

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 08-3903
CHIEF OPERATING OFFICER TO EXECUTE)	
AN INTERGOVERNMENTAL AGREEMENT)	
WITH THE CITY OF PORTLAND PROVIDING)	
FOR FUNDING AND ADMINISTRATION OF A)	
PUBLIC CONTRACT FOR RAILROAD TRACK)	
REALIGNMENT SERVICES AND TO GRANT)	Introduced by Chief Operating Officer
AN EASEMENT TO THE CITY OF PORTLAND)	Michael J. Jordan, with the concurrence of
FOR NON-PARK USE)	Council President David Bragdon

WHEREAS, Metro’s Chief Operating Officer has determined that realignment of the Oregon Pacific Railroad Company track between SE Umatilla Street and SE Marion Street in Sellwood, City of Portland, is a necessary prerequisite to prepare for future construction of the Springwater Trail between its current terminus at SE Umatilla Street and SE 18th Street (the“Sellwood Gap”); and

WHEREAS, the City of Portland Bureau of Environmental Services (“BES”) has determined that said track realignment is also a necessary prerequisite to the construction of a planned Combined Sewer Overflow Interceptor System (“CSO System”) to be installed under the current location of the Oregon Pacific Railroad Company track, in SE Grand Avenue and on Metro property between SE Umatilla and Marion Streets in Sellwood, City of Portland; and

WHEREAS, the Oregon Pacific Railroad Company (“OPR”) has agreed to the track realignment, but only if OPR has complete control and responsibility for moving the tracks and Metro contracts with OPR to pay OPR an agreed upon sum for doing so; and

WHEREAS, Metro has expertise in negotiating for an acquiring railroad right-of-way and procuring track realignment services; and

WHEREAS, Metro Regional Parks and Greenspaces Department has provided a parallel Resolution No. 08-3892“Resolution of Metro Council, Acting As the Metro Contract Review Board, for the Purpose of Approving a Sole Source Contract With the Oregon Pacific Railroad for Railroad Track Realignment Services;”for concurrent consideration by the Metro Contract Review Board providing a sole source procurement of track realignment services from Oregon Pacific Railroad pursuant to Metro Code 2.04.062 and ORS 279B.075; and

WHEREAS, the Metro Regional Parks and Greenspaces Department and BES now propose that Metro and the City of Portland enter into the Intergovernmental Agreement attached as Exhibit“A,” providing for Metro procurement of OPR’s track realignment services, a grant of easement from Metro to BES to accommodate the CSO System (“Sewer Easement”), BES funding of the Metro-OPR procurement and BES Construction of a temporary gravel maintenance road, as further set forth below; and

WHEREAS, BES is requesting a subsurface Sewer Easement through Metro property under the future location of the Springwater Trail between SE Marion and SE Clatsop Streets, as described and depicted in the attached Exhibit“B;”to accommodate construction of the CSO System; and

WHEREAS, Resolution No. 97-2539B "For the Purpose of Approving General Policies Related to the Review of Easements, Right-of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department," adopted by the Metro Council on November 6, 1997 (the "Easement Policy"), requires formal review of all easement requests by the Metro Council; and

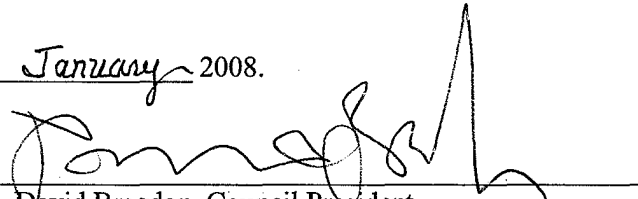
WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that the City's easement request satisfies the Easement Policy, as set forth in the Metro Easement Policy Criteria and Staff Findings attached as Exhibit "C," and can be accommodated with no impact to natural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management; and

WHEREAS, in lieu of paying the required fair market value for the Sewer Easement and the costs of processing the application, BES has agreed to provide and maintain a 16-foot wide graded gravel maintenance road between SE Umatilla and Linn Streets, in the location of the future Springwater Trail; now therefore


BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer:

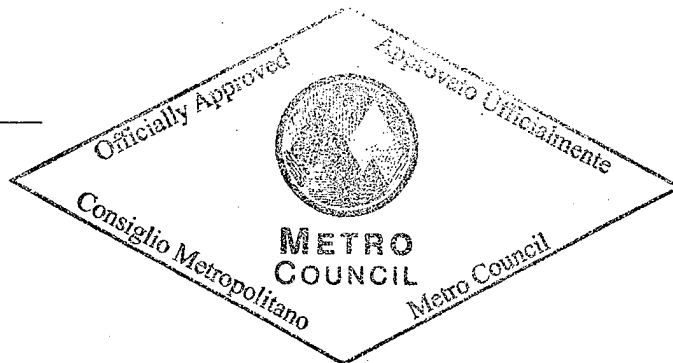
1. To execute the Intergovernmental Agreement with the City of Portland Bureau of Environmental Services attached as Exhibit A, providing for funding and administration of a public contract for railroad track realignment services;
2. Grant a Sewer Easement to the City of Portland Bureau of Environmental Services; and
3. Waive the requirement to pay easement processing costs and appraisal value for the Sewer Easement.

ADOPTED by the Metro Council this 17th day of January 2008.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



**INTERGOVERNMENTAL AGREEMENT
Oregon Pacific Railroad Realignment Project**

This Intergovernmental Agreement ("Agreement") dated November 30, 2007, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, Bureau of Environmental Services, located at 1120 SW 5th Avenue, Portland, Oregon 97204 ("BES"), collectively referred to as the "Parties."

RECITALS:

WHEREAS, Metro and the City of Portland, Parks and Recreation Department ("Parks") entered into an intergovernmental agreement (the "Sellwood Section IGA") dated February 6, 2004, providing for the management, maintenance and operation by Parks of certain parcels of real property owned by Metro in the Town of Sellwood, City of Portland (the "Sellwood Section") and establishing that, until the Springwater Trail is constructed over said parcels, Parks will landbank the Sellwood Section in accordance with the Metro Open Spaces Implementation Work Plan; and

WHEREAS, in accord with the Sellwood Section IGA, all requests for easements over the Sellwood Section must be evaluated and processed by Metro using the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997; and

WHEREAS, BES plans to install a Combined Sewer Overflow Interceptor system under unimproved SE Grand Avenue between SE Tacoma Street and SE Marion Street (the "CSO Project"), and has requested a permanent sewer easement ("Easement") over a portion of the Sellwood Section next to SE Grand Avenue to provide for the CSO Project, and Metro wishes to accommodate said request; and

WHEREAS, the Oregon Pacific Railroad ("OPR") rail line currently occupies SE Grand Avenue between SE Tenino Street and SE Marion Street, and a section of said rail line between railroad engineer's station Milepost 3.64 and Milepost 3.98 must be permanently realigned eastward to provide space for the excavation and construction of the CSO Project and to allow the OPR rail line and CSO Project to co-exist within SE Grand Avenue (the "OPR Realignment Project"); and

WHEREAS, Metro has expertise in negotiating for and acquiring railroad right-of-way and procuring track realignment services, and BES wishes to enter into this Agreement with Metro for the procurement of track realignment services for the OPR Realignment Project;

NOW, THEREFORE, the Parties agree as follows:

1. Permanent Sewer Easement. Metro and BES agree to execute and record a Permanent Sewer Easement encumbering the Metro Property, State Identification Number

1S1E26BB 4000, TL 4000 BLOCK 21, within the Sellwood Section, as shown in the map attached as Exhibit A. Metro and BES agree that the Permanent Sewer Easement will be drafted and recorded as set forth in the easement recording paragraph in the Scope of Work, Exhibit B to this IGA.

2. Procurement of Track Realignment Services. Metro, its agents and contractors shall procure track realignment services for the OPR Realignment Project on BES's behalf, in accord with the Scope of Work and Budget attached as Exhibit B. The procurement services provided by Metro shall be conducted in accord with the Metro Code and all applicable provisions of ORS Chapters 279A and 279B. All modifications to the Scope of Work and Budget must be mutually approved in writing by BES and Metro.
3. Payment. Once the BES and Metro Ordinance(s) are in effect, Metro shall be reimbursed for costs of track realignment shown in Exhibit A. Metro then shall invoice BES for mobilization and progress payments for each segment of railroad work complete. Each invoice shall include a breakdown of payment for costs for Metro staff that performed work, payment for costs for all other services directly related to Procurement Services with a description of those services, and payment for the direct costs for the rail realignment services, in accordance with Exhibit B. In addition, Metro shall be reimbursed for its staff time and expenses, and any other reasonable costs and expenses associated with or in any way related to the procurement performed hereunder, including changes in the Scope of Work and Budget, OPR Realignment Project delays and OPR Realignment Project cost increases. Metro shall provide City with current and projected expenses, and a summary of work accomplished by each Metro Staff, to BES on a monthly basis upon commencement of Procurement Services. Invoices shall be sent addressed as follows, or to such other address as the City may hereafter specify in writing:

Bureau of Environmental Services
Kurt Robinson
1120 SW Fifth Ave, Room 1000
Portland, OR 97204

4. BES to Provide Unpaved Maintenance Road. After track realignment is accomplished and upon completion of the Sewer Project, but no later than December 31, 2011, BES shall provide a 16-foot wide graded gravel maintenance road, to be located within unimproved SE Grand Avenue rights-of-way, eight and one-half (8.5) feet west of the railroad ties, between SE Umatilla Street and SE Linn Street crossings, as depicted in Exhibit A. BES shall install barriers or other improvements that prevent access by unauthorized motor vehicles over the maintenance road.
5. Maintenance of Unpaved Maintenance Road – Future Trail Use. BES agrees to maintain the unpaved maintenance road in a condition passable by bicycles and pedestrians, and specifically acknowledges that the maintenance road will be paved by others in the future as part of a Metro/Portland Parks bicycle and pedestrian trail project, and officially opened to the public. BES agrees that, after said paved bicycle and pedestrian trail is

constructed. BES will repair and/or replace any trail improvements that are removed and/or damaged beyond ordinary wear and tear by BES's ongoing maintenance, repair or replacement of the sewer improvements within Grand Avenue and the Sellwood Section. BES further agrees that said maintenance, repair and replacement activities shall not result in closure of the trail for more than 48-hours in any two week period, save any duration required to mitigate emergency sewer situations with the sewer system, or unless mutually agreed that a duration of ongoing maintenance longer than 48 hours is necessary.

6. Termination of Agreement.

6.1 Termination for Convenience by Mutual Agreement. Metro and BES may terminate all or part of this Agreement at any time by mutual agreement, based upon the determination that such termination is in the public interest. Termination under this provision shall be effective immediately upon written notice of termination executed by both Parties.

6.2 Payment/Reimbursement After Termination. Notwithstanding any termination of this Agreement, Metro and its agents and contractors shall be entitled to receive payment and/or reimbursement for any work completed or for which Metro or its agents or contractors are contractually or legally obligated, where such work or legal/contractual obligation occurred prior to the effective date of the termination.

7. Term and Expiration. This Agreement for Procurement Services shall be twenty (20) years. Unless earlier terminated, this Agreement shall expire on the tenth anniversary of the Effective Date. The Sewer Easement shall be in force, in perpetuity, unless amended otherwise by mutual agreement of both parties.

8. Coordination of Public Statements. BES and Metro shall coordinate their public statements about the OPR Realignment Project. All written public statements and media communications by BES concerning the OPR Realignment Project shall be provided to Metro for review and approval no less than five (5) business days prior to the public statement's release, or, if in case of emergency, no less than 48 hours prior to release.

9. General Provisions.

9.1 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 both by fax and regular mail as follows, or to such other address as the receiving party may hereafter specify in writing:

To Metro: Jim Desmond
 Director, Metro Regional Parks and Greenspaces
 600 NE Grand Avenue
 Portland, OR 97232-2736

To BES: Andi Gresh
 Fund Development Manager
 City of Portland Bureau of Environmental Services
 1120 SW 5th Avenue
 Portland, OR 97204

- 9.2 Indemnification. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the limits of the Oregon Tort Claims Act, ORS chapter 30:
- 9.2.1 BES shall defend, indemnify and save harmless Metro, 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, by contract or by operation of any statute, including but not limited to attorney's fees and expenses at trial and upon appeal which, in whole or in part, directly or indirectly arise from or are in any way connected with BES's performance of its obligation under this Agreement, or its breach violation or non-performance of its obligation hereunder.
- 9.2.2 Metro shall defend, indemnify and save harmless BES, 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, by contract or by operation of any statute, including but not limited to attorney's fees and expenses at trial and upon appeal which, in whole or in part, directly or indirectly arise from or are in any way connected with Metro's performance of its obligation under this Agreement, or its breach violation or non-performance of its obligation hereunder.
- 9.3 Laws of Oregon. This Agreement shall be governed by the laws of the state of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state, and the Parties agree to submit to the jurisdiction of the court of the state of Oregon.
- 9.4 Assignment. Neither party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that both Metro and BES may subcontract for performance of any of their respective responsibilities under this Agreement, without the prior written consent of the other party.
- 9.5 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 continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

Attachments:

Exhibit A –Permanent Sewer Easement and Rail Alignment

Exhibit B – Scope of Work and Budget – Track Realignment Procurement Services

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

CITY OF PORTLAND
Bureau of Environmental Services

METRO

Bureau Director Date

Authorized Signature Date

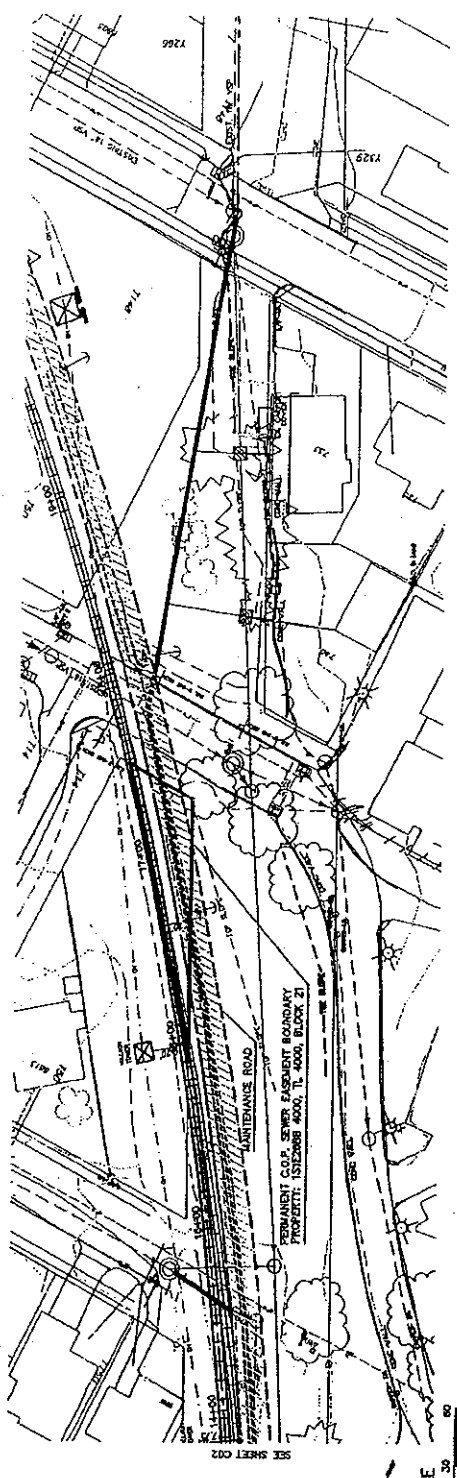
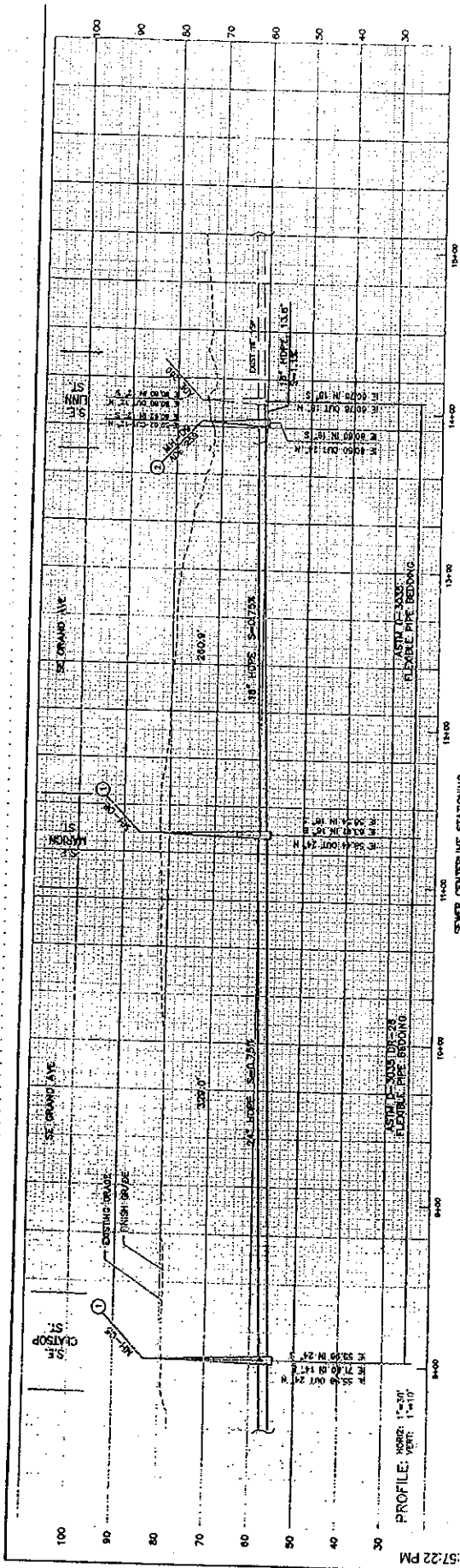
City Auditor Date

Approved as to form by Date
General Council

APPROVED AS TO FORM

[Handwritten Signature]

Approved as to form by Date
City Attorney **BY ATTORNEY** 12/17/07



NOTES:
Easement Description:
1. Easement for Property 1517 28ER
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CITY OF PORTLAND
ENVIRONMENTAL SERVICES

PROJECT NO.	1517 28ER
PROJECT NAME	IGA BETWEEN METRO & CITY OF PORTLAND BES
PROJECT LOCATION	1517 28ER
PROJECT DATE	11/12/2007
PROJECT STATUS	IN PROGRESS
PROJECT OWNER	CITY OF PORTLAND
PROJECT CONTACT	ENVIRONMENTAL SERVICES
PROJECT ADDRESS	1517 28ER
PROJECT PHONE	503-233-1517
PROJECT FAX	503-233-1517
PROJECT EMAIL	1517@portland.gov
PROJECT WEBSITE	www.portland.gov
PROJECT URL	www.portland.gov
PROJECT MAP DATA	1517 28ER
PROJECT FILE NAME	1517 28ER

NO.	DATE	REVISIONS
1	11/12/2007	ISSUED FOR PERMITS
2	11/12/2007	ISSUED FOR PERMITS
3	11/12/2007	ISSUED FOR PERMITS
4	11/12/2007	ISSUED FOR PERMITS
5	11/12/2007	ISSUED FOR PERMITS
6	11/12/2007	ISSUED FOR PERMITS
7	11/12/2007	ISSUED FOR PERMITS
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9	11/12/2007	ISSUED FOR PERMITS
10	11/12/2007	ISSUED FOR PERMITS

EXHIBIT A
METRO-BES IGA
OREGON PACIFIC RR REALIGNMENT
PERMANENT BES SEWER EASMENT

EXHIBIT A

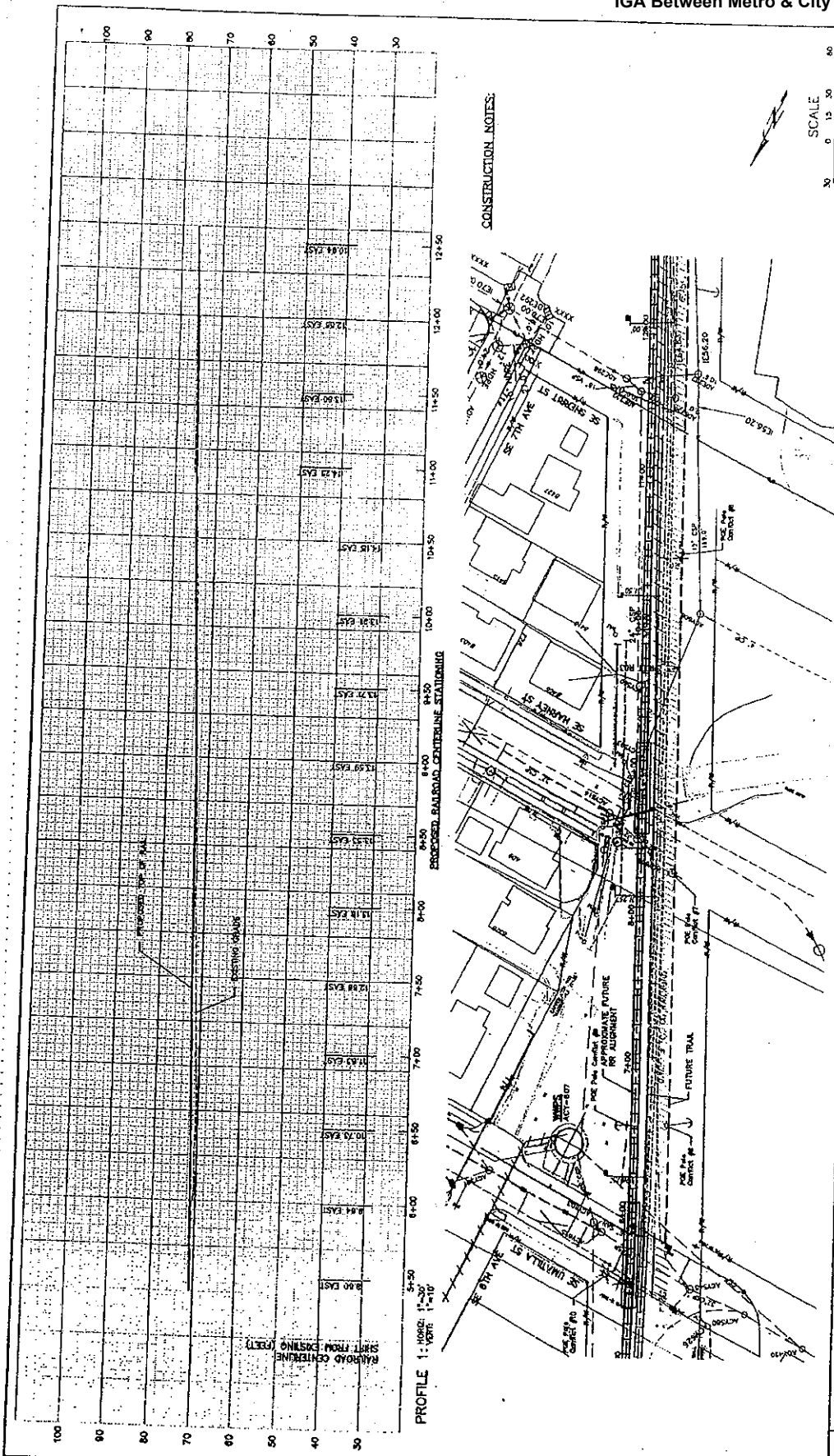


CITY OF PORTLAND
ENVIRONMENTAL SERVICES

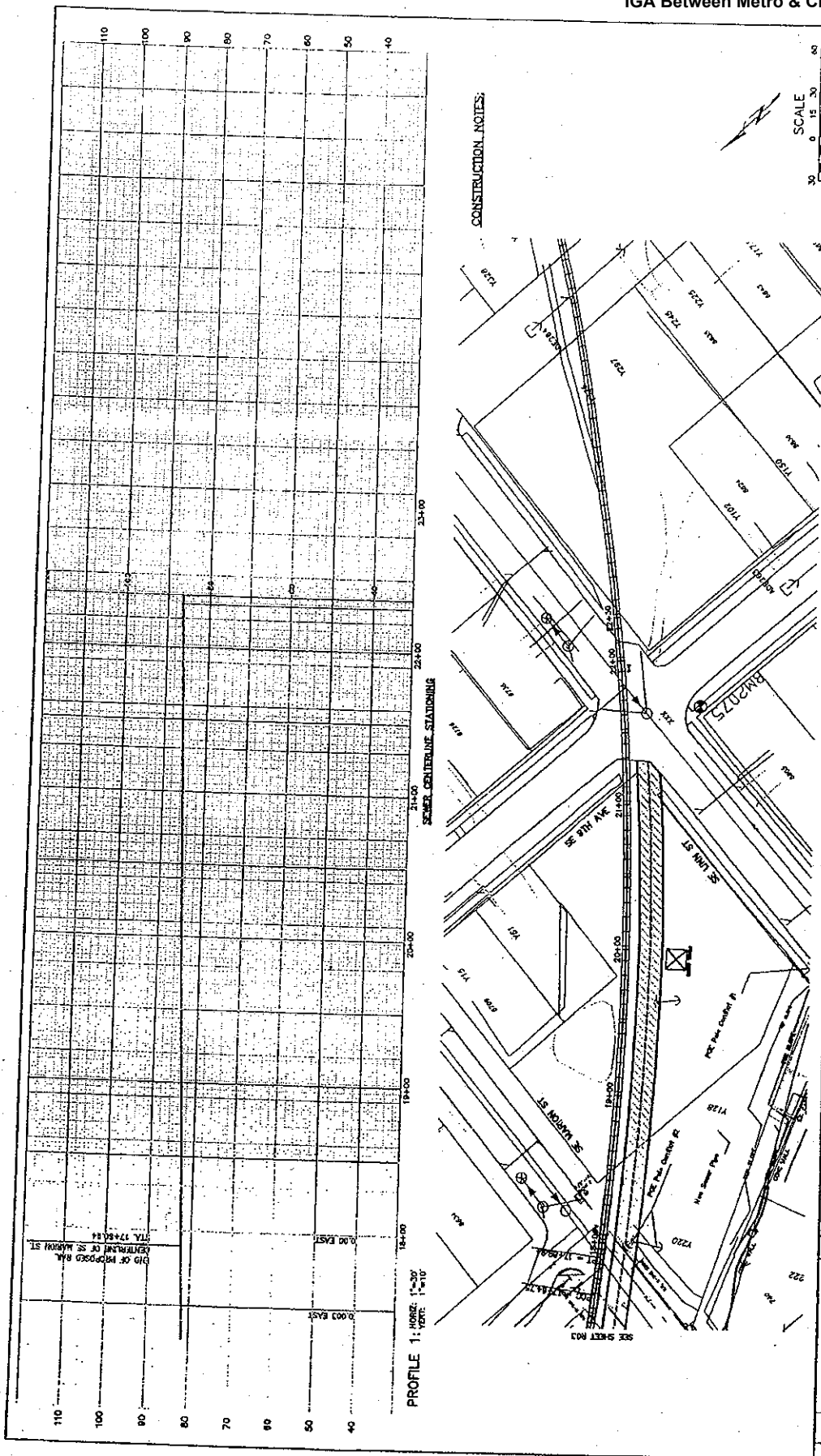
PROJECT NO.	1517 28ER
PROJECT NAME	IGA BETWEEN METRO & CITY OF PORTLAND BES
PROJECT LOCATION	1517 28ER
PROJECT DATE	11/12/2007
PROJECT STATUS	IN PROGRESS
PROJECT OWNER	CITY OF PORTLAND
PROJECT CONTACT	ENVIRONMENTAL SERVICES
PROJECT ADDRESS	1517 28ER
PROJECT PHONE	503-233-1517
PROJECT FAX	503-233-1517
PROJECT EMAIL	1517@portland.gov
PROJECT WEBSITE	www.portland.gov
PROJECT URL	www.portland.gov

NO.	DATE	REVISIONS
1	11/12/2007	ISSUED FOR PERMITS
2	11/12/2007	ISSUED FOR PERMITS
3	11/12/2007	ISSUED FOR PERMITS
4	11/12/2007	ISSUED FOR PERMITS
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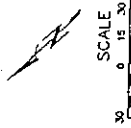
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<p>CITY OF PORTLAND ENVIRONMENTAL SERVICES</p>		<p>EXHIBIT A</p>		<p>METRO-BES IGA OREGON PACIFIC RR REALIGNMENT SE GRAND AVENUE SE TENNO ST TO SE MOONEY ST</p>	
<p>DATE: 11/12/2007 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: AS SHOWN</p>		<p>PROJECT NO: 11/12/2007-245-11 SHEET NO: 8 OF 10</p>		<p>DATE: 11/12/2007 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: AS SHOWN</p>	
<p>FILE NAME: [Name]</p>		<p>DATE: 11/12/2007 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: AS SHOWN</p>		<p>DATE: 11/12/2007 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: AS SHOWN</p>	



CONSTRUCTION NOTES:



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PROFILE 1: HORZ. 1"=30'
VERT. 1"=10'

<p>METRO-BES IGA OREGON PACIFIC RR REALIGNMENT SE GRAND AVENUE SE CLATSOP ST TO SE LINN ST</p>		<p>EXHIBIT A</p>		<p>CITY OF PORTLAND ENVIRONMENTAL SERVICES</p>	
<p>DATE: 11/12/2007 TIME: 2:59:38 PM</p>	<p>PROJECT NO: 16973M04-EXHIBIT A.dwg</p>	<p>DATE: 11/12/2007 TIME: 2:59:38 PM</p>	<p>PROJECT NO: 16973M04-EXHIBIT A.dwg</p>	<p>DATE: 11/12/2007 TIME: 2:59:38 PM</p>	<p>PROJECT NO: 16973M04-EXHIBIT A.dwg</p>
<p>DESIGNER: [Name]</p>	<p>CHECKER: [Name]</p>	<p>DATE: 11/12/2007</p>	<p>PROJECT NO: 16973M04-EXHIBIT A.dwg</p>	<p>DATE: 11/12/2007</p>	<p>PROJECT NO: 16973M04-EXHIBIT A.dwg</p>

After Recording Return To:
Bureau of Environmental Services
City of Portland
1120 SW 5th Avenue, Room 1000
Portland, OR 97204-1972

SEWER EASEMENT

METRO, a municipal corporation and political subdivision of the State of Oregon (“Metro”), for and in consideration of the mutual covenants and agreements set forth herein, and other consideration hereby acknowledged, hereby grants to the City of Portland, Bureau of Environmental Services, a municipal corporation of the State of Oregon (“BES”), its successors and assigns, a perpetual non-exclusive sewer easement, for the installation of a sewer pipeline and maintenance drive (hereafter, the “Facilities”) on, under and through Metro real property more particularly described in the Deed recorded as Fee No. 2003-080710, Multnomah County Deed Records (hereafter, the “Property”).

1. Easement Description. The sewer pipeline shall be located within the Easement between the depths of 5 and 20 feet below ground surface. The Easement shall be located as legally described in Exhibit A and depicted in Exhibit B attached hereto (the “Easement”).

2. Easement Rights. BES shall have the right to operate, maintain, repair, remove or replace the Facilities in whole or in part within the Easement. In exercising its rights hereunder, BES may enter on to, use, occupy and disturb the surface of the Property. However, BES shall promptly repair and or replace any trail or other improvement that is damaged by BES, its agents and contractors beyond ordinary wear and tear.

3. Limitations. After initial construction, BES’s activities hereunder shall not result in closure of the Easement area to public use for more than 48 hours in any two-week period, save any duration required to mitigate emergency sewer situations, or unless mutually agreed upon by the parties. Except as specifically authorized by this Easement, no other use may be made of the Easement without the prior written approval of Metro. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Easement, no Hazardous Substances may be used, handled, stored or transported on, to or from the Easement Area. Under no circumstances shall any use be made of, or conduct occur on, the Easement Area which would cause the Easement Area, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law.

4. Metro's Reservation of Rights. Metro reserves the right to use the Property subject to the Easement for any purpose that does not hinder, disturb or interfere with the Facilities. In particular, and without limiting the generality of the foregoing, the following surface and subsurface activities are allowed on the Property, to the extent they do not hinder, disturb or interfere with the Facilities:

- 4.1 Trail construction.
- 4.2 Underground utility installation.

5. Ownership. Metro represents and warrants that it holds fee simple title to the Property. However, this grant of Easement is expressly subject to liens and encumbrances of record as of the date of execution set forth below. Metro expressly disclaims any representation and warranty as to encumbrances and/or vested rights of third parties affecting the Property that may conflict or interfere with the rights granted herein, or that it holds all rights necessary or incident to the operation of the Facilities or Easement.

6. Notices. Metro agrees to provide written notice of the existence of the Easement and the Facilities to any tenant, lessee, or assignee of Metro who occupies the Property or acquires any interest in the Property from Metro. All requests elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

As to BES:

Bureau of Environmental Services
City of Portland
1120 SW 5th Avenue, Room 1000
Portland, OR 97204-1972

As to Metro:

Metro
Parks and Greenspaces Department
Attn: Jim Desmond, Director
600 NE Grand Avenue
Portland, OR 97232-2736

Changes of address may be accomplished for purposes of this section by giving the other party written notice of new address in the manner set forth above. Notices, elections and other communications shall be deemed effective upon receipt.

7. Covenants. The rights granted herein shall be covenants running with the land and be binding upon Metro, BES, their successors and assigns in perpetuity, except as otherwise set forth herein. BES covenants and agrees that, in the conduct of any and all of its activities and operations hereunder, it will comply strictly with all present and future laws, rules and regulations of all federal, state, and local governmental bodies having jurisdiction over the construction, installation, and operation activities occurring within the Easement.

8. Indemnity. BES, to the maximum extent permitted by law and subject to the Oregon Constitution and Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, 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 BES use or occupancy of the Property.

9. Environmental Indemnity. This Environmental Indemnity is in addition to, and not in lieu of, the general indemnity provision set forth above. BES shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Metro), indemnify and hold harmless Metro from and against all Environmental Costs claimed against or assessed against Metro arising, in whole or in part, directly or indirectly, from acts or omissions of BES, its employees, agents and contractors at, on or about the Easement during the term hereof, including the discovery of pre-existing latent Hazardous Substance contamination as a result of BES's excavation. Environmental Costs shall be interpreted in the broadest sense to include, but not necessarily be limited to: (i) damages, fines, costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs or other relief related to Hazardous Substances, as defined below; (iii) all reasonable expenses of evaluation, testing, analysis, cleanup, remediation, removal and disposal relating to Hazardous Substances, including reasonable fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, incurred at, before and after any trial or appeal, or any administrative proceeding or appeal. For purposes of this Environmental Indemnity, the term "Hazardous Substance" shall include any and all substances, pollutants or contaminants defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under ORS 465, ORS 466 and any other applicable Environmental Law. The term "Environmental Law" shall include ORS 465 and 466, as amended, the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., and any and all other applicable federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, or ordinances now or hereafter in effect, as the same may be amended from time to time, which govern the protection of the environment.

10. Binding Effect/Reversionary Interest. This Easement is granted on the express condition that the BES use the Easement solely for the purposes stated in Sections 1 and 2 set forth above. In the event the BES uses the Easement for another purpose, then Metro may re-enter and terminate this Easement. In the event that BES fails to use the Easement for a continuous period of one (1) year at any time after the initial installation(s) authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Metro may re-enter and terminate this Easement.

IN WITNESS WHEREOF, the parties have executed this Sewer Easement as of this _____ day of _____ 2008.

METRO

CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES

By: _____
Name: Michael J. Jordan
Title: Chief Operating Officer

By: _____
Name: _____
Title: _____

Attachments:

- Exhibit A Property Legal Description
- Exhibit B1 Legal Description Sewer Easement
- Exhibit B2 Map Depiction of Sewer Easement

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared MICHAEL J. JORDAN, as Chief Operating
Officer of Metro, an Oregon municipal corporation, personally known to me (or proved to be on
the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument,
and acknowledged that he executed it.

My commission expires: _____

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared _____
as _____ of CITY OF PORTLAND, BUREAU OF ENVIRONMENTAL
SERVICES, an Oregon municipal corporation, personally known to me (or proved to be on the
basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this
instrument, and acknowledged that he (she or they) executed it.

My commission expires: _____

Exhibit A
Property Legal Description

A TRACT OF LAND SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 26, TOWNSHIP 1 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A SEWER EASEMENT AFFECTING A PORTION THAT PROPERTY DESCRIBED IN DEED DOCUMENT NUMBER 2003-080710. THE GRAPHICAL DEPICTION AND THE ANGULAR RELATIONSHIP OF THIS DESCRIPTION IS PER RECORD OF SURVEY NUMBER 57923 MULTNOMAH COUNTY SURVEY RECORDS. THE BASIS OF BEARINGS IS BASED ON STATE PLAIN COORDINATES 83/91 DATUM, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SE CORNER OF LOT 4 BLOCK 21 PLAT OF "TOWN OF SELLWOOD", MULTNOMAH COUNTY PLAT RECORDS AS SHOWN ON EXHIBIT "B";
THENCE NORTH 88°25'37" WEST A DISTANCE OF 46.00 FEET TO THE INTERSECTION OF EASTERLY RIGHT OF WAY OF SE GRAND AVENUE AND THE NORTHERLY RIGHT OF WAY OF SE MARION STREET BEING THE POINT OF BEGINNING;

THENCE SOUTH 88°25'37" EAST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 39.10 FEET;
THENCE LEAVING SAID RIGHT OF WAY LINE, NORTH 38°33'26" WEST, A DISTANCE OF 149.85 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF SE GRAND AVENUE;
THENCE. S 25°04'12" E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 128.18 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,240 SQUARE FEET, MORE OR LESS

Exhibit B
Map Depicting Sewer Easement

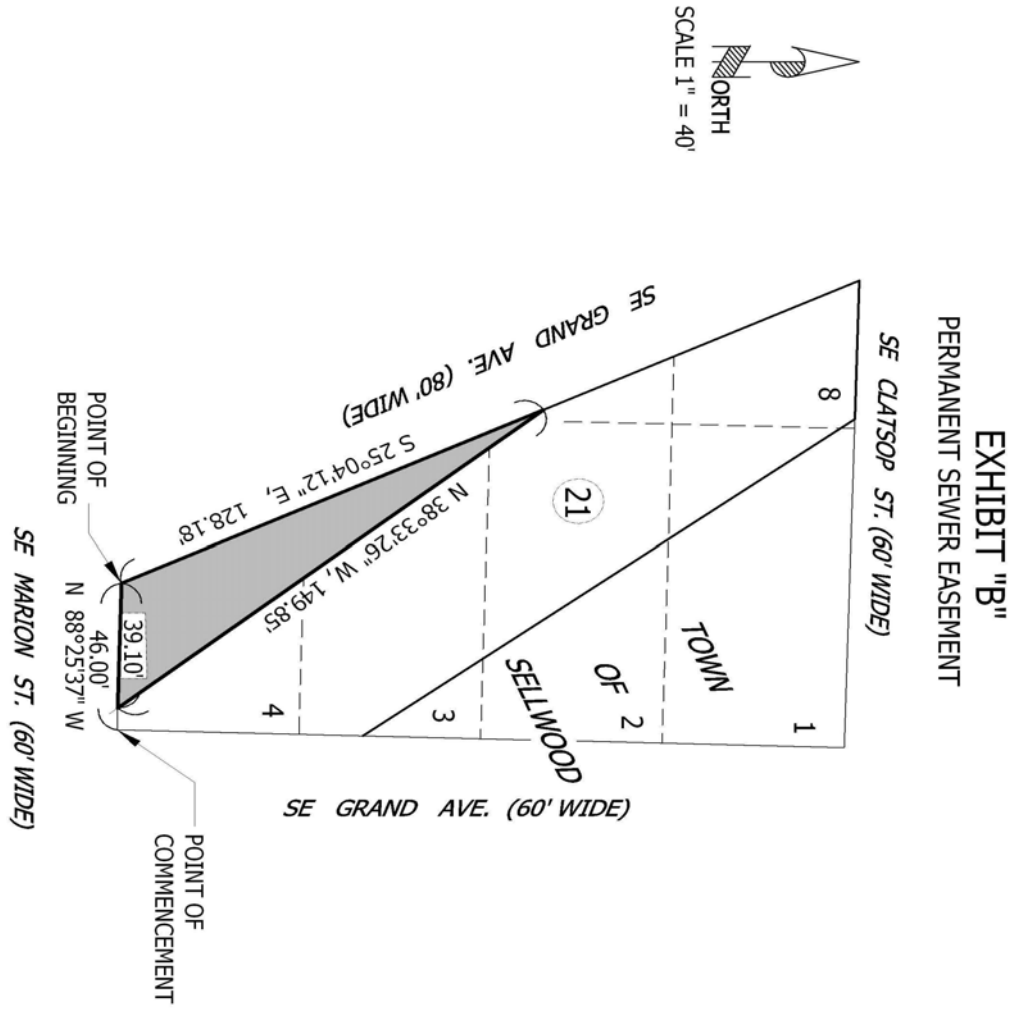


EXHIBIT C
Resolution 08-3903

Metro Easement Policy Criteria and Staff Findings

- 1) **Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses to Metro Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right-of-way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: The City of Portland Bureau of Environmental Services has submitted a formal easement and right-of-way application and request to the Regional Parks and Greenspaces Department. Staff recommends approval of the Easement request.

- 2) **Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant proposes to install a combined sewer outfall (“CSO”) interceptor pipe under Metro Property as part of a larger federally mandated project to prevent sewage from spilling into the Willamette River. BES is requesting a permanent sewer easement over 2,240 square feet of Metro’s park property bounded by SE Clatsop Street, SE Marion Street and undeveloped SE Grand Avenue in Sellwood (“Easement Area”).

- 3) **Reject proposals for utility easements, transportation right-of-ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The property has minimal natural resource value. Its intended use is for a future Springwater Trail connection. After subsurface installation of the pipe, the applicant will grade the surface of the Easement Area and provide a temporary gravel maintenance road suitable for bicycle and pedestrian travel in the location of the future trail. The proposal will thus result in no significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.

- 4) **Accommodate utility easements, transportation right-of-ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right-of-way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: A Metro trail concept plan exists for this site. Because the property affected by the proposed easement has little natural resource value, the easement will have minimal impact on natural resources. Because the pipe is below the surface, it will not limit or eliminate the future trail use of the Easement Area.

- 5) **Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right-of-ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: All site disturbances resulting from the construction of the CSO improvements will be restored by BES upon completion of construction, and a temporary gravel maintenance road suitable for bike and pedestrian use will be constructed between SE Umatilla and SE Linn Streets.

- 6) **Limit rights conveyed by easements, right-of-ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The subsurface easement requested is the minimum needed to allow BES to construct the CSO interceptor pipe.

- 7) **Limit the term of easements, right-of-ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The easement must be perpetual, to protect the permanence of the sewer infrastructure improvements.

- 8) **Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: The easement includes these terms.

- 9) **Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right-of-way, or lease for non-park use.**

Staff Finding: The applicant requests that the Metro Council waive cost recovery in consideration for the construction and maintenance of the temporary gravel maintenance road in the location of the future trail.

- 10) **Receive no less than fair market value compensation for all easements, right-of-ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.**

Staff Finding: The Easement Area has been appraised by Real Property Consultants, Inc., George W. Donnerberg, dated January 22, 2007, and an appraisal obtained by Metro confirmed the value report of \$18.00 a square foot for the Easement Area, for a value of "\$40,320.00" section of area.

- 11) **Require full indemnification from the easement, right-of-way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right-of-way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of Metro Attorney.**

Staff Finding: The easement will include indemnification provisions and environmental resources. Additional insurance coverage has been deemed unnecessary by the Office of the Metro Attorney.

- 12) **Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.**

Staff Finding: No exception is proposed.

- 13) **Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:**

- A. **The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: There are no feasible alternatives due to the location of the existing connecting sewer infrastructure and surrounding residences.

- B. **Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities, which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: No additional information is needed.

- C. **Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: No alternative alignment outside this area is feasible.

- D. **If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all**

issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

Staff Finding: The proposal can be accommodated without significant impacts to such resources, facilities, their operation and management.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Construction is contingent upon approval.

- F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right-of-way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.**

Staff Finding: BES requests that Metro Council waive reimbursement for Metro staff time.

- G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.**

Staff Finding: Criterion satisfied.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3903, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND PROVIDING FOR FUNDING AND ADMINISTRATION OF A PUBLIC CONTRACT FOR RAILROAD TRACK REALIGNMENT SERVICES AND TO GRANT AN EASEMENT TO THE CITY OF PORTLAND FOR NON-PARK USE

Date: January 17, 2008 Prepared by: Mary Anne Cassin and Mel Huie

PURPOSE

The Metro Council's approval of the resolution would authorize the Chief Operating Officer to enter into an Intergovernmental Agreement (IGA) with the city of Portland which would allow Metro to fund and administer a public contract to realign the railroad tracks in the Sellwood Gap from SE Umatilla Street to SE Linn Street. Approval of the resolution would also allow Metro to grant the city of Portland a sewer easement in the trail corridor from SE Umatilla Street to SE Linn Street.

BACKGROUND

The city of Portland has been required by state and federal environmental agencies to greatly curtail the amount of untreated sewerage that flows into the Willamette River during periods of heavy rain. Currently, combined sewers (sewerage and stormwater) in southeast Portland allow for this. The City will be installing new separated sewer and stormwater lines and a pump station on the trail corridor to prevent sewerage spills into the Willamette River.

In order to install the new lines in the trail corridor, the City will need a sewer easement from Metro. The City is also requesting that Metro administer a contract with Oregon Pacific Railroad Co. ("OPR") to realign the railroad tracks. The sewer lines will be on the inland side of the trail corridor and the future trail will be on the riverside of the corridor. A maintenance road in the corridor will serve as an interim trail.

ANALYSIS / INFORMATION

Known Opposition

There is no known opposition.

Legal Antecedents

There are no known legal antecedents.

Anticipated Effects

The project will allow the city to construct new sewer/stormwater lines in the corridor to prevent the overflow of sewerage into the Willamette River during heavy rains. A maintenance road in the corridor will also serve as an interim trail.

Budget Impacts

None. The City will provide funding for and manage the entire project. Metro will administer the contract for the track realignment though. Funds will come from the City to cover the cost of the track realignment.

RECOMMENDED ACTION

Staff recommends the approval of Resolution No. 08-3903.

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared MICHAEL J. JORDAN, as Chief Operating
Officer of Metro, an Oregon municipal corporation, personally known to me (or proved to be on
the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument,
and acknowledged that he executed it.

My commission expires: _____

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared _____
as _____ of CITY OF PORTLAND, BUREAU OF ENVIRONMENTAL
SERVICES, an Oregon municipal corporation, personally known to me (or proved to be on the
basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this
instrument, and acknowledged that he (she or they) executed it.

My commission expires: _____

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