

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF )	RESOLUTION NO. 05-3546
OPERATING OFFICER TO ENTER INTO AN )	
INTERGOVERNMENTAL AGREEMENT WITH THE )	
CITY OF BEAVERTON FOR ACQUISITION, JOINT )	Introduced by Councilor Robert Liberty
OWNERSHIP, DISPOSITION AND DEVELOPMENT )	
OF THE WESTGATE PROPERTY AS A TRANSIT- )	
ORIENTED DEVELOPMENT/CENTERS PROJECT )	

WHEREAS, on April 9, 1998, the Metro Council adopted Resolution No. 98-2619 (“For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development Implementation Program at Metro”), which authorized start-up activities for the Metro Transit-Oriented Development Implementation Program, as amended by Metro Council Resolution No. 04-3479 (“For the Purpose of Amending the Transit-Oriented Development Program to Expand the TOD Program Area and Initiate an Urban Centers Program”) adopted on July 15, 2004, authorizing the Metro acquisition and “Joint Development” of real property satisfying certain criteria and identified as “Opportunity Sites.” Metro’s Transit-Oriented Development/Urban Centers Program (“TOD” or “TOD Program”) utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, “Frequent Bus Stops” and in Urban Centers throughout the region; and

WHEREAS, on July 12, 2004, the Beaverton Downtown Regional Center Development Strategy was formally presented to a joint meeting of the Beaverton City Council and Metro Council. The action plan recommended by this strategy included identifying potential catalyst project sites, determining a marketable development program for each site, reducing minimum parking requirements, streamlining the entitlement process associated with each site and considering direct project subsidies to achieve urban scale development; and

WHEREAS, on July 15, 2004, the TOD Work Plan was amended to expand the TOD Program area and initiate an Urban Centers Program by Resolution No. 04-3479 (For the Purpose of Amending the Transit-Oriented Development (TOD) Program to Expand the TOD Program Area and Initiate an Urban Centers Program); and

WHEREAS, Metro’s TOD Program and the City of Beaverton co-sponsored a Metropolitan Transportation Improvements Program (MTIP) funding proposal to allocate funds toward the acquisition of the Westgate Property, and on March 24, 2005, the Metro Council adopted Resolution No. 05-3529A allocating \$2.0 million to fund the acquisition and development of the Westgate Property as a high quality showcase TOD catalyst project within the Beaverton Downtown Regional Center; and

WHEREAS, on November 7, 2005, the Beaverton City Council appropriated funds for purchase of the Westgate Property; now, therefore

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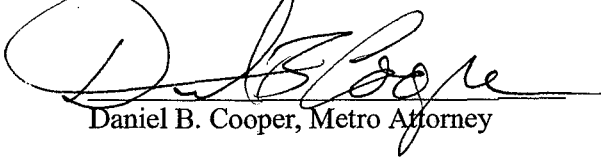
BE IT RESOLVED, the Metro Council authorizes the Chief Operating Officer to execute the attached Intergovernmental Agreement with the City of Beaverton (Exhibit A to the Resolution), providing for the acquisition, joint ownership, disposition and development of the Westgate Property as a catalyst TOD/Centers project.

ADOPTED by the Metro Council this 15<sup>th</sup> day of December, 2005.

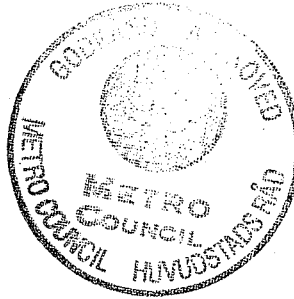


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



**Exhibit A to Metro Resolution No. 05-3546**

**INTERGOVERNMENTAL AGREEMENT  
BEAVERTON ROUND – WESTGATE PROPERTY**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter (“Metro”) and the City of Beaverton (the “City”), a municipal corporation (collectively, “the Parties”). This Agreement is effective as of the last date of execution set forth below (the “Effective Date”).

**RECITALS**

A. WHEREAS, Metro Council Resolution No. 98-2619 (“For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development Implementation Program at Metro”) adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 (“For the Purpose of Amending the Transit-Oriented Development Program to Expand the TOD Program Area and Initiate an Urban Centers Program”) adopted on July 15, 2004, authorizes the Metro acquisition and “Joint Development” of real property satisfying certain criteria and identified as “Opportunity Sites.” Metro’s Transit-Oriented Development/Urban Centers Program (“TOD” or “TOD Program”) utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, “Frequent Bus Stops” and in Urban Centers throughout the region.

B. WHEREAS, on July 12, 2004, the Beaverton Downtown Regional Center Development Strategy was formally presented to a joint meeting of the Beaverton City Council and Metro Council. The action plan recommended by this strategy included identifying potential catalyst project sites, determining a marketable development program for each site, reducing minimum parking requirements, streamlining the entitlement process associated with each site and considering direct project subsidies to achieve urban scale development.

C. WHEREAS, Metro’s TOD Program subsequently authored and Beaverton co-sponsored a Metropolitan Transportation Improvements Program (MTIP) funding proposal to allocate funds toward the acquisition of the Westgate Property, located at 3950 SW Cedar Hills Boulevard, Beaverton, Oregon, and legally described and depicted in the attached Exhibit A (the “Westgate Property”), and on March 24, 2005, the Metro Council adopted Resolution No. 05-3529A allocating \$2.0 million to fund the acquisition and development of the Westgate Property as a high quality showcase TOD Program Transit-Oriented Development catalyst project within the Beaverton Regional Center.

D. WHEREAS, on November 7, 2005, the Beaverton City Council appropriated funds for purchase of the Westgate Property.

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E. WHEREAS, Metro and the City now wish to enter into this Agreement to provide for the contribution of \$2.0 million in MTIP funding toward the acquisition, disposition and development of the Westgate Property as a high quality showcase TOD Program Transit-Oriented Development catalyst project.

F. WHEREAS, on December 12, 2005, the Beaverton City Council authorized the Mayor to enter into this Agreement with Metro.

G. WHEREAS, on December 15, 2005, the Metro Council approved Resolution No. 05-3546, authorizing Metro's Chief Operating Officer to enter into this Agreement with the City.

**NOW, THEREFORE**, in reliance on the above recitals and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. General Objective.** To provide for the acquisition, joint ownership, disposition and development of the Westgate Property as high quality showcase TOD Program Transit-Oriented Development catalyst project, in accord with Metro TOD Program criteria and the Minimum Development Program Criteria set forth below (hereafter, the "Project").

**2. Property Acquisition**

2.1 The City shall negotiate the acquisition of the Westgate Property, perform commercially reasonable due-diligence, close escrow and acquire the Westgate Property with City funds ("City Closing").

2.2 Upon review and approval by Metro of the results of the City's due diligence, satisfactory completion of any additional due-diligence Metro may elect to perform at its sole discretion, and upon receipt of the above set forth \$2,000,000 MTIP allocation from TriMet, Metro shall pay TWO MILLION DOLLARS (\$2,000,000.00) into an escrow account opened by Metro for purposes of the closing the acquisition of Metro's interest in the Westgate Property, in consideration for a pro-rata share of title commensurate with Metro's contribution and the development of the Westgate Property in accord with TOD criteria and the Minimum Development Program Criteria set forth below. Metro's pro-rata share of title shall be determined based on City's MAI appraised value (per appraisal report by R.P. Herman & Associates dated 8/15/05) of the Westgate Property, as reviewed by Metro's review appraiser for compliance with USPAP and generally accepted appraisal principles. Metro shall receive its undivided pro-rata share of title as a tenant in common with the City of Beaverton by Statutory Warranty Deed, subject only to those exceptions set forth on Ticor Title Insurance Company's Preliminary Title Report, dated September 12, 2005, order # 854871, and numbered and 8-14 (the "Metro Closing").

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2.3 Metro agrees to dedicate with City as co-tenant in common to the public for use as right-of-way, that portion of the Westgate Property shown on Exhibit C prior to City's notice to the road contractor to proceed.

**3. Pre-Solicitation Preparation – Entitlements.** Prior to the Metro Closing, the City agrees to prepare an amendment of the City's zoning and development ordinance (ZDO) altering the ZDO such that a development project satisfying the following Minimum Development Program Criteria set forth below may proceed on the Westgate Property as of right. Promptly after the Metro Closing, and prior to formal action on a DDA for the Westgate Property, the City shall submit said amendment to the City of Beaverton Planning Commission and Beaverton City Council, and shall support and recommend said amendment, exerting its best efforts to obtain the adoption of said ordinance.

**4. Minimum Development Program Criteria.**

- 4.1 3 or more buildings ranging of no less than 5-10 stories.
- 4.2 A transit-supportive site layout and mix of retail, office and residential uses.
- 4.3 30,000 square feet of ground floor retail space.
- 4.4 90 housing units.
- 4.5 220,000 square feet of office space in two buildings with structured parking.
- 4.6 A floor area ratio (FAR) near 2:1, structured parking to be included in FAR calculations.
- 4.7 Reduced parking ratios for residential, commercial, and office uses will be recommended for site development based on the results of the Beaverton/Hillsboro Parking Solutions Strategy to be undertaken by the City of Beaverton in 2006.
- 4.8 All building space conditioning will be provided by the City's Central Plant and associated distribution system will be extended to property lines.

**5. Selection of Development Team.** The City and Metro agree to establish a Project Management Committee to manage, craft and implement a mutually acceptable developer solicitation and selection process to promptly select a development team for the Project in accord with all applicable provisions of ORS Chapter 279, the Beaverton City Code and the Metro TOD Workplan as follows:

5.1 The Project Management Committee shall be composed of the following:

- Andy Cotugno, Metro Planning Director (or designee)
- Phil Whitmore, Metro TOD Program Manager
- Linda Adlard, City of Beaverton Chief of Staff (or designee)
- Lonnie Dicus, City of Beaverton Business Services & Plant Manager

5.2 The City shall lead the preparation of a Request for Proposals (RFP) for developer based on the Minimum Development Program Criteria established by this Agreement and

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other criteria mutually agreed upon in writing by Metro and the City, and shall issue said RFP to known potential proposers.

5.3 Notwithstanding the above, upon mutual agreement, the City and Metro may entertain unsolicited proposals and may accept an unsolicited proposal if said proposal satisfies the Minimum Development Program Criteria.

5.4 The City and Metro shall jointly evaluate the qualifications of all developers responding to the RFP and select the developer by mutual agreement.

5.5 The City shall bear the cost of conducting developer solicitation and selection. Metro shall bear its own costs of participating in the selection process if any.

**6. Disposition and Development Agreement.** The City, Metro and the selected developer (“Developer”) shall be parties to the Disposition and Development Agreement (“DDA”). The City and Metro shall jointly negotiate the terms of the DDA with Developer, which shall be mutually acceptable to Metro and the City, shall comply in all respects with the terms of this Agreement and the Minimum Development Program Criteria. Neither party shall be obligated to offer development incentives equal to incentives offered by the other.

**7. Conceptual Design.** The DDA shall provide for a design charrette to be conducted by Developer, providing three different conceptual designs or design variations for the Project. The City, Metro, and other select stakeholders mutually agreed upon by the City and Metro, will be invited to provide input and feedback. At the close of the conceptual design phase of the Project set forth herein, the City and Metro will mutually agree upon and select a design alternative. The selected design alternative shall include a site plan, development program, exterior materials and exterior architectural details (“Conceptual Design”). Any selected design shall be subject to City’s discretionary land use approvals.

**8. Value Engineering.** Value Engineering is an organized approach to the identification and elimination of project costs that provide neither use, nor life, nor quality, nor appearance, nor customer features. The City and Metro agree that the DDA shall require the selected developer to integrate value engineering early in the development process so that the conceptual design approved by the Project Management Committee is financially realistic. The DDA shall provide that, in the event that additional cost cutting is necessary (for example, after construction bids have been received), the parties shall mutually agree on any specific cost cutting proposals that affect the Conceptual Design.

**9. Land Disposition.** In accord with the terms of this Agreement and upon satisfaction of all relevant preconditions to be set forth in the DDA, including but not limited to those set forth below, the City and Metro shall convey the Westgate Property to the Developer by Bargain and Sale Deed. The proceeds of the Land Disposition, if any,

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shall be allocated pro-rata between the City and Metro in accord with common ownership share.

**9.1 Preconditions to Land Disposition:**

9.1.1 Final review and approval by the City and Metro of the architectural site plans for consistency with the Conceptual Design and the Value Engineering process, if any.

9.1.2 Final review and approval by the City and Metro of the building elevation details for consistency with the Conceptual Design and the results of the Value Engineering process, if any.

9.1.3 The Developer shall have secured adequate construction financing and equity investment capital, necessary to complete the Project. The adequacy or inadequacy of the construction financing and equity investment capital shall be subject to the mutual determination of the City and Metro.

9.1.4 The Developer shall be subject to no litigation or action privately, or by regulation or government order commenced, pending, or threatened in writing that adversely affects Developer's ability to construct the Project, including a petition in bankruptcy. This requirement may be waived by mutual agreement of Metro and the City.

**10. Property Management.** Upon acquisition of the Westgate Property by Metro and the City, the City shall manage the Westgate Property until it is conveyed to a developer pursuant hereto and in accord with the DDA. The City shall manage and maintain security of the Westgate Property. Funding for the management and maintenance of the Westgate Property and the payment of taxes or assessments applying to the Westgate Property, if any, shall be provided from the City's own resources.

**11. General Provisions**

11.1 General Indemnification. Each party, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and hold harmless the other party, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Westgate Property. The indemnity obligations under this clause shall survive any expiration or termination of this Agreement.

11.2 Environmental Indemnity. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to Metro) Metro and hold Metro, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding,

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meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, not caused or contributed to by an act or omission of Metro, its employees, agents, or contractors, in whole or in part, directly or indirectly, from: (a) the past, present or future Environmental Condition of the Westgate Property; (b) past, present or future Adverse Environmental Activity occurring on or related to the Westgate Property; (c) any and all Government Action related to the Westgate Property or past, present or future activities thereon; (d) the past, present or future Environmental Condition of real property surrounding the Westgate Property, relating to or resulting from the Environmental Condition of the Westgate Property or Adverse Environmental Activity on the Westgate Property; and (e) City or City's agents failure to comply with any and all future Environmental Requirements relating to the Westgate Property.

11.2.1 For purposes of this Section, "Environmental Condition" shall be interpreted to include, but not be limited to, the release of or contamination by any Hazardous Substance(s), pollutant or contaminant, as those terms are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and all other applicable federal and state environmental statutes, rules and regulations now or hereafter in effect, but shall not include conditions directly resulting from the acts of Metro, its officers and employees, agents and contractors.

11.2.2 For purposes of this Section, "Government Action" shall be interpreted to include any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which results directly or indirectly from the Environmental Condition of the Westgate Property or Environmental Activity related on or related to the Westgate Property.

11.2.3 For purposes of this Section, "Adverse Environmental Activity" shall be interpreted to include any past or current, actual, proposed or threatened surface or subsurface, storage, holding, existing, release, emission, discharge, generation, processing, abatement, removal, remediation, disposition, handling or transportation of any Hazardous Substance(s), pollutant or contaminant (as though they are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and other applicable federal and state environmental statutes, rules and regulations hereinafter in effect), from, under, into or on, the Westgate Property, or otherwise relating to the Westgate Property or the use of the Westgate Property or neighboring properties, or any other activity or occurrence, cause or causes that would cause any such event to exist, but shall not include activity by Metro, or on behalf of Metro by its officers and employees, agents and contractors.

11.2.4 For purposes of this Section, "Environmental Requirements" shall be interpreted to include past, present and future state and federal local laws and ordinances, including CERCLA, TOSCA, and ORS Chapters 465 and 466, as amended from time to time, including any administrative court order, judgment or decree arising there from.

11.2.5 The City and Metro hereby agree that the Environmental Indemnity contained herein shall survive the sale of the Westgate Property to a third party. Metro may, at its



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option, tender any defense of any claim, action or suit covered under this Environmental Indemnity to the City.

11.3 Liens. Each party shall pay as due all claims for work done on and for services rendered or material furnished to the Westgate Property at that party's order or request, and shall keep the Westgate Property free from any liens. If either party fails to pay any claims or to discharge any lien resulting from work done on and for services rendered or material furnished to the Westgate Property at that party's order or request, the other party may do so and collect the cost from the other party. Such action by a party shall not constitute a waiver of any right or remedy that the party may have on account of the other's default. A party may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as the other's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the responsible party shall, within 10 days after knowledge of the filing, secure the discharge of the lien, or deposit cash with the other, or provide sufficient surety bond or other surety satisfactory to the other party in an amount sufficient to discharge the lien plus any costs or attorney fees.

11.4 Signs. The City may provide on-site signage informing the public that the City is managing the site, but said signage shall state that funding for the acquisition came from Metro's Transit-Oriented Development/Urban Centers Program. The City shall also document in any publication, media presentation or other presentations on the Westgate Property that funding was provided by Metro's Transit-Oriented Development/Urban Centers Program.

11.5 Term. The term of this Agreement shall be three (3) years from the Effective Date of this Agreement, renewable by mutual written agreement for additional three (3) year periods. The indemnities set forth herein shall survive and shall not be affected by the expiration or termination of this Agreement.

11.6 Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon 10 days' written notice of termination issued by Metro, subject to the mutual written agreement of the Parties.

11.7 Default. Either party to this Agreement may declare a default before the date of expiration, if that party determines, in its sole discretion, that the other party has failed to comply with the terms and conditions of this Agreement and is therefore in violation of its terms. The party wishing to declare default shall promptly notify the defaulting party in writing of that determination and document said default with reasonable particularity. Thereafter, the defaulting party shall have 30 days to cure the default. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be deemed complied with if the defaulting party begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the default as soon as practicable.

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11.8 Metro Remedies. In the event of a default by the City that is not cured as set forth above, Metro may terminate this Agreement by notice in writing as set forth below, and except as otherwise set forth herein, Metro's exclusive remedy shall be the prompt repayment by the City of Metro's contribution to the acquisition of the Westgate Property, in the amount of TWO MILLION DOLLARS (\$2,000,000.00).

11.9 City Remedies. In the event of a default by Metro that is not cured as set forth above, the City's sole remedy shall be to enforce the specific performance of this Agreement. In no event shall Metro be liable to the City for any special, punitive, exemplary, consequential, incidental or indirect losses or damages under or in respect of this Agreement or for any failure of performance related hereto, howsoever caused.

11.10 Laws of Oregon – ORS 279. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapter 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. The City and Metro hereby acknowledge that uncertainty exists as to the applicability of prevailing wage rate laws, including ORS 279C.800-870 and related regulations, to this Agreement, and the DDA and Project contemplated by this Agreement. The City agrees to obtain the compliance of Developer with said laws when applicable, and agrees to indemnify Metro in accord with Section 11.1 for Developer's failure to so comply.

11.11 Assignment. No party may sell its undivided interest in the Westgate Property, or assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.

11.12 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
Phil Whitmore, TOD Program Manager  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

To City: City of Beaverton  
P.O. Box 4755  
Beaverton, OR 97076-4755  
Attn: Linda Adlard

11.13 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then

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continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

11.14 No Third Party Beneficiary. Except as set forth herein, the Agreement is between Metro and the City and creates no third party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to any third parties unless such third party is expressly described as an intended beneficiary under this Agreement. Metro and the City are the only parties to this Agreement and as such are the only parties entitled to enforce its terms.

11.15 Entire Agreement. This Agreement as supplemented by the DDA, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to this Westgate Property. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by any party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF BEAVERTON

METRO

By: \_\_\_\_\_  
Rob Drake

By: \_\_\_\_\_  
Michael J. Jordan

Title: Mayor \_\_\_\_\_

Title: Chief Operating Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Beaverton City Attorney

By: \_\_\_\_\_  
Metro Attorney

**Exhibits:**

Exhibit A – Legal Description of the Westgate Property

Exhibit B – Schedule of Performances

Exhibit C - Boundaries of Rose Biggi Avenue Right-of-Way

**Exhibit A**  
**Legal Description of Westgate Property**

Part of Lots 12, 13 and 14, STEEL'S ADDITION TO BEAVERTON, in the City of Beaverton, County of Washington and State of Oregon:

Beginning at an iron rod set at the intersection of the Northerly projection of the East line of Mill Street (when a 20 foot wide street) with the North right-of-way line of the Oregon Electric Railroad in Section 16, Township 1 South, Range 1 West of the Willamette Meridian, (said iron rod shown on Survey 9945, Records of Washington County Surveyor); thence running North 06° 56' East on the Northerly projection of East line of Mill Street 517.44 feet to an iron rod at the Southeast corner of that tract of land described in Deed to John S. Biggi, et al, recorded September 27, 1972 in Book 889 page 591, Washington County Deed Records; thence South 82° 45' 45" West 639.12 feet along the South line of said Biggi tract to an iron rod on the East right-of-way line of Cedar Street; thence South 00° 03' 15" East 125.00 feet to an iron rod on the North right-of-way of the Oregon Electric Railroad; thence South 61° 40' East on said right-of-way 669.42 feet to the place of beginning.

EXCEPTING THEREFROM that portion deeded to Tri-County Metropolitan Transportation District of Oregon by Deed recorded August 22, 1994 as Fee No. 94077226, Records of Washington County, Oregon.

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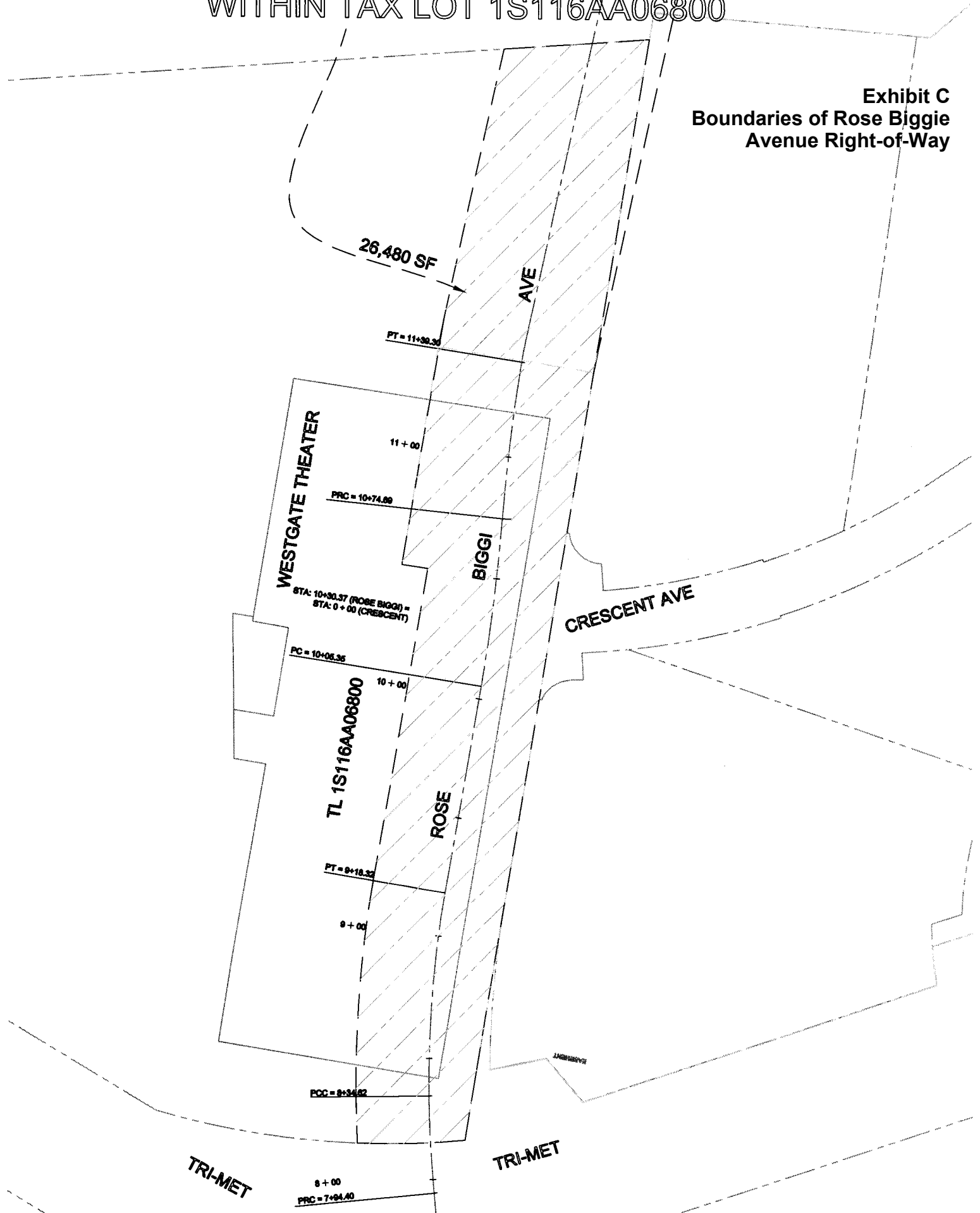
**EXHIBIT B**

**Schedule of Performances**

- Metro and City to enter into Intergovernmental Agreement December 2005
- Metro to provide \$2.0 million in acquisition funding and take title in pro rata share March – June 2006
- City to amend zoning to provide entitlements June - September 2006
- Developer Solicitation and Selection July – October 2006
- DDA Negotiated and Executed November 2006
- Complete Design Phase, Design Selection December 2006 – February 2007
- Engineering and Design January 2007 – June 2007
- Land Disposition July 2007

# ROSE BIGGI AVE REQUIRED RIGHT OF WAY WITHIN TAX LOT 1S116AA06800

Exhibit C  
Boundaries of Rose Biggie  
Avenue Right-of-Way



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO.05-3546, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF BEAVERTON FOR ACQUISITION, JOINT OWNERSHIP, DISPOSITION AND DEVELOPMENT OF THE WESTGATE PROPERTY AS A TRANSIT-ORIENTED DEVELOPMENT/CENTERS PROJECT

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Date: December 5, 2005

Prepared by: Andy Cotugno  
Phil Whitmore

## BACKGROUND

### *Transit-Oriented Development and Centers Implementation Program*

Metro initiated a Transit-Oriented Development Program (“TOD” or “TOD Program”) in April 1998 to help implement higher density and mixed-use projects next to transit stations along the Banfield and Westside Light Rail lines. Since that time, work has begun on 26 projects and the program has been expanded to encompass all operating MAX lines, streetcar lines, frequent bus routes, and regional and town centers.

The 2040 Growth Concept looks to the Central City, Regional and Town Centers, Station Communities and Main Streets as the centers of urban life in the region. The maintenance and enhancement of the region’s Centers is crucial to the long-term success of the 2040 Growth Concept.

In the fall of 2003, to encourage local governments to respond to Goal 6 of the Urban Growth Functional Plan, Metro funded a Development Strategy Pilot Project for Beaverton. The purpose of the pilot project was to provide an example for other local governments of a development strategy for encouraging development in a downtown center. In July 2004, the Beaverton Downtown Regional Center Development Strategy was formally presented at a joint meeting of the Beaverton City Council and the Metro Council. The action plan recommended that the public sector acquire site control for potential catalyst projects, develop a marketable program for each site, reduce parking ratios, streamline the approval process, and provide public investments to achieve urban scale development. To facilitate the execution of the development strategy, Metro approved Resolution No. 05-3529A (For the Purpose of Allocating \$62.2 Million of Transportation Priorities Funding For the Years 2008 and 2009 Pending Air Quality Conformity Determination) on March 24, 2005, which included \$2 million to fund acquisition and development of the Westgate Property, as further described below, in downtown Beaverton as a high quality TOD/Centers development. In October 2005, Metro approved Resolution No. 05-3627 to enter into an intergovernmental agreement with TriMet to provide \$6 million of local funds to Metro which includes this \$2 million for the Westgate acquisition. Metro will amend its budget in February to reflect these two prior actions: Resolution (05-3529A) and the TriMet funding IGA (Resolution No. 05-3627.) The Intergovernmental Agreement (IGA) with the City of Beaverton, substantially as shown in Exhibit A to the Resolution, provides for the expenditure of those funds for redevelopment of the Westgate Property. Metro will release the \$2 million to Beaverton after the funds have been transferred from TriMet in March 2006.

### *Beaverton Regional Center Project - Intergovernmental Agreement*

This resolution for an Intergovernmental Agreement with the City of Beaverton provides for the acquisition, joint ownership, internal management, disposition, and development of the property located

at 3950 SW Cedar Hills Boulevard (“Westgate Property”). The Westgate Property is comprised of 4.57 acres at a cost of \$4.9 million. Metro will pay \$2.0 million from MTIP funds towards the site acquisition with the City of Beaverton providing the balance. Metro and the City of Beaverton will co-own undivided interests in the site with the pro-rata share of title based on the value of the contribution. The site will be offered to developers with the following objectives: 1) 3 or more buildings of not less than 5 stories and ranging up to 10; 2) a mix of retail, office and residential uses; 3) minimum of 30,000 square feet of retail; 4) 90 housing units; 5) 220,000 square feet of office; 6) FAR of nearly 2:1; 7) reduction of parking requirements per city TGM study; and 8) connection of buildings to central City energy plant. Metro and the City of Beaverton will jointly evaluate and select the developer and be parties to a Development Agreement. Land value write down may be exercised by either party from their portion of the site value in order to secure public objectives and land sale proceeds (if any) will be distributed on a pro-rata basis of ownership with Metro's proceeds placed in the TOD/Centers Program. The City will provide environmental indemnification of the Westgate Property to hold Metro harmless, and will provide property management duties.

The City of Beaverton is acquiring the site in the same acquisition as the right-of-way for the Rose Biggi Street extension. The City and the seller are set to close escrow mid-December 2005 and this MTIP funding is an essential part of the acquisition funds.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

The site acquisition was part of the MTIP funding process in March 2005 and was the subject of numerous public meetings and hearings. During this time there was no known opposition to this site acquisition although there are groups and individuals who oppose TODs and Centers projects and public private partnerships.

### **2. Legal Antecedents**

The Federal Transit Administration (FTA) approved a grant for Metro to initiate the TOD Program in 1998. Authority to use FTA funds for joint development is included in the Intermodal Surface Transportation Act of 1991 (ISTEA) and codified under 49 USC 5309, 49 USC 5307, 23 USC 133 (STP) and 23 USC 149 (CMAQ). According to these statutes, TOD Program activities are defined as transportation projects provided there is (1) a physical or functional relationship to the transit project; and (2) an enhanced effectiveness of the existing transit system.

The TOD program was originally transferred from TriMet to Metro by Intergovernmental Agreement (IGA) via Resolution No. 96-2279 (For the Purpose of Authorizing an Intergovernmental Agreement With TriMet to Assist in Establishing a Transit-Oriented Development and Implementation Program at Metro) adopted on May 16, 1996. The Metro Council authorized start-up activities on April 9, 1998, by Resolution No. 98-2619 (For the Purpose of Authorizing Start-Up Activities For the Transit-Oriented Development (TOD) Implementation Program at Metro). The Work Plan was amended to include provisions for initiation of an Urban Centers Program on July 15, 2004 by Resolution No. 04-3479 (For the Purpose Of Amending the Transit-Oriented Development (TOD) Program Work Plan to Expand the TOD Program Area and Initiate an Urban Centers Program). The Metro Council adopted Resolution No. 05-3529A (For the Purpose of Allocating \$62.2 Million of Transportation Priorities Funding For the Years 2008 and 2009 Pending Air Quality Conformity Determination) on March 24, 2005, allocating \$2.0 million to fund acquisition and development of the Westgate Property to be a high quality TOD/Centers Project within the Beaverton Regional Center. In October 2005, Metro approved Resolution No. 05-3627 (For the Purpose of Authorizing Amendment No. 4 to An Intergovernmental Agreement With TriMet Concerning Transit-Oriented Development Program and Increasing the Level Of



Transit Service) to enter into an intergovernmental agreement with TriMet to provide \$6 million of local funds to Metro which includes this \$2 million for the Westgate acquisition.

### **3. Anticipated Effects**

#### ***Public Benefit***

A mixed-use project such as this will have 10 times more transit trips, nearly 3 times more walk trips and two and a half times more total non-auto trips as compared to typical suburban development. Development of the site will yield density of 5-8 times higher than typical suburban development. The development will result in 340 additional transit daily trips at a cost per induced transit ride of \$2.99.

The project will concentrate retail, housing, jobs and recreation in a walkable environment within a Regional Center designated in Metro's 2040 Plan. It will expand on the newly created place-making that has been successfully initiated by the Round.

### **4. Budget Impacts**

In March 2005, Metro approved Resolution No. 05-3529A to allocate \$62.2 for the Metropolitan Transportation Improvements Plan (MTIP) for the years 2008 and 2009; this included \$2 million to fund acquisition and development of the Westgate Property in downtown Beaverton as a high quality TOD/Centers development. In October 2005, Metro approved Resolution No. 05-3627 to enter into an intergovernmental agreement with TriMet to provide \$6 million of local funds to Metro; this included the \$2 million for the Westgate acquisition. Metro will amend its budget in February 2006 to reflect these two prior actions.

### **RECOMMENDED ACTION**

It is recommended that the Metro Council approve Resolution No. 05-3546 to provide for the acquisition, joint ownership, interim management, disposition and development of the Westgate Property located at 3950 SW Cedar Hills Boulevard in the City of Beaverton.