing body of the appointing government).

Decisions of the Board would have to be made in compliance with the requirements set forth in the authorizing agreement – which in this example assumes a quorum of at least four directors would have to be present and a decision requires a simple majority of the members present. The

⁴⁰ ORS 190.080(3)

⁴¹ ORS 190.080(5)(b)

agreement would also authorize the Board to establish and amend by-laws and other rules of the entity that may be needed.

Similar to the intergovernmental agreement option, a Project Management Group consisting of senior transportation officials from each of the Trip97 Partners would be established to make recommendations to the Board. Except for decisions relating to funding contributions by the Trip97 Partners, the Board would make all decisions. The Board could choose to assign certain decisions to the Project Management Group. Decisions affecting the funding allocations of the Trip97 Partners will require approval by the Governing Bodies. The authorizing agreement can specify that other decisions are to be made by the Governing Bodies, if desired.

4.3.3 Staffing and Project Management

The Board would appoint a Chief Executive to serve as overall project manager. The Chief Executive could contract with consultants and/or its Trip97 Partners to perform the required work. Perhaps other than an administrative assistant, there would be no other permanent staff of the entity.

The entity could operate without a Chief Executive, by appointing a lead agency or a project manager from the staffs of one of the Trip97 Partners. This example does not use this alternative approach because it presumes a desire to have the entity have reasonable independence from the partnering agencies.

4.3.4 Start-Up Issues

The Trip97 Partners would not likely undertake the effort of creating an intergovernmental entity until the improvement program and corridor management programs and funding plans were fleshed-out and generally agreed to. Thus there would be a pre-intergovernmental entity stage virtually identical to Stage 1 for the intergovernmental agreement structure, with the objective of establishing agreement on these preliminary programs and plans. These early planning and development activities would be performed and funding through cost sharing based on Stage 1 intergovernmental agreements similar to those discussed in Section 3.

4.3.5 Budget Process

The budget preparation and approval process for the intergovernmental entity would be similar to that described for the intergovernmental agreement option, except that the Board of Directors would make all budget decisions that do not impact the funding allocations, if any, of the Trip97 Partners.

4.3.6 Development and Approval of the Capital Improvement and Corridor Management Programs

The development and approval of capital improvement and corridor management programs under the intergovernmental entity option would be similar to that described for Stage 1 of the intergovernmental agreement option in Section 3.3.6.

At the end of Stage 1 a preliminary capital improvement and corridor management program, budget, schedule, and funding plan has been recommended. These items would be incorporated in the

intergovernmental agreement creating the intergovernmental entity, which means they would be approved by the Governing Bodies. The example assumes that future revisions to these programs and plans (unless it entailed changes to the funding contributions of the Trip97 Partners) would be approved only by the board of directors of the intergovernmental entity; although, if desired, the Governing Bodies can reserve the right to approve significant changes, as defined in the authorizing agreement, to the programs, budgets, schedule, and funding plans.

4.3.7 Capital Improvement Program Design and Engineering

Under the intergovernmental entity option, the design and engineering of the capital improvement program would be similar to that described for Stage 2 of the intergovernmental agreement option in Section 3.3.7, except the intergovernmental entity would be the lead. Affected local agencies would be provided the right to approve various engineering designs; this right can be built into the authorization of the intergovernmental entity or could be accomplished by a separate intergovernmental agreement. In this example, any significant changes would require approval by the board of directors of the intergovernmental entity; except any change that changes the funding obligations of the Trip97 Partners would have to be approved by their respective Governing Bodies.

4.3.8 Capital Improvement Program Construction

The Chief Executive would be responsible for managing or retaining consultants/contractors to manage construction of improvements. Unless there are change orders that impact the funding contribution of the Trip97 Partners, the intergovernmental entity would approve all change orders. The Board would provide the Chief Executive the authority to make such approvals, up to a dollar amount and/or amount of scope change, above that amount board of director approval would be required.

Because of the independence afforded the intergovernmental entity in this example, it is anticipated that all cost overruns would be the responsibility of the entity. However, if the resolution of a cost overrun is a program scope that is a significant departure from that in the authorizing agreement, the scope change would require approval by the Governing Bodies.

4.3.9 Capital Improvement Program Funding and Financing

One of the rationales for establishing an intergovernmental entity under ORS 190.083 is its ability to seek voter approval of a property tax base and/or general obligation bonds. This requires the board of the entity to approve a ballot title seeking the tax or bond approval. The vote must occur on a district-wide (of the intergovernmental entity) basis in an election that complies with applicable constitutional requirements.

4.3.10 Corridor Management Program Funding

In the intergovernmental entity option funding for the corridor management programs would be addressed in a manner similar to that described for Stage 2 of the intergovernmental agreement structure in Section 3.3.10. The major difference would be if a property tax base was approved, ongoing operational funding for the corridor management programs would be available directly through the intergovernmental entity.

4.3.11 Land Use Planning Considerations

Land use planning considerations under the intergovernmental entity structure would be addressed in a similar manner to that described for Stage 2 of the intergovernmental agreement structure in Section 3.3.11.

4.4 Assessment of Intergovernmental Entity Structure Example

4.4.1 Ability to Establish Governance Structure

The intergovernmental entity option is more difficult to establish than the intergovernmental agreement option. Creation of the intergovernmental entity option requires approval of a majority of cities in each of Jefferson and Deschutes Counties. In Deschutes County the Trip97 Partner cities comprise a majority of cities in the County; although the city council of Sisters would have the opportunity to review and approve the agreements. Madras is the only city located in Jefferson County that is involved in Trip97. Approval of the entity would rest on gaining approval from the city council of Culver and/or Metolius. These are cities that to date have not been involved with Trip97, and are possibly less affected by the Trip 97 Corridor than the Trip97 Partners.

4.4.2 Ability to Implement Projects and Programs

A properly structured intergovernmental entity would be fully capable of undertaking all activities required to develop and implement the Trip97 improvement program and operate the related corridor management program. The intergovernmental entity structure also has the ability to assign some responsibilities or activities to the Trip97 Partners, if desired, through the use of supplemental intergovernmental agreements.

4.4.3 Ability to Facilitate Project and Program Funding

The authority to seek approval of a tax base and/or general obligation bond provides an interesting opportunity to facilitate project and program funding. This memorandum does not address the likelihood of voter approval; more work is required to determine whether this 'opportunity' can translate into funding. However, voter approval of both a tax base and general obligation bond may be unlikely in the near-term. Because the property tax base could address program operation costs as well as capital program requirements, it could be more useful than a general obligation bond, provided it does not cause or exacerbate tax compression. If approved, an on-going tax base would eliminate or significantly reduce the need for contributions from the Trip97 Partners. Failure to gain approval of such funding would require the entity to continue its dependency on funding contributions from the Trip97 Partners.

4.4.4 Ability to Finance Debt

The borrowing authorities available under an intergovernmental entity structure are substantially superior to those available under the intergovernmental agreement option. The authority to issue general obligation bonds is discussed above. In addition, the intergovernmental entity can issue revenue bonds with board of director's approval, subject to the possibility of a referral. In addition,

the intergovernmental entity structure has excellent short-term and other borrowing authorities similar to other local governments.

Absent a general obligation bond approval or property tax base approval, the entity's ability to finance debt could be limited by the quality of the revenues pledged to it or the nature of the pledges themselves. Thus at this point it cannot be said that the intergovernmental entity has a good ability to finance debt, just that it may have the opportunity to do so.

4.4.5 Impact on Existing Decision-Making Processes

One of the rationales underlying the creation of the intergovernmental entity option is to provide its activities more independence from the local decision-making than available under the intergovernmental agreement option. The amount of independence can be tailored to meet Trip97 needs by properly structuring the provisions of the agreement establishing the entity.

4.4.6 Minimize Administrative Costs

The intergovernmental entity option would incur higher administrative costs than the intergovernmental agreement option because it entails the establishment of a new governmental entity, subject to local government record-keeping requirements, and (in the example) incorporates a Chief Executive and Administrative Assistant. However, it should operate more efficiently than the intergovernmental agreement option because of its higher level of centralized decision-making. Thus it may not cost significantly more to operate in overall terms than the intergovernmental agreement option.

4.4.7 Ability to Facilitate Land Use Requirements

As with the intergovernmental agreement option, the intergovernmental entity governance structure does not incorporate mechanisms to facilitate land use compliance. Thus it does little to facilitate land use requirements other than to coordinate the transportation activities of multiple agencies impacting the Trip97 Corridor.

4.4.8 Adaptability

The ability and procedures for revising or terminating the authorities of the intergovernmental entity would be set in the agreement establishing the entity. Thus, its adaptability depends on the nature of these provisions. These provisions could be written to provide the same adaptability as for the intergovernmental agreement option.

5 THE SPECIAL DISTRICT GOVERNANCE STRUCTURE OPTION

5.1 Introduction

Current state statutes allow for several special transportation districts, none of which are suited for Trip97. However, they are instructional as to the issues that can be addressed with new legislation that better suits Trip97. These districts include:

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- **County Road Districts (CRDs)** are authorized to improve or maintain county roads or public roads within cities or drainage districts.⁴² Unless voters otherwise approve, each drainage district and each city must have its own, separate CRD. The governing boards of these separate CRDs are the County Commissions, City Councils, or Supervisors of the Drainage District, as is applicable. The Governing Bodies of a CRD may levy, with voter approval, an ad valorem tax for the purpose of the district.⁴³ Funds collected must be deposited in a special fund reserved exclusively for the CRD. Funds collected within a drainage district or city must be expended under the supervision of the drainage district or the city. In addition, the drainage district board may levy in any one year a tax on every acre of land in the district in the proportion that the acre is benefited by the proposed construction, maintenance, or repair, but in no event to exceed \$1 for any one acre. This authority is inadequate for Trip97 due to the decentralized decision-making authority it provides.
 - **Special Road Districts (SRDs)** are authorized for the purpose of improving roads within the district.⁴⁴ SRDs may not include areas within city boundaries. In forming a SRD, the County Commission must establish the method for appointing board members for the SRD. The County may declare either that the board members are appointed by the County Commission or elected by the voters of the district. SRDs may assess ad valorem taxes, subject to voter approval.

Under ORS 371.353 the board of a SRD located in a county of between 3,000 and 3,500 square miles and with a population of between 100,000 and 200,000 may seek elector approval to divide the district into zones for the purpose of imposing and levying property taxes at a different rate and amount on the assessed value of all taxable property in each zone. The establishment of zones within a district must be based upon and reflect qualitative differences in the services provided by the district to the residents and their property in each zone. To establish differing taxing zones with a SRD, certain notice and other procedural steps must be undertaken and the zones must be approved by a majority of district voters voting on the measure; it does not require a majority from each of the individual zones. The measure sent to the voters includes a percentage for each zone reflecting the percent of the permanent tax rate base to be paid by that zone.

- **Road Assessment Districts (RADs)** are authorized to provide for the improvement, repair, or reconstruction of the public roads within the district.⁴⁵ RADs are only authorized for a county having a population of 19,000 and not more than 25,000, and must consist of an area of more than 20,000 acres or an assessed valuation of taxable property of not less than \$1 million. A road assessment district has authority over all roads and highways within the district, except state primary and secondary highways, and streets, alleys or public ways within a city within the district. The board of directors may contract with any city within or adjacent to the district for the repair, improvement, and reconstruction of streets or public ways within the city, where the improvement of the streets is a part of the general road system of the district. The inclusion of a city within the road assessment district shall not prevent the city from levying general or special

⁴² ORS 371.055-ORS 371.110

⁴³ Voter approval of ad valorem taxes are required by Article XI, Section 11(3)(c)(A) of the Oregon Constitution

⁴⁴ ORS 371.305-ORS 371.385

⁴⁵ ORS 371.401-ORS 371.535

taxes or assessments upon the property within the city for the purpose of improvement, maintenance, repair or reconstruction of the city streets as authorized or permitted by law or the charter of the city. The board of directors of a RAD must be approved by the voters of the district, unless the number of nominees is equal to the number of open positions. A RAD may levy a tax on real property that does not exceed $\frac{1}{4}$ or 1 percent of the real market value of the property, with voter approval.

5.2 Example of Proposed Legislation

5.2.1 Introduction

The descriptions of the intergovernmental agreement and intergovernmental entity options were grounded in existing legislation. As stated above, the special district authorities in current legislation would not serve the needs of Trip97. Therefore the special district option is premised on securing approval of new, enabling legislation.

The following description of a possible special district authority, which for this memorandum is referred to as the Trip97 District (or "T97D" for short), is intended as an example of such an authority for discussion purposes only. The example posits a district with broad planning, funding, and financing powers, with little control by the Governing Bodies.

The specific provisions outlined below are not recommended for action at this time, nor is the language intended to be sufficient for legislative purposes. Rather the provisions outlined in this example were selected to highlight the possible trade-offs of employing a special district governance structure compared to using intergovernmental agreements or an intergovernmental entity. There are many alternatives for each of the provisions used in this example. The alternatives could reduce the authority provided to the district in the example, or could provide for more oversight or control by the Trip97 Partners. These alternatives need to be carefully evaluated before pursuing a special district authority, should that be desired.

5.2.2 Legislative Concept

Purpose: The purpose of the Trip97 District is to improve multi-modal travel along Highway 97 and facilitate economic development affecting Highway 97 travel by making improvements and operating corridor management programs along Highway 97 within its district, improving or managing intersections, interchanges, and overpasses of Highway 97 within the district, and undertaking other multi-modal improvements and programs to achieve its purpose, all in accordance with a Trip97 Functional Plan adopted by the board of the district.

Formation: The Trip97 District (T97D) shall be formed by an intergovernmental agreement approved by the Governing Bodies. The intergovernmental agreement shall set the boundaries of the district, which shall include such area within Deschutes and Jefferson Counties affecting travel along Highway 97 between LaPine and Madras, as determined by the Trip97 Partners. T97D may overlap other districts.

Relation to Other Governmental Entities: T97D does not rescind, subsume, or modify any function or authority of any city, county, state agency, or district within the boundaries of T97D, unless otherwise agreed to by the parties.

Governing Body: T97D shall be governed by a Board of Directors as follows:

- a. The board of directors shall consist of seven members to be appointed as follows:
 - For the initial term, each governing body of (Trip97 Partners) shall appoint one member to board of district for a term of two or four years, as drawn by lot.
 - Following the initial term, the governing body of those board members whose term expires shall appoint a board member for a four year term. Board members of the district must be residents of the district and may not be current board members of a governing body of a Trip97 partner.
- b. Decisions by the Board of Directors shall be by majority vote of the board, provided a quorum of at least four members of the board is in attendance.
- c. The Board of Directors shall adopt and amend, as applicable, bylaws regarding the protocols to be followed by the board.
- d. The Board of Directors shall appoint a President and Vice President of the Board for a term of two years.
- e. Each year by majority vote, the Board of Directors shall approve an annual budget. Funding anticipated from the Trip97 Partners shall be subject to approval of an intergovernmental agreement providing such funds by the governing body of each applicable Trip97 partner.

General Powers of the District: The Trip97 District has the power:

- a. To make contracts
- b. To acquire, hold, receive, and dispose of real and personal property
- c. To sue and be sued
- d. To exercise the power of eminent domain
- e. To assess, levy and collect taxes on all taxable real property within the district.
- f. To levy system development charges and such other taxes or fees within the district, as set forth in this statute
- g. To borrow in the name of the district, including without limitation to issue General Obligation bonds approved by the voters of the district and issue revenue bonds approved by the board of the district.
- h. To design and construct improvements and operate corridor management programs within the district to facilitate travel on Highway 97, such improvements and management programs may
- i. To develop a functional multi-modal plan for the corridor
- j. To do any other act necessary to carry out its purposes

Intergovernmental Cooperation: T97D may contract with any public or private agency for the agency to operate any facility or perform any function of T97D. By contract T97D may assume any function relating to its purpose of any state agency or any public corporation, city, or county in its district.

Funding Authorities: T97D is authorized to secure funding for its transportation facilities or programs as follows:

- a. Ad Valorem Tax Base: T97D may assess, levy and collect taxes each year on the assessed value of all taxable property within the limits of the district, subject to voter approval in accordance with section 11 (3)(c), Article XI of the State Constitution. As part of seeking its initial voter approval of its ad valorem tax base, or at such later time as set by the T97D board, T97D may seek elector approval to divide the district into zones for the purpose of levying property taxes at a different rate and amount on the assessed value of taxable property in each zone. The establishment of zones within a district must be based upon and reflect qualitative differences in the services provided by the district to the residents and their property in each zone.
- b. Grants: T97D may accept any contributions or loans from the United States, the State of Oregon, or any local government.
- c. System Development Charge: By a vote of its board of directors, T97D may impose a system development charge to fund capital improvements identified the district's functional plan; provided the board follows the procedures and meets the requirements of local governments, as set forth in ORS 223.297 to 223.314.
- d. Vehicle Registration Fee: T97D may impose registration fees on vehicles within the limits set in ORS 803.445(5), subject to similar requirements to those for certain counties in ORS 801.041.⁴⁶

Financing Authorities: T97D may finance construction, acquisition, purchase, lease, and operation and maintenance of transportation facilities or programs for assisting in meeting its purpose by:

- a. General Obligation Bonds: T97D may sell and dispose of general obligation bonds, subject to voter approval meeting the requirements of Section 11 of Article XI of the Oregon Constitution. Outstanding bonds shall never exceed in the aggregate five percent of the real market value of all taxable property within the district. For the purpose of additionally securing the payment of the principal and interest on general obligation bonds issued under this section, the district may by resolution of the board pledge all or any part of the net revenue of the district.
- b. Revenue Bonds: By a majority vote of its board of directors, T97D may issue and sell revenue bonds and pledge as security therefor all or any part of the unobligated net revenue of the district. Such bonds shall be payable, both as to principal and interest, solely from the net revenues of the district remaining after payment of obligations having a priority and payment of all expenses of operation and maintenance of the district.
- c. Agreements for Cooperative Financing: T97D may enter into agreements with any city, any county, the federal government, the state, or any of its agencies, any other district, or any person for a period not to exceed 30 years for the cooperative financing of the construction, maintenance, and operation of facilities and programs.

⁴⁶ Under ORS 801.042 specified districts can impose a local registration fee subject to voter approval. This example assumes an authority is secured for T97D similar to that provided to Multnomah County under ORS 801.041, which would not require voter approval nor would it require distributions to cities, except as part of the Trip97 program.

Functional Planning: T97D shall prepare, adopt, and amend from time to time, a multi-modal functional plan as follows:⁴⁷

- a. The functional plan shall describe the multi-modal improvements and corridor management programs it intends to undertake in the Trip97 Corridor to achieve its purpose.
- b. The plan shall describe the projects and programs, anticipated costs, funding plan, and schedule for implementation.
- c. ODOT, the Trip97 Partners, and affected special districts shall:
 - Amend their comprehensive plans, transportation system plans, and land use regulations, as may be necessary to ensure that such plans and any actions taken under such plans substantially comply with the T97D's functional plan; and
 - Issue the appropriate development approvals, permits, licenses, and certificates necessary for the development of the improvements or operation of the programs included in the functional plan, subject only to reasonable and necessary conditions of approval that not by themselves or cumulatively prevent implementation of the functional plan.

5.3 Illustrative Example of Special District Structure

Beyond the authorizing legislation, there are key aspects to how the district is implemented, which can include such items as staffing, the retained rights of the affected state and local agencies, phase-in of operations, etc. As with the example of the authorizing legislation, there are many variations of how Trip97 can address these issues. For purposes of this example, the following is assumed:

5.3.1 Establishment of Governance Structure

The key step in establishing the special district governance structure is securing passage of the required legislative authority. But it will take several initial steps to reach this hurdle. As discussed further in the "Start-up Issues" section (Section 5.3.3), Stage 1 work prepared under a set of intergovernmental agreements must produce preliminary capital improvement and corridor management programs and associated funding plans that justify the effort required to prepare and secure passage of the legislation.

Assuming the example of legislation underlying the special district option, the steps required to establish the special district after the legislation is in place are similar to those required to establish the intergovernmental entity – with a few important exceptions. One source of added complexity stems from the proposed legislative requirement that the Governing Bodies agree on the boundaries of the special district, where the boundaries of the intergovernmental entity would be the aggregate area of Deschutes and Jefferson County.

Another source of added difficulty stems from legal and political issues surrounding the composition of the board of directors of the special district. This added difficulty results from the intersection of two factors in the special district option. First, while the board of directors of the intergovernmental entity serves on behalf of the Trip97 Partners, the board of the special district would serve on behalf

⁴⁷ Note that the legislation could require the Governing Bodies of the Trip97 partners to approve the functional plan prior to the district's approval, if desired.

of the district itself. Second, the board of the special district has taxing powers. Combined these factors raise the specter of unequal representation challenges. This example assumes one board member would be appointed by each of the Governing Bodies. This means, for example, Madras would have the same number of board members as Bend – which translates into Madras having more representation per capita than Bend, etc. These are complicated legal issues that are beyond the scope of this preliminary analysis. But for now it should be noted that if these issues arise, the Trip97 Partners would have to wrestle with options such as proportioning the number of board appointments, creating board districts, etc.

On the other hand, the proposed example of legislation does require approval by cities in Deschutes and Jefferson Counties that are not part of Trip97.

5.3.2 Governing Board, Decision-Making Structure

The legislation would authorize the creation of a Board of Directors to oversee the special district. In this example, the Board would consist of one representative of each of the Trip97 Partners, appointed by the governing body of the applicable Trip97 partner. But as discussed above, more research is required before proposing the actual composition of the board. The authorizing legislation would also establish the length of the terms (i.e.; initially there would be two and four year terms to stagger the positions and all subsequent appointments would be four years), term limits (if any), and perhaps who can be appointed (i.e.; no members of the governing body of the appointing government).

The legislation would either prescribe certain decision-making requirements such as the size of a quorum or the requirements for approving actions (such as, a simple majority of board members present, notice requirements, etc.) or would require the board to enact bylaws addressing these issues. In either case, the decision-making process would need to follow the required procedures.

This example assumes a Project Management Group consisting of senior transportation officials from each of the Trip97 Partners would be established to make recommendations to the Board, similar to that proposed for the intergovernmental entity. Except for decisions relating to funding contributions by the Trip97 Partners, the Board would make all decisions. The Board could choose to assign certain decisions to the Project Management Group.

If there is a desire to provide the Governing Bodies more decision-making authority than described above, this can be accomplished by incorporating provisions in the legislation or by having the special district entering intergovernmental agreements with the Governing Bodies that provide them more involvement.

5.3.3 Staffing and Project Management

In this example, the staffing and project management of the special district would be similar to that proposed for the intergovernmental entity in Section 4.3.3.

5.3.4 Start-Up Issues

Beyond the additional need to prepare and secure legislation, the start-up of the special district would be similar to that proposed for Stage 1 of the intergovernmental entity option in Section 4.3.4.

5.3.5 Budget Process

Similar to the intergovernmental entity option, the Board of Directors would make all budget decisions that did not impact the funding allocations, if any, from the Trip97 Partners. Decisions impacting the funding allocations of the Trip97 Partners would require the approval of their Governing Bodies.

5.3.6 Development and Approval of the Capital Improvement and Corridor Management Programs

The development and approval of capital improvement and corridor management programs under the special district would be similar to that described for Stage 1 of the intergovernmental entity option in Section 4.3.6.

Stage 1 ends with a defined preliminary capital improvement and corridor management program, budget, schedule, and funding plan. The intergovernmental agreements among the Trip97 Partners providing funding for the Stage 1 activities would require approval of these products as a pre-condition to seeking legislation. This ensures local government buy-in at the beginning. The example assumes that future revisions to these programs and plans would be approved only by the board of the special district, unless funding for the special district continues to depend on funding allocations from the Trip97 Partners. In that case, the local Governing Bodies would also approve such revisions.

5.3.7 Capital Improvement Program Design and Engineering

Capital improvement program design and engineering for the special district option would be similar to that described for the intergovernmental entity option in Section 4.3.7. Affected local agencies would still be provided the right to approve various engineering designs; this right can be accomplished by a separate intergovernmental agreement. In this example, any significant changes would require approval by the board of the special district, except that any change that changes the funding obligations of the Trip97 Partners would also have to be approved by their respective Governing Bodies.

5.3.8 Capital Improvement Program Construction

Similar to the intergovernmental entity option, the Chief Executive would be responsible for managing or retaining consultants/contractors to management all construction of improvements. Unless there are change orders that impact the funding contribution of the Trip97 Partners, the special district would approve all change orders. The Board would provide the Chief Executive the authority to make such approvals, up to a point (dollar amount and/or amount of scope change) that it would reserve approval rights for. Absent intergovernmental agreements between the special

district and the Trip97 Partners to the contrary, all cost overruns would be the responsibility of the special district.

5.3.9 Capital Improvement Program Funding and Financing

In the example of the proposed legislation underlying the special district, the special district is given the authority to seek voter approval of a property tax base that differs by zones (or sub-districts) within the overall district. The property tax differential is accomplished by establishing percentages applicable to each zone that represent the percent of the permanent property tax rate applicable to the zone. These percentages can range between 0% and 100%. This is a substantially better funding authority than available in the other governance options. The authority to not only set the boundaries of the district but to also create differential funding zones within the district greatly enhances the ability of the board to craft a politically viable funding measure.

The assumed legislation provides the special district with the authority to impose a local vehicle registration fee. The special district option also provides a cleaner approach to imposing system development charges, should that be desired as part of the funding plan. The ability to impose SDCs in the intergovernmental entity option was hampered by the possible differences in the authorities (by charter or by code) of the Trip97 Partners. This led other intergovernmental entities to rely on the local governments to impose SDCs and provide receipts to the entity. This issue does not arise with regard to the special district, assuming the underlying legislation provides for SDCs.

The financing authorities of the special district would be similar to those provided to the intergovernmental entity.

5.3.10 Corridor Management Program Funding

The special district option would address this issue similarly to that described for the intergovernmental entity option in Section 4.3.10.

5.3.11 Land Use Planning Considerations

If the special district board sought to facilitate the implementation of the Trip97 capital improvement and corridor management programs through land use actions, it could adopt these programs as a 'functional plan' under the special authority afforded the district in the proposed example of legislation. If this is done, then the Trip97 Partners would be required to amend their comprehensive plans, transportation system plans, and other regulations to conform to the Trip97 plans. One of the benefits of doing this is that it reduces the possibility of land use challenges to the plan in multiple jurisdictions.

The proposed example of legislation would also require the Trip97 Partners to issue the appropriate development approvals, permits, licenses, and certificates necessary for the development of the improvements or operation of the programs included in the functional plan, subject only to reasonable and necessary conditions of approval. This provision could substantially facilitate project implementation.

5.4 Assessment of Special District Structure Example

5.4.1 Ability to Establish Governance Structure

The special district option is the most difficult of three options to establish. Stage 1 of the special district option is similar to the other options, requiring intergovernmental agreements for funding contributions. At the end of Stage 1 the Trip97 Partners would need to prepare and secure passage of special district legislation tailored to meet the needs of Trip97. The special district option would terminate if the legislation fails. If the legislation fails, the Trip97 Partners would still have the ability to establish an intergovernmental agreement structure or an intergovernmental entity structure. If the legislation passes that are additional complexities to establishing the special district, including defining the boundaries of the district and identifying the composition of the board and the method in which appointments to the board are made.

5.4.2 Ability to Implement Projects and Programs

A properly structured special district would be fully capable of undertaking all activities required to develop the Trip97 improvement program and operate a related corridor management program. The special district would also be able to assign some responsibilities or activities to the Trip97 Partners, if that is desired, through the use of supplemental intergovernmental agreements.

5.4.3 Ability to Facilitate Project and Program Funding

The special district exhibits the best ability to fund Trip97 projects and programs. Given the proposed example of legislation, the special district governance structure would have the broadest and most flexible set of funding authorities. In particular, the example of legislation grants special district the authority to: (a) set the boundaries of the overall district and (b) seek voter approval of a property tax base that differs by zones within the overall district. These can be key factors in securing funding approvals from the voters. The special district is better able to impose a local vehicle registration fee and to establish system development charges than other governance structures. The special district option, like the other governance structures, can enter government intergovernmental agreements for funding contributions from the Trip97 Partners, and can accept state and federal grants.

5.4.4 Ability to Finance Debt

Similar to the intergovernmental entity option, the special district structure has the authority to issue general obligation bonds subject to voter approval, and revenue bonds, short-term borrowing, and other debt instruments subject to board approval. The increased independence of the special district from the local Governing Bodies may facilitate providing bond covenants required by the capital markets.

5.4.5 Impact on Existing Decision-Making Processes

The special district option provides for decision-making that is mostly independent from the Governing Bodies. The amount of separation can be tailored in the legislation to meet local needs, or can be modified through intergovernmental agreements. Any decision that affects funding contributions from the Trip97 Partners would continue to require approvals by the Governing Bodies.

5.4.6 Minimize Administrative Costs

The special district governance structure would have similar administrative costs as the intergovernmental entity option. These costs would be higher with a special district than with the intergovernmental agreement option because it entails the establishment of a new governmental entity, subject to local government record-keeping requirements, and (in the example) incorporates a Chief Executive and Administrative Assistant. However, it should operate more efficiently than the other options and thus may cost less to operate in overall terms than the other options.

5.4.7 Ability to Facilitate Land Use Requirements

Based on the proposed example of legislation, the special district option offers the best ability to facilitate land use requirements. If employed, the functional planning authority can ensure consistency of all affected comprehensive plans, transportation system plans, and other land use plans and regulations with the Trip97 programs. It also reduces the risk of land use challenges in multiple jurisdictions. In addition, the proposed legislative example would require the Trip97 Partners to issue the appropriate development approvals, permits, licenses, and certificates could substantially facilitate project implementation.

5.4.8 Adaptability

The adaptability of the special district option may be somewhat limited compared to the other governance structures because it stems from specific legislation as opposed to intergovernmental agreements between the Trip97 Partners. This rigidity can be mitigated by providing authority in the legislation for the board of the special district and/or of the Trip97 Partners to adjust certain features.

On the other hand, the proposed example of legislation provides for increased funding adaptability by allowing the district boundaries and zonal boundaries for differential taxation rates to be set by the Trip97 Partners and special district board.

6 SUMMARY COMPARISON OF GOVERNANCE STRUCTURE OPTIONS

6.1 Summary of Governance Option Tradeoffs

Each of the governance structure options described in this memorandum can provide a satisfactory governance structure for the development and implementation of the Trip97 capital improvement program and corridor management programs. In addition, each of the governance structure options can incorporate a wide variety of specific terms, depending on the needs of the Trip97 Partnership.

To facilitate discussion, examples of these terms were incorporated in the options – but it is important to note that these were just examples and not recommendations. The examples illustrate the major tradeoffs that need to be considered by the Trip97 Partners. The major countervailing forces appear to be the breadth and flexibility of funding authorities versus the level of decision-making retained by the Governing Bodies.

The matrix on the following page summarizes these tradeoffs.

6.2 Specific Issues Raised

6.2.1 Pooling of Funds

The question arises as to the relative ability of the governance structure options to serve as a repository of pooled funds from the Trip97 partners, including as it relates to the long-term stability of the structure, the political acceptability of the structure, and the structure's ability to collect and disburse funds.

Notwithstanding the basic governance option, the pooling of funds is accomplished through intergovernmental agreements. On one side of the agreement are the contributing entities, which include the participating local governments and, in some options, ODOT. On the other side of the agreement is the recipient entity – which differs by governance option.

Under the Intergovernmental Agreement structure, the recipient entity would be the Trip97 partner designated as the lead agency – in the example in the technical memorandum this is assumed to be ODOT. The intergovernmental agreement committing the funding contribution would include such provisions as:

- Establishing conditions precedent to the obligation to make a funding contribution (such as having all funding partners contractually commit their funding contributions);
- Establishing a specific amount and due date for each funding contribution;
- Requiring the lead agency to deposit in these funds in a separate account dedicated to Trip97;
- Requiring the lead agency to provide annual accountings to the funding partners;
- Defining eligible uses for the pooled funds and providing for an approval process for amending the eligible uses as may be needed; and
- Establishing provisions for return of unused funds and distribution of assets upon termination of the agreement.

Since as explained earlier in Section 3.4.3, these intergovernmental agreements are enforceable contracts, these provisions, if properly structured, would safeguard the interests of the funding partners

The PMT has discussed the possibility of pooling funding from the Trip97 partners using such sources as gas tax revenues and tax increment revenues. It should be noted that the funding sources providing the pooled funds is not particularly relevant to the choice of governance structure; the issues and solutions are generally the same regardless of funding sources. In fact it is not unusual for the funding agreements to specify the amount and due date of the contribution, and not the source – leaving it to each funding partner to decide for itself how it will meet its funding obligation.

The funding source becomes relevant to the governance structure when rather than having commitments of specific funding amounts the funding commitment(s) depends on future amounts of revenue collections from a specific source(s). While Trip97 may need to take this approach, it would greatly complicate the governance structure as well as make the overall program implementation much less efficient.

As discussed earlier in this memorandum, there are significant differences among the governance structure options regarding the funding mechanisms available to the governance entity other than pooled resources. While the pooling of funding contributions may not be a major factor in selecting the governance structure, the relative merits of the non-pooled funding options available to the governance structure options may be a significant factor.

In the cases of the Intergovernmental Entity and Special District options, a separate entity (rather than using ODOT or a local government) is established to be the recipient of pooled funding contributions. Nonetheless the issues and solutions surrounding pooled funding contributions are materially identical to those for the Intergovernmental Agreement option. Thus the relative merits of the governance options as it relates to the pooling of funding contributions depends on the political acceptability of the recipient entity. This is not a technical issue, and instead depends on the individual perceptions of each of the partnering agencies. The Trip97 partners may not agree, and the final conclusion may depend on a political compromise among the partners during the next phase of Trip97 planning.

6.2.2 Land Use

One of the issues to be addressed by Trip97 is how the Transportation Planning Rule (TPR) applies to transportation and land use decisions in the Trip97 Corridor. The TPR requires projects, transportation and land use plans, and land use regulations to conform to transportation system performance standards. With limited exceptions, mitigation is required if the performance of the system is materially degraded by a project, plan, or land use regulation; otherwise the project, plan, or regulation is prohibited by the TPR. The normal performance standards applicable to the Trip97 Corridor were adopted as part of the 2011 amendments to the Oregon Highway Plan (OHP) Policy 1.F. These performance standards focus solely on peak-hour volume-to-capacity (V/C) ratios at critical points within the applicable area (See Table 6 in OHP Policy 1.F, as amended). However, under Action 1F.3 of the OHP, ODOT and local jurisdictions may adopt different (i.e. other than V/C ratios) measures that balance overall transportation system efficiency with multiple objectives of the area being addressed.

The performance measures proposed by KAI could supplement V/C ratios as the basis for assessing compliance with the TPR in the Trip97 Corridor. KAI's methodology evaluates the corridor as a whole rather than a specific point or link in the system, and focuses on a broad range of criteria. This fundamentally differs from the V/C performance standards in the OHP; these corridor-based TPR performance measures will facilitate better transportation and land use decision-making in the Trip97 Corridor. However they will also tightly knit together the decision-making of the Trip97 partners. Since with the KAI methodology the development capacity constraints on Highway 97 would be based on measures of the entire corridor, land use decisions say in Bend would more directly affect what say Redmond could do than with the normal V/C ratio measures. This can affect the preferred governance structure for Trip97. While each of the governance structure options can work with corridor-based performance measures, the Intergovernmental Entity and Special District options are more naturally aligned with a corridor perspective than the Intergovernmental Agreement option. These issues need to be examined in more detail in the next phase of Trip97 planning.

Summary Comparison of Governance Structure Options

	Intergovernmental Agreement Option	Intergovernmental Entity Option	Special District Option
Ability to Establish Governance Structure	Easiest structure to establish. All parties familiar with structure. Enactment only requires approval by parties.	More difficult to establish than the intergovernmental agreement option. In addition to approval of enabling agreement by Trip97 Partners, requires approval of a majority of cities in each of counties.	Most difficult option to establish. Stage 1 similar to the other options, but must prepare and secure passage of legislation tailored to meet the needs of Trip97. Special district option void if legislation fails. Implementation complicated by need to set district boundaries.
Ability to Implement Projects and Programs	Except for inability to use certain funding and financing options, can perform activities necessary to implement Trip97 programs.	Fully capable of undertaking all activities required to develop and implement the Trip97 programs.	Fully capable of undertaking all activities required to develop and implement the Trip97 programs.
Ability to Facilitate Project and Program Funding	Can accommodate and fully enforce funding contributions from Trip97 Partners and other grants. Could impose a local vehicle registration fee with voter approval.	Can accommodate and fully enforce funding contributions from Trip97 Partners and other grants. In addition has authority to seek approval of a tax base and/or general obligation bond. Could also impose a local vehicle registration fee with voter approval.	Can accommodate and fully enforce funding contributions from Trip97 Partners and other grants. Has authority to secure contributions, and seek voter approval of tax base and/or GO Bond. Can create sub-districts with differing tax rates. Better ability to impose system development charges. Can impose local vehicle registration fee.
Ability to Finance Debt	Limited ability to finance debt. Can pool funding from several sources to issue debt, but difficult practically.	In addition to opportunity for GO Bonds, has authority for revenue bonding, short-term borrowing, and other debt.	In addition to opportunity for GO Bonds, has authority for revenue bonding, short-term borrowing, and other debt.
Impact on Existing Decision-Making Processes	Governing Bodies of Trip97 retain all material decision-making authority.	Entity provided some independence from the local decision-making. Amount of independence depends on the authorizing agreement.	Most independence from the local decision-making. Amount of independence depends on legislation; can be adjusted through intergovernmental agreements.
Minimize Administrative Costs	Least costly to administer because no new entity and no additional budget, audit, accounting requirements.	Higher administrative costs than the intergovernmental agreement option due to record keeping and staffing of new entity; but may operate more efficiently otherwise	Similar to intergovernmental entity.
Ability to Facilitate Land Use Requirements	Assists in land use coordination, but no major ability to facilitate land use requirements.	.Better able to facilitate corridor-based decision-making than the Intergovernmental Agreement option.	Best ability to facilitate land use requirements. Similar to Intergovernmental entity option, can facilitate corridor-based decision-making. Functional planning authority ensures consistency of affected comp plans, TSPs, etc. Reduces risk of land use challenges in multiple jurisdictions.
Adaptability	Easily adaptable. Revisions only require amendments to intergovernmental agreements, which must be approved by Trip97 Governing Bodies.	Procedures for adapting authorities of intergovernmental entity are set in authorizing agreement. Adaptability depends on these terms.	Least adaptable. Procedures for adapting authorities set in legislation. Adaptability depends on these terms.

