



**METRO**

**Agenda**

MEETING: METRO COUNCIL  
DATE: April 2, 2009  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. CONSENT AGENDA**

- 3.1 Consideration of Minutes for the March 26, 2009 Metro Council Regular Meeting.
- 3.2 **Resolution No. 09-4033**, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement With the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure.
- 3.3 **Resolution No. 09-4034**, For the Purpose of Authorizing the Chief Operating Officer to Contribute One-Third of the Purchase Price Toward the Purchase of Property in the Johnson Creek Target Area Under the 2006 Natural Areas Bond Measure and Subject to Unusual Circumstances.
- 3.4 **Resolution No. 09-4041**, For the Purpose of Confirming the Reappointments of Christine Duffy, Robin Plance, Michael Salvo and Doretta Schrock to the North Portland Rehabilitation and Enhancement Committee (NPREC).
- 3.5 **Resolution No. 09-4044**, For the Purpose of Approving a Communication Site Lease Agreement at the Portland Expo Center.
- 3.6 **Resolution No. 09-4049**, For the Purpose of Authorizing Metro to Apply For a Local Government Grant From the Oregon Parks and Recreation Department and Delegating Authority to the Chief Operating Officer to Sign the Application.

**4. ORDINANCES – FIRST READING**

4.1 **Ordinance No. 09-1215**, Adopting the Annual Budget For Fiscal Year 2009-10, Making Appropriations, Levying Ad Valorem Taxes, and Declaring an Emergency.

**5. RESOLUTIONS**

5.1 **Resolution No. 09-4040**, For the Purpose of Agreement on the Roles, Responsibilities, and Cost for the Lake Oswego to Portland Transit Project Draft Environmental Impact Statement. Collette/Liberty

**6. CHIEF OPERATING OFFICER COMMUNICATION**

**7. COUNCILOR COMMUNICATION**

**8. EXECUTIVE SESSION**

**ADJOURN**

**Television schedule for April 2, 2009 Metro Council meeting**

<b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b> Channel 11 – Community Access Network <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534 2 p.m. Thursday, April 2 (Live)	<b>Portland</b> Channel 30 (CityNet 30) – Portland Community Media <a href="http://www.pcmv.org">www.pcmv.org</a> – (503) 288-1515 8:30 p.m. Sunday, April 5 2 p.m. Monday, April 6
<b>Gresham</b> Channel 30 – MCTV <a href="http://www.mctv.org">www.mctv.org</a> – (503) 491-7636 2 p.m. Monday, April 6	<b>Washington County</b> Channel 30 – TVC-TV <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534 11 p.m. Saturday, April 4 11 p.m. Sunday, April 5 6 a.m. Tuesday, April 7 4 p.m. Wednesday, April 8
<b>Oregon City, Gladstone</b> Channel 28 – Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (503) 650-0275 Call or visit website for program times.	<b>West Linn</b> Channel 30 – Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (503) 650-0275 Call or visit website for program times.

**PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.**

Agenda items may not be considered in the exact order in which they are listed. If you have questions about the agenda, please call the Council Office at (503) 797-1540. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Council Office to be included in the decision record. Documents may be submitted by e-mail, fax, mail or in person at the Council Office. For additional information about testifying before the Metro Council, and for other public comment opportunities, please go to this section of the Metro website [www.oregonmetro.gov/participate](http://www.oregonmetro.gov/participate). For assistance per the American Disabilities Act (ADA), dial Metro’s TDD line (503) 797-1804 or (503) 797-1540 for the Council Office.

Agenda Item Number 3.1

**Consideration of Minutes of the March 26, 2009 Metro Council Regular Meeting**

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

Agenda Item Number 3.2

**Resolution No. 09-4033**, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement With the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure.

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER )  
TO EXECUTE AN INTERGOVERNMENTAL ) RESOLUTION NO. 09-4033  
AGREEMENT WITH THE CITY OF PORTLAND )  
AND THE NORTH CLACKAMAS PARKS AND ) Introduced by Chief Operating Officer  
RECREATION DISTRICT REGARDING THE ) Michael J. Jordan, with the concurrence of  
PURCHASE AND MANAGEMENT OF PROPERTY ) Council President David Bragdon  
IN THE JOHNSON CREEK TARGET AREA )  
ACQUIRED PURSUANT TO THE 2006 NATURAL )  
AREAS BOND MEASURE )

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection; and

WHEREAS, the Johnson Creek Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, on September 13, 2007, the Metro Council adopted Resolution No. 07-3851 "Approving The Natural Areas Acquisition Refinement Plan For The Johnson Creek Target Area" authorizing the Chief Operating Officer to acquire properties in the Johnson Creek Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan; and

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District and the City of Portland Bureau of Environmental Services to enter into an intergovernmental agreement (the "IGA" or "Agreement"), a form of which is attached hereto as Exhibit A, to jointly contribute towards the purchase of several adjoining properties, covering more than 13 acres, identified as Tier II acquisition priorities in the 2006 Natural Areas Bond Measure Johnson Creek Target Area Refinement Plan, which properties are identified and further described as Parcels A, B and C in Exhibit A to the IGA (the "Properties"); and

WHEREAS, the Properties include approximately 2,000 feet of stream frontage along Johnson Creek, abut the Springwater Trail, are currently in an extremely degraded environmental condition, and are in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, Metro staff has entered into a purchase agreement with the owner of Parcel A, a ten acre property that includes over 1,400 feet of stream frontage along Johnson Creek and is the primary acquisition target among the Properties; and

WHEREAS, due to potential risks, expenses and liabilities associated with ownership and management of the properties, Metro does not wish to maintain an ownership interest or management responsibilities for the properties; and

WHEREAS, the IGA provides for BES to contribute one third of the purchase price of the Properties in return for easements to allow BES to repair and realign a sewer pipe that crosses Parcel A and to undertake a major channel change, flood prevention, and natural restoration project along the

full length of Johnson Creek on the Properties, for which BES already has budgeted funds available;  
and

WHEREAS, the IGA provides for NCPRD to contribute one third of the purchase price of the Properties and to own the Properties in order to develop a park on the upland portion of the site, and for NCPRD to manage and maintain the Properties after their acquisition; and

WHEREAS, the IGA provides for Metro to contribute one third of the purchase price of the Properties in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed; and

WHEREAS, acquisition of the Properties will further the Johnson Creek Target Area goal of partnering with other local governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, BES and NCPRD will be able to undertake their restoration and park development projects, respectively, with the acquisition of Parcel A alone, although the successful subsequent acquisition of Parcels B and C would improve and enhance both access to Parcel A for NCPRD's park uses and the scope and impact of the natural area restoration project that BES intends to undertake on the Properties; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute an intergovernmental agreement with the City of Portland Bureau of Environmental Services and the North Clackamas Parks and Recreation District to acquire the Properties in substantially the form attached hereto as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

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## **INTERGOVERNMENTAL AGREEMENT**

### **LENTS II**

#### **Acquisition and Ownership Agreement**

This Intergovernmental Agreement (“Agreement”), entered into on the last date of signature below (the “Effective Date”), is by and between Metro, an Oregon municipal corporation (“Metro”); the City of Portland, an Oregon municipal corporation, through its Bureau of Environmental Services (“BES”); and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”) (collectively, the “Parties,” and each individually a “Party”).

### **RECITALS**

WHEREAS, the Parties have agreed to cooperate in the purchase of fee simple or easement property interests in the following certain properties, located in unincorporated Clackamas County, more particularly described in Exhibit A, attached hereto and incorporated herein (collectively, the “Properties”):

- Parcel A (intended fee simple ownership): At address 8855 SE 76th Drive, Portland, Oregon, commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian;
- Parcel B (intended fee simple ownership): At address 7800 SE Luther Road, Portland, Oregon, commonly known as Tax Lot 3500 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian; and
- Parcel C (intended easement ownership): At address 8710 SE 76th Drive, Portland, Oregon, commonly known as Tax Lot 3604 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian.

WHEREAS, NCPRD will contribute funds from its System Development Charges to purchase the Properties, in order to develop a park on a portion of the Properties; and

WHEREAS, Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, toward NCPRD’s purchase of the Properties, in order to protect fish and wildlife habitat and water quality within the Metro Natural Area Acquisition Program’s Johnson Creek Target Area; and

WHEREAS, BES will contribute funds toward NCPRD’s purchase of the Properties and, in return, NCPRD will grant easements across the Properties to BES to complete the BES Lents II Sewer and Restoration Project (the “Sewer and Restoration Project”), which will include the construction and maintenance of improvements to its sewer line traversing the Properties (for which the City already owns existing sewer easements), the construction of an overflow side channel for Johnson Creek, and the replanting and natural area restoration of its construction Intergovernmental Agreement—BES, NCPRD, Metro—Johnson Creek/Lents II Project

zone as described and shown on the attached Exhibit B (the “Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements”); and

WHEREAS, Metro shall represent the Parties in negotiations to acquire the Properties according to the terms described herein; and

WHEREAS, NCPRD will manage the Properties after acquisition; and

WHEREAS, the Parties acknowledge that the separate owners of Parcels A, B, and C may or may not be willing to sell their properties, or an easement interest in their properties, to the Parties, and the Parties will therefore communicate with one another and collectively determine whether to proceed with acquisition of one or more of the parcels based on the success of Metro’s negotiations;

**NOW, THEREFORE**, the Parties agree as follows:

**1. Acquisition: Negotiation, Due Diligence, Financial Contributions and Closing**

- 1.1 Metro has negotiated a purchase and sale agreement to acquire Parcel A which will be assigned to NCPRD before closing, and Metro shall be responsible for attempting to negotiate the terms of one or more additional purchase and sale agreements for Parcels B and C, or for easement interests Parcels B and C (each referred to as “Purchase Agreement,” or collectively as the “Purchase Agreements”). NCPRD shall enter into the Parcel A purchase agreement on behalf of the Parties, and Metro shall enter into the Parcels B and C Purchase Agreements on behalf of the Parties. Metro shall consult with the other Parties during Metro’s negotiations to determine whether all or part of Parcels B and C should also be acquired, conditioned on whether the sellers are willing to sell to the Parties.
- 1.2 Metro shall coordinate due diligence with the Parties where possible, and the Parties shall name each other as co-clients on any third-party due diligence contracts whenever possible. Metro shall conduct commercially reasonable due diligence, as Metro deems appropriate and in accord with Metro Natural Areas Bond Measure practices (see Metro Resolution No. 07-3766A), and shall share the results of all such due diligence with the parties prior to NCPRD closing on acquisition of the Properties. BES shall pay for the appraisal and the phase one environmental site assessment for Parcel A. Metro shall pay for the appraisals and for the phase one environmental site assessments for Parcels B and C. BES and NCPRD shall each pay for one-half of the cost of any phase two environmental site assessments that BES and NCPRD deems necessary to be performed as part of due diligence pursuant to this Agreement. BES and NCPRD each shall be solely responsible for conducting and paying for any additional due diligence, beyond that which Metro deems necessary and performs as described above, that either BES or NCPRD determines is necessary for its own purposes. Although Metro is primarily responsible for conducting the due diligence, BES and NCPRD each shall be solely responsible for reviewing and assessing the results of such due diligence, and thereafter



determining whether they are satisfied with such due diligence and are prepared to close on the acquisition of any of the Properties. The decision by each of BES and NCPRD to deposit its respective share of the purchase price with the Title Company to close on the acquisition of any of the Properties shall be deemed its conclusive decision that it is satisfied with the due diligence completed for the property being acquired. The commitment to defend, indemnify, and hold harmless as provided by Metro in Section 10.1, below, shall not apply in the event of any environmental, hazardous substance, or hazardous material contamination on any of the Properties, nor shall Metro be liable to either BES or NCPRD, nor to any other party, for the costs of any investigation, characterization, remediation, or cleanup of any such contamination, nor to defend or hold harmless the other parties regarding such liabilities.

- 1.3 Subject to the review of the results of Metro's due diligence and approval by all Parties, at closing on the purchase of the Properties each Party shall contribute one-third (1/3) of the negotiated Purchase Price for each Parcel to be acquired, in consideration of which NCPRD shall receive sole fee simple ownership of the Properties and BES shall be entitled to the Permanent Sewer, Permanent Channel Change and Temporary Construction Easements on the Properties as provided in Section 2 of this Agreement. BES and NCPRD shall each ensure that its one-third share of the Purchase Price for each Parcel is deposited not later than two days prior to Closing into the escrow account provided by the Title Company designated by Metro in the Purchase Agreement.
- 1.4 Metro shall coordinate closing on the acquisitions of the Properties, including without limitation preparing buyer's escrow instructions. Metro shall pay the recording fees, escrow fees, and other customary closing costs, if any, relating to the acquisitions, in accordance with the terms of the Purchase Agreement(s).

## **2. BES Lents II Sewer and Restoration Project and Easements**

- 2.1 Throughout all phases of the Sewer and Restoration Project, BES shall make a reasonable good faith effort to keep NCPRD timely informed of the general planning, design and construction specifications of the Sewer and Restoration Project and any changes thereto, including, without limitation, the total area of the Properties that will be affected by temporary construction activities and that will be permanently affected by the Sewer and Restoration Project. Drafts of the Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements are attached as Exhibit B to this Agreement, including a depiction of the easement areas for each such easement. Such easements include: a temporary construction easement (TCE) covering the entire site, a permanent channel change easement (PCCE) covering all areas on the site not designated for active park use development, and a new permanent sewer easement (PSE) over the Lents Interceptor sewer extending 15 feet on each side of the pipe centerline for a total width of 30 feet along the alignment. BES reserves the right to modify the easement areas of these easements within the limits described in 3.1 below to accommodate the sewer and restoration design at the site.

- 2.2 The Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements shall be consistent with the provisions of Section 2.3, below, and shall be in a form substantially similar to the drafts attached as Exhibit B. BES shall prepare a survey of the easement areas to be attached to the final Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements, which survey and easements shall be subject to review and approval by staff of NCPRD, which approval shall not be unreasonably withheld. If no such easements are agreed to within ten years from the latest date of acquisition for the Properties, then this requirement shall terminate. BES shall be responsible for management of any enhancement and restoration activities performed in the area protected by the Sewer and Channel Change Easements, if any, in accord with the terms of this Agreement and the terms of such Easements. Such management by BES shall include a commitment to maintain such enhancement and restoration activities for a minimum of five years beginning with the completion of the restoration work, and until such time as BES satisfies the survivability and performance criteria stipulated by regulatory permitting agencies for the project. Following the management period BES will meet with NCPRD on an annual basis to discuss project performance in the PCCE area.
- 2.3 By its approval of this Agreement, the NCPRD Board authorizes its staff, upon acquisition of one or more of the Properties, to grant the Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements to BES, in a form substantially in conformance with the provisions of this Agreement. In addition to any other applicable provisions of this Agreement regarding such easements, such easements shall:
- 2.3.1 Permit and require BES to access, repair, reconstruct, construct, maintain, and monitor the existing sewer pipe that traverses the Properties, including remedying the fact that the sewer pipe is currently exposed where it traverses Johnson Creek;
  - 2.3.2 Permit BES to access, construct, manage, and monitor an overflow side channel to Johnson Creek on the Properties and other natural area habitat and water quality enhancement and restoration activities on the Properties;
  - 2.3.3 Provide BES with access to an area no greater than the area generally described in Exhibit B, attached hereto and incorporated herein;
  - 2.3.4 Require BES to obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by the Sewer and Restoration Project; and
  - 2.3.5 Require BES to restore all areas on the Properties that BES disturbs as part of its construction activities, except as to permanent changes made necessary by and authorized under the easement.

**3. NCPRD Park Development and Management of Lents II Park and Natural Area**

- 3.1 NCPRD shall be responsible for development and management of a park that will provide and allow active recreational park uses (“Park Development”). Such park shall occupy approximately four (4) acres of the Properties, but in no event shall it occupy more than five (5) acres of the Properties (unless approved by Metro and BES during a joint master planning process), and the Park Development shall not occupy any of the area of the Properties described on Exhibit B within the PCCE area.
- 3.2 The Park Development shall be constructed after the Sewer and Restoration Project is completed in conformance with the Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements. In the event that NCPRD is prepared to move forward with the Park Development before the Sewer and Restoration Project has commenced or has been completed, then BES and NCPRD shall agree to terms of a separate intergovernmental agreement to coordinate construction activities on the Properties.
- 3.3 NCPRD shall be responsible for obtaining any local, state or federal permits necessary to undertake any work on the Properties related to the Park Development.

**4. Grant of Access Easement Across Springwater Trail.** BES shall secure an access easement over the Springwater Trail granted by the City of Portland benefiting NCPRD as owner of Parcel A, as provided in this Section, and BES as an easement holder on the parcel. NCPRD shall not be obligated to close on acquisition of Parcel A unless such access easement has been approved by the City of Portland, which approval may be conditioned on the acquisition of Parcel A by NCPRD. Such access easement shall permit NCPRD and BES staff vehicles, and vehicles of contractors hired by NCPRD and BES to undertake park-related work on the Properties, and to travel on and across the Springwater Trail from where said trail crosses Luther Road and thence along said trail to the southeast until the point where Parcel A no longer abuts said trail. Such easement may require that NCPRD repair any damage caused by such use of the Springwater Trail to at least a condition comparable to said trail’s condition prior to any such use.

**5. Public Uses and Permits.** Any public uses of the Properties authorized by NCPRD and any permits granted to third parties by any of the Parties for the Properties shall comply with the terms, requirements, and restrictions set forth in the Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements and this Agreement.

**6. NCPRD Shall Manage, Maintain, and Operate the Properties.**

- 6.1 NCPRD shall be responsible for the ongoing management, maintenance, and operation of the Properties at all times, in accordance with the terms of this Agreement. Except for the area of the Properties within the Park Development, the Properties shall be managed, maintained, operated, and protected in accordance with their intended use as natural areas, one of the goals being protection of the Properties’ natural resources,

enhancement and protection of wildlife habitat, and another goal being public recreation. NCPRD's responsibilities shall include management, maintenance, and operation of any facilities, projects, or improvements (e.g. fences, gates, removal of invasive plants, replanting of native plants, etc.) made by Metro pursuant to Section 6 of this Agreement with NCPRD's consent. By accepting management responsibility for the Properties, NCPRD agrees to be responsible for funding the operation and maintenance of the Properties, including, but not limited to payment of taxes and assessments, with NCPRD's own financial and staffing resources. Metro shall periodically review the Properties to ensure that their management is in accordance with this Agreement.

- 6.2 As required by Metro's Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Properties must be set forth in a Master Plan for the site ("Master Plan"). This Agreement sets forth (1) the interim protection guidelines and use limitations applicable to the Properties, and (2) the requirements applicable to NCPRD's development of a Master Plan for the Properties.
- 6.3 In accordance with the Metro Greenspaces Master Plan, formal public use of a Property and site development on the Property shall not begin until a Master Plan for the Property has been completed.
- 6.4 NCPRD shall be responsible for obtaining any authorizations or permits necessary for management, maintenance, and operation of the Properties. Any permits granted by NCPRD to users of the Properties shall comply with the terms and limitations set forth in this Agreement and in the applicable Master Plan for the Properties. NCPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance, and operational issues that may arise with respect to the Properties.

## **7. Interim Protection Guidelines.**

- 7.1 In the interim period prior to the adoption of a Master Plan (the "Interim Period"), the Properties shall be managed, maintained, and operated by NCPRD in accordance and in a manner consistent with the Metro Greenspaces Master Plan, the 2006 Natural Areas Bond Measure, NCPRD's Comprehensive Plan, the Sewer and Restoration Project Easement, and this Agreement, specifically Section 7 of this Agreement (this Agreement and these plans collectively referred to herein as the "Plans"). In case of conflict among Plans, the Plan affording the greatest level of detail shall govern unless such Plan is inconsistent with the Sewer and Restoration Project, the 2006 Natural Areas Bond Measure, or with the Park Development.
- 7.2 In the Interim Period, NCPRD shall use commercially reasonable efforts to control access to the Properties.

- 7.3 In the Interim Period, NCPRD may, at its discretion, allow informal public access to the Properties for passive recreation, habitat enhancement, pedestrian activity, and non-motorized bicycle use; provided, however, that no such passive recreation, including without limitation pedestrian or bicycle access, shall be permitted in any area that is part of the Sewer and Restoration Project described in Section 2 of this Agreement. All uses of the Properties in the Interim Period shall be consistent with this Agreement and with the Plans. NCPRD shall not allow any such informal use if to do so would, in NCPRD's reasonable judgment, effectively preclude any other likely potential uses of the Properties that could later be allowed in the Master Plan.
- 7.4 In the Interim Period, NCPRD shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Properties, except for the control of exotic, non-native, invasive, or pest plant species, as necessary to prevent the Properties' degradation, or to address public safety concerns. No capital improvements or trails shall be constructed on the Properties and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or that would effectively preclude any potential uses of the Properties that could later be allowed in the Management Plan.

## **8. Resource Management/Master Plan for The Properties.**

- 8.1 NCPRD shall undertake a good faith effort to develop and adopt an area-specific Master plan for the Properties. The Master Plan shall set forth the acceptable management, operation, maintenance, and types and levels of programmed and public use and trail and improvement standards applicable to the Properties. If not previously completed, NCPRD shall take an inventory of the natural resources and improvements on the Properties as part of the process of developing the Master Plan. The Master Plan shall ensure that the Properties are managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Properties comply with the Metro Greenspaces Master Plan and with this Agreement. The Master Plan shall also ensure that, except as otherwise provided in the Sewer and Permanent Channel Change Easements or by the Park Development, the Properties are maintained as a natural area open space, with the primary goals being protection and restoration of the Properties' natural resources, enhancement and protection of wildlife habitat, and public recreation.
- 8.2 As part of NCPRD's process of developing and adopting a Master Plan, NCPRD shall regularly consult with a Metro staff member designated by the Metro Parks and Environmental Services Center Director.

## **9. Signage and Acknowledgement.**

- 9.1 Each Party shall recognize and document in any on-site signs, publications, media presentations, web site information, press releases, or other written materials or presentations referencing the Properties, that are produced by or at the direction of such Party, that funding for acquisition of the Properties came in part from the Metro 2006

Natural Areas Bond Measure, in part from NCPRD, and in part from BES. As part of NCPRD's Park Development, NCPRD shall install signs at the Properties consistent with this paragraph, and if BES installs signs regarding its restoration work at the Properties they also shall be consistent with this paragraph. Signs erected on the Properties shall be in prominent and highly visible locations near each primary public access point or viewing access area to acknowledge the property acquisition funding partnership described in this Agreement. Regarding acknowledgment of Metro's funding share, such signage shall be either: (a) a standard, free-standing sign provided by Metro, which Metro shall make available to NCPRD and BES upon request, or (b) the inclusion of Metro's logo and script in NCPRD's and BES's signage, with Metro's logo and script of a size equal and comparable to the size of NCPRD's and BES's logo and script (Metro shall make its graphics available to NCPRD and BES upon request). If NCPRD or BES chooses to incorporate Metro's logo and script into its own sign, it shall do so at its own cost and expense.

- 9.2 When the Properties are opened to the public, if any party plans and holds any community/media events to publicize the Properties, such party agrees to provide the other parties with written notice of any such event at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by staff and elected officials from all parties and appropriate recognition of the sources of funding for acquisition of the Properties.

## 10. General Provisions

- 10.1 Mutual Indemnification. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Metro shall defend, indemnify and hold harmless the other parties to this Agreement, their 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 Metro's performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, BES shall defend, indemnify and hold harmless the other parties to this Agreement, their 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' performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, NCPRD shall defend, indemnify and hold harmless the other parties to this Agreement, their 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 NCPRD's performance of its responsibilities under this Agreement.
- 10.2 Oregon Constitution and Tax-Exempt Bond Covenants. The source of Metro's contribution to the acquisition of the Properties is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bondholders is currently exempt from federal and Oregon income taxes. BES and NCPRD covenant that they will take no actions that would cause Metro to be unable to maintain the current exemption from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event BES and/or NCPRD breach this covenant, Metro shall be entitled to whatever remedies are available either to cure the default or to compensate Metro for any loss it may suffer as a result thereof.
- 10.3 Term. This Agreement shall continue in perpetuity unless terminated as provided in Section 11.4 or 11.5.
- 10.4 Joint Termination for Convenience. The Parties hereto may mutually agree to terminate all or part of their responsibilities and obligations under this Agreement, based upon a determination that such action is in the public interest. Termination under this provision shall be effective ten (10) days following the execution of a written agreement to terminate, signed by all Parties to this Agreement.
- 10.5 Termination for Cause. Any party may terminate this Agreement, whenever that party determines, in its sole discretion, that another party has failed to comply with a material term or condition of this Agreement and is therefore in default. The terminating party shall promptly notify the other parties in writing of that determination and document such default with reasonable particularity. The defaulting party shall then be provided with thirty (30) days to cure the problem, or to substantially pursue such a cure, if it is not possible to complete a cure within thirty days.
- 10.6 Laws of Oregon; Public Contracts. 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 chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Agreement.
- 10.7 Amendment. This Agreement may be amended at any time with the written consent of all Parties.
- 10.8 Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent

from the other Parties, except the Parties may delegate or subcontract for performance of any of their responsibilities under this Agreement.

- 10.9 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, addressed as follows:

To Metro: Metro Natural Areas Bond Measure Program Director  
Kathleen Brennan Hunter  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Tel. 503-797-1948  
Fax 503-797-1849

To NCPRD: North Clackamas Parks and Recreation District  
Dan Zinzer, Director  
150 Beaver Creek Road, 4<sup>th</sup> Floor  
Oregon City, OR 97045  
Tel. 503-742-4661  
Fax 503-742-8005

To BES: City of Portland  
Bureau of Environmental Services  
Attn: Maggie Skendarian  
1120 SW Fifth Ave., 10<sup>th</sup> Floor  
Portland, Oregon 97204  
Tel. 503-823-5334

- 10.10 Severability. If any covenant or provision of 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.
- 10.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each party.

*[Signature Page Follows]*



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

**METRO**

**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

\_\_\_\_\_  
Michael Jordan  
Chief Operating Officer

By: \_\_\_\_\_

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

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

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

**CITY OF PORTLAND  
BUREAU OF ENVIRONMENTAL SERVICES**

By: \_\_\_\_\_

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

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

- Exhibit A Property Descriptions
- Exhibit B Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements

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**EXHIBIT A**  
**Property Descriptions**

**PARCEL A (Lots 3609, 3700 and 3800)**

Tax Lot 3609

Part of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point 2.00 chains South and 18.01 chains East of the Northwest one-quarter of the Northeast one-quarter of said Section, said point also being the Northwest corner of that tract conveyed to Herbert C. Wilton, et ux, by Deed recorded February 12, 1974, Recorder's Fee No. 74-3543, Clackamas County Records; thence South along the West line of said Wilton Tract to a point on the Southerly line of that tract of land conveyed to The Oregon Water Power and Railway Company by Deed recorded February 19, 1903, in Book 86, page 239, Clackamas County Deed Records, and the true point of beginning; thence continuing South along the West line of said Wilton Tract to a point in the thread of Johnson Creek said point also being the most Northerly corner of JOHNSON CREEK-76th INDUSTRIAL PARK, a recorded plat; thence Southerly along the thread of Johnson Creek and the boundary of said recorded plat to a point on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section; thence West along said South line to the Southeast corner of that tract described as Parcel III in Affidavit executed by Augusta L. Wie recorded May 11, 1971, Recorder's Fee No. 71-10059, Clackamas County Records; thence North along the East line of said Wie Tract 385 feet, more or less, to a point on the Southerly line of the aforementioned Oregon Water Power and Railway Company Tract; thence Northeasterly along said Southerly line to the true point of beginning.

TOGETHER WITH an Easement for ingress and egress over the following described tracts:

A tract of land being a portion of Lots 1, 4 and 5, JOHNSON CREEK-76TH INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, to-wit:

Beginning at a point in the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK, which point is 10 feet North 89°50' East from the Southeast corner of Lot 5, of said JOHNSON CREEK-76TH INDUSTRIAL PARK; thence Northerly to a point which is 10 feet West from an iron rod which is North 0°01' West 169.06 feet from the aforesaid Southeast corner of Lot 5; thence continuing Northerly to the North boundary of said Lot 5, in the thread of Johnson Creek; thence upstream along the thread of Johnson Creek to a point which is 32 feet Easterly from the previous described line when measured at right angles therefrom; thence Southerly, parallel with and 32 feet Easterly from the first line herein described, to the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK; thence tracing said South boundary, South 89°50' West to the place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:  
Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 407.06 feet to the Northeast corner of the tract conveyed to Glenn S. Cook, et ux, in Book 402, page 628; thence continuing South 89°48' West along the North boundary of said Cook tract, 65 feet to the true point of beginning of the tract herein to be described; thence continuing South 89°48' West along the North boundary of said Cook Tract 50 feet; thence South 0°01' East a distance of 217 feet to a point on the North line of Parcel II in that Mortgage recorded January 21, 1970, Recorder's Fee No. 70-1309; thence North 89°48' East parallel with the North line of said Cook Tract 50 feet; thence North 0°01' West parallel with the West boundary of said Cook Tract 217 feet to the true place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

The Easterly 40 feet of the following described property, as measured along the Northerly line thereof;

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 607.05 feet; thence South 0°01' East 217 feet to the true point of beginning; thence continuing South 0°01' East 83 feet; thence North 89°48' East 85 feet; thence South 0°01' East to the Northerly line of Johnson Creek Boulevard; thence Northeasterly along the Northerly line of said Johnson Creek Boulevard, to the Southwesterly corner of a tract conveyed to Harold R. Stier and Charlotte Stier, husband and wife, by Deed recorded in Deed Book 466, page 646; thence North 0°01' West along the Westerly line of said Stier Tract to the Northwest corner thereof; thence South 89°48' West, a distance of 125 feet to the true point of beginning.

**EXHIBIT A**  
**Property Descriptions**

**PARCEL A (continued)**

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof; thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way; thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records; thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Beginning at the most Southerly Southwest corner of Government Lot 3, Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East on the South line of said Lot, 147.5 feet to a line parallel with and 365.5 feet East of the center line of Kindorf Road extended Southerly; thence North to the Southerly line of the right-of-way of The Portland Railway Light and Power Co., formerly Oregon Water Power and Railway Company; thence Westerly along said Southerly line to the East line of the Hector Campbell Donation Land Claim; thence South on said East line to the place of beginning.

## Tax Lot 3700

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof;

Thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way;

Thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records;

Thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

## Tax Lot 3800

**BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON; THENCE EAST ON THE SOUTH LINE OF SAID LOT, 147.5 FEET TO A LINE PARALLEL WITH AND 365.5 FEET EAST OF THE CENTER LINE OF KINDORF ROAD EXTENDED SOUTHERLY; THENCE NORTH TO THE SOUTHERLY LINE OF THE RIGHT-OF-WAY OF THE PORTLAND RAILWAY LIGHT AND POWER CO., FORMERLY OREGON WATER POWER AND RAILWAY COMPANY; THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE EAST LINE OF THE HECTOR CAMPBELL D.L.C.; THENCE SOUTH ON SAID EAST LINE TO THE PLACE OF BEGINNING.**

**EXHIBIT A**  
**Property Descriptions**

**PARCEL B**

Tax Lot 3500

PART OF THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NW CORNER OF THE NE 1/4 OF SAID SECTION;  
THENCE SOUTH 24 RODS;  
THENCE EAST 20 RODS;  
THENCE NORTH 24 RODS;  
THENCE WEST 20 RODS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM 20 FEET ON THE EAST SIDE OF THE ROAD AND EXCEPTING ALSO THE RIGHT OF WAY CONVEYED TO THE OREGON WATER POWER AND RAILWAY COMPANY.

**PARCEL C**

PARCEL I:

A TRACT OF LAND SITUATED IN SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NORTHWEST CORNER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION;  
THENCE SOUTH 24 RODS TO A POINT;  
THENCE EAST 20 RODS TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;  
THENCE SOUTH 100 FEET TO A POINT;  
THENCE WEST 200 FEET TO A POINT;  
THENCE NORTH 100 FEET TO A POINT;  
THENCE EAST 200 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PROPERTY;  
THENCE NORTH ALONG THE WEST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO EVA VAN GALDER, ET AL, BY DEED RECORDED AUGUST 9, 1965, FEE NO. 13262, DEED RECORDS, A DISTANCE OF 476 FEET TO THE SOUTH RIGHT OF WAY LINE OF LUTHER ROAD;  
THENCE WEST ALONG THE SOUTH RIGHT OF WAY THEREOF, A DISTANCE OF 20 FEET;  
THENCE SOUTH ALONG THE EAST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO ALVIN ELLEFSON, ET UX, BY BOOK 263, PAGE 537, DEED RECORDS, AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 476 FEET;  
THENCE EAST A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH A 15 FOOT SEWER EASEMENT DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED TRACT;  
THENCE SOUTH A DISTANCE OF 15 FEET;  
THENCE WEST TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;  
THENCE NORTH 38° 26' EAST ALONG SAID CENTERLINE TO A POINT WHICH IS DUE WEST FROM THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED CONTRACT OF SALE TO HERBERT C. WILTON, ET UX, BY INSTRUMENT RECORDED OCTOBER 25, 1962, BOOK 612, PAGE 409, DEED RECORDS;  
THENCE EAST TO THE SOUTHWEST CORNER OF AFORESAID WILTON TRACT;  
THENCE CONTINUING EAST ALONG THE SOUTH BOUNDARY LINE OF SAID WILTON TRACT TO THE POINT OF BEGINNING.

Intergovernmental Agreement—BES, NCPRD, Metro—Johnson Creek/Lents II Project

**EXHIBIT A**  
**Property Descriptions**

**PARCEL C (continued)**

THENCE SOUTH 100 FEET TO A POINT;  
THENCE WEST 200 FEET TO A POINT;  
THENCE NORTH 100 FEET TO A POINT, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;  
THENCE WEST ALONG THE SOUTH BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO HERBERT C. WILTON, ET UX, BY CONTRACT OF SALE, RECORDED OCTOBER 25, 1962, IN BOOK 612, PAGE 409, DEED RECORDS, TO THE SOUTHWEST CORNER THEREOF;  
THENCE NORTH ALONG THE WEST BOUNDARY LINE THEREOF A DISTANCE OF 8 FEET TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;  
THENCE SOUTH 38° 26' WEST ALONG THE SAID CENTERLINE TO A POINT WHICH IS WEST 1 FOOT FROM THE WEST BOUNDARY LINE OF SAID WILTON TRACT WHEN MEASURED AT RIGHT ANGLES THERETO;  
THENCE SOUTH PARALLEL WITH WEST BOUNDARY LINE THEREOF A DISTANCE OF 6.86 FEET;  
THENCE EAST TO A POINT WHICH IS SOUTH FROM THE TRUE POINT OF BEGINNING;  
THENCE NORTH 1 FOOT TO THE TRUE POINT OF BEGINNING.

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

**PERMANENT SEWER EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that the **North Clackamas Parks and Recreation District**, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), “Grantor,” in consideration of the sum of \* (\$\*) and no/100 Dollars, and other good and valuable consideration, to them\* paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), do\* hereby grant unto said City of Portland, an exclusive and perpetual sewer easement for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers and appurtenances, through, under, over and along the following described property:

As described in **Exhibit A** ("the Property"), and depicted on **Exhibit B** attached hereto and by this reference made a part hereof..

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement
- B. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- C. No other utilities, buildings, facilities, easements, material storage, grade change or tree planting will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow-rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this easement, shall not require consent.

---

RW # \* After Recording Return to:

\* (state ID no.) 406/800/Dee A. Walker\_\_\_\_\_

Tax Statement shall be sent to: \_\_\_\_\_

No Change\_\_\_\_\_

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

- D. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantor's access and use of the easement area during revegetation, to the extent practicable.
- E. This easement does not grant or convey to Grantee any right or title to the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, operating, inspecting and maintaining the same.
- F. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- G. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- H. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- I. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its' successors and assigns, agrees to defend, indemnify and hold harmless the Grantor, its' officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantor, its' successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. If the parties to this agreement (Grantor and Grantee) discover preexisting environmental contamination at the site that requires remediation it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

IN WITNESS WHEREOF, the Grantor above named, has hereunto set its' hand this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
North Clackamas Parks and Recreation District

\_\_\_\_\_  
Name & Title

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \*.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or his designee



Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements

PERMANENT CHANNEL CHANGE EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 ("NCPRD"), collectively "Grantor," in consideration of the sum of \* and no/100 Dollars (\$\*), and other good and valuable consideration, to them paid by the City of Portland, a municipal corporation of the State of Oregon ("Grantee"), does hereby grant unto said City of Portland, an exclusive and perpetual easement for a channel change over and across the property described as follows:

As described in Exhibit A ("the Property"), and depicted on Exhibit B attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall have the right to go upon the Property for the purpose of making a channel change in Johnson Creek as necessitated by the construction and improvement of the Lents II Interceptor Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
B. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement.
C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. Grantee and Grantor acknowledge that Johnson Creek is a natural system and its channel and floodplain may change over time. The Permanent Channel Change Easement area is established to accommodate reasonable changes in the Johnson Creek channel alignment. Grantee shall have the right, although it is not obligated to do so, to manage, monitor, repair and replace said Johnson Creek in its relocated channel and Grantee may go upon the Property as necessary for such purposes. Grantee agrees to coordinate

RW File # \*
\* (state ID no.)

After Recording Return to:

106/800/Dee A. Walker

Tax Statement shall be sent to:

No Change

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

with Grantor regarding proposed channel modifications and Grantor agrees to defer to Grantee's judgment regarding proposed channel changes within the Permanent Channel Change Easement area.

- D. In the event that Johnson Creek leaves or threatens to leave the Permanent Channel Change Easement area, Grantee and Grantor agree to cooperate in any flood mitigation and channel change measures that are pursued and to share personnel and other costs as agreed to by the parties at that time.
- E. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services.
- G. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- H. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- I. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantor, its' officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantor, its' successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

- L. If the parties to this agreement (Grantor and Grantee) discover preexisting environmental contamination at the site that requires remediation it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantor above named, has hereunto set its' hand this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**North Clackamas Parks and Recreation District**

\_\_\_\_\_  
Name & Title

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2009,  
by \*.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or his designee

Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 ("NCPRD"), "Grantor," in consideration of the sum of One (\$1.00) and other good and valuable consideration, to them paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), does hereby grant unto said City of Portland a temporary easement for the purpose of construction, construction support and revegetation activities associated with the Lents II Interceptor Project through, under, over and along the following described property:

Described in Exhibit A ("the Property"), and depicted on Exhibit B attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. This temporary easement is granted for a term of six years, commencing no earlier than May 15, 2011, and terminating no later than May 14, 2017, for the following activities: (a) Grantee shall have exclusive use of the easement area for construction and construction support activities from May 15, 2011, to December 21, 2011; (b) non-exclusive use of the easement area between December 22, 2011, and May 15, 2012, for the purpose of revegetation and stream restoration activities, and; (c) non-exclusive use of the easement area for 4 days each year between May 16, 2012, and May 14, 2017, for the purpose of monitoring, revegetation establishment and construction activities necessary to assure conformance with project design criteria.
B. Grantee agrees to provide Grantor with at least seven (7) days written notice prior to commencing work under this easement.
C. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantor's access and use of the easement area during revegetation and reconstruction to the extent practicable.

State ID #\* After Recording Return to:

R/W # 106/800/Dee A. Walker

Tax Statement shall be sent to:

No Change

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

- D. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction.
- E. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- F. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- M. Grantee will provide Grantor a copy of the revegetation plan for the easement area.
- N. Grantor agrees not to disturb the plantings in the easement area during the term of this easement.
- O. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- P. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantor, its' officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- Q. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantor, its' successors and assigns, agree to defend, indemnify and hold harmless the Grantee, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- R. If the parties to this agreement (Grantor and Grantee) discover preexisting environmental contamination at the site that requires remediation it is agreed that the contamination will be remediated and the cost for such remediation will be split equally between the parties.

IN WITNESS WHEREOF, the Grantor above named, has hereunto set its' hand this

**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

\_\_\_\_\_ day of \_\_\_\_\_, 2009.

**North Clackamas Parks and Recreation District**

\_\_\_\_\_  
Name & Title

STATE OF OREGON

County of Multnomah

This instrument was acknowledge before me on \_\_\_\_\_, 2009,  
by \*.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or his designee

**EXHIBIT B** Exhibit A to Resolution No. 09-4033  
**Permanent Sewer, Permanent Channel Change, and Temporary Construction Easements**

**EXHIBIT A**  
**Property Description**

(Placeholder)

The property description attached to this IGA as Exhibit A will be inserted as Exhibit A to each easement that is recorded

**EXHIBIT B**  
**Easement Diagram**





## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 09-4033 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND AND THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT REGARDING THE PURCHASE AND MANAGEMENT OF PROPERTY IN THE JOHNSON CREEK TARGET AREA ACQUIRED PURSUANT TO THE 2006 NATURAL AREAS BOND MEASURE

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Date: April 2, 2009

Prepared by: Kathleen Brennan-Hunter

### **BACKGROUND**

Metro desires to enter into an Intergovernmental Agreement (“IGA”) with the City of Portland Bureau of Environmental Services (“BES”) and the North Clackamas Parks and Recreation District (“NCPRD”) for the purpose of acquiring, restoring, developing, and managing three adjoining properties in the Johnson Creek Target Area of the 2006 Natural Areas Bond Measure. The properties are commonly known as “Lents II,” and are more specifically identified on Exhibit A to the IGA attached to this Resolution (the “Properties”). Metro has entered into an agreement with a private landowner to purchase the largest of the properties, approximately 10 acres in size.

The Properties are located along the Springwater Corridor, with approximately 2,000 total feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 72<sup>nd</sup> and Johnson Creek Boulevard. The Properties have been identified, as a Tier II acquisition priority in the Johnson Creek Target Area, to protect key properties adjacent to publicly owned resource areas and to promote partnership.

The IGA provides that the purchase of the Properties, if successfully negotiated, will be jointly funded by the City of Portland Bureau of Environmental Services (“BES”), North Clackamas Parks and Recreation District (“NCPRD”) and Metro. BES will contribute funds to purchase one or more easements across the Property to complete a sewer project including the replanting and natural area restoration of the length of the creek on the property, improvement of two significant outfalls, and construction of a side channel. NCPRD will contribute funds from its System Development Charges in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, in order to protect fish and wildlife habitat and water quality. NCPRD will take 100% ownership interest in the Properties.

During the course of Metro’s due diligence investigations regarding one of the Properties, certain hazardous substances were detected at levels below the threshold required for reporting the contamination to the Oregon Department of Environmental Quality. Metro ordinarily would engage in additional investigations to determine the full extent of such contamination prior to taking ownership interest in such a property, but Metro’s partners in this IGA, NCPRD and BES, are comfortable moving forward with the acquisition and accepting all risk that the Properties contain higher levels of hazardous substances than were detected in Metro’s due diligence investigation. Due to such potential risks, expenses, and liabilities associated with ownership and management of the properties, Metro recommends against Metro taking an ownership interest or any management responsibility for the Properties.

In its current state the Properties attract nuisance uses and are in an extremely degraded environmental condition. BES's commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use to be developed by NCPRD, will make an enormous impact on the health of Johnson Creek and for the entire neighborhood, providing a community amenity and flood abatement.

The IGA will provide as follows:

- 1) Metro shall be responsible for negotiating for purchase of, conducting due-diligence and coordinating closing for purchase and sale for the Properties;
- 2) Upon acquisition of one or more of the Properties, NCPRD agrees to grant the sewer and restoration project easements to BES, to permit and require BES to access, repair, reconstruct, construct, maintain, and monitor the existing sewer pipe that traverses the Properties, invest significantly in natural habitat and water quality enhancement and restoration activities along the creek and potentially replace a side channel to Johnson Creek on the Properties; and
- 3) NCPRD shall take ownership of the Properties and be responsible for development of active recreation on approximately four acres of the Properties and be responsible for long-term management and maintenance.

The proposed form of IGA is attached as Exhibit A to this Resolution.

Acquisition, restoration and management of the Properties under the IGA is a unique collaboration of three agencies with different but aligned interests, pooling resources to establish a public asset to support improved water quality, habitat and create a community resource. Acquisition of the Properties will meet the Tier II and partnership objectives set forth in the Johnson Creek Target Area Refinement Plan, and will be conducted in accordance with the Natural Areas Work Plan.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection," was adopted on March 9, 2006.

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program."

### **3. Anticipated Effects**

NCPRD shall hold a 100% interest in the Property and BES shall hold an easement for its sewer and related improvements. BES shall be responsible for restoration of the Properties and NCPRD for development of a community park and for the Properties' long-term maintenance and management.

### **4. Budget Impacts**

Metro's share toward the purchase of the Properties will be from 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne by exclusively by NCPRD and BES pursuant to the terms of the IGA.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends passage of Resolution No. 09-4033.

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\Res 09-4033 IGA stfrpt 031809.doc

**Resolution No. 09-4034**, For the Purpose of Authorizing the Chief Operating Officer to Contribute One-Third of the Purchase Price Toward the Purchase of Property in the Johnson Creek Target Area Under the 2006 Natural Areas Bond Measure and Subject to Unusual Circumstances.

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE ONE-THIRD OF THE PURCHASE PRICE TOWARD THE PURCHASE OF PROPERTY IN THE JOHNSON CREEK TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO UNUSUAL CIRCUMSTANCES

RESOLUTION NO. 09-4034

Introduced by Chief Operating Officer Michael J. Jordan, with the concurrence of Council President David Bragdon

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Measure 26-80, the 2006 Natural Areas Bond Measure submitted to the voters to preserve natural areas and clean water and protect fish and wildlife (the “Measure”); and

WHEREAS, the Johnson Creek Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition; and

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District (NCPRD) and the City of Portland Bureau of Environmental Services (BES) to jointly contribute towards the purchase of a specific property in the 2006 Natural Areas Bond Measure Johnson Creek Target Area, which property is identified and further described in Exhibit A to this resolution (the “Property”); and

WHEREAS, the ten acre Property includes over 1,600 feet of stream frontage along Johnson Creek and also abuts the Springwater Trail, is currently in an extremely degraded condition, and is in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, BES is contributing one third of the purchase of the Property in return for easements to allow BES to repair and realign a sewer pipe that crosses the Property and to undertake a major channel change, flood prevention, and natural restoration project along the full length of Johnson Creek on the Property, for which BES already has budgeted funds available; and

WHEREAS, NCPRD and Metro are each contributing one third of the purchase price of the Property and NCPRD will take 100% ownership interest in the Property in order to implement and maintain natural areas restoration and to develop a park on the upland portion of the site; and

WHEREAS, Metro is contributing one third of the purchase price of the Property in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed, but due to potential risks, expenses and liabilities associated with ownership and management of the Property, Metro does not wish to own or manage the Property; and

WHEREAS, acquisition of the Property by NCPRD will further the Johnson Creek Target Area goal of partnering with other governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as

Outlined in the Natural Areas Implementation Work Plan,” (the “Acquisition Parameters and Due Diligence Guidelines”); and

WHEREAS, the Acquisition Parameters and Due Diligence Guidelines provide that the purchase price for property must be no more than the fair market value of the property as determined by an independent certified appraiser in an appraisal subject to no extraordinary assumptions, and as confirmed by a review appraisal by an independent certified appraiser; and

WHEREAS, the appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions, one was the appraiser’s assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning (which was not considered extraordinary by the review appraiser), and the other that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land; and

WHEREAS, the inclusion of extraordinary assumptions in the appraisal of the Property is an “unusual circumstance,” under the Acquisition Parameters and Due Diligence Guidelines, and the Council therefore must approve acquisition of the Property at the negotiated purchase price; and

WHEREAS, acquisition of the Property is warranted notwithstanding such unusual circumstance because of the opportunity for Metro to partner with BES and NCPRD to achieve public ownership of the property that will allow restoration of its extensive stream frontage along Johnson Creek and the Springwater Trail; now, therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to contribute one-third of the purchase price toward NCPRD’s acquisition of the property identified in Exhibit A (the “Property”), at the purchase price agreed to by the parties, and to pay certain closing costs and expend due diligence resources towards such acquisition, notwithstanding the unusual circumstance that the appraisal for the Property included two extraordinary assumptions.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## Exhibit A to Resolution No. 09-4034

### Target Area: JOHNSON CREEK Lents II Property

**Description:** Staff has identified an opportunity to acquire approximately 10 acres of land in partnership with the City of Portland Bureau of Environmental Services (“BES”) and North Clackamas Parks and Recreation District (“NCPRD”) that will serve several restoration, conservation, and recreation functions in the Johnson Creek Target Area. The property is located between the Springwater Corridor and Johnson Creek at 76<sup>th</sup> Drive, just south of the Multnomah and Clackamas County border. The property is approximately 6 miles from downtown Portland and west of the 205 Highway, therefore in one of the more heavily traveled segments of the Springwater Corridor trail.

The industrial-zoned property is relatively level and the majority of the site is suitable for intense restoration activity because it does not include high value plant life habitat. It is one of few large vacant parcels left in the area and surrounded by high density industrial, commercial and residential uses. An appraisal completed for Metro indicates that there is a strong demand for small manufacturing and light industrial spaces in this area of the City. Industrial development of the site would most likely wipe out the current opportunity to contribute to the health of Johnson Creek and provide a park area for the neighborhood and Springwater Trail users.

Currently, a sewer line and manhole are exposed at the creek, which has been channelized and eroded, separating the creek from its natural floodplain. BES will invest in a significant capital project which will grade the bed of the creek, bury the pipe, and raise the level of the creek, necessitating a side channel on the property. This will reconnect the floodplain and provide benefits for water quality and for species that depend on aquatic habitat. It will also allow for more water storage during heavy rain events. Approximately 4-5 acres of the property would be used for this purpose and planted in appropriate floodplain vegetation. The balance of the property would be restored and planned as a community park area by NCPRD. The proximity to the Springwater Trail will most likely bring more users than a typical community park.

- Bond Criteria Addressed:**
- Provides an uncommon opportunity to protect associated upland area in a densely developed area along Johnson Creek
  - Improvement of water quality in Johnson Creek by restoring the floodplain function of the creek to its more natural state.
  - Protects the health of the creek by allowing for preventive maintenance of sewer lines using best science currently available.
  - Fulfills refinement plan partnership objectives of working with the City of Portland’s Bureau of Environmental Services and Clackamas County
  - Leverages bond resources by limiting Metro investment to one third of the purchase price.
  - The BES capital project includes intense restoration that will benefit habitat and water quality.

**Property**

**identification:** Tax Lots 3609, 3700 and 3800, Map 1S2E 29AB, Willamette Meridian; Clackamas County

**Seller:** Private Party

**Size:** 10.07 acres

**Stream**

**Frontage:** Johnson Creek, approximately 1,600 feet

**Conditions:** Standard due diligence; subject to unusual circumstance due to extraordinary assumptions in the appraisal regarding the developable area estimate and access issues; NCPRD to be 100% owner, with BES holding an easement.



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4034 AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE ONE-THIRD OF THE PURCHASE PRICE TOWARD THE PURCHASE OF PROPERTY IN THE JOHNSON CREEK TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO AN UNUSUAL CIRCUMSTANCE

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Date: April 2, 2009

Prepared by: Kathleen Brennan-Hunter

## BACKGROUND

Metro has entered into an agreement with a private landowner (“Owner”) to purchase 10 acres of property in the Johnson Creek Target Area, which property is commonly known as “Lents 2” and is more specifically identified on Exhibit A attached to the Resolution (the “Property”). The Property is located along the Springwater Corridor, with approximately 1,600 feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 72<sup>nd</sup> and Johnson Creek Boulevard. The Property acquisition is a collaboration of the City of Portland Bureau of Environmental Services (“BES”), North Clackamas Parks and Recreation District (“NCPRD”) and Metro (collectively “the Parties”). The Property has been identified as a Tier II acquisition priority and partnership objective in the Johnson Creek Target Area.

The purchase of the Property is being jointly funded by the Parties with each party contributing one-third of the purchase price. BES will contribute funds in return for one or more easements across the Property to complete a sewer repair and channel restoration project. This project will include the replanting and natural area restoration of the length of Johnson Creek on the Property, improvement of two significant outfalls, and construction of a side channel to improve floodplain capacity on the Property. NCPRD will contribute funds from its System Development Charges in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure to facilitate the acquisition and further Metro’s goals of protecting fish and wildlife habitat and water quality. NCPRD will take 100% ownership interest at closing, and will assume all management responsibility for the Property.

The Property is zoned industrial but has remained undeveloped likely due to access constraints. It is located in unincorporated Clackamas County in an area of mixed-use industrial property and lower cost housing. The current owner has used the property for long-term storage of construction debris and soil. In its current state the property attracts nuisance uses and is a blight along the Springwater Corridor Trail. BES’s commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use by NCPRD will make an enormous impact on the health of Johnson Creek and the entire neighborhood. The City of Portland’s Bureau of Parks and Recreation has agreed to provide a permit of entry to the Parties to facilitate the development and maintenance of the Property, until future acquisitions might provide better access opportunities.

Metro has represented the Parties in negotiations to acquire the Property and will continue to represent the parties in negotiations to acquire two additional complementary properties. NCPRD will be responsible for future management of the Property. The terms of the roles of the parties are described in the Intergovernmental Agreement being presented to council concurrent with this Resolution as Resolution No. 08-3969, “Authorizing The Chief Operating Officer To Execute An Intergovernmental Agreement With The City Of Portland And The North Clackamas Parks And Recreation District Regarding The

Purchase And Management Of Property In The Johnson Creek Target Area Acquired Pursuant To The 2006 Natural Areas Bond Measure.”

The appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions. The first was the appraiser’s assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning. The appraiser assumed that a total of six acres of the ten acre site could be developed. The appraiser listed this as an extraordinary assumption because any change in the developable area of the site would have a direct impact on the total valuation. On review, the review appraiser noted that this assumption did not seem all that extraordinary in his experience. The second extraordinary assumption was that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land. As noted above, it is difficult to access the Property because it is located between the Springwater Corridor Trail and Johnson Creek. The area to its north, across the trail, is primarily a residential neighborhood. The area to its south, across Johnson Creek, is developed for light industrial uses. The Property is zoned for industrial use, but it is questionable whether the Property currently has sufficient legal access to permit it to be developed for that use. In addition, a bridge would have to be constructed to allow such use. At Metro’s request, the appraiser calculated the market value of the Property by assuming that access could be provided and by subtracting the value of the additional land that would be required to provide such access and the cost of the bridge that would need to be constructed.

Metro, BES, and NCPRD all acknowledge that such access issues also will affect plans to improve the Property as a park. That is why the partners have agreed, in a separate IGA, to continue to work to acquire additional properties in the area that could provide improved access. In addition, the Parties have obtained an easement across the Springwater Trail from Portland Parks to access the Property for construction and maintenance and the Property will be easily accessible by pedestrians and cyclists using the Springwater Trail.

During the course of Metro’s due diligence investigations regarding the Property, certain hazardous substances were detected at levels below the threshold required for reporting the contamination to the Oregon Department of Environmental Quality. Metro ordinarily would engage in additional investigations to determine the full extent of such contamination prior to taking ownership interest in such a property, but Metro’s partners, NCPRD and BES, are comfortable moving forward with the acquisition and accepting all risk that the Property contains higher levels of hazardous substances than were detected in Metro’s due diligence investigation. Due to such potential risks, expenses, and liabilities associated with ownership and management of the Property, Metro recommends against Metro taking an ownership interest or any management responsibility for the Property.

Metro’s contribution to the purchase price is a critical factor in the property acquisition, without which the opportunity to protect and restore the Property may be lost.

Acquisition of the “Lents 2” Property by NCPRD with a one third contribution of regional bond funds is recommended because it will facilitate immediate restoration and ensure long-term protection of a unique urban 10-acre Johnson Creek and Springwater Corridor frontage property. It will meet the goals and Tier II objectives set forth in the Johnson Creek Target Area Refinement Plan to partner with the City of Portland (and, in this case, NCPRD) to secure key parcels adjacent to existing publicly protected resource areas.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

None.

### **2. Legal Antecedents**

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection," was adopted on March 9, 2006.

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3851, "Approving the Natural Areas Acquisition Refinement Plan for the Johnson Creek and Watershed Target Area," was adopted by the Metro Council on September 13, 2007.

Resolution No. 08-3969, "Authorizing The Chief Operating Officer To Execute An Intergovernmental Agreement With The City Of Portland And The North Clackamas Parks And Recreation District Regarding The Purchase And Management Of Property In The Johnson Creek Target Area Acquired Pursuant To The 2006 Natural Areas Bond Measure," being introduced concurrently with this resolution.

### **3. Anticipated Effects**

NCPRD, BES, and Metro shall pay equal thirds of the purchase price to acquire the Property. NCPRD shall hold a 100% interest in the property and BES shall hold an easement for its sewer and Johnson Creek restoration-related improvements. BES shall be responsible for restoration of the property and NCPRD for development of a community park and for long-term maintenance and management of the Property.

### **4. Budget Impacts**

Metro's contribution to the Property shall be funded utilizing 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne exclusively by BES and NCPRD pursuant to the terms of the IGA.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends passage of Resolution No. 09-4034.

**Resolution No. 09-4041**, For the Purpose of Confirming the Reappointments of Christine Duffy, Robin Plance, Michael Salvo and Doretta Schrock to the North Portland Rehabilitation and Enhancement Committee (NPREC).

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE ) RESOLUTION NO. 09-4041  
REAPPOINTMENTS OF CHRISTINE DUFFY, ROBIN )  
PLANCE, MICHAEL SALVO AND DORETTA SCHROCK ) Introduced by Chief Operating  
TO THE NORTH PORTLAND REHABILITATION AND ) Officer Michael J. Jordan with the  
ENHANCEMENT COMMITTEE (NPREC) ) concurrence of Council President  
David Bragdon

WHEREAS, Metro Code Chapter 2.19.140 provides for a North Portland Rehabilitation and Enhancement Committee (NPREC); and,

WHEREAS, Metro Code Chapter 2.19.030 states that advisory committee members and alternate members are limited to two consecutive two-year terms; and,

WHEREAS, the initial terms of Christine Duffy, Robin Plance, Michael Salvo and Doretta Schrock have expired and they have expressed interested in serving another term; and,

WHEREAS, Ms. Duffy, Mr. Plance, Mr. Salvo and Ms. Schrock are members in good standing and their reappointments are supported by the Committee and Committee Chair; and,

WHEREAS, the Council President has reappointed these individuals, subject to confirmation by the Metro Council; now, therefore,

BE IT RESOLVED, that the Metro Council confirms the reappointment of Christine Duffy, Robin Plance, Michael Salvo and Doretta Schrock to serve on the North Portland Rehabilitation and Enhancement Committee.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 09-4041 FOR THE PURPOSE OF CONFIRMING THE REAPPOINTMENTS OF CHRIS DUFFY, ROBIN PLANCE, MICHAEL SALVO AND DORETTA SCHROCK TO THE NORTH PORTLAND REHABILITATION AND ENHANCEMENT COMMITTEE (NPREC)**

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Date: March 13, 2009

Prepared by: Karen Blauer

#### **BACKGROUND**

The eight-member North Portland Rehabilitation and Enhancement Committee (NPREC) is charged with making recommendations to the Metro Council regarding policies and the administration of the rehabilitation and enhancement program for the North Portland Area, including recommending projects for funding.

Metro Code 2.19.140(b) authorizes membership on the Committee, including seven citizen neighborhood representatives. Metro Code 2.19.030 concerning membership of advisory committees, limits these representatives to two consecutive two-year terms. Four members' terms have expired: Robin Plance, representing the St. Johns neighborhood; Doretta Schrock, representing the Kenton neighborhood; Chris Duffy, representing the Arbor Lodge neighborhood; and Michael Salvo, representing the University Park neighborhood. All four are members in good standing and Councilor Rex Burkholder, chair of the NPREC, supports their reappointments. Furthermore, all four have expressed interest in serving second terms on the NPREC.

#### **ANALYSIS/INFORMATION**

1. Known Opposition. There is no known opposition to the reappointments of Ms. Duffy, Mr. Plance, Mr. Salvo and Ms. Schrock to the NPREC.
2. Legal Antecedents. Chapter 2.19 of the Metro Code Relating to Advisory Committees; Section 2.19.140 provides for a North Portland Rehabilitation and Enhancement Committee (NPREC) and sets forth guidelines for representation.
3. Anticipated Effects. Adoption of this resolution would confirm the reappointments of Ms. Duffy, Mr. Plance, Mr. Salvo and Ms. Schrock to the NPREC.
4. Budget Impacts. There are no known costs associated with implementation of this legislation.

#### **RECOMMENDED ACTION**

Staff recommends Metro Council adopt resolution to confirm the reappointments of Chris Duffy, Robin Plance, Michael Salvo and Doretta Schrock to serve on the North Portland Rehabilitation and Enhancement Committee.

Agenda Item Number 3.5

**Resolution No. 09-4044**, For the Purpose of Approving a Communication Site  
Lease Agreement at the Portland Expo Center.

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 09-4044
COMMUNICATION SITE LEASE AGREEMENT	)	
AT THE PORTLAND EXPO CENTER	)	Introduced by Chief Operating Officer
	)	Michael J. Jordan, with the concurrence of
	)	Council President David Bragdon

WHEREAS, Clearwire US LLC representatives have approached the Metropolitan Exposition Recreation Commission requesting to lease fifty (50) square feet of rooftop space on Exhibit Hall D of the Portland Expo Center (the "Premises") for the purpose operating certain radio communications facilities; and

WHEREAS, Expo Center staff, along with the Office of the Metro Attorney, have negotiated the terms of the proposed lease, whereunder Clearwire would lease the Premises for an initial term of five years and have the right to extend the initial term for five additional five-year periods; and

WHEREAS, the Metropolitan Exposition Recreation Commission adopted Resolution No. 09-02 "For the Purpose of Approving Communication Site Lease Agreement Between the Metropolitan Exposition Recreation Commission and Clearwire US LLC, and Authorizing Staff to Forward such Lease to the Metro Council for Approval"; and

WHEREAS, the Metro Council has previously approved similar long term communication site leases at the Oregon Zoo, the Glendoveer Golf Course, and the M. James Gleason Boat Ramp; and

WHEREAS, the Metro Council, as the fee owner of the Portland Expo Center, has determined that the rooftop Premises are not needed for public use; now therefore

BE IT RESOLVED that the Metro Council authorizes the Metropolitan Exposition Recreation Commission to enter into a long term Communication Site Lease Agreement with Clearwire US LLC for rooftop space on Exhibit Hall D of the Portland Expo Center, in a form substantially similar to attached Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney



## **EXHIBIT A TO RESOLUTION 09-4044**

### **COMMUNICATION SITE LEASE AGREEMENT (BUILDING)**

THIS COMMUNICATION SITE LEASE AGREEMENT (“Agreement”), dated for reference purposes as of \_\_\_\_\_, 2009, is between CLEARWIRE US LLC, a Nevada limited liability company (“Clearwire” or “Tenant”), and METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission (“MERC”), governing body for the Portland Metropolitan Exposition Center (METRO and MERC are jointly referred to herein as “Owner” or “Landlord”).

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Landlord owns a parcel of land (“**Land**”) and a building (“**Building**”) located in the City of Portland, County of Multnomah, State of Oregon, commonly known as 2060 N. Marine Drive (APN: 2N1E33 00200). The Building and the Land are collectively referred to herein as the “**Property.**” The Land is more particularly described in Exhibit A annexed hereto. Subject to the terms and conditions set forth in this Agreement, Owner hereby leases to Clearwire and Clearwire leases from Owner 50 square feet of rooftop space, plus additional space adjacent to and/or on the roof of the Building and cable tray, cable runs, antennae, MW dishes, conduit and riser space (collectively, “**Premises**”). The Premises is more particularly described and depicted on Exhibit B annexed hereto.

2. **Effective Date/Due Diligence Period.**

2.1 This Agreement shall be effective on the date of full execution hereof (“**Effective Date**”). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 4 below (“**Due Diligence Period**”), Clearwire shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, signal, topographical, geotechnical, structural and environmental tests, and other investigations Clearwire may reasonably deem necessary to determine the physical condition, feasibility and suitability of the Premises for Clearwire’s intended use (collectively, “**Investigations and Tests**”). Clearwire will provide Landlord with no less than 72 hours notice of its intent to access the Property and shall coordinate with Landlord to schedule a time that is convenient for both parties.

2.2 Tenant will notify Landlord and receive Landlord's written consent before conducting any invasive Investigations and Tests such as soils testings, wells, and borings. With respect to the Investigations and Tests, Tenant shall (i) have all work performed in a good and workmanlike manner and in accordance with all Laws (as defined below); (ii) pay for all work performed and keep the Property free and clear of all mechanic’s liens, construction liens, and any other encumbrances; (iii) have all work performed in such a manner so as not to cause any damage to the Property, injury to any person, or injury to the environment; and (iv) promptly repair any damage caused by such entry and restore the Property to the condition that existed prior to the entry. For purposes of this Paragraph, the term “**Laws**” shall mean each and every applicable federal, state, county, and local statute, ordinance, rule, regulation, order, or requirement, including, without limitation, all amending, modifying, or superseding statutes, ordinances, rules, regulations, orders, or requirements. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, costs, penalties, and expenses, including (without limitation) reasonable counsel, engineering, and other professional or expert fees: (a) arising from or in any way related to the acts or omissions of Tenant or its agents or consultants occurring during or relating to any entry during the Due Diligence Period or (b) arising from or in any way related to any breach by Tenant or its agents or consultants of any term, condition, or covenant set forth in this Paragraph 2. Landlord and Clearwire expressly acknowledge and agree that Clearwire’s access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clearwire shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.

2.3 If, prior to the expiration of the Due Diligence Period, Clearwire determines that the Premises are not appropriate for Clearwire’s intended use, or if for any other reason, or no reason, Clearwire decides

not to commence its tenancy of the Premises, then Clearwire may terminate this Agreement without penalty upon written notice to Owner at any time prior to the Term Commencement Date. If Clearwire has not notified Landlord of its inability to accept the Property before the Term Commencement Date, Clearwire shall be deemed to have accepted the Premises "AS IS", and with all faults, and waives all claims against Landlord in respect of defects in the Premises or the Property and its structures and appurtenances excepting any latent defects, and their suitability for Clearwire's intended use.

3. Use. The Premises may be used by Tenant to erect and maintain the Tenant Facilities (as defined below in Paragraph 6) for the transmission of its communications services. Landlord agrees to cooperate with Tenant, at no expense to Landlord, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.

4. Term; Renewal; Deposit.

4.1 Term. The term of this Agreement shall commence upon the date Tenant begins construction of the Tenant Facilities (as defined in Paragraph 6 below) or six (6) months following the Effective Date, whichever first occurs ("**Term Commencement Date**") and shall terminate on the fifth anniversary of the Term Commencement Date ("**Term**") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for five (5) successive five (5) year periods ("**Renewal Terms**") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew at least ninety (90) days prior to commencement of the succeeding Renewal Term.

4.2 Upon the Term Commencement Date, Tenant shall pay to Landlord the sum of Three Thousand and 00/100 Dollars (\$3,000.00), as security for the full and faithful performance by Tenant of all the covenants and terms of this Agreement (the "**Deposit**"). The Deposit shall be returned to Tenant after the expiration of this Agreement, provided Tenant has fully and faithfully carried out all of Tenant's obligations hereunder, including (without limitation) the payment of all amounts due to Landlord hereunder and the surrender of the Premises to Landlord in the condition required in this Agreement. If Landlord applies any part of the Deposit to cure any default of Tenant, Tenant shall on demand deposit with Landlord the amount so applied so that Landlord shall have the full Deposit on hand at all times during the Term of this Agreement.

5. Rent. Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per month ("**Rent**"). Rent shall be increased annually at a rate of Three Percent (3%) per year. Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Landlord at 2060 N. Marine Drive, Portland, OR 97217; Attention: Expo Center Director. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord.

6. Improvements.

6.1 Tenant has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises certain radio communications facilities described on the attached Exhibit B, including but not limited to utility lines, transmission lines, an air conditioned equipment shelter(s), electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore ("**Tenant Facilities**"). In connection therewith, Tenant has the right to do all work reasonably necessary to prepare and maintain the Premises for the Tenant Facilities and to install utility lines and transmission lines connecting antennas to transmitters and receivers.

6.2 Title to the Tenant Facilities and any equipment placed on the Premises by Tenant shall be held by Tenant or its lenders or assigns and are not fixtures. Installation and operation of the Tenant Facilities shall be subject to all applicable land use and zoning restrictions and conditions and Tenant is responsible for obtaining all necessary permits and approvals and paying all associated fees prior to commencing construction of the Tenant Facilities. All of Tenant's construction and installation work shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner. Tenant shall at all times during the duration of this Agreement maintain the Tenant Facilities and the Premises in a safe and secure condition.

6.3 Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Building or Property, and shall keep the Premises and the Property free from any liens other than liens created by Landlord or other parties. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

6.4 Tenant shall remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement. Tenant shall be responsible for repairing any and all damage to the Premises caused by such removal, and shall surrender the Premises to Landlord in the same or better condition as existed at the Term Commencement Date of this Agreement, less ordinary wear and tear and other casualty beyond the control of Tenant.

7. Access and Utilities.

7.1 Subject to the conditions set forth below in this Paragraph, Tenant, and Tenant's agents, employees and contractors, shall have the right to cross the Property to access the Premises. Tenant may access the Premises for construction, routine maintenance, repair and other non-emergency visits during business hours (defined as Monday through Friday, 8:00 a.m. to 3:00 p.m.); provided, however, that Tenant shall provide Landlord with one week advance notice of its intent to access the Premises and shall schedule its visit to the Property at times that are convenient to Landlord so as to minimize interference with Landlord's ongoing business operations. Non-emergency visits to the Premises shall be coordinated with Christopher W. Bailey, Expo Center Director at (503) 736-5200. In the event of an emergency, Tenant may access the Premises upon two hours notice to Landlord provided that Tenant coordinates its access with Landlord's designated operations staff, whose contact information will be provided to Tenant upon the Term Commencement Date. Tenant shall pay Landlord an agreed upon flat fee of \$200 per visit to cover all costs incurred by Landlord to accommodate Tenant's emergency access to the Property during non-business hours.

7.2 Landlord shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Tenant's use of such roadways.

7.3 Tenant shall install separate meters for utilities used on the Property and shall pay all charges due to Tenant's use at the rate charged by the servicing utility company. Tenant shall, at Tenant's sole expense, have the right to install utilities and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators) reasonably necessary to provide service to the Tenant Facilities. Landlord agrees to sign such documents or easements as may be necessary to provide such utility service to the Premises; provided, however, that any easement necessary for such utilities will be at a location acceptable to Landlord.

8. Interference. Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities. Subsequent to the installation of the Tenant Facilities, Landlord will not permit its lessees or licensees to install new equipment if such installations are likely to cause interference with Tenant's operations.

9. Taxes. Tenant shall pay all real property and/or personal property taxes assessed against the Tenant Facilities and all other taxes, fees and assessments attributable to the Premises or this Agreement. Notwithstanding the forgoing, in the event Tenant fails to timely pay any such taxes assessed, Landlord retains the right to pay such amounts on Tenant's behalf and invoice Tenant for the amount paid, in which case Tenant shall reimburse Landlord for the amount invoiced within thirty (30) calendar days of receipt of written notice from Landlord.

10. Termination.

10.1 This Agreement may be terminated by Tenant without further liability for any reason or for no reason, provided Tenant delivers written notice of termination to Landlord prior to the Term Commencement Date.

10.2 After the Term Commencement Date, this Agreement may be terminated by Tenant without further liability on thirty (30) days prior written notice if Tenant is unable to obtain or maintain, through no fault of Tenant and after expending reasonable efforts, any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, replacing, maintaining or operating the Tenant Facilities. In the event of a termination under this paragraph, Tenant shall pay Landlord all monies due including Rent, and any other fees due to Landlord, as of the date of termination. In addition Tenant shall, at its sole expense, return the Premises to the same or better condition than existed on the Term Commencement Date (normal wear and tear, and casualty beyond Tenant's control, excepted) and remove the Tenant Facilities.

10.3 This Agreement may be terminated by Landlord upon thirty (30) days written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Agreement within that thirty (30) day period.

10.4 This Agreement may be terminated by either party upon sixty (60) days written notice by either party upon default of any non-monetary covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion.

10.5 In the event of a default by Tenant which has not been cured by Tenant within the applicable time periods set forth in Section 10.3 and 10.4, this Lease may be terminated at the option of Landlord by written notice to Tenant, in accordance with state law. In the event of termination or retaking of possession following an event of default by Tenant, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the term of this Lease, the following amounts as damages:

(a) An amount equal to twelve (12) times the monthly Rent, at the then current rate. This amount shall be the full, agreed, and liquidated damages attributable to Landlord's loss of Rent and Landlord shall have no duty to mitigate its damages. Landlord and Tenant agree that it would be impractical and extremely difficult to estimate the damages that Landlord may suffer as a result of the loss of Rent. Therefore, Landlord and Tenant agree that a reasonable estimate of the total net detriment that Landlord would suffer is and shall be, in addition to other remedies provided in this Lease, the amount set forth in this Section 10.5(a). The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Landlord.

(b) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, or any other expense occasioned with Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, and court costs.

10.6 This Agreement may be terminated by Tenant without further liability on thirty (30) days prior written notice to Landlord for any reason if Tenant otherwise determines, within its sole discretion, that it will be unable to use the Premises for Tenants intended purpose. In the event Tenant terminates this Agreement pursuant to this paragraph, Tenant shall pay to Landlord a termination fee equal to six (6) months the current Rent.

10.7 This Agreement may be terminated by Landlord, for reasons involving public health, safety, or welfare. If the public's health, safety, or welfare is endangered by the operations of the Tenant Facilities and Tenant fails to cure the conditions causing the endangerment within thirty (30) days after receipt of such notice, Landlord may terminate this Agreement.

10.8 This Agreement may be terminated by Landlord or Tenant upon prior written notice, if either the Metropolitan Exposition Recreation Commission or the Metro Council decides to redevelop the Property or the Building in a manner inconsistent with continued use of the Premises by Tenant pursuant to the terms of paragraph 15 below.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, and provided any of the damage and/or destruction suffered was not caused by Tenant, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Insurance; Subrogation; and Indemnity.

12.1 Tenant shall provide Commercial General Liability Insurance in an aggregate amount of One Million and No/100 Dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. Tenant's policy shall be specifically endorsed to provide that the coverage obtained by Tenant by virtue of this Agreement will be primary, and that any insurance carried by Landlord shall be excess and non-contributory. Such insurance shall name Metro, MERC, and Portland Metropolitan Exposition Center, (and each entity's elected officials, employees, and agents) as additional insureds. Tenant shall provide Landlord with a certificate of insurance complying with this article within fifteen (15) days of execution of this Agreement. Notice of any material change or policy cancellation shall be provided to Landlord thirty days (30) prior to the change.

12.2 Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first-party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

12.3 Tenant shall indemnify, defend and hold harmless Landlord (and Landlord's elected officials, employees, and agents) from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, whether before the commencement of litigation at trial or on appeal ("**Losses**"), arising out of or in any way connected with Tenant's performance of this Agreement, Tenant's breach of any term or condition of this Agreement, or any way related to the Tenant Facilities, the Premises, or Tenant's use of the Property pursuant to this Agreement. Notwithstanding the forgoing, Tenant shall not have to indemnify Landlord for Losses caused by Landlord's negligent or willful misconduct. The duties described in this Paragraph 12.3, shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

13. Assignment. Tenant shall not assign any interest in this Agreement without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed provided however that Tenant may, without Landlord's consent, assign this Lease to a corporation which is a partner, parent, subsidiary or affiliate of Tenant. For the purposes of this Section, a "parent" shall mean a corporation which owns not less than fifty-one percent (51%) of the outstanding stock of Tenant, a "subsidiary" shall mean any corporation not less than fifty-one percent (51%) of whose outstanding stock shall be owned by Tenant, and an "affiliate" shall mean any partner or corporation not less than fifty-one percent (51%) of whose outstanding stock shall be owned by the Tenant's parent. Upon such assignment to a partner, parent, subsidiary or affiliate of Tenant, such assignee shall succeed to all rights and options of the Tenant hereunder. It is hereby expressly understood and agreed that the assignment of this Lease and the term and estate hereby granted, to (a) any corporation into which Tenant is merged or to which Tenant has sold all or substantially all of its assets, or (b) any entity which is an Affiliate or (c) any entity which is a transferee or assignee of Tenant's FCC wireless license as part of the sale or exchange of all or a majority of Tenant's sites in the market in which the Premises is located (any such corporation, entity or transferee in (a), (b) and (c) being hereinafter called "**Assignee**"), shall not require Owner's consent; provided (x) that Assignee and Tenant shall promptly execute, acknowledge and deliver to Owner an assignment agreement in form satisfactory to Owner, and (z) that the Assignee is an FCC licensed telecommunications company and otherwise properly licensed to operate the wireless communications system. Tenant, may also, upon notice to Landlord, mortgage or grant a security interest in Tenant's equipment, and may assign this Lease and the equipment to any mortgagees or holders of security interest, including their successors or assigns collectively ("**Mortgagees**"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. If reasonably required by the Mortgagees, Landlord shall execute such consent to Leasehold or equipment financing. The foregoing notwithstanding, under no circumstances shall any assignee or Mortgagee of Tenant have any property in the Building beyond that of a leasehold interest for the term of the Lease.

14. Title and Quiet Enjoyment.

14.1 Landlord represents and warrants that (i) it has full right, power, and authority to execute this Agreement, (ii) Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods, (iii) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Landlord to enter into this Agreement and allow Tenant to install and operate the Facility on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Landlord's Property, and (iv) the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

14.2 Tenant has the right, during the Due Diligence Period, to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises, Tenant shall have the right, prior to the Term Commencement Date, to terminate this Agreement immediately upon written notice to Landlord.

15. Relocation. In the event Landlord desires to redevelop, modify, remodel or in any way alter the Property, the Building, and/or any improvements located thereon ("**Redevelopment**"), Landlord shall use reasonable efforts to fully accommodate Tenant's use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Tenant Facilities, Landlord shall use reasonable efforts to find a mutually acceptable alternate location for the Tenant Facilities. Landlord shall give Tenant at least six (6) months prior written notice of its Redevelopment plans. In the event that Tenant and Landlord cannot agree on an alternative location for the Tenant Facilities within three (3) months after Tenant's receipt of Landlord's notice of Redevelopment, either party may immediately terminate this Agreement on ten (10) days written notice and such termination shall be either party's sole remedy. In no event shall Tenant be entitled to any damages resulting from Landlord's Redevelopment under this section. If the parties are able to agree on an acceptable alternate location for the Tenant Facilities, Landlord and Tenant agree to use their best efforts to amend this Agreement to document the new, alternate Tenant Facilities location, and from and after the date Tenant begins installation of its Tenant Facilities at such new location, such new location shall be deemed the Premises (or part thereof, as applicable) herein.

16. Environmental. As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any applicable law or regulation, and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any applicable law or regulation; (ii) no notice has been received by or on behalf of Landlord from any governmental entity or any person or entity claiming any violation of any applicable environmental law or regulation in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any applicable law or regulation. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, and without limiting the terms set forth in Paragraph 12.3 above, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 16 by such party; and/or (ii) environmental conditions or noncompliance with any applicable law or regulation that result, in the case of Tenant, from operations in or about the Property by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Property by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The provisions of this Paragraph 16 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement. "**Hazardous Material**" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation.

17. Restoration. In the event that Tenant causes damage of any kind during the course of installing, operating or maintaining Tenant Facilities, including damage to the Property caused by cutting, boring, jack hammering, excavation or other work, and including latent damage not immediately apparent at the time of the work, Tenant shall repair the damage and restore the Property at its sole cost and expense, without delay or interruption and within the reasonable time period prescribed by Landlord. Restoration of the Property shall be to a condition that is equivalent to or better than the condition of the Property prior to commencing the installation, operation or maintenance of the Tenant Facilities and to a condition satisfactory to Landlord.

18. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

19. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Tenant, to:	If to Landlord, to:
Clearwire US LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: <a href="mailto:Siteleasing@clearwire.com">Siteleasing@clearwire.com</a>  With a copy to:  Clearwire US LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-790	Portland Metropolitan Exposition Center 2060 N. Marine Dr. Portland, OR 97217 Attn: Christopher Bailey, Expo Center Director Telephone: 503-736-5200  With a copy to:  Metro Office of the Metro Attorney 600 NE Grand Avenue Portland, OR 97232 Telephone: 503-813-7522 Fax: 503-797-1792

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

20. Miscellaneous.

20.1 If Tenant is to pay Rent to a payee other than the Landlord, Landlord shall notify Tenant in advance in writing of the payee's name and address.

20.2 The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

20.3 If any provision of the Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.4 Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

20.5 This Agreement shall be governed under law of the State of Oregon, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

20.6 A Memorandum of Agreement in the form attached hereto as Exhibit C may be recorded by Tenant confirming the (i) effectiveness of this agreement, (ii) expiration date of the Term, (iii) the duration of any Renewal Terms, and/or other reasonable terms consistent with this Agreement.

20.7 All Exhibits referred herein are incorporated herein for all purposes.

20.8 This Agreement will be subject and subordinate to all mortgages that may now or hereafter affect the Building or the Property, to each and every advance under such mortgages, and to all renewals, modifications, replacements, and extensions of such mortgages. This Section is self-operative, and no further instrument of subordination will be required. In confirmation of the subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord (or Landlord's lender) may reasonably request to evidence the subordination, provided that in return Tenant receives a written non-disturbance agreement from the holder of such mortgage or deed of trust. Landlord shall make a diligent and good faith effort to obtain a Nondisturbance Agreement for the benefit of Tenant from each lender with a security interest recorded upon the title to the Property at the time of execution of this Agreement.

20.9 This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

20.10 This Agreement must be specifically approved by formal action of the Metropolitan Exposition Recreation Commission prior to it having any binding effect whatsoever. All parties acknowledge that no liability or obligations of any kind shall attach to any party until such Commission approval has been given pursuant to this subsection.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement effective as of as of the last date of signature specified below.

**LANDLORD:**

**TENANT:**

METROPOLITAN EXPOSITION RECREATION  
COMMISSION

CLEARWIRE US LLC, a Nevada limited liability company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

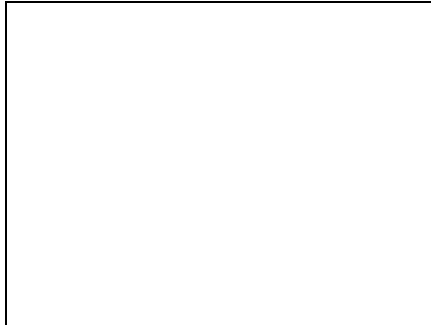
Date: \_\_\_\_\_



STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Metropolitan Exposition Recreation Commission, a \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



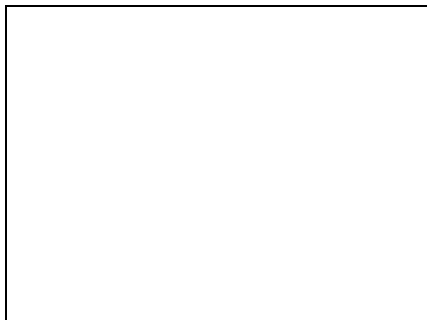
(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Clearwire US LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF LAND**

to the Agreement dated \_\_\_\_\_, 2009, by and between Portland Metropolitan Exposition Center a \_\_\_\_\_ as Landlord, and Clearwire US LLC, a Nevada limited liability company, as Tenant.

The Land is described and/or depicted as follows (metes and bounds description):

APN: 2N1E33 00200

*[TO BE INSERTED]*

## EXHIBIT B

### DESCRIPTION OF PREMISES

to the Agreement dated \_\_\_\_\_, 2009, by and between Portland Metropolitan Exposition Center, \_\_\_\_\_, as Landlord, and Clearwire US LLC, a Nevada limited liability company, as Tenant.

The Premises are described and/or depicted as follows:

*[TO BE INSERTED]*

#### **Notes:**

1. Tenant may replace this Exhibit with a survey of the Premises once Tenant receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

**EXHIBIT C**

**RECORDED AT REQUEST OF, AND  
WHEN RECORDED RETURN TO:**

Clearwire US LLC  
4400 Carillon Point  
Kirkland, WA 98033  
Attn: Site Leasing

**MEMORANDUM OF AGREEMENT  
APN: 2N1E33 00200**

This MEMORANDUM OF AGREEMENT is entered into on \_\_\_\_\_, 2009, by METRO, a municipal corporation organized under the laws of the State of Oregon and the Metro Charter, by and through the Metropolitan Exposition Recreation Commission (“MERC”), governing body for the Portland Metropolitan Exposition Center (METRO and MERC are jointly referred to herein as “**Owner**” or “**Landlord**”) and Clearwire US LLC, a Nevada limited liability company, with an address at 4400 Carillon Point, Kirkland, WA 98033 (hereinafter referred to as “**Clearwire**” or “**Tenant**”).

1. Owner and Clearwire entered into a Communication Site Lease Agreement (“**Agreement**”) dated as of \_\_\_\_\_, 2009, effective upon full execution of the parties (“**Effective Date**”) for the purpose of Clearwire undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The term of Clearwire’s tenancy under the Agreement is for five (5) years commencing on the date Tenant begins construction of the Tenant Facilities or six (6) months following the Effective Date, whichever first occurs (“**Term Commencement Date**”), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.

3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Tenant and all necessary access and utility easements (the “**Premises**”) are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

**LANDLORD:**

Metropolitan Exposition Recreation Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

Clearwire US LLC,  
a Nevada limited liability company

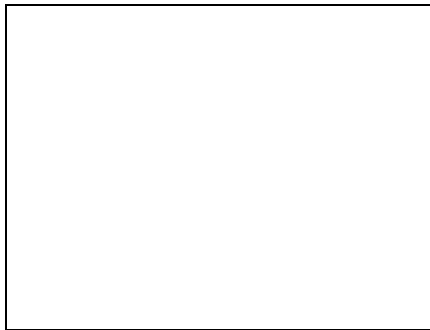
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[Notary block for a Corporation]**

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Metropolitan Exposition Recreation Commission, a \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



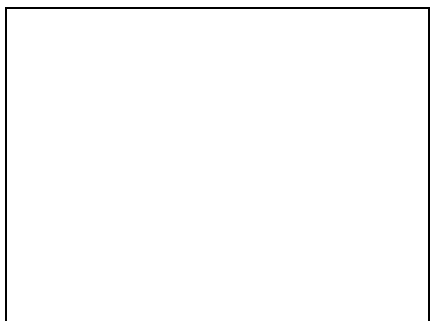
(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Clearwire US LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 09-4044, FOR THE PURPOSE OF APPROVING A COMMUNICATION SITE LEASE AGREEMENT AT THE PORTLAND EXPO CENTER

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Date: April 2, 2009

Prepared by: Chris Bailey, Director  
Portland Expo Center  
503.736.5202

## BACKGROUND

Resolution No. 09-4044 requests authorization for the Metropolitan Exposition Recreation Commission to enter into a long term Communication Site Lease Agreement with Clearwire US LLC for 50 square feet of rooftop space on Exhibit Hall D of the Portland Expo Center.

In the Spring of 2008, a Clearwire representative contacted Expo Center staff expressing an interest in testing the viability of utilizing a portion of the facilities as a site for the transmission of its WiMax communication services. WiMax is a wireless technology that provides mobil broadband internet access within a network coverage area. Shortly thereafter, Clearwire confirmed that the Expo Center is an ideal site location.

During the interim, Clearwire, Expo Center staff, and the Office of Metro Attorney developed a Communication Site Lease Agreement; basic terms of the agreement are as follows:

Premises: Westerly portion of Exhibit Hall D roof at the exhaust fan enclosures (antenna location); Westerly lower roof of Exhibit Hall D (equipment cabinet)

Effective Date: Date of Lease execution

Due Diligence Period: Effective Date to Commencement Date

Commencement Date: Earlier of (a) date of construction commencement or (b) 6 months after Effective Date

Initial Term: Five years from Commencement Date

Renewal Options: Five successive five-year periods

The Metro Council has previously approved similar long term communication site leases at the Oregon Zoo, the Glendoveer Golf Course, and the M. James Gleason Boat Ramp.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None.

## 2. **Legal Antecedents**

On March 25, 2009, Metropolitan Exposition Recreation Commission adopted Resolution 09-02, “For the Purpose of Approving Communication Site Lease Agreement between the Metropolitan Exposition Recreation Commission and Clearwire US LLC, and Authorizing Staff to Forward such Lease to the Metro Council for Approval.”

Metro Code Section 6.01.040 authorizes the MERC Commission to lease, rent, and authorize use of the Portland Expo Center.

Oregon Revised Statute 271.310 provides that a political subdivision may lease property to a private corporation whenever the governing body of such political subdivision determines that the property is not needed for public use.

3. **Anticipated Effects.** Adoption of Resolution No. 09-4044 would authorize the Metropolitan Exposition Recreation Commission to execute a five year lease, with five additional five-year renewal options, with Clearwire, whereunder Clearwire would be permitted to install and operate radio communication facilities on the rooftop of Exhibit Hall D at the Portland Expo Center.
4. **Budget Impacts.** Beginning on the Commencement Date, Clearwire will pay the Metropolitan Exposition Recreation Commission rent at the rate of \$1,500 per month. Monthly rent will increase annually at the rate of 3% per year. Excise tax will be paid to Metro out of the lease payments made to the Metropolitan Exposition Recreation Commission.

## **RECOMMENDED ACTION**

That the Council approve Resolution 09-4044 authorizing the Metropolitan Exposition Recreation Commission to enter into a long term Communication Site Lease Agreement with Clearwire US LLC at the Portland Expo Center.

Agenda Item Number 3.6

**Resolution No. 09-4049**, For the Purpose of Authorizing Metro to Apply For a Local Government Grant From the Oregon Parks and Recreation Department and Delegating Authority to the Parks and Greenspaces Director to Sign the Application

*Consent Agenda*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber



BEFORE THE METRO COUNCIL

AUTHORIZING METRO TO APPLY FOR A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT AND DELEGATING AUTHORITY TO THE CHIEF OPERATING OFFICER TO SIGN THE APPLICATION ) RESOLUTION NO. 09-4049 ) Introduced by Chief Operating Officer Michael Jordan, with the concurrence of Council President David Bragdon

WHEREAS, the Oregon State Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

WHEREAS, Metro Sustainability Center desires to participate in this grant program to the greatest extent possible as a means of providing needed park and facilities improvements at Graham Oaks Nature Park in accordance with the "Wilsonville Tract Master Plan and Management Recommendations;" and

WHEREAS, the Metro Council adopted and approved the Wilsonville Tract Master Plan and Management Recommendations on June 10, 2004 through Resolution No. 04-3462, "For the Purpose of Council Approval of the Wilsonville Tract Master Plan and Natural Resources Management Plan" and

WHEREAS, grant funds would be used to implement the Facility Development Plan which includes the following facilities: an entry gate and signage, a 27-space parking lot, flush restrooms, picnic shelter, entry plaza, site furnishings, a 2.5-mile trail system including foot bridges, and a boardwalk; and

WHEREAS, matching funds up to \$1,500,000 for this application are available and will be provided from the 2006 Natural Areas bond funds; now therefore

BE IT RESOLVED, that the Metro Council authorizes the application for a local government grant from the Oregon Parks and Recreation Department for implementation of the recreation facility improvements at Graham Oaks Nature Park and delegates authority to the Chief Operating Officer to sign the application.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2009

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4049 AUTHORIZING METRO TO APPLY FOR A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT AND DELEGATING AUTHORITY TO THE CHIEF OPERATING OFFICER TO SIGN THE APPLICATION

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Date: April 2, 2009

Prepared by: Jim Desmond, 503-797-1914  
Rod Wojtanik, 503-797-1846

## BACKGROUND

The Oregon Parks and Recreation budget includes a Local Government Grant Program that was approved by the 1999 legislature. The grant program was created by initiative petition filed on March 11, 1998 and approved by voters on November 3, 1998. The adopted administrative rules for the distribution of funds require approval by resolution from the elected officials of the governing bodies for all applicants. The Oregon Parks and Recreation Commission adopted administrative rules for the distribution of state lottery funds to eligible local governments, and the process for establishing the priority order in which projects are funded.

This money is to be distributed for public purposes of financing the protection, repair, operation and creation of state parks, ocean shore and public beach access areas, historic sites and recreation areas. Projects eligible for funding assistance are acquisition, development, and rehabilitation projects consistent with the outdoor recreation goals and objectives contained in the Statewide Comprehensive Outdoor Recreation Plan and/or recreation elements of local comprehensive plans and local park master plans.

The Wilsonville Tract (aka Graham Oaks) Master Plan & Management Recommendations document was approved and adopted by Metro Council on June 10, 2004 following an extensive public participation process. The goals of the master plan are to provide new facilities to support and enhance nature-based recreation and education opportunities consistent with resource protection goals of the natural area. Proposed improvements include the following facilities: an entry gate and signage, a 27-space parking lot, flush restrooms, picnic shelter, entry plaza, site furnishings, a 2.5-mile trail system including foot bridges, and a boardwalk.

In November 2006, the Metro Area voters approved the Natural Areas, Parks and Streams Bond Measure that authorized Metro to issue \$227.4 million in general obligation bonds to finance land acquisitions and specific park-related capital improvements, including the development of the Graham Oaks Nature Park, located in Clackamas County west of the city of Wilsonville.

Upon adoption of this Resolution, Metro Sustainability Center would apply for funds to assist with implementation of Facility Improvements for Graham Oaks Nature Park.

## ANALYSIS/INFORMATION

**1. Known Opposition:** None.

**2. Legal Antecedents:**

OAR 736-006-0125(5) and (5)(k) require that applications “be consistent with the Local Government Grant Policies and Procedures Manual,” which manual requires in section 2.2(L) that the Metro Council approve, by resolution, Metro’s submission of an application for grant funding.

Resolution No. 04-3462, “For the Purpose of Council Approval of the Wilsonville Tract Master Plan and Natural Resources Management Plan” adopted June 10, 2004 .

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” adopted March 9, 2006.

- 3. Anticipated Effects:** If Metro is awarded this grant, the funds will be used toward implementation of the Master Plan.
- 4. Budget Impacts:** The five-year Capital Improvement Plan for the current fiscal year and for the proposed FY 2009-10 budget includes development of the Graham Oaks Nature Park. The FY 2009-10 Proposed Budget, presented to Council on April 2, 2009, includes sufficient appropriation to build out and complete this capital development. External sources of funding for this project include \$260,000 from the City of Wilsonville and \$455,000 from this grant application to the State. Funding for the rest of the project will come from the Natural Areas bond and be used as grant match.
- 5. Outstanding Questions:** None.

**RECOMMENDED ACTION**

Staff recommends adoption of Resolution 09-4049.

Agenda Item Number 4.1

**Ordinance No. 09-1215**, Adopting the Annual Budget For Fiscal Year 2009-10, Making Appropriations, Levying Ad Valorem Taxes, and Declaring an Emergency.

*First Reading*

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

# Chief Operating Officer's Budget Message

**As presented on April 2, 2009**

To the Metro Council, citizens and regional partners and valued employees:

I am pleased to present Metro's proposed Fiscal Year 2009-10 budget. This is a particularly challenging year in the nation, in Oregon and in the region. I believe that despite the challenges facing our region, Metro is well positioned to lead the region in making fair and equitable choices that support vibrant communities, economic prosperity, safe and reliable transportation options, and a healthy and sustainable environment.

This budget also reflects the next steps in the implementation of the Sustainable Metro Initiative (SMI), an agency project to transform Metro into a modern, mission-driven organization equipped to fulfill our promise as the leader in regional conservation and civic innovation.

To succeed, our management structure must align programs and resources with our desired regional outcomes. But perhaps more importantly, our business and management practices must provide a level of standardization and accountability which will keep us focused on regional outcomes in FY 2009-10. The Sustainable Metro Initiative creates collaborative centers and services to achieve Metro's mission and goals, realigning staff to ensure the right people with the right skills are in the right jobs.

Implementing these organizational changes positions Metro to meet the increasingly complex challenges of the future and to attract, retain and foster talented staff. These cultural and structural changes improve our financial transparency and provide an enhanced ability to face challenges and seize opportunities.

## **Financial discipline keeps Metro strong, but cautious**

The FY 2009-10 total budget, all resources and requirements, tops \$457 million, about the same as the current year. Metro faces the same economic uncertainties for FY 2009-10 as its public and private partners and its citizens face. However, unlike many jurisdictions, our resource base is diversified and not reliant on a single revenue source. The proposed expenditures are \$386 million, about 5 percent greater than the current year, primarily due to the ambitious capital spending related to the two bond measures for Natural Areas acquisition and the Oregon Zoo infrastructure and animal welfare. Remaining active in these areas will provide some local economic stimulus in the market place and potentially benefit the taxpayers because of favorable market prices.

Labor costs are contained to an overall 2 percent increase. With the exception of new positions in the zoo bond fund and positions authorized by Council during the current year, there is no net growth in FTE. Limited duration positions are discontinued at their scheduled dates, added positions in one area are offset by reductions in others, and each program must submit vacant positions for review prior to recruiting for replacement. For the first time in several years, the CPI increase which controls the primary labor contracts has fallen below the contract ceiling due to national, state and regional economic conditions. And, in recognition of these conditions, Metro's senior management team stepped forward to freeze executive salaries at current levels. Other non-represented employees received a FY 2008-09 pay increase as a lump sum, instead of an adjustment to base pay, thereby containing future salary costs. While the FY 2009-10 proposed budget contains provisions for salary adjustments in spring 2010, we will consider the economic health of the region and the financial performance of Metro before granting any increases not covered by collective bargaining contracts.

The economic downturn has reduced solid waste system revenues and, in turn, general excise tax revenues. In the current year there are indications that we will dip into the designated reserves to meet a portion of this revenue gap. However, the proposed FY 2009-10 budget restores and fully funds the reserves in accordance with Metro's financial policies and "pay ourselves first" philosophy. Our disciplined action positions Metro to withstand the deepening and lengthening downturn, gives us more time and greater flexibility to make strategic adjustments, if necessary, and allows Metro to maintain steady momentum in areas critical to the region's future.

### **Council policy reflected in budget themes . . .**

The proposed budget reflects the Metro Council's commitment to matters that cross local boundaries. The management of Cooper Mountain Nature Park has been transferred by intergovernmental agreement to Tualatin Hills Park & Recreation District. The opening of Graham Oaks Nature Park in partnership with the City of Wilsonville fulfills the Council's promise of opening for passive recreation certain natural areas purchased with voter-approved bonds so residents of the region can enjoy the benefits of their investment. Planning and Development will continue to integrate and enhance its development focus while moving forward with Placemaking initiatives aimed at achieving the region's long range land use and transportation objectives.

Metro will make important contributions to the Connecting Green Initiative by acquiring targeted land and by integrating active, non-motorized projects into its transportation planning. Metro also will continue to promote integrated habitat considerations in its land use planning and deliver enhanced waste reduction education through Outdoor School programs. Metro's new Sustainability Center will focus on improving the reach of other waste reduction education programs and bolstering the sustainability of Metro's own operations.

Within Metro, implementation of the SMI will continue at a brisk pace, with internal policies and procedures aligning with a set of organizational values that are consistent with Metro Council goals for collaboration, transparency and best management practices. SMI implementation will deliver a common code to promote ethical conduct and outline a set of related core competencies for all levels of Metro staff.

Modest but focused expenditures will improve opportunities for cultivating and monitoring professional development, and Communications will implement SMI service level improvements internally and externally. These outcomes build on the initial platform of the SMI in recognizing the interdisciplinary nature of our work, an ambitious policy agenda and the value of collaboration and efficiency. In today's economic climate, this work is more important than ever before, and this budget reflects our absolute commitment to working smarter to better meet the needs of the region.

### **. . . as new initiatives come into focus**

Our region's collaborative approach to planning has set us on a wise course – but times are changing. Climate change, rising energy costs, economic globalization, aging infrastructure and population growth demand thoughtful deliberation and action. As part of Making the Greatest Place in FY 2009-10, the Metro Council will be working closely with individuals and groups throughout the region to take actions to implement local and regional goals in a way that creates vibrant, healthy and sustainable communities consistent with our 2040 goals. As Metro delivers specific projects, the concepts and principles will continue beyond the final reports and will require active encouragement for local communities to invest in ways that leverage private development. Financing for transportation and non-transportation

infrastructure requires a regional commitment. Metro must decide how to use its available resources to ensure that Connecting Green, the region's system of parks, trails and natural areas, maintains momentum. Our role in climate change is still forming, and it is time to reengage in disposal system planning. Each of these areas will require determined and demanding leadership from the Council.

At the same time, Metro this year will undertake a Future Vision review required by our charter. The proposed budget has set aside a modest contingency as the Council determines how to meet this obligation. As defined in the charter the Future Vision is "a conceptual statement that indicates population levels and settlement patterns that the region can accommodate within the carrying capacity of the land, water and air resources of the region, and its educational and economic resources, and that achieves a desired quality of life." The Future Vision is a long-term, visionary outlook for at least a 50-year period. The Council must decide how to leverage the Future Vision to advance regional convening and collaboration and to shape new initiatives to achieve a more climate friendly and sustainable future.

## **BUDGET HIGHLIGHTS**

Oregon budget law directs me to highlight significant changes in the proposed budget. Some changes are the direct result of the Sustainable Metro Initiative that was launched in fall 2008 and are reflected for the first time in the FY 2009-10 budget. The changes also carry out the budget themes and the recommendations of Metro's elected auditor.

### **Council Leadership**

The Council Office has eliminated the Operations Coordinator and, as part of the Sustainable Metro Initiative, has transferred in from Planning and Development a position to support the Metropolitan Policy Advisory Committee and the Joint Policy Advisory Committee on Transportation. The Records and Information Management unit has been transferred to Information Services. A limited duration climate change analyst position, originally authorized through June 30, 2009, has been reauthorized for FY 2009-10 as Metro sets its policy direction and develops its program.

### **Chief Operating Officer Administration**

The Office of the Chief Operating Officer will transfer a new project analyst authorized under the SMI implementation plan to Human Resources to oversee organizational development activities.

The Strategy Center operates under the auspices of the Chief Operating Officer. As a key part of the Sustainable Metro Initiative. The Strategy Center transferred in policy advisors from the former areas of Planning, Governmental Relations and Nature in Neighborhoods who will work in close collaboration with Communications and the Research Center. It represents an evolving effort to act in a consultative role for both the policy makers and the program and project managers, hopefully making each more efficient by providing a more effective, informative and consistent interface. In February 2009 Council authorized an additional limited duration analyst for the Active Transportation Partnerships initiative which is anticipated to last into FY 2010-11.

### **Office of Metro Auditor**

With the additional auditor position authorized for FY 2008-09, Metro's independently elected Auditor has been able to increase the audit schedule. There are no proposed budget additions for FY 2009-10.

## **Office of Metro Attorney**

In addition to managing the due diligence for the Natural Areas acquisitions, the Office of Metro Attorney will also be engaged in planning for the zoo construction activity under its new bond measure. The Convention Headquarters Hotel project has prompted the need for a new intergovernmental Visitor Development Initiative (VDI) agreement, and solid waste operations will award a new transfer station operating contract, both of which will require significant legal review. The Office will also be advising Metro policy makers about the adoption of a new Future Vision statement required by Metro Charter. An additional 0.5 position legal secretary was added during FY 2008-09.

## **Metropolitan Exposition Recreation Commission**

For FY 2009-10 MERC has solid bookings for conventions and performing events, although the depressed economic conditions are reflected in lower food and beverage margins and transient lodging taxes (TLT). MERC has established strategic reserves, and due to significant TLT receipts over the past four years, the current fund balance exceeds the targeted strategic reserves. In addition to the healthy reserves, MERC has solid experience in managing effectively through economic downturns. The proposed budget shows an increase of 4.0 FTE, although only one, the security agent, is a new position. The other three are the result of combining or converting several part-time positions which do not generate FTE to create three full-time benefit eligible positions which are considered FTE.

## **Oregon Zoo**

With the scheduled opening of *Predators of the Serengeti* and *Red Ape Reserve* exhibits, the zoo is expecting a record 1.6 million guests, which it will manage without additional staff. The Metro Council has approved a fee increase in general admission, effective on June 1, 2009. The successful bond election in November 2008 will result in significant planning activity for new construction projects for infrastructure and animal welfare. In FY 2009-10 the zoo will complete master site planning for all bond-related projects and begin construction for the veterinary hospital and quarantine buildings. Consistent with Council policy direction, improvements at the zoo also will focus on sustainability by reducing energy use and improving storm and wastewater management.

The bond program will fund 6.8 FTE; three positions are new, and the balance includes 3.8 FTE from current construction staff in the Capital and General funds who will be assigned to bond construction projects. The proposed budget eliminates one position because the zoo did not obtain the targeted grant funds.

## **Parks and Environmental Services**

Under the SMI reorganization, Parks and Environmental Services focuses on facilities: regional parks; thousands of acres of natural areas throughout the region; boat ramps; pioneer cemeteries and Glendoveer Golf Course; solid waste facilities including the two transfer stations, the latex paint facility, the St. Johns landfill owned by Metro and the Killingsworth Fast Disposal landfill monitored by Metro; and the Metro headquarters building and its property services.

The proposed budget includes fee increases authorized by Council for day use at regional parks, effective June 1, 2009, and overnight camping, effective January 1, 2010. The management of Cooper Mountain Nature Park has been transferred by intergovernmental agreement to Tualatin Hills Park & Recreation District, and the operating expenses for Graham Oaks Nature Park will begin in FY 2009-10 when the park facility opens.



As part of an on-going evaluation, we will reduce the number of Hazardous Waste Roundups by half and adjust the scalehouse operating hours to conform more efficiently to customer needs and patterns. A new position (.75 FTE) will provide additional operating support for the pioneer cemeteries by serving families on weekends and evenings as well as during regular business hours. Under SMI the records management function moves to Information Services, and a part-time engineer position is eliminated.

### **Planning and Development**

Planning and Development includes three units: Land Use Planning and Development, Transportation System Planning, and Corridor Planning and Development. Together its programs and projects facilitate the creation of great places in centers and corridors and throughout the region.

Under the reorganization the planning and “nature friendly” development aspects of Nature in Neighborhoods move under the Planning and Development center. An additional analyst position is added to the finance section to augment grant contract administration, project budgeting and financial reporting for both Planning and Development and the Research Center. The position has been redeployed from Finance and Administrative Services. Funds for a limited duration public affairs specialist assigned to Communications is discontinued in December as the Urban and Rural Reserves project completes, and a limited duration Program Assistant is eliminated.

### **Sustainability Center**

Under the SMI reorganization the Sustainability Center consolidates Metro’s significant conservation and education activities. It focuses on the acquisition and restoration of areas acquired under the Natural Areas bond measure; on planning for parks and trails under the Connecting Green initiative; and on promoting sustainable management of resources through waste reduction initiatives, hands-on interpretive programs, youth and adult education, grants and demonstration projects and volunteer opportunities.

In keeping with the recent audit that recommended Metro realign resources to better support waste prevention activities, the proposed budget anticipates a major review of waste reduction programs. Based on feedback from jurisdictional partners that residential recycling has achieved its goals, the budget eliminates a targeted residential outreach program (\$125,000) and will continue the annual art contest but seek alternatives to commercial billboard placement. The enhanced waste reduction education offered in conjunction with the Outdoor School program will be available for both fall and spring sessions. The disposal voucher program (\$145,000) is being discontinued because it is not attracting new users. In addition, Metro will end its sponsorship of well established programs like SOLV. The authority for emergency fee waivers remains in place.

In Parks Planning and Development, the proposed budget includes resources to begin a master planning process for Glendoveer Golf Course in anticipation of the implementation of the Connecting Green strategy and the next operating contractor procurement in 2012. Construction of Graham Oaks will be completed. The Tonquin Trail Regional Trail Master Plan will be completed; the Lake Oswego-to-Milwaukee Regional Trail feasibility study will begin. The budget provides for an update to the Natural Resources Management Plan for the Smith and Bybee Wetlands Natural Area, and Natural Areas Education and Volunteer Services are augmented slightly as part of the SMI realignment. Realignment of education priorities will result in the discontinuation of the Salmon Festival. Finally, the Sustainability Coordinator will initiate a Sustainability Management Plan for Metro.

## **Research Center**

Under the SMI, the Research Center operates the Data Resource Center and provides forecasting and modeling services for transportation, land use, economic and demographic trends. While Planning and Development remains a primary customer, the Research Center also serves other Metro clients as well as external partners, stakeholders and public customers.

In addition a GIS Specialist for the Natural Areas bond program is assigned to the Research Center. A limited duration position is eliminated and replaced with a new 0.6 FTE position to provide specialized tools to display the physical nature of growth in centers and corridors. These tools are designed to help citizens and local communities envision a future more consistent with 2040 goals and transportation investments. Finally, the Research Center is working to create a regional greenhouse gas emissions baseline and to develop improved tools for evaluating how different investments and policy choices influence climate change.

## **OPERATIONAL SUPPORT**

### **Communications**

Formerly Public Affairs and Governmental Relations, Communications is redesigning its organization along functional lines to support SMI. Communications will create inter-agency teams that will focus on community and government engagement, marketing for Metro's centers and services, internal communications, media relations and communication design and standards, including web site content management. A management position transferred from Planning and Development will help integrate all Metro marketing programs. Legislative activity has been transferred to the Strategy Center. Two limited duration positions authorized as part of the 3-year Placemaking plan will conclude during this year.

### **Finance and Administrative Services**

In addition to its portfolio of financial services, risk management and procurement, FAS has assumed responsibility for solid waste regulation, rate setting and financial analysis and modeling for solid waste operations. The infrastructure analyst is transferred to the Strategy Center, and FAS will eliminate a financial analyst position, redeploying the position to Planning and Development to strengthen its financial analysis capability.

### **Human Resources**

Under SMI, Human Resources will assume greater responsibility for organizational development. A new project analyst authorized under SMI implementation is transferred to Human Resources from the Office of the Chief Operating Officer. This position will be responsible for organizing "best practices" training throughout the agency. A new on-line application system will allow Human Resources to be more responsive to both applicants and hiring managers while reducing paper use.

### **Information Services**

Keeping pace with technology is a challenge. Metro will be increasing its bandwidth with wide area network technology, serving both internal needs including MERC as well as allowing new opportunity for Metro's partners and citizens to interact actively with Metro resources. A project manager position is eliminated, and the Records Management program is added to the IS portfolio under the SMI reorganization.

## 5-YEAR CAPITAL BUDGET

Capital spending is again dominated by land acquisition under the Natural Areas bond measure (\$41 million). The Zoo Infrastructure and Animal Welfare bond program, new for FY 2009-10, represents one-third of the year's planned capital spending (\$11 million). The Nature and Golf Learning Center at Blue Lake is appropriated for construction, subject to a final financing plan. The threshold for capital projects is now \$100,000, consistent with the definition of "public improvement" and authorized by the Metro Council last year.

## RENEWAL AND REPLACEMENT

The consolidated General Renewal and Replacement Fund provides for scheduled renewal and replacement of assets at the Oregon Zoo, parks facilities and the Metro Regional Headquarters. Established by the Metro Council in FY 2008-09, the fund contains a favorable balance which, when combined with the annual contribution of \$1.1 million, will meet the General Fund needs for the foreseeable future. The Solid Waste Revenue Fund continues to maintain solid renewal and replacement reserves, and the MERC Commission also has designated renewal and replacement reserves.

## Readying the Region for the Future

As Budget Officer, I am required to bring forward a balanced budget for your consideration. I am cautious, but I remain optimistic that despite the economic uncertainties that shaped the proposed FY 2009-10 budget, Metro can and will maintain quality service levels at all sites and facilities and will continue to provide economic, cultural and educational opportunities through the Oregon Convention Center, the Portland Expo Center, the Portland Center for the Performing Arts and the Oregon Zoo.

While our grant programs, local contributions and efficiency measures support Metro's commitment to local economic health, our greatest contribution will be the ability to model and encourage the implementation of strategies to accomplish the region's goals. Our land use, transportation and solid waste practices are our biggest assets in supporting community strength and vitality. We recognize that regional success is dependent on local capacity to implement and innovate. While our local partners face varying degrees of economic challenge that may slow down these efforts in the near term, Metro will continue to ready the flexible tools and services that can encourage and support the region's livability and environmental diversity as it returns to economic prosperity.

We look forward to your consideration of this proposed budget.

Sincerely,



Michael Jordan  
Chief Operating Officer



BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR	)	ORDINANCE NO. 09-1215
FISCAL YEAR 2009-10, MAKING	)	
APPROPRIATIONS, LEVYING AD VALOREM	)	Introduced by Michael Jordan, Chief
TAXES, AND DECLARING AN EMERGENCY	)	Operating Officer, with the concurrence of
	)	Council President David Bragdon

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2009, and ending June 30, 2010; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2009-10 Metro Budget," in the total amount of FOUR HUNDRED FIFTY SEVEN MILLION SIX THOUSAND THREE HUNDRED FIFTY TWO DOLLARS (\$457,006,352), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operations and in the amount of FORTY ONE MILLION TWO HUNDRED EIGHTY SIX THOUSAND ELEVEN DOLLARS (\$41,286,011) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2009-10. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$41,286,011

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2009, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

4. The Smith and Bybee Lakes Fund is hereby renamed the Smith and Bybee Wetlands Fund. The purpose of the fund remains the same.

5. The Chief Operating Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

6. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2009, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this 18<sup>th</sup> day of June 2009.

\_\_\_\_\_  
David Bragdon, Council President

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Anthony Andersen, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 09-1215 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2009-10, MAKING APPROPRIATIONS AND LEVYING AD VALOREM TAXES, AND DECLARING AN EMERGENCY

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Date: April 2, 2009

Presented by: Michael Jordan  
Chief Operating Officer

## BACKGROUND

I am forwarding to the Metro Council for consideration and approval my proposed budget for fiscal year 2009-10.

Metro Council action, through Ordinance No. 09-1215 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Metro Council to adopt this plan must be completed by June 30, 2009.

Once the budget plan for fiscal year 2009-10 is approved by the Metro Council, the number of funds and their total dollar amount and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Metro Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Metro Council approval in early May 2009 and adoption in June 2009.

Exhibit A to this Ordinance will be available subsequent to the Tax Supervising and Conservation Commission hearing June 4, 2009. Exhibits B and C of the Ordinance will be available at the public hearing on April 2, 2009.

## ANALYSIS/INFORMATION

1. **Known Opposition** – Metro Council hearings will be held on the Proposed Budget during the month of April 2009. Opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2009. The Commission will conduct a hearing on June 4, 2009 for the purpose of receiving information from the public regarding the Metro Council's approved budget. Following the hearing, the Commission will certify the budget to the Metro Council for adoption and may provide recommendations to the Metro Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2009-10 budget, effective July 1, 2009.
4. **Budget Impacts** – The total amount of the proposed FY 2009-10 annual budget is \$457,006,352 and 757.13 FTE.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of Ordinance No. 19-1215

M:\Asd\Finance\Confidential\BUDGET\FY09-10\Budord\Ordinance 09-1215 - Adopting Ordinance\Staff Report For Adoption Ord 09-1215.Doc



Agenda Item Number 5.1

**Resolution No. 09-4040**, For the Purpose of Agreement on the Roles,  
Responsibilities, and Cost for the Lake Oswego to Portland Transit  
Project Draft Environmental Impact Statement.

Metro Council Meeting  
Thursday, April 2, 2009  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 09-4040  
CHIEF OPERATING OFFICER TO ENTER INTO )  
INTERGOVERNMENTAL AGREEMENTS ) Introduced by Councilor Robert Liberty and  
ESTABLISHING THE ROLES, ) Councilor Carlotta Collette  
RESPONSIBILITIES, AND FUNDING FOR THE )  
JOHNS LANDING REFINEMENT STUDY AND )  
DRAFT ENVIRONMENTAL IMPACT )  
STATEMENT FOR THE LAKE OSWEGO TO )  
PORTLAND TRANSIT PROJECT )

WHEREAS, the 2040 Growth Concept, adopted by Metro Council in 1996, sets forth a land use plan for the region which focuses growth in activity centers connected by high quality transit connections;

WHEREAS, the Regional Transportation Plan, adopted by the Metro Council in 2004, called for a corridor refinement plan for evaluation of high capacity transit options for the Lake Oswego to Portland Highway 43 corridor;

WHEREAS, in 2005, Metro initiated an alternatives analysis consistent with Federal Transit Administration (“FTA”) requirements to assess the feasibility of transit and trail alternatives between Lake Oswego and Portland;

WHEREAS, on December 13, 2007, via Resolution 07-3887A, attached as Exhibit A, Metro Council adopted the *Lake Oswego to Portland Transit and Trail Alternatives Analysis: Alternatives to Be Advanced into a Draft Environmental Impact Statement and Work Program Considerations*, approving options to advance for further study, including enhanced bus, streetcar, and no-build alternatives as well as recommendations on actions to advance a bicycle and pedestrian trail in the corridor and work tasks relating to refining streetcar alignments through Johns Landing (the “Johns Landing Refinement Study”);

WHEREAS, on April 16, 2008, the Federal Transit Administration published in the *Federal Register* a Notice of Intent to Prepare a Draft Environmental Impact Statement for the Lake Oswego to Portland Transit Corridor;

WHEREAS, in December 2008, Metro began work on the Johns Landing Refinement Study, Lake Oswego Terminus Refinement Study and the Lake Oswego to Portland Trail Refinement Study requested by Metro Council, which will be completed in June 2009, and which will prepare information in support of the Draft Environmental Impact Statement (“DEIS”);

WHEREAS, Metro, TriMet, City of Lake Oswego, Clackamas County and the City of Portland (the “Project Partners”) propose a \$5,586,000 Project funding plan to pay for the DEIS process, the selection of the Locally Preferred Alternative, and the FTA application process needed to begin Preliminary Engineering, and have also agreed to pursue an additional \$4,000,000 in federal funding to pay for Preliminary Engineering and continue the Project development process;

WHEREAS, the Project Partners have proposed a unique management structure and funding plan for the Project which incorporates the multi-jurisdictional nature of the Project and includes a commitment to expedite the Project in order to take full advantage of potential near-term federal funding opportunities;

WHEREAS, the five-party IGA attached hereto as Exhibit B (the "Project IGA") governing the preparation of the Project's DEIS proposes a departure from the 'typical' process for environmental analysis and conceptual design for transit infrastructure projects in the Portland Metropolitan Region, in that TriMet will serve as Project lead contractor and will agree to pay \$1,249,840 to Metro for DEIS services;

WHEREAS, the Project IGA allocates \$465,355 directly to Metro to complete the Johns Landing Refinement Study, followed by a funding plan to provide \$1,249,840, for the Project DEIS, conditioned upon the allocation of Federal fiscal year 2012-13 regional flexible transportation funds through the Metro allocation process;

WHEREAS, an additional Intergovernmental Agreement between TriMet, as the Project lead contractor, and Metro as NEPA lead, is proposed to govern Metro's provision of DEIS services and TriMet's payment of \$1,249,840 for those services, attached hereto as Exhibit C (the "DEIS-LPA Services IGA");

WHEREAS, the DEIS-LPA Service IGA calls for Metro to provide a "lead role and support" Project lead contractor TriMet through the provision of professional services during the DEIS process, through the FTA application process needed to begin Preliminary Engineering, and by providing environmental analysis, public outreach, FTA coordination, transportation modeling, and quality assurance and quality control (the "DEIS-LPA Metro Workplan Elements");

WHEREAS, Metro Council recognizes and has a strong interest in the regional, multi-jurisdictional nature of this project that would connect the Portland Central City to the Lake Oswego Town Center as designated in the Region 2040 Growth Concept;

WHEREAS, Metro Council has a strong interest in developing a project that meets all appropriate FTA funding program requirements and which maintains Metro's successful 25-year working relationship with the FTA;

WHEREAS, Metro Council will soon adopt a High Capacity Transit plan which will rely on continued regional cooperation and a strong relationship with FTA given current or future FTA requirements;

WHEREAS, Metro Council has a strong interest in attaining the substantial regional benefits that could occur with this project, including: improved transit travel time and reliability, improved transit operating efficiency and reduced operating costs, realization of the substantial economic development potential in Johns Landing and downtown Lake Oswego, and providing for the future creation of a continuous high quality pedestrian and bicycle trail connecting Portland to Lake Oswego;

WHEREAS Metro Council will select the Locally Preferred Alternative by vote at the conclusion of a formal public hearing on the DEIS after receiving recommendations from the Project Partners; now therefore:

BE IT RESOLVED, the Metro Council authorizes the Chief Operating Officer to enter into the "Intergovernmental Agreement between TriMet, Metro, City of Lake Oswego, Clackamas County and City of Portland for the Portland Lake Oswego Transit Corridor Project," attached as Exhibit B, establishing the roles, responsibilities, and funding for the Johns Landing Refinement Study and Draft Environmental Impact Statement for the Project;

BE IT FURTHER RESOLVED, that Metro Council authorizes the Metro Chief Operating Officer to enter into the “Portland to Lake Oswego Transit Corridor Environmental Impact Statement – Locally Preferred Alternative Intergovernmental Service Agreement,” attached as Exhibit C, to provide a lead role and support to the Project in preparing the DEIS, transportation modeling, FTA coordination, public involvement process coordination, and quality assurance and quality control (QA/QC) between April 1, 2009 and June 30, 2010;

BE IT FURTHER RESOLVED, that Metro will complete the DEIS Metro Work Program Elements as set forth in Exhibit C of this resolution, and will provide a lead role and support to the creation of a regional project with regional benefits and will ensure the following;

- a) that all Federal Transit Administration funding program requirements are met and that Metro’s successful relationship and partnership with FTA is maintained;
- b) that all requirements of the National Environmental Policy Act are met by providing strategic advice and providing quality assurance and quality control (QA/QC) services to the Project;
- c) that Federal Transit Administration funding and environmental reviews and approvals are obtained by working closely with TriMet;
- d) that all transportation modeling products required for the Project are of high quality and are in compliance with FTA requirements; and
- e) that the the public involvement process for the project is open, transparent and complies with all applicable FTA and NEPA requirements;

BE IT RESOLVED, that Metro will participate in the project committees, including but not limited to the technical advisory committee, the Project Management Group and the Project Steering Committee, and hold a formal public hearing at the conclusion of the DEIS process to adopt the Locally Preferred Alternative.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF IDENTIFYING	)	RESOLUTION NO. 07-3887A
ALTERNATIVES TO ADVANCE INTO A	)	
DRAFT ENVIRONMENTAL IMPACT	)	
STATEMENT FOR THE PORTLAND TO LAKE	)	
OSWEGO CORRIDOR TRANSIT PROJECT	)	Introduced by Councilor Rex Burkholder
	)	

WHEREAS, in 1988 a consortium of seven government agencies purchased the Willamette Shore Line right-of-way for the purpose of preserving the right of way for future rail transit in the geographically constrained Portland to Lake Oswego Highway 43 corridor; and

WHEREAS, the Willamette Shore Line right-of-way has appreciated significantly in value since its purchase and can be used as local match for federal transit funds, and

WHEREAS, the Regional Transportation Plan, adopted by the Metro Council in 2004 called for a corridor refinement plan for evaluation of high capacity transit options for the Lake Oswego to Portland Highway 43 corridor;

WHEREAS, in 2004 the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council allocated \$1.16 million to study the transit and trail alternatives in the Lake Oswego to Portland Willamette Shore Line Corridor; and

WHEREAS, in 2005, Metro initiated an alternatives analysis consistent with Federal Transportation Administration (FTA) requirements to assess the feasibility of transit and trail alternatives between Lake Oswego and Portland; and

WHEREAS, a wide range of alternatives was evaluated in the alternatives analysis that included No-Build, Bus Rapid Transit with multiple alignments, Streetcar with multiple alignments, River Transit, and accompanying trail alignments; and

WHEREAS, the alternatives analysis confirmed that highway widening in the Highway 43 corridor is infeasible and costly, and that reversible lanes are not warranted, and

WHEREAS, ridership and cost information was developed in the alternatives analysis that evaluated an extension of the proposed Milwaukie light rail line to the Albertsons terminus on an alignment parallel to the Portland and Western Railroad; and

WHEREAS, an extensive public involvement process was undertaken from July 2005 to the present that included testimony before and after every meeting of the Lake Oswego to Portland Project Advisory Committee (LOPAC), community design workshops, open houses, small group meetings, neighborhood group meetings, individual property owner meetings, a bus rider survey, newsletters, and targeted mailings, resulting in over 1,200 direct citizen contacts; and

WHEREAS, on July 16, 2007, a public hearing was held by the Steering Committee and public comments were received on the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft*; and

WHEREAS, on July 31, 2007, the Lake Oswego to Portland Project Advisory Committee (LOPAC) adopted their recommendation to the Steering Committee regarding transit and trail alternatives to advance for further study in a Draft Environmental Impact Statement; and

WHEREAS, on August 29, 2007 the Lake Oswego to Portland Project Management Group (PMG) adopted their recommendation to the Steering Committee regarding transit and trail alternatives to advance for further study in a Draft Environmental Impact Statement; and

WHEREAS, on September 10, 2007 the Steering Committee, after consideration of LOPAC and PMG recommendations, public input, the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Draft Public Comment Summary* report, and the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft* report; adopted the *Steering Committee Recommendations on Alternatives to be Advanced into a Draft Environmental Impact Statement and Work Program Considerations*, attached as Exhibit A; and

WHEREAS, the transit alternatives adopted by the Steering Committee on September 10, 2007 included No-Build, Enhanced Bus and Streetcar, including streetcar alignment alternatives on SW Macadam Avenue, the Willamette Shore Line right-of-way, or combinations of the two that may include all or parts of the Johns Landing Masterplan alignment through Johns Landing, a temporary minimum operable segment terminus in the vicinity of Nevada Street in Johns Landing, the Willamette Shore Line right-of-way from the vicinity of Nevada Street to the existing trolley barn and south to the Albertsons terminus option or west via A and B Avenues to the Safeway terminus option in Lake Oswego; and

WHEREAS, the Lake Oswego to Portland Corridor Project could be the region's next priority for FTA funding, following the Portland Streetcar Loop Project and Milwaukie to Portland Light Rail Project; and

WHEREAS, the bicycle and pedestrian trail element of the alternatives analysis received a high level of public support, and the Steering Committee Recommendation from September 10, 2007 included a recommendation to advance and refine the pedestrian and bicycle trail options in the corridor, including additional design work, cost reduction strategies, potential trail phasing strategies, resolution of legal issues and identification of construction funding sources; and

WHEREAS, on November 19, 2007, the Steering Committee amended their September 10, 2007 recommendation to add a permanent Johns Landing terminus to the alternatives to be advanced, and to initiate a Refinement Study in the Johns Landing area prior to the start of the Draft Environmental Impact Statement, attached as Exhibit A, based on public comment and recommendations from the LOPAC Chair and Vice-chairs, and

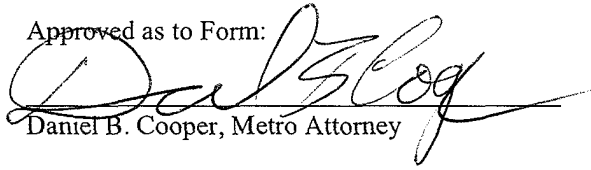
WHEREAS, the Lake Oswego City Council, Portland City Council, TriMet Board of Directors, Multnomah County Board of Commissioners and Clackamas County Board of Commissioners submitted letters of support and/or resolutions endorsing the Steering Committee recommendations, attached as Exhibit B, and

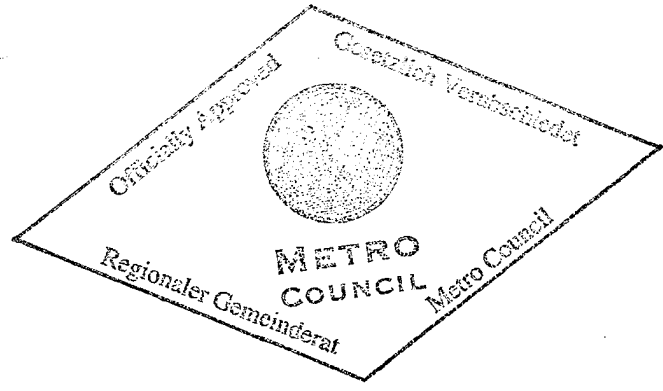
WHEREAS, the Metro Council has considered previous public comments, public testimony at this hearing, and public agency endorsements of the Steering Committee Recommendation as amended November 19, 2007; now therefore

BE IT RESOLVED, that the Metro Council adopts the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Alternatives to be Advanced into a Draft Environmental Impact Statement and Work Program 19, Considerations* dated December 13, 2007, attached as Exhibit A.

ADOPTED by the Metro Council this 13<sup>th</sup> day of December 2007.

  
David Bragdon, Council President

Approved as to Form:  
  
Daniel B. Cooper, Metro Attorney



# **Lake Oswego to Portland Transit and Trail Alternatives Analysis**

## **Metro Council Action**

Alternatives to be Advanced into a  
Draft Environmental Impact Statement and  
Work Program Considerations

**Adopted December 13, 2007**



**METRO**





# Metro Council Action

*Alternatives to Advance into a Draft Environmental Impact Statement  
Adopted December 13, 2007*

## I. OVERVIEW

This document presents the Metro Council adoption of alternatives to be advanced into a Draft Environmental Impact Statement (DEIS) for the Lake Oswego to Portland corridor. The transit alternatives and their accompanying trail components have been fully evaluated against the project's purpose and need and goals and objectives, and this evaluation is documented in the Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft dated July 12, 2007. The Metro Council action considers recommendations from the Transit Alternatives Analysis Steering Committee dated November 19, 2007, the Lake Oswego to Portland Project Advisory Committee (LOPAC) dated July 31, 2007, the findings of the Project Management Group dated September 3, 2007, public input received during the two public open houses held on June 27 and 28, 2007, a public hearing before the Steering Committee held on July 16, 2007, testimony before the Council on December 13, 2007 as well as all other comments received as described in the Public Comment Summary dated September 10, 2007 and updated to include public comments through December 13, 2007.

This action by the Metro Council selects transit mode, terminus of the transit project and specific alignments to be studied in a Draft Environmental Impact Statement. In addition, a strategy is presented for further development of a trail connection in the corridor. The **mode** section presents findings and recommendations regarding the No-Build, Bus Rapid Transit (BRT) and Streetcar alternatives. The **terminus** section presents findings and recommendations about the three terminus options including the Trolley, Safeway and Albertsons termini sites. The **alignment** section describes findings and recommendations for the three potential streetcar alignments within the Johns Landing area; the Willamette Shore Line right of way, SW Macadam Avenue and the Johns Landing Master Plan alignment.

## II. FINDINGS

### **Context**

The Lake Oswego to Portland corridor is environmentally, topographically and physically constrained. Future roadway expansion is not anticipated and previous planning studies have concluded that a high capacity transit improvement is needed to provide additional capacity. In 1988, a consortium of seven government agencies purchased the Willamette Shore Line right of way connecting Lake Oswego to Portland for the purpose of preserving the rail right of way for future rail transit service. The 2004 Regional Transportation Plan (RTP) identified the need for a corridor refinement plan for a high capacity transit option for this corridor, which was the genesis of this alternatives analysis.

Existing and future traffic conditions in this corridor are projected to worsen as population and employment projections for Portland, Lake Oswego and areas south of Lake Oswego in Clackamas County continue to grow. The corridor already experiences long traffic queues, poor levels of service and significant capacity constraints at key locations. Travel times in the corridor are unreliable due to congestion on Highway 43.

## ***Project Sequencing***

A transit project in the Lake Oswego to Portland Corridor is one of several regional projects that would seek funding through Federal Transit Administration's (FTA) New Starts and Small Starts funding programs. The financial analysis prepared during this alternatives analysis evaluated the sequencing of funding for this project based on current regional commitments. The Milwaukie to Portland Light Rail Project is the region's top priority for FTA New Starts funding following projects currently funded and under construction. The Columbia Crossing Project would also include a New Starts transit component and is proceeding concurrently with the Milwaukie to Portland LRT Project. The Portland Streetcar Loop project is the region's priority project for FTA Small Starts funding.

The Lake Oswego to Portland Corridor Project could be the region's next priority for FTA funding, with construction funding capacity becoming available starting in 2012 and continuing through 2017. In order to fit into the regional sequence of projects, the Metro Council recognizes that the Portland to Lake Oswego Corridor Draft Environmental Impact Statement would need to be initiated in Fall 2008 as the Milwaukie to Portland Light Rail Project Final Environmental Impact Statement nears completion. In the Work Program Considerations section of these Metro Council findings, a number of steps are outlined which would need to be taken prior to the initiation of the DEIS, including preparation of a more detailed schedule that identifies key New Starts milestones and deliverables for the project.

## ***Willamette Shoreline Right of Way***

The Willamette shoreline rail right of way was purchased from the Southern Pacific Railroad in 1988 for \$2 million dollars by a consortium of local governments including Metro, the cities of Lake Oswego and Portland, Clackamas and Multnomah counties, the Oregon Department of Transportation (ODOT) and TriMet. Knowing that the Highway 43 corridor is very constrained; the purchase was made with the intent of preserving the corridor for future transit use.

The value of the right-of way has increased dramatically over 20 years. TriMet estimates currently value the right-of-way at \$75 million in 2007 dollars. This value is critical to a transit project that would use the right-of-way because the value of the right of way can be counted as local match for federal funds. A request for New Starts project funding from the Federal Transit Administration would typically be for 60 percent of a project's capital cost leaving 40 percent to be supplied locally. If \$75 million in right of way value were applied as part of local match, the remaining share of local funds required would be significantly reduced.

For the reasons stated above, whether an alternative uses the Willamette Shore Line right –of way is a significant factor in project funding. For the Streetcar alternative, the \$75 million value of the Willamette Shore Line right of way could leverage as much as \$112.5 million in federal funds. Because it would not be using the right of way, the BRT alternative would not be able to leverage value of the right of way as part of its funding plan.

### ***A. Transit Mode: Streetcar***

Streetcar is the transit mode that best meets the project's purpose and need and the goals and objectives for the Lake Oswego to Portland Transit and Trail Alternatives Analysis.

The Metro Council finds that the **Streetcar mode** should advance for further study in a DEIS because:

- Streetcar would have the highest ridership of all the transit alternatives.
- Streetcar travel times would be up to 18 minutes faster between key corridor destinations and would be more reliable than the other transit alternatives. In peak travel periods, the Streetcar would provide faster travel times than autos between downtown and Lake Oswego. Faster travel time and higher reliability is gained through operation of streetcar in exclusive right of way on the Willamette Shore Line.
- Streetcar would have the lowest operating and maintenance costs of any alternative, including the No-Build. This is due to the marginal cost of extending a line that already operates in the corridor, the carrying capacity of the Streetcar vehicles compared to buses and the travel time advantage over BRT and No-Build. The Streetcar also replaces some corridor bus service, which results in a cost savings.
- The Streetcar alternative could leverage up to 3.3 million square feet of total new transit supportive development within three blocks of the proposed alignments.
- Streetcar is compatible with the existing transit system and would operate as an extension of the existing streetcar line that operates between NW 23<sup>rd</sup> Avenue and the South Waterfront.
- The \$75 million of value in the Willamette Shoreline right of way could leverage as much as \$112.5 million in federal funds if the project proceeds as a Federal Transit Administration (FTA) News Starts project.

The Metro Council finds that the **Bus Rapid Transit (BRT) mode** should not advance for further study in a DEIS because:

- It may not be a practical option to achieve the travel time and ridership as modeled in this alternatives analysis. The queue bypass lanes used to bypass congestion at key intersections in the BRT alternative would have to be extended to between 500 and 1,000 feet instead of the 200 feet in the current designs and cost estimates.
- The BRT alternative would include property impacts at the key intersections where transit improvements are constructed. There would be additional property impacts associated with the additional queue jump length required to bypass congestion. This also would include removal of trees within the sidewalk area.
- Initial BRT capital costs were the lowest of all the transit alternatives, however, these do not include the additional costs of the longer queue jump lanes, which would be required.
- The BRT alternative would have the highest operating cost due to the greater number of vehicles required to meet demand, and the fact that the BRT line would require added service, unlike the Streetcar alternative which would replace existing bus service.
- For the entire length of the corridor, BRT travel times are subject to the same delays and congestion as the general traffic in areas where queue jump lanes are not provided, resulting in decreased reliability.
- The BRT alternative would not leverage transit supportive economic development beyond what would be expected with the No-Build alternative.
- The BRT alternative would not leverage the \$75 million value of Willamette Shore Line right of way, which could match federal transit funding of up to \$112.5 million.

The Metro Council finds that an **enhanced bus** alternative should be studied as a more practical option for this constrained corridor. Such an option would avoid the property impacts of the BRT while providing improved service, bus pullouts where possible and better shelters and lighting at stations. Enhanced bus would act as the base case for comparison

to Streetcar alternatives in the DEIS. It would operate in mixed traffic, though this has implications for travel time, reliability and long-term efficiency of the line.

**B. Alignments: Willamette Shore Line and SW Macadam Avenue**

During the alternatives analysis process three alignments were evaluated in the John's Landing area: the Willamette Shore Line right of way, SW Macadam Avenue and the John's Landing Master Plan alignment. The Metro Council recommends that two alignment options be studied further in the John's Landing area north of the Sellwood Bridge: the Willamette Shore Line right of way alignment and the SW Macadam Avenue alignment.

In addition, combinations of the two alignments should be evaluated to maximize the potential benefits and minimize impacts in the John's Landing area. The Metro Council recognizes that alignments, which would avoid or minimize impacts through John's Landing, may need to be developed that are not part of either the Macadam Avenue or Willamette Shoreline alignments. These could include all or portions of the John's Landing Master Plan alignment or other rights of way.

The Metro Council finds that the **Willamette Shore Line right of way alignment** should advance for further study for the following reasons:

- Streetcar on the Willamette Shore Line right of way would yield higher reliability and faster travel times than the other alignments due to the 100% exclusive right of way. In the DEIS, Issues of pedestrian and vehicle safety and proximity to private properties must be considered in the analysis of this alignment..
- The Willamette Shore Line right of way is in public ownership and could potentially be used as local match towards the capital cost of the project. Current estimates value the entire right of way at \$75 million. For the portion north of SW Nevada Street, the value of the right of way is estimated at approximately \$35 million, which could leverage an additional \$58 million in federal funds.
- The Willamette Shore Line Right-of-Way alignment has received public support from Lake Oswego residents because it has faster travel time, better reliability and less impact to Highway 43 traffic operations and safety than an alignment that would use Macadam Avenue in John's Landing.

The Metro Council finds that the **SW Macadam Avenue alignment** should advance for further study for the following reasons:

- The SW Macadam Avenue alignment was the preferred alignment of the LOPAC based on community support, development potential, and the ability to avoid residential impacts of the Willamette Shore Line alignment. The LOPAC emphasized that the alignment should be on SW Macadam Avenue for as much of the length of the route as possible from the South Waterfront to the vicinity of the intersection of SW Macadam Avenue and SW Nevada Street.
- The SW Macadam Avenue alignment would leverage the most potential transit supportive development, approximately 2.2 million square feet of total new development in John's Landing.
- The SW Macadam Avenue alignment would avoid some of the potential property impacts associated with use of the Willamette Shore Line right of way.
- The SW Macadam Avenue alignment has emerged with the most public support from residents and businesses in John's Landing.

- As LOPAC recommended, a bicycle and pedestrian trail could be established along the Willamette Shore Line with the Macadam Avenue alignment. This trail has the potential to reduce conflicts between recreational and commuter user groups on the existing Willamette River Greenway trail by providing a more direct route through Johns Landing.

**Note:** The Metro Council recognizes ODOT's expressed concerns regarding the SW Macadam Avenue alignment option and will ensure that questions related to potential streetcar operations in mixed traffic on SW Macadam Avenue are addressed.

South of the John's Landing area and north of the Trolley Terminus site in Lake Oswego, the Willamette Shore Line right of way was the only alignment to advance to the completion of the alternatives analysis. As part of its design option narrowing decision, Steering Committee eliminated Highway 43 south of John's Landing from consideration as a Streetcar alignment for safety and operational reasons, making the Willamette Shore Line alignment the only option in this segment of the corridor. The *Evaluation Summary Report* contains a description of the alternative and design option narrowing decisions that were made during the alternatives analysis.

### **C. Lake Oswego Full-Length Termini: Albertsons and Safeway**

The Metro Council finds that the Albertsons and Safeway termini should advance into the DEIS. The Trolley terminus should not be advanced into the DEIS. These termini options are preferred because they would serve more population and employment, have higher ridership, disperse park and ride spaces, and have greater potential for transit-supportive development while demonstrating similar traffic impacts.

The Metro Council finds that the **Albertsons terminus should** advance for further study for the following reasons:

- The Albertsons terminus would allow for the possible future extension of Streetcar south to West Linn or Oregon City.
- The Albertsons terminus has strong public support from the residents south of Lake Oswego and citizens within Lake Oswego. In 2006, Lake Oswego's Downtown Transit Alternatives Analysis Committee (DTAAC) recommended the Albertsons terminus site, partly because it would intercept traffic from the south before it reaches the center of downtown.
- The Albertsons terminus could generate substantial transit supportive development in Lake Oswego (0.9 million square feet).

The Metro Council finds that the **Safeway terminus** should advance for further study for the following reasons:

- The Safeway terminus would allow for the possible future extension of Streetcar to the west.
- The Safeway terminus could provide park and ride access west of downtown Lake Oswego, intercepting traffic before it reaches the center of downtown.
- The Safeway site could leverage the most potential transit supportive development (1.1 million square feet in Lake Oswego), as compared to the Albertsons or Trolley terminus options.

- The Safeway site would allow the Streetcar to act as a circulator for trips within downtown Lake Oswego between the Foothills district and the west end of downtown.

The Metro Council acknowledges that an at-grade crossing of streetcar with Highway 43 under the Safeway terminus option would require additional study and coordination with ODOT and the City of Lake Oswego to ensure that a safe and efficient crossing is feasible.

Additionally, the Metro Council acknowledges that it may be necessary to construct a project that would utilize the **Trolley Terminus** as a **temporary interim terminus** while joint development construction plans are finalized at either the Albertsons or Safeway terminus sites.

***D. Temporary Johns Landing Short Terminus - Minimum Operable Segment (MOS)***

If a full-length project cannot be built for financial or other reasons, the FTA allows for Minimum Operable Segments (MOS) to be considered as interim termini for a project. In this corridor, preliminary analysis was done for a MOS for Streetcar that would terminate in the vicinity of Nevada Street in John's Landing on either the Willamette Shore Line right-of-way or the Macadam Avenue alignments. A streetcar terminus in Johns Landing should include enhanced bus service to Lake Oswego as part of the complete alternative. The Metro Council finds that this alternative advance for further study for the following reasons:

- Significant public support was expressed for this option from participants in the process all through the corridor.
- A minimum operable segment (MOS) provides flexibility to initiate a project with available funding while pursuing additional funding to complete the remainder.

***E. Johns Landing Permanent Terminus***

A permanent terminus in Johns Landing was selected by the LOPAC along with a full-length Streetcar alternative as their preferred options to be advanced into the DEIS. The LOPAC preference was that this terminus be paired with the Macadam Avenue alignment; in Johns Landing however this terminus option could be paired with either the Willamette Shoreline or Macadam alignments. A streetcar terminus in Johns Landing should include enhanced bus service to Lake Oswego as part of the complete alternative.. The Metro Council finds that this alternative should be advanced into the DEIS for the following reasons:

- There is strong community support for this option in both Johns Landing and Dunthorpe.
- Analysis of a permanent terminus in addition to a temporary Minimum Operable Segment terminus would allow a full range of choices that could respond to funding constraints, environmental impacts and community preferences.
- This terminus option could maintain the ability to cross a new or reconstructed Sellwood Bridge in the future.

### III. TRAIL CONSIDERATIONS

#### ***Context***

As part of the Willamette River Greenway vision, a trail was proposed to run along the Willamette Shore Line right of way from Willamette Park in Portland to downtown Lake Oswego between Highway 43 and the Willamette River. As part of this Alternatives Analysis, the feasibility of a continuous trail between Portland and Lake Oswego was evaluated. Each transit alternative carried with it a complementary trail component. The BRT alternative would have used the Willamette Shore Line right of way for exclusive trail use. The Streetcar alternative, which the Metro Council advances for further study, would require shared use of the Willamette Shoreline between Streetcar and a trail. The discussion below focuses on the trail components that would accompany the Streetcar alignments.

#### ***A. Trail Component***

The bike and pedestrian trail component of this study has received tremendous community support. A trail in the corridor would provide a critical link in the regional transportation system, connecting other regional and local trails. A continuous, safe and level trail component is a desired outcome in this corridor.

However, as currently designed, the trail component may not be practical to build for its entire length because of the high capital costs associated with shifting the Streetcar alignment to accommodate the trail in a tightly constrained right of way and very difficult topography. Because some portions of the trail are more easily implemented than others, and because funding for the entire trail may not be available at one time, the trail may need to be developed in phases.

#### ***B. Trail Component Refinement Next Steps***

The Metro Council finds that a trail component should be advanced for further study. However, additional refinement is needed to determine how to advance the trail and the transit alternatives, either together or separately. The following identifies additional considerations for the trail and next steps:

- Further consideration is required to determine trail project sponsors and potential funding sources. Metro may or may not be the appropriate agency to lead the effort to advance a trail in the corridor.
- Additional design work is needed to identify ways to design and construct a trail in this corridor with lower capital costs and impacts while still accommodating the transit project. The trail design should change and adapt to constraints in the corridor. The width of the trail does not need to be the same for the entire alignment and flexibility will be required with regard to various jurisdictions design standards and requirements.
- Trail phasing should be considered so that the most cost-effective segments could move forward. The additional design work required for the more difficult and expensive portions will take more time and effort.



- Additional study is needed to evaluate the potential for the Portland and Western railroad bridge and an eastside connection to the Sellwood Bridge to provide a useful pedestrian and bike trail connection between Lake Oswego and Portland
- Further study is needed regarding the outstanding legal questions in order to facilitate decisions about the Willamette Shore Line right of way and its use for a trail.

## IV. WORK PROGRAM CONSIDERATIONS

The Metro Council finds that several actions are needed prior to advancing the project into the *Draft Environmental Impact Statement* phase of project development. Because a DEIS for the Lake Oswego to Portland Corridor is not included in Metro's current fiscal year budget, it is recognized that there will be a gap before the DEIS can commence.

1. **The Metro Council finds that the following actions are necessary to advance the project into the *Draft Environmental Impact Statement*:**
  - a. **Metro should work with the FTA to Publish a *Notice of Intent to Prepare a Draft Environmental Impact Statement* in the Federal Register**, and initiate the DEIS Scoping Process. The FTA has recommended that this action be taken immediately. This action would ensure that all of the work completed during the alternatives analysis would be documented under the National Environmental Policy Act (NEPA). Public comment received prior to the Metro Council action on advancing the project into the DEIS phase would also be included as part of the NEPA record. The Scoping phase of a DEIS includes meetings with the public as well as local, state and federal agencies and affected tribal jurisdictions. The dates of the public, agency and tribal meetings would be published along with the notice of intent. The Scoping meetings present proposed alternatives and solicit input on potential additional alternatives that could be included in a DEIS.
  - b. **Metro should prepare a work scope, budget and schedule for the DEIS.** In order to secure funding for a DEIS, a cost estimate is required. The estimate is based on a scope of work and schedule that meet all appropriate FTA and NEPA requirements. This DEIS will need to meet new requirements for public and agency participation covered under Section 6002 of the SAFETEA-LU Act. Metro staff will convene the PMG to discuss and review the scope of work, schedule and budget, including agency roles and responsibilities during the DEIS phase.
  - c. **Metro should work with project partners, through the Project Management Group, to identify and secure funding for the DEIS.** Along with the scope, schedule and budget, Metro will work with project partners to identify potential sources of funding for the DEIS, as well as the next phases of project development, Preliminary Engineering and the Final Environmental Impact Statement. Potential sources of funding include FTA Section 5339 or other funds through the MTIP process, and local jurisdiction, TriMet, or ODOT contributions.

2. **In order to advance the goal of implementing a bicycle and pedestrian trail that connects Portland and Lake Oswego, the Metro Council directs that the following steps be taken:**
  - a. **Metro, with assistance from project partners through the TAC and PMG, should develop a process to undertake the *Trail Refinement Next Steps* listed above.** The result of this process would be to resolve key issues and determine the relationship of the trail and the transit project during the DEIS phase. Of particular importance are:
    - i. Involvement of the public and advocacy groups in improving the trail concept
    - ii. Definition of the lead agency for advancement of a trail
    - iii. Development of an approach to reduce capital costs
    - iv. Analysis of possible phasing of trail segments
    - v. Identification of potential trail capital funding sources
  
3. **The Metro Council finds that prior to initiation of the DEIS, Metro, with the assistance of the PMG, should develop actions or conditions for each participating agency that would help to ensure that the project can meet FTA thresholds with regard to ridership and financing and achieve the important development objectives for the Corridor.**

These could include:

- a. Development of local funding mechanisms
  - b. Demonstrated progress toward development objectives
  - c. Resolution of technical issues, e.g. ODOT concerns regarding the SW Macadam Avenue alignment
  - d. Threshold criteria for selecting a full-length option over an MOS or vice versa
- 
4. **The Metro Council finds that the following concerns need to be addressed by Metro and its project partners as the project moves forward into a DEIS:**
    - a. The alternative should be constructed in such a manner as to allow coordination with transportation alternatives across the Sellwood Bridge or its replacement.
    - b. Maximize the alternative to establish a safe and attractive transit, pedestrian and bicycle route from Lake Oswego to Portland. Minimize negative impacts to residents and property values.
    - c. The DEIS should include an analysis of the conflicts between use of the corridor as a commuter route and the stated desire of Johns Landing residents for a more pedestrian and retail friendly environment.
    - d. Continue to analyze redevelopment opportunities in Johns Landing and Lake Oswego.
    - e. Strive for closer integration of Johns Landing and South Waterfront urban planning and work to improve pedestrian, bicycle, automobile and streetcar connections.

- 5. The Metro Council finds that the PMG should undertake a Johns Landing Alignment Refinement Study that would precede the start of the DEIS. This study would support the DEIS detailed definition of alternatives and should focus on:**
- a. The operational, design and cost trade-offs between the various alignment options in the Johns Landing segment.
  - b. Financial mechanisms to capture the full value of the Willamette Shore Line so that the current value of the WSL right of way could be used to leverage federal dollars and be applied to a project as local match. These mechanisms could include purchase by adjoining property owners, formation of a local improvement district and/ or a right of way trade that could be counted as local match
  - c. Design solutions through and/or around the most constrained parts of the Willamette Shore Line alignment
  - d. Initial operating concepts for the Streetcar in Macadam Avenue that address ODOT concerns regarding shared traffic operations.
  - e. Refinement of temporary and permanent Johns Landing terminus locations.
  - f. Funding for the refinement study should be equitably shared by the participating agencies.

**RESOLUTION 07-57****A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL SUPPORTING THE LAKE OSWEGO TO PORTLAND TRANSIT AND TRAIL ALTERNATIVES ANALYSIS STEERING COMMITTEE RECOMMENDATIONS FOR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT STUDY FOR THE HIGHWAY 43 CORRIDOR.**

**WHEREAS**, the Regional Transportation Plan (RTP) designates Highway 43 between Portland and Lake Oswego as a planned frequent bus line and the Willamette Shore Line Rail right of way as a planned/proposed streetcar line; and

**WHEREAS**, in 1988, the City of Lake Oswego, along with six other agencies, purchased the Willamette Shore Line rail right of way for the purpose of preserving the line for future high capacity transit ; and

**WHEREAS**, the City of Lake Oswego has adopted a Transportation System Plan as a component of its Comprehensive Plan that indicates that Hwy. 43 is a congested corridor, and that the Willamette Shore Line right of way should be preserved for future high capacity transit; and

**WHEREAS**, the City of Lake Oswego, along with other regional partners, has through its actions over the past 19 years, supported efforts to encourage future high capacity transit between Lake Oswego and Portland by contracting with the Oregon Electrical Railway Historical Society to operate a seasonal trolley on the Willamette Shore Line right of way in order to preserve its use for future high capacity transit; and

**WHEREAS**, in 2004, the City Council of the City of Lake Oswego appointed a Downtown Transit Alternatives Advisory Committee (DTAAC), consisting of neighborhood, business and transportation representatives, which examined preferred transit options for the City of Lake Oswego; and

**WHEREAS**, in 2005, Metro applied for and attained Metropolitan Transportation Improvement Program funds in order to conduct a Transit and Trail Alternatives Analysis to examine transit and trail options in the Highway 43 Corridor, including the Willamette Shore Line right-of-way, and the City of Lake Oswego contributed funding for a portion of the local match, along with the City of Portland and TriMet; and

**WHEREAS**, an Alternatives Analysis, consistent with Federal Transit Administration requirements, was conducted; and

**WHEREAS**, representatives on the Transit and Trail Steering Committee, consisting of elected and appointed members from the City of Lake Oswego, the City of Portland, Multnomah and Clackamas Counties, TriMet, Metro, Oregon Department of



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**Section 4.** Effective Date. This Resolution shall take effect upon passage.

Considered and enacted at the meeting of the City Council of the City of Lake Oswego held on the 2nd day of October, 2007.

AYES: Mayor Hammerstad, McPeak, Groznik, Hennagin, Jordan, Johnson


NOES: none

EXCUSED: Turchi

ABSTAIN: none

  
\_\_\_\_\_  
Judie Hammerstad, Mayor

ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David Powell  
City Attorney



**Martha Schrader**  
Chair

**Lynn Peterson**  
Commissioner

**Bill Kennemer**  
Commissioner

**BOARD OF COUNTY COMMISSIONERS**

**PUBLIC SERVICES BUILDING**

**2051 KAEN ROAD | OREGON CITY, OR 97045**

December 7, 2007

David Bragdon, President  
Metro Council  
600 NE Grand Ave.  
Portland, OR 97232-2736

Dear President Bragdon:

The Clackamas County Board of Commissioners has reviewed the Lake Oswego Transit and Trail Alternatives Analysis Steering Committee recommendation to advance alternatives into a Draft Environmental Impact Statement and we support the recommendation of the Steering Committee. While we are supportive of this recommendation, we would like to emphasize several issues.

We agree with the need to continue to study a Streetcar as the preferred mode, especially recognizing the limitations of bus rapid transit. However, we believe it is important to study all modes more thoroughly in the next stage of analysis. Additionally, though we have agreed to further study of a minimum operable segment to Nevada Street, we believe that this would not meet the purpose and need of the project and would add significantly more cost to the project.

Regarding the alignments through the Johns Landing area, we support continued study of both the Willamette Shore Line right of way and SW Macadam Avenue. We recognize and want to maximize the value of the Willamette Shore Line right of way but also realize that a Macadam Avenue alignment could potentially provide a positive tradeoff between benefits and impacts.

While the segment of the corridor that is within unincorporated Clackamas County does not anticipate increased development, there are key development opportunities in the Lake Oswego town center. The county supports further study of both terminus locations in order to better understand the benefits and impacts of both options. Additionally, we are fully supportive of the redevelopment efforts currently underway by the City of Lake Oswego.

Providing a bicycle/pedestrian component is very important to Clackamas County. We recognize the physical constraints involved as well as the possible legal issues of the Willamette Shore Line right of way. We are willing and eager to play a leadership role with Metro, project partners and the public to address the challenges of creating a safe, continuous trail through the corridor at a reasonable cost. We look forward to future opportunities to develop and consider creative options and make recommendations as appropriate.

We thank you for this opportunity to lend our support to this project that will provide new transportation choices in the corridor and beyond, into broader Clackamas County, where our population and employment continue to grow and demand additional transportation capacity.

Sincerely,

Martha Schrader  
Chair

Lynn Peterson  
Commissioner

Bill Kennemer  
Commissioner



## Ted Wheeler, Multnomah County Chair

501 SE Hawthorne Blvd., Suite 600  
Portland, Oregon 97214  
Phone: (503) 988-3308  
Email: [mult.chair@co.multnomah.or.us](mailto:mult.chair@co.multnomah.or.us)

November 26, 2007

David Bragdon, President  
Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear President Bragdon:

The Multnomah County Board of Commissioners has reviewed both LOPAC's and the Steering Committee Recommendation for the Lake Oswego to Portland Transit and Trails Alternatives Analysis. This letter will offer alternatives into a Draft Environmental Impact Statement and provide the following recommendation.

After reviewing the Steering Committee Revised Recommendation we agree with the need to continue to study a Streetcar as the preferred mode, especially recognizing the limitations of bus rapid transit. That said, we encourage that a streetcar to Johns Landing and enhanced bus to Lake Oswego be studied as an alternative for this corridor, as well as the Steering Committee's recommendation of studying Streetcar to Lake Oswego as an alternative. Regarding the alignments through the South Waterfront area, we support continued study of the Willamette Shore Line right of way and SW Macadam alignments. We recognize the value of the Willamette Shore Line right of way, but we do not wish to see its value as the driving force, only that it and the SW Macadam Avenue alignments each be given full consideration.

With respect to a terminus in Lake Oswego we believe that a Trolley Terminus be considered while the advantages of the other two locations (Safeway and Albertsons) receive further study. We recognize that there are several advantages that accompany streetcar development. First is the transit demand at the terminus as well as the potential for continuation of the line, and second the potential for economic development that might occur along an alignment. Therefore, consideration of a Trolley Terminus is also important to allow some flexibility before committing to one terminus or the other.

At our briefing we also heard from citizens from unincorporated Multnomah County as well as members of LOPAC and wish to support their recommendation. While their recommendation(s) is included in the Steering Committee's Revised Recommendation, there are some key differences that bear consideration. First, we would like to reiterate our desire to see the SW Macadam alignment studied as per LOPAC's recommendation. Second, while we wish to see the Trolley Terminus as an alternative, we again concur that studying a terminus in Johns Landing should also be reviewed as an alternative with enhanced bus service to south to Lake Oswego.



Providing a bicycle/pedestrian component is very important to Multnomah County. We recognize the physical constraints involved as well as the possible legal issues of the Willamette Shore Line right of way. We encourage establishing a subcommittee to closely review the options and make recommendations as appropriate.

Finally, the effect of any of the alternatives on the environment must be a component of the DEIS. We continued to be concerned about the potential impact any of the alternatives may have on the environment and believe that the preferred alternative be one that also meets key sustainability measures.

Multnomah County supports moving ahead with the DEIS as recommended by both LOPAC and the Steering Committee. We thank you for this opportunity to lend our support.

Sincerely,

A handwritten signature in black ink that reads "TED WHEELER". The signature is written in a cursive, slightly slanted style.

Ted Wheeler  
Multnomah County Chair

TW/ml



CITY OF

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# PORTLAND, OREGON

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OFFICE OF PUBLIC UTILITIES

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**Sam Adams, Commissioner**  
1221 S.W. Fourth Avenue, Rm. 220  
Portland, Oregon 97204-1994  
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Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Honorable President Bragdon and Metro Councilors:

As Commissioner in charge of the Portland Office of Transportation and City of Portland representative in the Lake Oswego to Portland Transit and Trail Alternatives Analysis Steering Committee, I support the Steering Committee recommendations as amended and approved at the November 19<sup>th</sup>, 2007 meeting.

In advancing the Steering Committee's Recommendations, I appreciate the hard work that citizens of Portland and along the corridor put into the project for over two years.

I understand that planning for high capacity transit in this corridor has been a controversial endeavor going back to the master planning efforts of the 1970s. Given this history, the recommendations of the Lake Oswego to Portland Project Advisory Committee and the Steering Committee are important steps toward a workable solution.

Though this study resolved many issues, many questions remained unanswered. I believe this refinement study is the best way to continue to explore options with the community and try to build towards an agreement on the options to be studied as part of the environmental impact study work (EIS).

In advancing this project to the next level of planning, the City of Portland is interested in a process that will lead to solutions that meet the City's and the region's transportation and land use objectives and reflect the needs and aspirations of stakeholders along the corridor.

As such, I am recommending that as part of the refinement study referred to in the Steering Committee's recommendations, the following elements be incorporated:

1. This refinement study is for the area of Johns Landing between South Waterfront and the Sellwood Bridge, and should be conducted with active participation from businesses and residents along the corridor.
2. The refinement study should be consistent and supportive of the NEPA process;
3. The refinement study work should be scoped for and executed so that the end result will be a narrowing of streetcar alignments in the Johns Landing segment to be advanced into the EIS;
4. The refinement study should be conducted concurrently with trail planning, and if that is not possible, the refinement study should consider the impacts on trail development in its alternative selection process;
5. Opportunities and constraints to build a citywide streetcar system should be part of the criteria for alternative selection; and
6. The scope of work and execution of the refinement study should be done in a cooperative effort with the City of Portland, Metro, TriMet, ODOT and the public at large.

Sincerely,

Commissioner Sam Adams

December 11, 2007

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear President Bragdon:

On behalf of TriMet, I recommend that you adopt the Lake Oswego to Portland Steering Committee Recommendations as amended on November 19, 2007. These recommendations propose a sound range of project alternatives that present the public and decision-makers with sensible choices on how to proceed with transit improvements in the Lake Oswego to Portland Corridor. Each of the alternatives will benefit from the careful analysis of impacts and mitigations that can only take place within the NEPA process.

As the project moves forward, TriMet, Metro and our regional partners will seek to develop creative design solutions that address the community concerns expressed during the alternatives analysis, while maintaining reliable and quick transit options through the corridor. Balancing the regional transportation needs with local impacts will be particularly challenging in this highly constrained corridor.

TriMet also wants to emphasize its belief that the value of the Willamette Shore Line railroad right of way should be preserved as local match for FTA funds and not given up prematurely. Whether the match is created through direct use of the right of way or by separate funding that ensures that the value is captured by other means, capture of the right of way's value will need to be addressed as we advance into the DEIS.

We look forward to working with you on this important project.

Sincerely,



Fred Hansen  
General Manager

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF IDENTIFYING	)	RESOLUTION NO. 07-3887
ALTERNATIVES TO ADVANCE INTO A	)	
DRAFT ENVIRONMENTAL IMPACT	)	
STATEMENT FOR THE PORTLAND TO LAKE	)	
OSWEGO CORRIDOR TRANSIT PROJECT	)	Introduced by Councilor Rex Burkholder
	)	

WHEREAS, in 1988 a consortium of seven government agencies purchased the Willamette Shore Line right-of-way for the purpose of preserving the right of way for future rail transit in the geographically constrained Portland to Lake Oswego Highway 43 corridor; and

WHEREAS, the Willamette Shore Line right-of-way has appreciated significantly in value since its purchase and can be used as local match for federal transit funds, and

WHEREAS, the Regional Transportation Plan, adopted by the Metro Council in 2004 called for a corridor refinement plan for evaluation of high capacity transit options for the Lake Oswego to Portland Highway 43 corridor;

WHEREAS, in 2005, Metro initiated an alternatives analysis consistent with FTA requirements to assess the feasibility of transit and trail alternatives between Lake Oswego and Portland; and

WHEREAS, a wide range of alternatives was evaluated in the alternatives analysis that included No-Build, Bus Rapid Transit with multiple alignments, Streetcar with multiple alignments, River Transit, and accompanying trail alignments; and

WHEREAS, the alternatives analysis confirmed that highway widening in the Highway 43 corridor is infeasible and costly, and that reversible lanes are not warranted, and

WHEREAS, ridership and cost information was developed in the alternatives analysis that evaluated an extension of the proposed Milwaukie light rail line to the Albertsons terminus on an alignment parallel to the Portland and Western Railroad; and

WHEREAS, an extensive public involvement process was undertaken from July 2005 to the present that included testimony before and after every meeting of the Lake Oswego to Portland Project Advisory Committee (LOPAC), community design workshops, open houses, small group meetings, neighborhood group meetings, individual property owner meetings, a bus rider survey, newsletters, and targeted mailings, resulting in over 1,200 direct citizen contacts; and

WHEREAS, on July 16, 2007, a public hearing was held by the Steering Committee and public comments were received on the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft*; and

WHEREAS, on July 31, 2007, the Lake Oswego to Portland Project Advisory Committee (LOPAC) adopted their recommendation to the Steering Committee regarding transit and trail alternatives to advance for further study in a Draft Environmental Impact Statement; and

WHEREAS, on August 29, 2007 the Lake Oswego to Portland Project Management Group (PMG) adopted their recommendation to the Steering Committee regarding transit and trail alternatives to advance for further study in a Draft Environmental Impact Statement; and

WHEREAS, on September 10, 2007 the Steering Committee, after consideration of LOPAC and PMG recommendations, public input, the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Draft Public Comment Summary* report, and the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft* report; adopted the *Steering Committee Recommendations on Alternatives to be Advanced into a Draft Environmental Impact Statement and Work Program Considerations*, attached as Exhibit A; and

WHEREAS, the transit alternatives adopted by the Steering Committee on September 10 2007 included No-Build, Enhanced Bus and Streetcar, including streetcar alignment alternatives on SW Macadam Avenue, the Willamette Shore Line right-of-way, or combinations of the two that may include all or parts of the Johns Landing Masterplan alignment through Johns Landing, a temporary minimum operable segment terminus in the vicinity of Nevada Street in Johns Landing, the Willamette Shore Line right-of-way from the vicinity of Nevada Street to the existing trolley barn and south to the Albertsons terminus option or west via A and B Avenues to the Safeway terminus option in Lake Oswego; and

WHEREAS, the Lake Oswego to Portland Corridor Project would be the region's next priority for FTA funding, following the Portland Streetcar Loop Project and Milwaukie to Portland Light Rail Project; and

WHEREAS, the bicycle and pedestrian trail element of the alternatives analysis received a high level of public support, and the Steering Committee Recommendation from September 10, 2007 included a recommendation to advance and refine the pedestrian and bicycle trail options in the corridor, including additional design work, cost reduction strategies, potential trail phasing strategies, resolution of legal issues and identification of construction funding sources; and

WHEREAS, on November 19, 2007, the Steering Committee amended their September 10, 2007 recommendation to add a permanent Johns Landing terminus to the alternatives to be advanced, and to initiate a Refinement Study in the Johns Landing area prior to the start of the Draft Environmental Impact Statement, attached as Exhibit A, based on public comment and recommendations from the LOPAC Chair and Vice-chairs, and

WHEREAS, the Lake Oswego City Council, Portland City Council, TriMet Board of Directors, Multnomah County Board of Commissioners and Clackamas County Board of Commissioners submitted letters of support and/or resolutions endorsing the Steering Committee recommendations, attached as Exhibit B, and

WHEREAS, the Metro Council has considered previous public comments, public testimony at this hearing, and public agency endorsements of the Steering Committee Recommendation as amended November 19, 2007; now therefore

BE IT RESOLVED, that the Metro Council adopts the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Steering Committee Recommendation and Work Program Considerations*, as adopted September 10, 2007 and amended November 19, 2007, attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of December 2007.

---

David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

# Lake Oswego to Portland Transit and Trail Alternatives Analysis

## Steering Committee Recommendation

Alternatives to be Advanced into a  
Draft Environmental Impact Statement

Work Program Considerations

*Adopted September 10, 2007*

*Amended November 19, 2007*



**METRO**

# Steering Committee Recommendation

## *Alternatives to Advance into a Draft Environmental Impact Statement*

*Adopted September 10, 2007*

### I. OVERVIEW

This document presents the recommendations of the Steering Committee to the Metro Council for alternatives to be advanced into a *Draft Environmental Impact Statement* for the Lake Oswego to Portland corridor. The transit alternatives and their accompanying trail components have been fully evaluated against the project's purpose and need and goals and objectives, and this evaluation is documented in the *Lake Oswego to Portland Transit and Trail Alternatives Analysis Evaluation Summary Public Review Draft* dated July 12, 2007. The Steering Committee recommendations also consider recommendations from the Lake Oswego to Portland Project Advisory Committee (LOPAC) dated July 31, 2007, the findings of the Project Management Group dated September 3, 2007, public input received during the two public open houses held on June 27 and 28, 2007 and the public hearing held on July 16, 2007 as well as all other comments received as described in the *Public Comment Summary* dated September 10, 2007.

This recommendation discusses transit mode, terminus of the transit project and specific alignments. In addition, a strategy is presented for further development of a trail connection in the corridor. The **mode** section presents findings and recommendations regarding the No-Build, Bus Rapid Transit (BRT) and Streetcar alternatives. The **terminus** section presents findings and recommendations about the three terminus options including the Trolley, Safeway and Albertsons termini sites. The **alignment** section describes findings and recommendations for the three potential streetcar alignments within the John's Landing area; the Willamette Shore Line right of way, SW Macadam Avenue and the John's Landing Master Plan alignment.

### II. FINDINGS AND RECOMMENDATIONS

#### **Context**

The Lake Oswego to Portland corridor is environmentally, topographically and physically constrained. Future roadway expansion is not anticipated and previous planning studies have concluded that a high capacity transit improvement is needed to provide additional capacity. In 1988, a consortium of seven government agencies purchased the Willamette Shore Line right of way connecting Lake Oswego to Portland for the purpose of preserving the rail right of way for future rail transit service. The 2004 Regional Transportation Plan (RTP) identified the need for a corridor refinement plan for a high capacity transit option for this corridor, which was the genesis of this alternatives analysis.

Existing and future traffic conditions in this corridor are projected to worsen as population and employment projections for Portland, Lake Oswego and areas south of Lake Oswego in Clackamas County continue to grow. The corridor already experiences long traffic queues, poor levels of service and significant capacity constraints at key locations. Travel times in the corridor are unreliable due to congestion on Highway 43.



## ***Project Sequencing***

A transit project in the Lake Oswego to Portland Corridor is one of several regional projects that would seek funding through FTA's New Starts and Small Starts funding programs. The financial analysis prepared during this alternatives analysis evaluated the sequencing of funding for this project based on current regional commitments. The Milwaukie to Portland Light Rail Project is the region's top priority for FTA New Starts funding following projects currently funded and under construction. The Columbia Crossing Project would also include a New Starts transit component and is proceeding concurrently with the Milwaukie to Portland LRT Project. The Portland Streetcar Loop project is the region's priority project for FTA Small Starts funding.

The Lake Oswego to Portland Corridor Project would be the region's next priority for FTA funding, with construction funding capacity becoming available starting in 2012 and continuing through 2017. In order to fit into the regional sequence of projects, the Steering Committee recognizes that the Portland to Lake Oswego Corridor Draft Environmental Impact Statement would need to be initiated in Fall 2008 as the Milwaukie to Portland Light Rail Project Final Environmental Impact Statement nears completion. In the Work Program Considerations section of these Steering Committee findings and recommendations, a number of steps are outlined which would need to be taken prior to the initiation of the DEIS, including preparation of a more detailed schedule that identifies key New Starts milestones and deliverables for the project.

## ***Willamette Shoreline Right of Way***

The Willamette shoreline rail right of way was purchased from the Southern Pacific Railroad in 1988 for \$2 million dollars by a consortium of local governments including Metro, the cities of Lake Oswego and Portland, Clackamas and Multnomah counties, the Oregon Department of Transportation (ODOT) and TriMet. Knowing that the Highway 43 corridor is very constrained; the purchase was made with the intent of preserving the corridor for future transit use.

The value of the right-of way has increased dramatically over 20 years. TriMet estimates currently value the right-of-way at \$75 million in 2007 dollars. This value is critical to a transit project that would use the right-of-way because the value of the right of way can be counted as local match for federal funds. A request for New Starts project funding from the Federal Transit Administration would typically be for 60 percent of a project's capital cost leaving 40 percent to be supplied locally. If \$75 million in right of way value were applied as part of local match, the remaining share of local funds required would be significantly reduced.

For the reasons stated above, whether an alternative uses the Willamette Shore Line right-of-way is a significant factor in project funding. For the Streetcar alternative, the \$75 million value of the Willamette Shore Line right of way could leverage as much as \$112.5 million in federal funds. Because it would not be using the right of way, the BRT alternative would not be able to leverage value of the right of way as part of its funding plan.

### ***A. Transit Mode: Streetcar***

Streetcar is the transit mode that best meets the project's purpose and need and the goals and objectives for the Lake Oswego to Portland Transit and Trail Alternatives Analysis.

The Steering Committee recommends that the **Streetcar mode** advance for further study in a Draft Environmental Impact Statement (DEIS) because:

- Streetcar would have the highest ridership of all the transit alternatives.
- Streetcar travel times would be up to 18 minutes faster between key corridor destinations and would be more reliable than the other transit alternatives. In peak travel periods, the Streetcar would provide faster travel times than autos between downtown and Lake Oswego. Faster travel time and higher reliability is gained through operation of streetcar in exclusive right of way on the Willamette Shore Line.
- Streetcar would have the lowest operating and maintenance costs of any alternative, including the No-Build. This is due to the marginal cost of extending a line that already operates in the corridor, the carrying capacity of the Streetcar vehicles compared to buses and the travel time advantage over BRT and No-Build. The Streetcar also replaces some corridor bus service, which results in a cost savings.
- The Streetcar alternative could leverage up to 3.3 million square feet of total new transit supportive development within three blocks of the proposed alignments.
- Streetcar is compatible with the existing transit system and would operate as an extension of the existing streetcar line that operates between NW 23<sup>rd</sup> Avenue and the South Waterfront.
- The \$75 million of value in the Willamette Shoreline right of way could leverage as much as \$112.5 million in federal funds if the project proceeds as a Federal Transit Administration (FTA) News Starts project.

The Steering Committee recommends that the **Bus Rapid Transit (BRT) mode** not advance for further study in a DEIS because:

- It may not be a practical option to achieve the travel time and ridership as modeled in this alternatives analysis. The queue bypass lanes used to bypass congestion at key intersections in the BRT alternative would have to be extended to between 500 and 1,000 feet instead of the 200 feet in the current designs and cost estimates.
- The BRT alternative would include property impacts at the key intersections where transit improvements are constructed. There would be additional property impacts associated with the additional queue jump length required to bypass congestion. This also would include removal of trees within the sidewalk area.
- Initial BRT capital costs were the lowest of all the transit alternatives, however, these do not include the additional costs of the longer queue jump lanes, which would be required.
- The BRT alternative would have the highest operating cost due to the greater number of vehicles required to meet demand, and the fact that the BRT line would require added service, unlike the Streetcar alternative which would replace existing bus service.
- For the entire length of the corridor, BRT travel times are subject to the same delays and congestion as the general traffic in areas where queue jump lanes are not provided, resulting in decreased reliability.
- The BRT alternative would not leverage transit supportive economic development beyond what would be expected with the No-Build alternative.
- The BRT alternative would not leverage the \$75 million value of Willamette Shore Line right of way, which could match federal transit funding of up to \$112.5 million.

The Steering Committee recommends that an **enhanced bus** alternative be studied as a more practical option for this constrained corridor. Such an option would avoid the property impacts of the BRT while providing improved service, bus pullouts where possible and better shelters and lighting at stations. Enhanced bus would act as the base case for comparison

to Streetcar alternatives in the DEIS. It would operate in mixed traffic, though this has implications for travel time, reliability and long-term efficiency of the line.

**B. Alignments: Willamette Shore Line and SW Macadam Avenue**

During the alternatives analysis process three alignments were evaluated in the John's Landing area: the Willamette Shore Line right of way, SW Macadam Avenue and the John's Landing Master Plan alignment. The Steering Committee recommends that two alignment options be studied further in the John's Landing area north of the Sellwood Bridge: the Willamette Shore Line right of way alignment and the SW Macadam Avenue alignment.

In addition, combinations of the two alignments should be evaluated to maximize the potential benefits and minimize impacts in the John's Landing area. The Steering Committee recognizes that alignments, which would avoid or minimize impacts through John's Landing, may need to be developed that are not part of either the Macadam Avenue or Willamette Shoreline alignments. These could include all or portions of the John's Landing Master Plan alignment or other rights of way.

The Steering Committee recommends that the **Willamette Shore Line right of way alignment** advance for further study for the following reasons:

- Streetcar on the Willamette Shore Line right of way would yield higher reliability and faster travel times than the other alignments due to the 100% exclusive right of way. In the DEIS, Issues of pedestrian and vehicle safety and proximity to private properties must be considered in the analysis of this alignment..
- The Willamette Shore Line right of way is in public ownership and could potentially be used as local match towards the capital cost of the project. Current estimates value the entire right of way at \$75 million. For the portion north of SW Nevada Street, the value of the right of way is estimated at approximately \$35 million, which could leverage an additional \$58 million in federal funds.
- The Willamette Shore Line Right-of-Way alignment has received public support from Lake Oswego residents because it has faster travel time, better reliability and less impact to Highway 43 traffic operations and safety than an alignment that would use Macadam Avenue in John's Landing.

The Steering Committee recommends that the **SW Macadam Avenue alignment** advance for further study for the following reasons:

- The SW Macadam Avenue alignment was the preferred alignment of the LOPAC based on community support, development potential, and the ability to avoid residential impacts of the Willamette Shore Line alignment. The LOPAC emphasized that the alignment should be on SW Macadam Avenue for as much of the length of the route as possible from the South Waterfront to the vicinity of the intersection of SW Macadam Avenue and SW Nevada Street.
- The SW Macadam Avenue alignment would leverage the most potential transit supportive development, approximately 2.2 million square feet of total new development in John's Landing.
- The SW Macadam Avenue alignment would avoid some of the potential property impacts associated with use of the Willamette Shore Line right of way.
- The SW Macadam Avenue alignment has emerged with the most public support from residents and businesses in John's Landing.

- As LOPAC recommended, a bicycle and pedestrian trail could be established along the Willamette Shore Line with the Macadam Avenue alignment. This trail has the potential to reduce conflicts between recreational and commuter user groups on the existing Willamette River Greenway trail by providing a more direct route through Johns Landing.

**Note:** The Steering Committee recognizes ODOT's expressed concerns regarding the SW Macadam Avenue alignment option and will ensure that questions related to potential streetcar operations in mixed traffic on SW Macadam Avenue are addressed.

South of the John's Landing area and north of the Trolley Terminus site in Lake Oswego, the Willamette Shore Line right of way was the only alignment to advance to the completion of the alternatives analysis. As part of its design option narrowing decision, The Steering Committee eliminated Highway 43 south of John's Landing from consideration as a Streetcar alignment for safety and operational reasons, making the Willamette Shore Line alignment the only option in this segment of the corridor. The *Evaluation Summary Report* contains a description of the alternative and design option narrowing decisions that were made during the alternatives analysis.

### **C. Lake Oswego Full-Length Termini: Albertsons and Safeway**

The Steering Committee recommends that the Albertsons and Safeway termini should advance into the DEIS. The Trolley terminus should not be advanced into the DEIS. These termini options are preferred because they would serve more population and employment, have higher ridership, disperse park and ride spaces, and have greater potential for transit-supportive development while demonstrating similar traffic impacts.

The Steering Committee recommends that the **Albertsons terminus** advance for further study for the following reasons:

- The Albertsons terminus would allow for the possible future extension of Streetcar south to West Linn or Oregon City.
- The Albertsons terminus has strong public support from the residents south of Lake Oswego and citizens within Lake Oswego. In 2006, Lake Oswego's Downtown Transit Alternatives Analysis Committee (DTAAC) recommended the Albertsons terminus site, partly because it would intercept traffic from the south before it reaches the center of downtown.
- The Albertsons terminus could generate substantial transit supportive development in Lake Oswego (0.9 million square feet).

The Steering Committee recommends that the **Safeway terminus** advance for further study for the following reasons:

- The Safeway terminus would allow for the possible future extension of Streetcar to the west.
- The Safeway terminus could provide park and ride access west of downtown Lake Oswego, intercepting traffic before it reaches the center of downtown.
- The Safeway site could leverage the most potential transit supportive development (1.1 million square feet in Lake Oswego), as compared to the Albertsons or Trolley terminus options.

- The Safeway site would allow the Streetcar to act as a circulator for trips within downtown Lake Oswego between the Foothills district and the west end of downtown.

The Steering Committee acknowledges that an at-grade crossing of streetcar with Highway 43 under the Safeway terminus option would require additional study and coordination with ODOT and the City of Lake Oswego to ensure that a safe and efficient crossing is feasible.

Additionally, the Steering Committee acknowledges that it may be necessary to construct a project that would utilize the **Trolley Terminus** as a **temporary interim terminus** while joint development construction plans are finalized at either the Albertsons or Safeway terminus sites.

#### ***D. Temporary Johns Landing Short Terminus - Minimum Operable Segment (MOS)***

If a full-length project cannot be built for financial or other reasons, the FTA allows for Minimum Operable Segments (MOS) to be considered as interim termini for a project. In this corridor, preliminary analysis was done for a MOS for Streetcar that would terminate in the vicinity of Nevada Street in John's Landing on either the Willamette Shore Line right-of-way or the Macadam Avenue alignments. A streetcar terminus in Johns Landing should include enhanced bus service to Lake Oswego as part of the complete alternative. The Steering Committee recommends that this alternative advance for further study for the following reasons:

- Significant public support was expressed for this option from participants in the process all through the corridor.
- A minimum operable segment (MOS) provides flexibility to initiate a project with available funding while pursuing additional funding to complete the remainder.

#### ***E. Johns Landing Permanent Terminus***

A permanent terminus in Johns Landing was selected by the LOPAC along with a full-length Streetcar alternative as their preferred options to be advanced into the DEIS. The LOPAC preference was that this terminus be paired with the Macadam Avenue alignment; in Johns Landing however this terminus option could be paired with either the Willamette Shoreline or Macadam alignments. A streetcar terminus in Johns Landing should include enhanced bus service to Lake Oswego as part of the complete alternative.. The Steering Committee recommends that this alternative be advanced into the DEIS for the following reasons:

- There is strong community support for this option in both Johns Landing and Dunthorpe.
- Analysis of a permanent terminus in addition to a temporary Minimum Operable Segment terminus would allow a full range of choices that could respond to funding constraints, environmental impacts and community preferences.
- This terminus option could maintain the ability to cross a new or reconstructed Sellwood Bridge in the future.

### **III. TRAIL CONSIDERATIONS**

#### ***Context***

As part of the Willamette River Greenway vision, a trail was proposed to run along the Willamette Shore Line right of way from Willamette Park in Portland to downtown Lake Oswego between Highway 43 and the Willamette River. As part of this Alternatives Analysis, the feasibility of a continuous trail between Portland and Lake Oswego was evaluated. Each transit alternative carried with it a complementary trail component. The BRT alternative would have used the Willamette Shore Line right of way for exclusive trail use. The Streetcar alternative, which the Steering Committee recommends further study, would require shared use of the Willamette Shoreline between Streetcar and a trail. The discussion below focuses on the trail components that would accompany the Streetcar alignments.

#### ***A. Trail Component***

The bike and pedestrian trail component of this study has received tremendous community support. A trail in the corridor would provide a critical link in the regional transportation system, connecting other regional and local trails. A continuous, safe and level trail component is a desired outcome in this corridor.

However, as currently designed, the trail component may not be practical to build for its entire length because of the high capital costs associated with shifting the Streetcar alignment to accommodate the trail in a tightly constrained right of way and very difficult topography. Because some portions of the trail are more easily implemented than others, and because funding for the entire trail may not be available at one time, the trail may need to be developed in phases.

#### ***B. Trail Component Refinement Next Steps***

The Steering Committee recommends that a trail component advance for further study. However, additional refinement is needed to determine how to advance the trail and the transit alternatives, either together or separately. The following identifies additional considerations for the trail and next steps:

- Further consideration is required to determine trail project sponsors and potential funding sources. Metro may or may not be the appropriate agency to lead the effort to advance a trail in the corridor.
- Additional design work is needed to identify ways to design and construct a trail in this corridor with lower capital costs and impacts while still accommodating the transit project. The trail design should change and adapt to constraints in the corridor. The width of the trail does not need to be the same for the entire alignment and flexibility will be required with regard to various jurisdictions design standards and requirements.
- Trail phasing should be considered so that the most cost-effective segments could move forward. The additional design work required for the more difficult and expensive portions will take more time and effort.

- Additional study is needed to evaluate the potential for the Portland and Western railroad bridge and an eastside connection to the Sellwood Bridge to provide a useful pedestrian and bike trail connection between Lake Oswego and Portland
- Further study is needed regarding the outstanding legal questions in order to facilitate decisions about the Willamette Shore Line right of way and its use for a trail.

## IV. WORK PROGRAM CONSIDERATIONS

Several actions are needed prior to advancing the project into the *Draft Environmental Impact Statement* phase of project development. Because a DEIS for the Lake Oswego to Portland Corridor is not included in Metro's current fiscal year budget, it is recognized that there will be a gap before the DEIS can commence.

1. **The following actions are recommended by the Steering Committee to advance the project into the *Draft Environmental Impact Statement*:**
  - a. **Metro should work with the FTA to Publish a *Notice of Intent to Prepare a Draft Environmental Impact Statement* in the Federal Register**, and initiate the DEIS Scoping Process. The FTA has recommended that this action be taken immediately. This action would ensure that all of the work completed during the alternatives analysis would be documented under the National Environmental Policy Act (NEPA). Public comment received prior to the Metro Council action on advancing the project into the DEIS phase would also be included as part of the NEPA record. The Scoping phase of a DEIS includes meetings with the public as well as local, state and federal agencies and affected tribal jurisdictions. The dates of the public, agency and tribal meetings would be published along with the notice of intent. The Scoping meetings present proposed alternatives and solicit input on potential additional alternatives that could be included in a DEIS.
  - b. **Metro should prepare a work scope, budget and schedule for the DEIS.** In order to secure funding for a DEIS, a cost estimate is required. The estimate is based on a scope of work and schedule that meet all appropriate FTA and NEPA requirements. This DEIS will need to meet new requirements for public and agency participation covered under Section 6002 of the SAFETEA-LU Act. Metro staff will convene the PMG to discuss and review the scope of work, schedule and budget, including agency roles and responsibilities during the DEIS phase.
  - c. **Metro should work with project partners, through the Project Management Group, to identify and secure funding for the DEIS.** Along with the scope, schedule and budget, Metro will work with project partners to identify potential sources of funding for the DEIS, as well as the next phases of project development, Preliminary Engineering and the Final Environmental Impact Statement. Potential sources of funding include FTA Section 5339 or other funds through the MTIP process, and local jurisdiction, TriMet, or ODOT contributions.

2. **In order to advance the goal of implementing a bicycle and pedestrian trail that connects Portland and Lake Oswego, the Steering Committee recommends that the following steps should be taken:**

a. **Metro, with assistance from project partners through the TAC and PMG, should develop a process to undertake the *Trail Refinement Next Steps* listed above.** The result of this process would be to resolve key issues and determine the relationship of the trail and the transit project during the DEIS phase. Of particular importance are:

- i. Involvement of the public and advocacy groups in improving the trail concept
- ii. Definition of the lead agency for advancement of a trail
- iii. Development of an approach to reduce capital costs
- iv. Analysis of possible phasing of trail segments
- v. Identification of potential trail capital funding sources

3. **Prior to initiation of the DEIS, Metro, with the assistance of the PMG, should develop actions or conditions for each participating agency that would help to ensure that the project can meet FTA thresholds with regard to ridership and financing and achieve the important development objectives for the Corridor.**

These could include:

- a. Development of local funding mechanisms
- b. Demonstrated progress toward development objectives
- c. Resolution of technical issues, e.g. ODOT concerns regarding the SW Macadam Avenue alignment
- d. Threshold criteria for selecting a full-length option over an MOS or vice versa

4. **The following Steering Committee concerns need to be addressed by Metro and its project partners as the project moves forward into a DEIS:**

- a. The alternative should be constructed in such a manner as to allow coordination with transportation alternatives across the Sellwood Bridge or its replacement.
- b. Maximize the alternative to establish a safe and attractive transit, pedestrian and bicycle route from Lake Oswego to Portland. Minimize negative impacts to residents and property values.
- c. The DEIS should include an analysis of the conflicts between use of the corridor as a commuter route and the stated desire of Johns Landing residents for a more pedestrian and retail friendly environment.
- d. Continue to analyze redevelopment opportunities in Johns Landing and Lake Oswego.
- e. Strive for closer integration of Johns Landing and South Waterfront urban planning and work to improve pedestrian, bicycle, automobile and streetcar connections.



- 5. Metro, TriMet, ODOT and the City of Portland should undertake a Johns Landing Alignment Refinement Study that would precede the start of the DEIS. This study would support the DEIS detailed definition of alternatives and should focus on:**
- a. The operational, design and cost trade-offs between the various alignment options in the Johns Landing segment.
  - b. Financial mechanisms to capture the value of the Willamette Shore Line so that the current value of the WSL right of way could be used to leverage federal dollars and be applied to a project as local match. These mechanisms could include purchase by adjoining property owners, formation of a local improvement district and/ or a right of way trade that could be counted as local match
  - c. Design solutions through and/or around the most constrained parts of the Willamette Shore Line alignment
  - d. Initial operating concepts for the Streetcar in Macadam Avenue that address ODOT concerns regarding shared traffic operations.
  - e. Refinement of temporary and permanent Johns Landing terminus locations.

**RESOLUTION 07-57**

**A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL SUPPORTING THE LAKE OSWEGO TO PORTLAND TRANSIT AND TRAIL ALTERNATIVES ANALYSIS STEERING COMMITTEE RECOMMENDATIONS FOR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT STUDY FOR THE HIGHWAY 43 CORRIDOR.**

**WHEREAS**, the Regional Transportation Plan (RTP) designates Highway 43 between Portland and Lake Oswego as a planned frequent bus line and the Willamette Shore Line Rail right of way as a planned/proposed streetcar line; and

**WHEREAS**, in 1988, the City of Lake Oswego, along with six other agencies, purchased the Willamette Shore Line rail right of way for the purpose of preserving the line for future high capacity transit ; and

**WHEREAS**, the City of Lake Oswego has adopted a Transportation System Plan as a component of its Comprehensive Plan that indicates that Hwy. 43 is a congested corridor, and that the Willamette Shore Line right of way should be preserved for future high capacity transit; and

**WHEREAS**, the City of Lake Oswego, along with other regional partners, has through its actions over the past 19 years, supported efforts to encourage future high capacity transit between Lake Oswego and Portland by contracting with the Oregon Electrical Railway Historical Society to operate a seasonal trolley on the Willamette Shore Line right of way in order to preserve its use for future high capacity transit; and

**WHEREAS**, in 2004, the City Council of the City of Lake Oswego appointed a Downtown Transit Alternatives Advisory Committee (DTAAC), consisting of neighborhood, business and transportation representatives, which examined preferred transit options for the City of Lake Oswego; and

**WHEREAS**, in 2005, Metro applied for and attained Metropolitan Transportation Improvement Program funds in order to conduct a Transit and Trail Alternatives Analysis to examine transit and trail options in the Highway 43 Corridor, including the Willamette Shore Line right-of-way, and the City of Lake Oswego contributed funding for a portion of the local match, along with the City of Portland and TriMet; and

**WHEREAS**, an Alternatives Analysis, consistent with Federal Transit Administration requirements, was conducted; and

**WHEREAS**, representatives on the Transit and Trail Steering Committee, consisting of elected and appointed members from the City of Lake Oswego, the City of Portland,



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**Section 4.** Effective Date. This Resolution shall take effect upon passage.

Considered and enacted at the meeting of the City Council of the City of Lake Oswego held on the 2nd day of October, 2007.

AYES:

NOES:

EXCUSED:

ABSTAIN:

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Judie Hammerstad, Mayor

ATTEST:

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Robyn Christie, City Recorder

APPROVED AS TO FORM:

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David Powell  
City Attorney



## Ted Wheeler, Multnomah County Chair

501 SE Hawthorne Blvd., Suite 600  
Portland, Oregon 97214  
Phone: (503) 988-3308  
Email: [mult.chair@co.multnomah.or.us](mailto:mult.chair@co.multnomah.or.us)

November 26, 2007

David Bragdon, President  
Metro Council  
600 NE Grand Avenue  
Portland, OR 97232-2736

Dear President Bragdon:

The Multnomah County Board of Commissioners has reviewed both LOPAC's and the Steering Committee Recommendation for the Lake Oswego to Portland Transit and Trails Alternatives Analysis. This letter will offer alternatives into a Draft Environmental Impact Statement and provide the following recommendation.

After reviewing the Steering Committee Revised Recommendation we agree with the need to continue to study a Streetcar as the preferred mode, especially recognizing the limitations of bus rapid transit. That said, we encourage that a streetcar to Johns Landing and enhanced bus to Lake Oswego be studied as an alternative for this corridor, as well as the Steering Committee's recommendation of studying Streetcar to Lake Oswego as an alternative. Regarding the alignments through the South Waterfront area, we support continued study of the Willamette Shore Line right of way and SW Macadam alignments. We recognize the value of the Willamette Shore Line right of way, but we do not wish to see its value as the driving force, only that it and the SW Macadam Avenue alignments each be given full consideration.

With respect to a terminus in Lake Oswego we believe that a Trolley Terminus be considered while the advantages of the other two locations (Safeway and Albertsons) receive further study. We recognize that there are several advantages that accompany streetcar development. First is the transit demand at the terminus as well as the potential for continuation of the line, and second the potential for economic development that might occur along an alignment. Therefore, consideration of a Trolley Terminus is also important to allow some flexibility before committing to one terminus or the other.

At our briefing we also heard from citizens from unincorporated Multnomah County as well as members of LOPAC and wish to support their recommendation. While their recommendation(s) is included in the Steering Committee's Revised Recommendation, there are some key differences that bear consideration. First, we would like to reiterate our desire to see the SW Macadam alignment studied as per LOPAC's recommendation. Second, while we wish to see the Trolley Terminus as an alternative, we again concur that studying a terminus in Johns Landing should also be reviewed as an alternative with enhanced bus service to south to Lake Oswego.

Providing a bicycle/pedestrian component is very important to Multnomah County. We recognize the physical constraints involved as well as the possible legal issues of the Willamette Shore Line right of way. We encourage establishing a subcommittee to closely review the options and make recommendations as appropriate.

Finally, the effect of any of the alternatives on the environment must be a component of the DEIS. We continued to be concerned about the potential impact any of the alternatives may have on the environment and believe that the preferred alternative be one that also meets key sustainability measures.

Multnomah County supports moving ahead with the DEIS as recommended by both LOPAC and the Steering Committee. We thank you for this opportunity to lend our support.

Sincerely,

A handwritten signature in black ink that reads "TED WHEELER". The signature is written in a cursive, slightly slanted style.

Ted Wheeler  
Multnomah County Chair

TW/ml

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION 07-3887, FOR THE PURPOSE OF IDENTIFYING ALTERNATIVES TO ADVANCE INTO A DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PORTLAND TO LAKE OSWEGO CORRIDOR TRANSIT PROJECT**

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Date: December 13, 2007

Prepared by: Ross Roberts

## **BACKGROUND**

### **Council Action**

This resolution would effectively advance the Lake Oswego to Portland Corridor into the Draft Environmental Impact Statement phase of project development, and would identify transit mode, terminus and alignments to be studied in the DEIS. In addition, this action would set in motion activities to prepare for the DEIS including development of work program, budget, schedule, and funding plan for the DEIS. At the completion of the DEIS, the Council would select a locally preferred alternative.

### **Policy Context**

The Region 2040 Growth Concept calls for high capacity transit connections between centers. The 2004 Regional Transportation Plan called for a corridor refinement plan in the Lake Oswego to Portland Corridor to examine high capacity transit improvements. Subsequently, the Lake Oswego to Portland Transit and Trail Alternatives Analysis was initiated by Metro in July 2005 to evaluate transit alternatives that would connect the Portland Central City with the Lake Oswego Town Center. The Council funded the alternatives analysis through two MTIP allocations. Metro is lead agency for the project, and TriMet, ODOT, the cities of Lake Oswego and Portland, Multnomah and Clackamas Counties and Portland Streetcar Inc are project partners.

### **Project Decision-Making**

The Metro Council has final authority for this project decision and is acting on a recommendation by the Transit Alternatives Analysis Steering Committee. The Steering Committee provides policy oversight and includes elected officials or executives from all of the project partners. Councilors Burkholder and Colette are the Council's representatives on the committee and serve as co-chairs. In addition to the project partners, the chairs of the Lake Oswego to Portland Project Advisory Committee (LOPAC) and the Portland Streetcar Loop Project Advisory Committee have seats on the Steering Committee. The LOPAC and the Project Management Group, made up of jurisdiction senior staff, made recommendations to the Steering Committee on alternatives to be advanced into a Draft Environmental Impact Statement (DEIS). The Steering Committee considered those recommendations as well as technical analysis from the *Evaluation Summary Report Public Review Draft*, and public comment as heard at a public hearing in July 2007, and as summarized in the *Public Comment Report*.

### **Public Involvement**

An extensive public involvement process was undertaken from July 2005 to the present that included testimony before and after every meeting of the LOPAC. Community design workshops were held early in the process in May 2006 to identify a wide range of alternatives for transit and trail options in the corridor. Small group meetings followed from September to November 2006 to refine alignments. Project staff met with neighborhood groups throughout the corridor, including West Linn. Two open

houses were held to review the technical analysis in June 2007. Individual property owner meetings were held as needed throughout the process. A bus rider survey was completed of 670 transit users in the corridor. The project also utilized newsletters, and targeted mailings to advertise meetings and provide updates. In all, the public involvement effort resulted in over 1,200 direct citizen contacts.

### **Steering Committee Recommendation**

The Steering Committee Recommendation was adopted on September 10, 2007. Subsequent to that adoption, concerns were raised by Chair and Vice-Chairs of LOPAC and residents of Dunthorpe. After meetings with the interested parties that included Council President Bragdon and Councilor Burkholder, a proposed amendment to the recommendation was forwarded to the Steering Committee by Councilor Burkholder, and was adopted on November 19, 2007. The amendment added the permanent Johns Landing terminus preferred by LOPAC to the alternatives to be studied in the DEIS and added language to the work program considerations that would add an alignment refinement study in Johns Landing that would precede the DEIS and be undertaken by Metro, TriMet, the City of Portland and ODOT.

The Steering Committee Recommendation, as amended is summarized below:

- **Context.** After the Portland to Milwaukie Light Rail Project and Portland Streetcar Loop, the Lake Oswego to Portland Corridor would be the region's next priority for Federal Transit Administration funding. The publicly owned Willamette Shore Line right-of-way is valued at \$75 million (2007 dollars) and as local match for FTA New Starts funding, it could leverage as much as \$112.5 million (2007 dollars) in federal funds.
- **Transit Mode.** Streetcar was recommended to be advanced for further study because it would have the highest ridership, fastest travel times, highest reliability, and lowest operating and maintenance costs of any alternative including the No-Build. Streetcar could leverage substantial development - up to 3.3 million square feet of total new transit supportive development within three blocks of the alignment. Streetcar would also be compatible with the existing transit system, operating as an extension of the existing streetcar line. The Steering Committee did not recommend that Bus Rapid Transit be advanced due to the impracticality of proposed queue jump lanes, but did recommend that an enhanced bus alternative be studied further in the DEIS.
- **Alignment.** Two alignments were recommended to be studied further in Johns Landing: the Willamette Shore Line right-of-way and SW Macadam Avenue – with combinations of the two primary alignments and all or part of the Johns Landing Masterplan alignment to be evaluated to maximize the potential benefits and minimize adverse impacts in the Johns Landing area. The Willamette Shore Line was recommended because it would provide higher reliability and faster travel times, and could be used for \$75 million (2007 dollars) in local match. This alignment received a high level of public support from Lake Oswego residents. The SW Macadam Avenue alignment was selected because it was the preferred alignment of LOPAC, could leverage the most potential transit supportive development and would avoid proximity impacts of the Willamette Shore Line alignment. This alignment received a high level of public support from residents and businesses in Johns Landing.
- **Terminus.** The Steering Committee recommended two Lake Oswego full-length terminus options, the Albertsons and Safeway sites. A Temporary Johns Landing Terminus option was included as an interim step to a full length project. A Permanent Johns Landing Terminus option was added by the November 19, 2007 amendment.
- **Trail.** A continuous, safe bike and pedestrian trail between Lake Oswego and Portland's South Waterfront area received tremendous community support. However, as currently designed, high



capital costs make trail implementation difficult. Additional refinement is needed to determine how to advance the trail either separately or with the transit alternatives. Other refinement issues include identification of funding sources, determination of lead agency, additional design work, development of a trail segment phasing strategy, evaluation of the potential for use of the Portland and Western railroad bridge and an eastside connection to the Sellwood Bridge and evaluation of outstanding legal questions.

- Work Program Considerations. The Steering Committee Recommendation also includes activities would be initiated by Metro and our project partners in preparation for the DEIS:
  - Initiate the FTA Draft Environmental Impact Statement process.
  - Prepare DEIS scope, budget and schedule.
  - Develop actions or conditions for each participating agency that would help to ensure that the project can meet FTA thresholds with regard to ridership and financing and achieve the important development objectives for the Corridor.
  - Undertake a Johns Landing Refinement Study prior to the start of the DEIS
  - Develop a process to refine trail options in the corridor
  - Continue coordination with the Sellwood Bridge project and ongoing planning activities in South Waterfront
  - Ensure that impacts to residents and property values are minimized
  - Continue to analyze redevelopment opportunities in Johns Landing and Lake Oswego.

## ANALYSIS/INFORMATION

### 1. Known Opposition

- Opposition may be encountered from Johns Landing residents, business interests or LOPAC members that have advocated for removing the Willamette Shore Line from further study in the Johns Landing segment. The LOPAC recommendation would have taken the Willamette Shore Line off the table in favor of a SW Macadam alignment. The Steering Committee felt that the Willamette Shore Line's value as local match, shortest travel times and highest reliability made it too valuable to drop at this early stage of project development. The Macadam alignment is included in the Steering Committee recommendations, however added work is needed to refine the alignment and address operational challenges on SW Macadam. In their November 19 amendment, the Steering Committee called for Metro to undertake a Johns Landing Alignment Refinement Study along with PDOT, ODOT and TriMet prior to the start of the DEIS.
- Dunthorpe opposition could be encountered, although the inclusion of a permanent streetcar terminus alternative in Johns Landing is an option that could end the project north of Dunthorpe. Opposition to the full-length streetcar alternative can be expected.
- Clackamas County and Lake Oswego voted against the November 19 amendment to add a permanent Johns Landing terminus to the Steering Committee recommendation, citing the project's purpose and need to connect Lake Oswego and Portland.

### 2. Legal Antecedents

The proposed action, initiating a DEIS in the Lake Oswego to Portland Corridor would fall under the jurisdiction of the National Environmental Policy Act (NEPA) and would be undertaken in accordance with Federal Transit Administration policies, guidance and rules.

Further, there are several Metro Council resolutions that provide legal antecedents including the following:

**Resolution No. 86-715** For the Purpose of Entering Into an Intergovernmental Agreement and Expending Funds to Preserve the Southern Pacific Right-of-Way (Jefferson Street Branch) Between Portland and Lake Oswego.

**Resolution No. 05-3569** For the Purpose of Confirming Metro Council Representatives to the Eastside and Portland/Lake Oswego Transit Alternatives Analysis Steering Committee and Identifying Other Representative Categories to the Committee.

**Resolution No. 05-3647** For the Purpose of Approving a Consultant Services For the Lake Oswego to Portland Transit Alternatives Analysis.

### **3. Anticipated Effects**

Adoption of the Steering Committee recommendation would define the alternatives to be evaluated in the DEIS and direct staff to prepare a DEIS scope, schedule and budget. Staff would also begin the Johns Landing alignment refinement study and begin to seek funding for the DEIS from FTA and local partner jurisdictions. In addition, work would begin to refine the trail alternatives and find funding sources for trail construction.

### **4. Budget Impacts**

Metro's FY 2008 budget includes the second half of the SAFETEA-LU Streetcar Earmark, and some of those funds can be used for the Lake Oswego to Portland Corridor. This funding should be sufficient for the alignment refinement study in Johns Landing and to prepare for DEIS start-up. Approximately \$5.5 million would be required for the DEIS, based on recent experience with the Portland to Milwaukie Light Rail SDEIS. Metro staff prepared an appropriations request for \$4.0 million in FTA Section 5339 funding for FY 09. The remainder of the DEIS funding would be sought from local partners.

## **RECOMMENDED ACTION**

Approve Resolution No. 07-3887, For The Purpose of Identifying Alternatives to Advance to A Draft Environmental Impact Statement for the Portland to Lake Oswego Corridor Transit Project.

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN TRIMET, METRO, CITY OF LAKE OSWEGO, CLACKAMAS COUNTY AND CITY  
OF PORTLAND FOR  
THE PORTLAND LAKE OSWEGO TRANSIT CORRIDOR PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between Tri-County Metropolitan Transportation District, a mass transit district organized under the laws of the State of Oregon, hereinafter referred to as "TriMet," Metropolitan Service District hereinafter referred to as Metro, Clackamas County, hereinafter referred to as "Clackamas", City of Lake Oswego, a municipal corporation of the State of Oregon, hereinafter referred to as "Lake Oswego", and the City of Portland, a municipal corporation of the State of Oregon, hereinafter referred to as "Portland". The parties to this Agreement are collectively known as Project Sponsors.

**RECITALS**

1. The Portland-Lake Oswego Transit Corridor Project ("Project") was authorized in the reauthorization of the Transportation Bill ("SAFETEA-LU") signed into law on August 10, 2005. This Agreement concerns the completion of the Draft Environmental Impact Statement ("DEIS") and Federal Transit Administration ("FTA") approval to enter into and commence preliminary engineering ("PE").
2. The Regional Transportation Plan, adopted by the Metro Council in 2004, called for a corridor refinement plan for evaluation of high capacity transit options for the Lake Oswego to Portland Highway 43 corridor.
3. In 2004, the Joint Policy Advisory Committee on Transportation ("JPACT") and the Metro Council allocated \$1.16 million to study the transit and trail alternatives in the Lake Oswego to Portland Willamette Shore Line Corridor.
4. In 2005, Metro initiated an alternatives analysis consistent with FTA requirements to assess the feasibility of transit and trail alternatives between Lake Oswego and Portland.
5. A wide range of alternatives was evaluated in the alternatives analysis, including No-Build, Bus Rapid Transit with multiple alignments, Streetcar with multiple alignments, River Transit, and accompanying trail alignments.
6. On December 13, 2007, Metro Council adopted the *Lake Oswego to Portland Transit and Trail Alternatives Analysis: Alternatives to Be Advanced into a Draft Environmental Impact Statement and Work Program Considerations*, which is attached hereto as Exhibit A and incorporated by this reference herein, which required that Metro perform further study of the alignment in the John's Landing neighborhood (the Refinement Study).
7. In the reauthorization of SAFETEA-LU signed into law on August 10, 2005, Metro received Streetcar Corridor Funding that has been used to support work on the Portland Lake Oswego Transit Study. Work on the Refinement Study began in December 2008, with a budget of \$471,000. Work on the Refinement Study is to be conducted from December 2008 to June 2009, and will prepare information in support of the DEIS.
8. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, which shall be considered a part of the Agreement, it is agreed by and between the parties hereto as follows:

### **TERMS OF AGREEMENT; PROJECT DESCRIPTION & COSTS**

1. The beginning date of this Agreement is December 1, 2008. The termination date of this Agreement is December 31, 2013. Metro is leading the Refinement Study, which will identify the options that will be formally considered in the DEIS. Once the Refinement Study is completed, TriMet will assume the lead contracting role for the Project, with Metro as lead agency for NEPA work. Metro has received federal funding for the Refinement Study. Local funding has been committed by Portland (\$57,000) and by Lake Oswego (\$57,000). Metro shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement.
2. This Agreement is subject to a financial assistance agreement between TriMet and the Federal Transit Administration (FTA). TriMet shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "recipient" set forth in the October 1, 2008 FTA Master Agreement between TriMet and the FTA; (2) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; (3) OMB Circular A-87, Cost Principles Applicable to Grants and Contracts with State and Local Governments; and (4) FTA Circular 5010.1D.
3. Costs incurred after December 1, 2008, which are deemed allowable costs for this Project, will be reimbursed once all parties have signed this Agreement. Metro shall maintain the budget, contracts and reporting for the Refinement Study phase of the project. TriMet shall maintain the budget for the DEIS phase and each additional phase of the Project as determined by the Project Sponsors.
4. Upon Metro's completion of the Refinement Study, TriMet will assume the lead contracting role for the Project, on behalf of the Project Sponsors, beginning with the DEIS. Metro, as lead agency for NEPA work, shall participate, guide and support TriMet on the DEIS. Metro's role as lead agency for NEPA work shall be further defined by an Intergovernmental Agreement (the "DEIS-LPA IGA") between Metro and TriMet. The initial funding is intended to complete the DEIS and receive FTA approval to enter and commence PE for the entire Project. The Project is described in Exhibit B, which is attached hereto and incorporated by this reference herein. The Project Sponsors agree to establish a Steering Committee to establish the policy commitments and a project management group to oversee the preparation of the technical analysis and recommendations.
5. The Portland-Lake Oswego Transit Corridor Project is intended to address the transit access needs for the entire corridor. The process calls for the analysis of options, preparation of the DEIS, selection of the locally preferred alternative, application to the FTA for capital funding, engineering design and construction of the locally preferred alternative. While the Project may be developed in phases, all Project Sponsors are

committed to selecting a solution that best suits the entire corridor and support its consideration as a single project.

6. A combination of funding sources will be used to finance the Project. Funding in the amount of \$465,355 to support the Refinement Study, which will be conducted in 2009, is identified and committed in this Agreement. The Refinement Study will be funded as follows: \$351,355 existing federal streetcar funds from Metro, \$57,000 of local match funds from Portland, and \$57,000 of local match funds from Lake Oswego. Approximately \$21,000 of the local match funds provided by the Portland and Lake Oswego will be used as match for Refinement Study expenses incurred prior to December 1, 2008. Portland and Lake Oswego will pay these local match funds to Metro no later than April 15, 2009. Work on the Refinement Study will be performed by both TriMet and Metro, and will be further described in Amendment No. 3 to the Agreement between TriMet and Metro for Lake Oswego Transit Alternatives Analysis (Metro Contract No. 927168 and TriMet Contract No. GH070180TL). Other than the Refinement Study work described in this Paragraph, no funds will be obligated or expended until the DEIS-LPA IGA is executed between TriMet and Metro.
7. Funding in the amount of \$5,586,000 has been identified to support the DEIS, FTA application and Preliminary Engineering. The Project Sponsors agree to pursue additional grants from the FTA 5339 program for \$4,000,000 toward funding the DEIS and concept design in order to reallocate MTIP and local match toward the completion of the FEIS and engineering design of the Project. The Project Sponsors agree to seek alternative sources of funding in the event the Section 5339 funds are not obtained.
8. Federal sources of funding are proposed and pending approval from Metro and FTA. Federal FY 12-13 regional flexible transportation funding through the Metro allocation process totaling \$4,000,000 will be sought to support the Project, with final Metro approval anticipated by August 2009. Due to the need for program funding for this Project before October 1, 2009, Metro will seek to execute funding commitments to advance \$972,673 of funds to the Project by reprogramming funds from other transportation projects such as Portland's Central Eastside Bridgeheads (Key #13528).

Regional flexible transportation funding of \$1,227,327 is being sought for the DEIS/FTA Application portion of the Project. Funding approved through this process can be obligated beginning October 1, 2009. It is understood that if funds are expended at that time, the reimbursement from these funds would not occur until FY 2012-13. In that case, one of the Project Sponsors in this Agreement will have to advance funding to enable expenditure as scheduled. In that case, the Project Sponsors agree to work in good faith to identify an advance funding source and arrangements for repayment. If no such funding source is identified by August 30, 2009, work on the Project will stop after October 31, 2009 until such funds are identified.

Metro approval of the proposed and pending federal sources of funding set forth in this paragraph is expressly conditioned upon the execution of a mutually satisfactory DEIS-LPA IGA with TriMet.

9. Clackamas County commits \$850,000 to the Project, of which \$220,000 is committed to match funding for the DEIS phase of the project, which will be paid to TriMet no later than April 1, 2009. The remaining \$630,000 will be provided to support the preliminary engineering phase of the project, and will be paid to TriMet no later than March 31, 2010.

10. Lake Oswego commits \$150,000 in support of the Project, as follows: \$57,000 payable to Metro by April 15, 2009 to support the Refinement Study; \$37,000 for the DEIS/FTA Application, which shall be paid to TriMet upon notification from TriMet that full funding for the DEIS/FTA Application phase is secured, with the anticipated payment to be made on November 1, 2009; and \$56,000 for the FEIS and preliminary engineering work, which will be paid to TriMet no later than March 31, 2010. Lake Oswego also agrees to advance \$1,500,000 to TriMet to support the DEIS, which will be provided to TriMet in monthly draws in 2009 based upon verification of expenditures for the DEIS with draws anticipated from April 2009 to September 2009. Lake Oswego's obligation to provide these advance payments is contingent upon TriMet securing a commitment for \$1.8 million in MTIP funding for FY 2012 for preventive maintenance. TriMet agrees to repay \$1,500,000 to Lake Oswego by September 30, 2012. The amount of the repayment shall be \$1,800,000. TriMet's repayment will be in unrestricted general funds subject to the condition that \$1.8 million of MTIP funding in FY 2012 is provided for preventive maintenance. If TriMet fails to make the repayment by September 30, 2012, interest on the outstanding amount owed shall accrue at the rate of 9% per year.
11. Metro agrees that, conditioned upon the execution of a mutually satisfactory DEIS-LPA IGA with TriMet, Metro will request programming of regional flexible transportation funds for FY 2012-13 that support the Lake Oswego Transit Corridor Project totaling \$4,000,000. Funding would be apportioned \$972,673 to City of Portland for street improvements listed in item 13528 of the STP, \$1,227,327 for Portland Lake Oswego Transit Corridor Project, and \$1,800,000 to TriMet for STP funding for preventive maintenance.
12. Portland has identified the sources of funding for the full commitment contained in this agreement through the DEIS process. This includes \$57,000 payable to Metro by April 15, 2009 to support the Refinement Study and \$83,000 (\$23,000 payment and \$60,000 in-kind services) for the DEIS and FTA application as match for MTIP funding of \$1,227,327. The DEIS payment shall be due on November 1, 2009 upon notification from TriMet that the regional flexible transportation funding can be utilized to support the DEIS work. Portland agrees to seek an additional \$860,000 from the Portland City Council in the FY 10-11 budget to support the FEIS and preliminary engineering.
13. The sources of funding for the DEIS, DEIS and FTA Application and FEIS/Preliminary Engineering are attached hereto as Exhibit C, which is incorporated by this reference herein.

#### **TRIMET RESPONSIBILITIES**

1. TriMet shall perform the work and provide the deliverables adopted by the Steering Committee. The description of phases is included in Exhibit B, which is attached hereto and incorporated herein by this reference.
2. TriMet shall perform the work under this Agreement as an independent contractor. TriMet shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work and for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

3. In the event that TriMet believes that the funding set forth in this Agreement is insufficient to complete the work, TriMet shall so notify the other Project Sponsors. In such event, the other Project Sponsors agree to work in good faith in order to authorize sufficient funding to complete the work. If sufficient funding is not promptly forthcoming, TriMet may terminate this Agreement.
4. TriMet shall present progress reports and deliverables, as applicable, to the Project Sponsors once a month.
5. TriMet shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, TriMet shall maintain any other records pertinent to this Agreement in such a manner as to clearly document TriMet's performance. TriMet acknowledges and agrees that Project Sponsors and FTA shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. TriMet also acknowledges and agrees that TriMet shall retain such documents for a period of three years after termination of this Agreement, or such longer period as may be required by applicable law. In the event of, any audit, controversy or litigation arising out of or related to this Agreement, TriMet shall retain such documents until the conclusion thereof. Copies of applicable records shall be made available to Project Sponsors upon request.
6. If TriMet engages a personal services contractor(s) to accomplish any of its work under this Agreement, TriMet shall:
  - a. Provide Project Sponsors with the opportunity to participate in the personal services contractor selection process;
  - b. Select personal services contractor(s) in accordance with TriMet procedures and applicable law, and advise Project Sponsors of TriMet's recommendation;
  - c. Provide a TriMet project manager to:
    - i) be TriMet's principal contact person for the personal services contractor(s) for the Project;
    - ii) monitor and coordinate the work of the personal services contractor(s);
    - iii) review and approve bills and deliverables (work products) produced and submitted by the personal services contractor(s); and
    - iv) advise Project Sponsors regarding payments to the personal services contractor(s).
7. All work products that result from TriMet's agreement(s) with personal service contractor(s) for TriMet's work under this Agreement shall be considered the joint work products of the Project Sponsors. The Project Sponsors intend that such work products be deemed "work made for hire" of which the Project Sponsors shall be jointly deemed the author. If, for any reason, the work products produced by any personal service contractor(s) are not deemed "work made for hire," TriMet agrees to jointly assign rights, title, and interest in and to any and all of the work products to the Project Sponsors, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.

8. TriMet shall ensure that any work products produced pursuant to this Agreement include the following statement:

This Project is partially funded by the Federal Transit Administration.

9. TriMet shall submit two hard copies of all final work products produced in accordance with this Agreement to Project Sponsors.
10. Within 30 days after the termination date of this Agreement, TriMet shall provide Project Sponsors with a completion report. The report must contain:
  - a. A summary of qualified costs incurred for the Project, including reimbursable costs and matching amount;
  - b. The intended location of records (which may be subject to audit); and
  - c. A list of final deliverables.
11. Without limiting the generality of the foregoing, TriMet expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections V and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS.659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
12. All employers, including TriMet, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. TriMet shall require each of its contractors to comply with these requirements.

### **METRO RESPONSIBILITIES**

1. Metro shall perform the work and provide the deliverables for the Refinement Study, as set forth in the attached Exhibit B, which is incorporated herein by this reference.
2. Metro shall perform the work under this Agreement as an independent contractor. Metro shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work and for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.
3. In the event that Metro believes that the funding set forth in this Agreement is insufficient to complete the work, Metro shall so notify the other Project Sponsors. In such event, the Project Sponsors agree to work in good faith in order to authorize sufficient funding to complete the work. If sufficient funding is not promptly forthcoming, Metro may terminate this Agreement.
4. Metro shall present progress reports and deliverables, as applicable, to the Project Sponsors once a month.



5. Metro shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Metro shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Metro's performance. Metro acknowledges and agrees that Project Sponsors and FTA shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. Metro also acknowledges and agrees that Metro shall retain such documents for a period of three years after termination of this agreement, or such longer period as may be required by applicable law. In the event of, any audit, controversy or litigation arising out of or related to this agreement, Metro shall retain such documents until the conclusion thereof. Copies of applicable records shall be made available to Project Sponsors upon request.
6. If Metro engages a personal services contractor(s) to accomplish any of its work under this Agreement, Metro shall:
  - a. Provide Project Sponsors with the opportunity to participate in the personal services contractor selection process;
  - b. Select personal services contractor(s) in accordance with Metro procedures and applicable law, and advise Project Sponsors of Metro's recommendation;
  - c. Provide a Metro project manager to:
    - i) be Metro's principal contact person for the personal services contractor(s) for the Project;
    - ii) monitor and coordinate the work of the personal services contractor(s);
    - iii) review and approve bills and deliverables (work products) produced and submitted by the personal services contractor(s); and
    - iv) advise Project Sponsors regarding payments to the personal services contractor(s).
7. All work products that result from Metro's agreement(s) with personal service contractor(s) for its work under this Agreement shall be considered the joint work products of the Project Sponsors. The Project Sponsors intend that such work products be deemed "work made for hire" of which the Project Sponsors shall be jointly deemed the author. If, for any reason, the work products produced by any personal service contractor(s) are not deemed "work made for hire," Metro agrees to jointly assign rights, title, and interest in and to any and all of the work products to the Project Sponsors, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
8. Metro shall ensure that any work products produced pursuant to this Agreement include the following statement:

This Project is partially funded by the Federal Transit Administration.
9. Metro shall submit two hard copies of all final work products produced in accordance with this Agreement to Project Sponsors.
10. Within 30 days after the termination date of this Agreement, Metro shall provide Project Sponsors with a completion report. The report must contain:

- a. A summary of qualified costs incurred for the Project, including reimbursable costs and matching amount;
  - b. The intended location of records (which may be subject to audit); and
  - c. A list of final deliverables.
11. Without limiting the generality of the foregoing, Metro expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections V and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS.659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
  12. All employers, including Metro, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Metro shall require each of its contractors to comply with these requirements.

### **GENERAL PROVISIONS**

1. Budget modifications and major adjustments from the work described in Exhibit B must, as applicable, be processed as written amendments to this Agreement signed by all Project Sponsors and as written amendments to any personal services contract(s).
2. This Agreement may be terminated by mutual written consent of all parties.
3. Metro may terminate this Agreement effective upon delivery of written notice to Project Sponsors, or at such later date as may be established by Metro, under, but not limited to, any of the conditions set forth in this Paragraph.

TriMet may terminate this Agreement effective upon delivery of written notice to Project Sponsors, or at such later date as may be established by TriMet under, but not limited to, any of the following conditions:

- a. Failing to timely receive financial commitments from Project Sponsors as specified in this Agreement.
- b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Metro or TriMet is prohibited from paying for such work from the planned funding source.
- c. If TriMet or Metro fails to receive appropriations, limitations or other expenditure authority sufficient to allow TriMet or Metro, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this agreement.
- d. TriMet has performed its obligations under Paragraph 3 of TriMet Responsibilities, above, and the parties are unable to obtain sufficient funding to complete the work.
- e. Metro has performed its obligations under Paragraph 3 of Metro Responsibilities, above, and the parties are unable to obtain sufficient funding to complete the work.

Any termination of this agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

4. In the event of litigation by or against a third party or parties related to this Agreement or the work or work products created hereunder, the Project Sponsors agree to work in good faith to establish a fair allocation of costs to be shared associated with such litigation, including but not limited to attorney fees and expert witness fees.
5. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to each Project Sponsor at the address or number set forth below, or to such other addresses or numbers as any party may hereafter indicate by giving notice in accordance with this Paragraph. Any communication or notice so addressed and mailed is considered to have been delivered five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine and confirmed by telephone notice to the Project Sponsor representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
6. All communications between the parties regarding this agreement shall be directed to the parties' respective Project Sponsor representatives as indicated below:

TriMet – Joe Recker  
 710 NE Holladay Street  
 Portland, OR 97232  
 Phone (503) 962-2893

Metro – Ross Roberts  
 600 N.E. Grand Avenue  
 Portland OR 97232  
 Phone (503) 797-1752

Lake Oswego – Brant Williams  
 380 A Avenue  
 P.O. Box 369  
 Lake Oswego, OR 97024  
 Phone (503) 635-6138

Clackamas County – Elissa Gertler  
 Public Services Building  
 2051 Kaen Road  
 Oregon City, OR 97045  
 Phone (503) 742-5900

Portland – Paul Smith  
 1120 S.W. Fifth Avenue, #800  
 Portland, OR 97204  
 Phone (503) 823 7736

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to any jurisdiction's conflict of law principles, rules or doctrines. Any claim, action, suit or proceeding (collectively, "Claim") between any Project Sponsors that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon or the United States District Court for the District of Oregon in Portland, Oregon, as applicable. In no event shall this section be construed as a waiver by any the parties of any form of defense or immunity from any claim or from the jurisdiction of any court.
8. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any party unless in writing and signed by all parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The

failure of any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and their seals as of the day and year hereinafter written.

**Clackamas County**

**Lake Oswego**

By: \_\_\_\_\_  
Lynn Peterson, Chair  
Clackamas County Commission

By: \_\_\_\_\_  
Jack Hoffman  
Mayor

**Metro**

By: \_\_\_\_\_  
Michael Jordan  
Chief Operating Officer

**City of Portland**

**TriMet**

By: \_\_\_\_\_  
Sam Adams  
Mayor

By: \_\_\_\_\_  
Fred Hansen  
General Manager

By: \_\_\_\_\_  
Gary Blackmer  
City Auditor

**APPROVED AS TO FORM FOR CITY OF PORTLAND: APPROVED AS TO FORM FOR TRIMET:**

By: \_\_\_\_\_  
Mark Moline  
Deputy City Attorney

By: \_\_\_\_\_  
Lance Erz  
Assistant General Counsel

**Portland to Lake Oswego Transit and Trail Alternatives Analysis**  
**Project Description**  
**Exhibit B**

The Portland to Lake Oswego Transit and Trails Alternatives Analysis is intended to identify the feasibility of a federally eligible project for improving access in the Highway 43/Willamette Shore Corridor connecting Lake Oswego to Portland.

Metro has conducted the alternatives analysis to date and will continue to lead the refinement analysis, Draft Environmental Impact Statement and selection of the Locally Preferred Alternative.

TriMet will serve as the contracting agency commencing with the Draft Environmental Impact Statement. Lake Oswego, Portland and Clackamas County will participate in the Steering Committee with TriMet, metro and the Portland Streetcar, Inc. (operator of the current streetcar in Portland) to conduct the analysis and participate in the implementation of the locally preferred alternative.

The project intends to seek federal support through the Federal Transit Administration capital grants program. TriMet will be the grant recipient.

The project will be conducted in phases based upon selection of alternatives. Funding has been identified for the initial phases of the analysis. The agreement includes provisions that allow for conducting the engineering and construction of the locally preferred alternative. Funding for subsequent phases can only be identified once the LPA is selected.

The following phases have funding identified in the agreement:

**Refinement:** Metro has received \$351,355 in Streetcar Corridor Funding money from FTA which has been matched by \$57,000 from the City of Portland and \$57,000 from Lake Oswego. The purpose of the refinement study is prepare alternatives for the Draft Environmental Impact Statement (DEIS). The refinement will also address the role of the trail considerations in the DEIS.

**Draft Environmental Impact Statement:** Metro will serve as lead and TriMet will serve as contracting agency for the conduct of the DEIS and selection of the Locally Preferred Alternative (LPA). A combination of MTIP, Lake Oswego loan to TriMet and match from Clackamas County will fund this effort which is scheduled to be published in March 2010.

**Final Environmental Impact Statement and FTA Application:** The Final Environmental Impact Statement and submittal of the grant application to FTA would be prepared in this phase based upon the selection of the LPA. Partial funding for this phase would come from MTIP and match provided by the City of Portland.

**Preliminary Engineering:** With approval from FTA to proceed with preliminary engineering, TriMet would authorize design work to begin on the LPA. Partial funding for this phase has been identified which includes a request for FTA Section 5339 funding, City of Portland, Clackamas County and Lake Oswego funds.

**Portland Lake Oswego Transit Corridor  
Cost of Phases**

**EXHIBIT C**

**METRO CONTRACTING**

<b>Refinement Study</b>	<b>Dec 08-Apr 09</b>
Corridor Funding	\$351,355
City of Portland	\$57,000
Lake Oswego	\$57,000
<b>Total</b>	<b>\$465,355</b>

**TRIMET CONTRACTING**

<b>DEIS</b>	<b>Apr-Nov 09</b>	
MTIP	\$2,472,673	
<i>COP Swap 13528</i>		\$272,779
<i>COP Swap 13528</i>		\$699,894
Lake Oswego Advance Pmt		\$1,500,000
Clackamas	\$220,000	
<b>Total</b>	<b>\$2,692,673</b>	

<b>DEIS Publication</b>	<b>Nov 09-Mar 10</b>
MTIP	\$1,227,327
Lake Oswego	\$37,000
City of Portland	\$83,000
<b>Total</b>	<b>\$1,347,327</b>

<b>FTA Application/FEIS/PE</b>	<b>Mar-Dec 10</b>
City of Portland	\$860,000 *
Clackamas	\$630,000
Lake Oswego	\$56,000
	<b>\$1,546,000</b>

5339 Funding \$4,000,000 **Requested**

Total Funding Committed to TriMet \$5,586,000  
TriMet pays Lake Oswego in 2012 \$1,800,000

**2009 MTIP Recommendation**

Lake Oswego Transit	\$1,227,327	
TriMet (STP Funding)	\$1,800,000	
City of Portland	\$972,673	\$4,000,000

\* Contingent upon Portland City Council approval in the FY10-11 budget.

**PORTLAND TO LAKE OSWEGO TRANSIT CORRIDOR  
DRAFT ENVIRONMENTAL IMPACT STATEMENT – LOCALLY PREFERRED ALTERNATIVE  
INTERGOVERNMENTAL SERVICES AGREEMENT**

**TriMet Intergovernmental Agreement No. \_\_\_\_\_**

This Intergovernmental Agreement (this “Agreement”) is between the **Tri-County Metropolitan Transportation District of Oregon** (“TriMet”) and **Metro** (“Metro”), collectively referred to as the “Parties.”

**ARTICLE I - RECITALS**

1. TriMet is a mass transit district organized under the laws of the State of Oregon as codified in ORS Chapter 267.
2. Metro is an Oregon metropolitan service district organized under the laws of the state of Oregon and the Metro Charter.
3. The Portland to Lake Oswego Transit Corridor Project (“Project”) proposes improvements to existing transit service by extending the streetcar on the Willamette Shoreline right of way, Macadam Avenue or parts of both, or by enhancing bus service. The alternatives analysis phase of the Project was completed in December 2007 when the Metro Council considered which alternatives should advance into a Draft Environmental Impact Statement (“DEIS”). On December 13, 2007, the Metro Council approved options to advance for further study that include enhanced bus, streetcar, and no-build alternatives as well as recommendations on actions to advance a bicycle and pedestrian trail in the corridor; work tasks related to refining streetcar alignments through Johns Landing; and steps to secure funding for the environmental analysis.
4. In the reauthorization of SAFETEA-LU signed into law on August 10, 2005, Metro received Streetcar Corridor Funding that has been used to support work on the Project. Work on the Refinement Study began in December 2008, with a budget of \$465,355. The Refinement Study is to be conducted from December 2008 to June 2009, and will prepare information in support of the DEIS.
5. TriMet, Metro, the City of Lake Oswego, Clackamas County, and the City of Portland have entered into an intergovernmental agreement that defines roles and responsibilities for the Project and for the completion of the DEIS and Federal Transit Administration (“FTA”) approval to enter into and commence PE. In accordance with that agreement, upon Metro’s completion of the Refinement Study, TriMet will assume the lead contracting role for the Project beginning with the DEIS. Metro will assume the lead National Environmental Policy Act (“NEPA”) role for the Project (“NEPA Work”).
6. TriMet has agreed to contract with Metro for services related to preparation and publishing of a DEIS that will refine and evaluate the transportation effectiveness and environmental impacts of the options approved for advanced study and result in a Locally Preferred Alternative (“LPA”) to be advanced into the Final Environmental Impact Statement (“FEIS”) under the provisions of NEPA. The Parties desire to enter into this Agreement to define Metro’s role as lead agency for NEPA Work on the Project and to document each Party’s understanding related to the services to be performed under this Agreement. The NEPA

Work to be performed by Metro is described in Exhibit A, which is attached hereto and incorporated by this reference herein

7. The Project is, or will be, subject to budgetary limitations imposed by the U.S. Department of Transportation, FTA, and local financing agreements.

## **ARTICLE II – TERM**

The term of this Agreement will be from April 1, 2009 through June 30, 2010, unless terminated sooner or extended under the provisions of this Agreement.

## **ARTICLE III – TRIMET OBLIGATIONS**

- A. Except as otherwise provided herein, TriMet shall retain responsibility as the grantee for any Federal funding appropriated for this Project.
- B. TriMet will have the authority to initiate the work tasks set forth herein in Exhibit A by giving Metro a written task order and Notice To Proceed with the tasks. TriMet's task orders must be consistent with Exhibit A. TriMet shall not control the methods for the services requested from Metro under this Agreement.
- C. The general work scope of the tasks to be ordered by TriMet and performed by Metro is established in Exhibit A. If necessary, TriMet will work with Metro to develop a more specific scope of work prior to issuing each written task order and Notice to Proceed. TriMet must provide Metro with written notice 60 days prior to the scheduled start date of each task set forth in Exhibit A if TriMet intends to delay or eliminate the initiation of a work task.
- D. TriMet agrees to pay for the services requested at the rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference. Any modifications to the services set forth in Exhibit A or payment for those services will be effective only if made by a written amendment to this Agreement signed by both Parties.

## **ARTICLE IV – METRO OBLIGATIONS**

- A. Upon issuance of a Notice to Proceed and a written task order from TriMet, Metro agrees to designate the staff members necessary to complete the tasks identified in Exhibit A in a timely manner.
- B. Metro agrees to use its best efforts to assist TriMet in maintaining the Project schedule, and will work with TriMet to develop a more specific scope of work for each task order issued by TriMet.
- C. Metro shall deliver the specific work products for each task identified in Exhibit A, and shall not exceed the costs budgeted for each task set forth in Exhibit A without prior written approval from TriMet.
- D. The Metro Project Manager shall exercise good faith efforts to manage the Metro services within the budget specified in this Agreement. In the event that Metro believes that its work on any particular task will exceed the authorized budget, it shall promptly inform TriMet of this belief and work with TriMet to develop a strategy to complete the task on budget.



## ARTICLE V – COMPENSATION AND PAYMENT

- A. Compensation. Metro's compensation for services to be provided under this Agreement must not exceed ONE MILLION, TWO HUNDRED FORTY-NINE THOUSAND, EIGHT HUNDRED AND FORTY AND 00/100 DOLLARS (\$1,249,840.00) without prior written authorization of TriMet. This amount is based upon the Staffing Plan, staff rates and services identified in Exhibit B attached hereto and incorporated herein by this reference. In the event Metro anticipates that it will exceed this maximum amount, it shall promptly inform TriMet of this belief and work with TriMet to develop a strategy to complete the work task on budget or identify and allocate more funding to pay to complete the work tasks. If Metro cannot complete the work task on budget, and no funds are identified and allocated as set forth above, Metro may terminate this Agreement, effective upon delivery of written notice. The Parties recognize that funding for this Project is constrained and agree to use their best efforts to minimize costs consistent with the timely completion of the required tasks.
- B. Method of Payment. Subject to the requirements set forth elsewhere in this Agreement, TriMet agrees to pay for the services performed by Metro, and for the Material and Services costs described in Exhibit B.
- C. Invoices. Metro shall submit invoices detailed with reasonable particularity regarding work performed to TriMet monthly for reimbursable costs incurred since the previous invoice. TriMet shall pay Metro the balance due within thirty (30) days of receipt of a proper invoice. Financial reports accompanying requests for reimbursement must be in accordance with FTA requirements. TriMet shall review records for suitability and provide assistance as necessary to ensure compliance with FTA requirements. Invoices must be supported by current time sheets, supporting documentation for direct costs included in the invoice, and a summary of activities performed for each month, or any other documentation reasonably required by TriMet. Invoices must be itemized by task as set forth in Exhibit A. The Project Managers shall review the invoices against the project budget to provide real time cost tracking and budget management. All invoices shall be submitted to TriMet's Finance Department at the following address:

TriMet Finance Department  
Attn: Accounts Payable  
4012 SE 17th Avenue  
Portland, OR 97202

Metro shall not invoice overtime to TriMet unless TriMet's Project Manager has specifically authorized overtime in advance of the work.

- D. Budget Reports. Metro agrees to provide to TriMet's Project Manager and the Project Manager Consultant (Shiels Oblatz Johnsen) regular budget reports within 21 days of the end of each calendar month. Such reports will outline expenditures incurred during the previous month, total costs to date and a projection of costs through the end of the term of this Agreement. In the event expenditures in a given month exceed the budget or are projected to exceed the maximum amount authorized under this Agreement or subsequent task orders, Metro will work with TriMet's Project Manager and the Project Manager Consultant on adjustments necessary to maintain compliance with the approved budget.

## **ARTICLE VI - PROJECT MANAGEMENT**

- A. TriMet designates Joe Recker as its Project Manager and Metro designates Bridget Wiegart as its Project Manager. Project Managers are responsible for coordinating all aspects of their respective work scopes for the Project and all the respective employees assigned to the Project. The Project Managers: 1) shall ensure the Project and the tasks related thereto are completed expeditiously and economically; 2) shall be the contact persons through whom TriMet and Metro officially communicate; and 3) have the authority to make decisions and resolve disputes related to the Project. In the event a disagreement or dispute occurs between the Project Managers, they shall refer it to TriMet's Executive Director for Capital Projects and Metro's Planning and Development Director for resolution.

## **ARTICLE VII - GENERAL PROVISIONS**

- A. **Liability.** TriMet shall hold harmless and indemnify Metro and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of TriMet's work under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act. Metro shall hold harmless and indemnify TriMet and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of Metro's work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.
- B. **Interest of Members of Congress.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
- C. **Interest of Public Officials.** No member, officer, or employee of Metro or TriMet during his or her tenure or for one (1) year thereafter will have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- D. **Disadvantaged Business Enterprise.** In connection with the performance of this Agreement, Metro will cooperate with TriMet and use its best efforts to ensure disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work under this Agreement.
- E. **Equal Employment Opportunity.** In connection with the execution of this Agreement, neither Metro nor TriMet will discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; or selection for training, including apprenticeship.
- F. **Termination for Convenience.** Metro or TriMet may terminate this Agreement in whole or in part at any time by providing sixty (60) days written notice to the other party. In the event of such termination, TriMet shall pay Metro's costs incurred prior to the date of termination, including any costs necessarily incurred by Metro in terminating its work or the work of others under contract to Metro. Metro shall promptly submit its termination claim to TriMet. If Metro has any property in its possession belonging to TriMet, Metro shall account for it and dispose of it in the manner TriMet directs.

G. Termination for Default. If Metro fails to perform in the manner called for in this Agreement, or if Metro fails to comply with any other provisions of this Agreement, TriMet may terminate this Agreement for default. Termination will be effected by serving a notice of termination on Metro setting forth the manner in which Metro is in default. Metro will be paid only the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by TriMet that Metro had an excusable reason for not performing, such as a strike, fire, flood, or events that are not the fault of, or are beyond the control of Metro, TriMet may establish a new performance schedule and allow Metro to continue work, or treat the termination as a termination for convenience.

H. Termination by Mutual Agreement. TriMet and Metro, by mutual agreement, may terminate this Agreement at any time and for any reason.

I. Maintenance of Records. Metro shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Metro shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Metro's performance. Metro acknowledges and agrees that TriMet and FTA shall have access to such fiscal records and other books, documents, papers, plans, and writings that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. Metro also acknowledges and agrees that it shall retain such documents for a period of three years after termination of this Agreement, or such longer period as may be required by applicable law. In the event of, any audit, controversy or litigation arising out of or related to this Agreement, Metro shall retain such documents until the conclusion thereof. J. Audit and Inspection of Records. Metro shall permit the authorized representatives of TriMet, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of Metro relating to its performance under this Agreement. TriMet shall be responsible for all auditing costs.

K. Documents. All records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models that are prepared or developed in connection with this Agreement will become public property. All design drawings and documents prepared by Metro staff under this Agreement will be the property of TriMet. Nothing herein will prevent Metro from retaining original design drawings and providing reproducible copies to TriMet.

L. Relationship of Parties. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one Party shall be deemed to be an employee, agent or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship.

M. No Third-Party Beneficiary. Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or will be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless such third parties are expressly described as intended to be beneficiaries of its terms.

N. Compliance with Laws. The Parties shall comply with all Federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, to the extent applicable, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279C.580, which are hereby incorporated in their entirety by reference.

Without limiting the generality of the foregoing, the Parties expressly agree to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of Federal and state civil rights and rehabilitation statutes, rules, and regulations.

- O. Oregon Law, Dispute Resolution and Forum. This Agreement is to be construed according to the laws of the State of Oregon. TriMet and Metro shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the Parties are unable to resolve any dispute within fourteen (14) calendar days, the Parties are free to pursue any legal remedies that may be available. Any litigation between Metro and TriMet arising under this Agreement or out of work performed under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
- P. Assignment. Neither TriMet nor Metro may assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.
- Q. Interpretation of Agreement. This Agreement will not be construed for or against any Party by reason of authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and may not be used in constructing or interpreting this Agreement.
- R. Entire Agreement; Modification; Waiver. This Agreement and attached Exhibits constitute the entire agreement between the Parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations, or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification, or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement will not constitute a waiver by a Party of that or any other provision.
- S. Severability/Survivability. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless will remain in full force and effect and the illegal or unenforceable provision will be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

**METRO**

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT  
OF OREGON**

By: \_\_\_\_\_  
Michael Jordan, Chief Operating Officer

By: \_\_\_\_\_  
Neil McFarlane, Executive Director

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Metro Attorney

**Approved as to form:**

\_\_\_\_\_  
TriMet Legal Department

**PORTLAND TO LAKE OSWEGO TRANSIT CORRIDOR  
DRAFT ENVIRONMENTAL IMPACT STATEMENT – LOCALLY PREFERRED ALTERNATIVE  
INTERGOVERNMENTAL SERVICES AGREEMENT**

**Exhibit A**

**Task 1. Preparation of the Draft Environmental Impact Statement (DEIS):** Metro will provide a lead role and support the Project Manager through the preparation of the DEIS. Metro will provide strategic advice regarding the environmental process; coordinate with the Federal Transit Administration (FTA) reviews and approvals; provide transportation modeling products required for the environmental process; coordinate the public information process; and provide quality assurance and quality control (QA/QC) through the preparation of the DEIS.

**Timeframe:** April 1, 2009 through October 31, 2009

**Estimated Cost:** \$578,959

**Task 2. DEIS Publication, Public Outreach and Initiation of the New Starts Application:** Metro will provide review and QA/QC for the environmental analysis and publication of the DEIS; provide strategic advice, coordination and participation through the public outreach supporting the DEIS; provide coordination with FTA review and approvals; and provide transportation modeling support in preparation of the New Starts submittal to FTA.

**Timeframe:** November 1, 2009 through March 31, 2010

**Estimated Cost:** \$432,913

**Task 3. Public Comment Period, Locally Preferred Alternative (LPA) Adoption Process and New Starts Submittal:** Metro will provide support during the public comment period after the publication of the DEIS; provide support and participate in the LPA adoption process; and provide support for the New Starts submittal to FTA to enter preliminary engineering.

**Timeframe:** April 1, 2010 through June 30, 2010

**Estimated Cost:** \$237,968

**Total: \$1,249,840**

**PORTLAND TO LAKE OSWEGO TRANSIT CORRIDOR  
DRAFT ENVIRONMENTAL IMPACT STATEMENT – LOCALLY PREFERRED ALTERNATIVE  
INTERGOVERNMENTAL SERVICES AGREEMENT**

**Exhibit B**

**Staffing Plan and Budget**

The following staffing plan and budget details an estimate of Metro’s expenditures in support of the DEIS for the Portland to Lake Oswego Transit Corridor Draft Environmental Impact Statement – Locally Preferred Alternative Project (“Project”):

Staffing Plan and Billing Rates

Task / Job Classification	Estimated FTE	Hourly Billing Rates	
		Minimum	Maximum
<b>Policy and Project Management - FTA and Council Liaison</b>			
Policy Advisor II	0.0125	\$125.61	\$182.15
Director	0.0125	\$125.61	\$182.15
Deputy Director	0.1250	\$114.19	\$165.59
Transit Project Manager II	0.3750	\$94.38	\$136.85
<b>Alternative development, NEPA review, document preparation</b>			
Principal Transportation Planner	1.1625	\$65.27	\$87.37
Senior Transportation Planner	1.1625	\$62.21	\$83.22
<b>Graphics/GIS production</b>			
Associate Transportation Planner	0.6250	\$53.77	\$71.93
<b>Transportation Research &amp; Modeling</b>			
Manager II	0.0600	\$86.85	\$123.36
Manager I	0.3125	\$78.96	\$112.14
Principal Transportation Modeler	0.1900	\$65.27	\$87.37
Senior Transportation Modeler	1.1200	\$62.21	\$83.22
Senior Transportation Planner	1.3750	\$62.21	\$83.22
<b>Public Involvement and Outreach</b>			
Manager I	0.3100	\$78.96	\$112.14
Associate Public Involvement Specialist	1.2475	\$48.74	\$65.27
<b>Administration</b>			
Senior Management Analyst	0.1625	\$53.77	\$71.93
Administrative Specialist II	1.0000	\$32.97	\$44.06

Project Budget

Professional and Technical	\$ 1,189,840.00
Materials and Services*	\$ 60,000.00
<b>Total Agreement</b>	<b>\$ 1,249,840.00</b>

\*Materials and Services include, but are not limited to, printing, travel (FTA meetings), and public outreach expenses (public outreach expenses may include modest refreshments; such refreshments will include only non-alcoholic beverages and light snacks).



## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4040, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS ESTABLISHING THE ROLES, RESPONSIBILITIES, AND FUNDING FOR THE JOHNS LANDING REFINEMENT STUDY AND DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE LAKE OSWEGO TO PORTLAND TRANSIT PROJECT

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Date: March 18, 2009

Prepared by: Ross Roberts, 503.797.1752  
Bridget Wieghart 503.797.1775  
Jamie Snook 503.797.1751

## BACKGROUND

### Previous Council Actions

The Lake Oswego to Portland Transit and Trail Alternatives Analysis was initiated in July 2005 by Metro and the cities of Lake Oswego and Portland, Clackamas and Multnomah Counties, TriMet and the Oregon Department of Transportation (ODOT). The project was funded by Federal Transit Administration (FTA) grants and local matching funds. The alternatives analysis was identified in the 2004 Metro Regional Transportation Plan (RTP) as a priority for the development of high capacity transit as way to improve mobility in the highly congested and constrained corridor. The Lake Oswego to Portland Transit Corridor *Draft Environmental Impact Statement* (DEIS) follows this two and half year transit and trail alternatives analysis process.

On December 13, 2007, the Metro Council approved alternatives to advance for further study in an environmental analysis. The alternatives included enhanced bus, streetcar and no-build alternatives as well as recommendations on actions to advance a bicycle and pedestrian trail in the corridor; work tasks related to refining streetcar alignments through Johns Landing; and steps to secure funding for the environmental analysis. The following actions have been taken pursuant to the Metro resolution:

- On April 16, 2008 the FTA published a *Notice of Intent to Prepare a Draft Environmental Impact Statement* for the project in the *Federal Register*. This action put the project under the umbrella of the National Environmental Policy Act (NEPA), and ensured that the work done in the Alternatives Analysis to narrow alternatives would be part of the NEPA documentation for the project.
- Metro and our project partners initiated the Johns Landing Refinement Study in December 2008. The purpose of the study is to refine and potentially narrow the streetcar alignments through the Johns Landing neighborhood. Potential new streetcar alignments are being developed to avoid impacts created by the proximity of the Willamette Shore Line (WSL) right-of-way to residences in a portion of the Johns Landing neighborhood. The technical design and cost estimating work is anticipated to be completed by June 2009, prior to the start of the DEIS.
- The Lake Oswego to Portland Trail Refinement Study began in March 2009 and is estimated to be completed in April 2009. The trail refinement study will fall into three main tasks: 1) a technical evaluation of alignment options; 2) stakeholder involvement; and 3) an action plan/next steps to move the trail forward including phasing and funding sources.

- Additionally, prior to the start of the Lake Oswego to Portland Transit Project (Project) DEIS, the City of Lake Oswego has expressed a desire to narrow the range of terminus options in Lake Oswego. This work will be completed by June 2009 to support the DEIS.

The Lake Oswego to Portland Transit Project (Project) DEIS is a multi-jurisdictional effort to bring high quality transit service to the Lake Oswego to Portland transportation corridor. TriMet, Metro, the cities of Lake Oswego and Portland, Multnomah and Clackamas counties, ODOT and Portland Streetcar, Inc. (PSI) (the Project Partners) are working together in the development of federally-required environmental analyses and reports, preliminary engineering and public outreach associated with the project.

### **Current Context for Expediting the Project**

Metro had planned and budgeted for the Lake Oswego to Portland Transit Project to move forward as the regions next transit priority after the Portland to Milwaukie Light Rail Project and the Columbia River Crossing Project, as a Metro-led project Metro's staff were programmed to start work on the Lake Oswego to Portland DEIS after they completed the Portland to Milwaukie Light Rail Project *Final Environmental Impact Statement* (FEIS), approximately nine months from now.

Given anticipated changes to FTA's funding programs and the possibility of a new category of funding to build streetcar projects that would be separate and distinct from the existing New Starts and Small Starts programs, it became apparent to some of our project partners that the project could benefit from these funds if a DEIS and Locally Preferred Alternative could be completed about the same time as the new surface transportation bill is passed by Congress, projected to be around the end of calendar 2009. The need to expedite the project and the workload of TriMet and Metro staff from the Milwaukie LRT and Columbia Crossing project FEIS documents meant that a new model of project delivery needed to be developed that relies more heavily on the private sector. Project consultants will be expected to shoulder a greater burden in the overall process of preparing the environmental documentation for the Project.

Within this streamlined process, the consultant team will report to, and be coordinated by an independent Project Manager. TriMet, as the procuring agency, will retain primary responsibility for contract compliance between TriMet and the selected contractors. Metro will have substantive involvement in the overall environmental review process as the lead agency for such work in the Portland Region. However, Metro's primary roles will be to: a) provide overall strategic advice to the Project Team regarding the environmental process; b) work with TriMet in coordinating FTA reviews and approvals; c) provide all transportation modeling products required for the Project; d) coordinate the public information process for the project; and e) provide quality assurance and quality control (QA/QC) for the work performed by the environmental consultants.

Through this Intergovernmental Agreement between the Project Partners they have agreed on a project structure meant to support the multi-jurisdictional nature of the project and a commitment to expedite the process for preparation of environmental documentation and funding approvals for the project in order to capture potential, near-term funding opportunities.

### **ANALYSIS/INFORMATION**

Typically during this phase of the project, Metro would have the role as contracting agency and a greater portion of the work would be done in-house. With this agreement, the Project Partners have agreed to both start the project earlier than originally scheduled and allow for contractors to perform more of the work. Additionally, TriMet would act as the contracting agency and the Project Management role would be outsourced to contractors. Metro would provide a leadership role in overall strategy for the environmental analysis and public outreach, coordination with FTA and quality control and quality assurance. Metro would allocate about half of the staff than would be typical.

Metro has a number of strong interests that our staff will work to forward through this process:

- Metro has a strong interest in developing a project that meets all appropriate FTA funding program requirements and which maintains Metro's successful 25-year working relationship with the FTA;
- Metro has a strong interest in being positioned to pursue High Capacity transit according to the 30-year plan to be adopted in summer 2009. Implementation of the plan will rely heavily on strong relationships with FTA and local jurisdictions.
- Metro has strong interests in the regional, multi-jurisdictional nature of this project that would connect the Portland Central City to the Lake Oswego Town Center as designated in the Region 2040 Growth Concept;
- Metro has a strong interest in attaining the substantial regional benefits that could occur with this project including creation of a continuous high quality pedestrian and bicycle trail through the corridor, improved transit travel time and reliability, improved transit operating efficiency and reduced operating costs, and realization of the substantial economic development potential in Johns Landing and downtown Lake Oswego.
- Metro will complete specific work program elements as set forth in Exhibit B of this resolution, and will provide direction to the Project to ensure the following: a) that all FTA program requirements are met and that Metro's successful relationship and partnership with FTA is maintained; b) that all requirements of the NEPA are met by providing strategic advice and providing quality assurance and quality control (QA/QC) services to the Project ; c) that FTA funding and environmental reviews and approvals are obtained by working closely with TriMet; d) that all transportation modeling products required for the Project are of high quality and are produced in a timely manner in compliance with FTA requirements; and e) that the public involvement process for the project is open, transparent and complies with all applicable FTA requirements.

At the conclusion of the process, after receiving recommendations from the other Project Partners, Metro Council will hold a formal public hearing and select a Locally Preferred Alternative (LPA).

### **Legal Antecedents**

The proposed action, initiating a DEIS in the Lake Oswego to Portland Corridor would fall under the jurisdiction of the National Environmental Policy Act (NEPA) and would be undertaken in accordance with FTA policies, guidance and rules. Furthermore, there are several Metro Council resolutions that provide legal antecedents including the following:

**Resolution No. 86-715** For the Purpose of Entering Into an Intergovernmental Agreement and Expending Funds to Preserve the Southern Pacific Right-of-Way (Jefferson Street Branch) Between Portland and Lake Oswego.

**Resolution No. 05-3569** For the Purpose of Confirming Metro Council Representatives to the Eastside and Portland/Lake Oswego Transit Alternatives Analysis Steering Committee and Identifying Other Representative Categories to the Committee.

**Resolution No. 05-3647** For the Purpose of Approving a Consultant Services For the Lake Oswego to Portland Transit Alternatives Analysis.

**Resolution No. 07-3887A** For the Purpose of Identifying Alternatives to Advance into a Draft Environmental Impact Statement for the Portland to Lake Oswego Corridor Transit Project.

### **Budget Impacts**

The Project Partners have agreed to allocate \$465,355, through the five-party IGA, directly to Metro to complete the Johns Landing Refinement Study. The five party IGA also includes proposed Project Funding Plan of \$5,586,000 to pay for the DEIS process, the selection of the LPA, and the FTA application process needed to begin Preliminary Engineering. However, the \$5,586,000 is conditioned upon the allocation of Federal fiscal year 2012-13 regional flexible transportation funds through the Metro allocation process.

The DEIS-LPA Services IGA includes \$1,249,840 to be allocated to Metro to complete the DEIS and provide professional services as described above.

In addition to the these two IGAs, the Project Partners have also agreed to pursue an additional \$4,000,000 in federal funding to pay for Preliminary Engineering and continue the Project development process.

### **RECOMMENDED ACTION**

The recommended action for the Metro council is to approve Resolution 09-4040, For The Purpose of Authorizing the Chief Operating Officer to Enter in to Intergovernmental Agreements Establishing the Roles, Responsibilities, and Funding for the Johns Landing Refinement Study and Draft Environmental Impact Statement providing for the entry by Metro into the following intergovernmental agreements:

- Approval of the Intergovernmental Agreement between TriMet, Metro, City of Lake Oswego, Clackamas County and City of Portland for the Portland Lake Oswego Transit Corridor Project, as agreed to by Project Partners, to allow the project to move forward with the completion of the Lake Oswego to Portland Transit Project completion of the Draft Environmental Impact Statement (DEIS) and the Federal Transit Administration (FTA) approval to enter into and commence preliminary engineering (PE).
- Approval of the PORTLAND TO LAKE OSWEGO TRANSIT CORRIDOR DRAFT ENVIRONMENTAL IMPACT STATEMENT – LOCALLY PREFERRED ALTERNATIVE INTERGOVERNMENTAL SERVICES AGREEMENT outlining the agreement between TriMet and Metro regarding funding for Metro to assist with the DEIS, provide transportation modeling, coordinate with FTA, coordinate the public information process, and provide quality assurance and quality control (QA/QC) for the duration between April 1, 2009 and June 30, 2010.