

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN) RESOLUTION NO. 03-3316
INTERGOVERNMENTAL AGREEMENT)
BETWEEN METRO, BY AND THROUGH THE)
METROPOLITAN EXPOSITION-RECREATION)
COMMISSION (MERC), AND THE TRI-)
COUNTY METROPOLITAN)
TRANSPORTATION DISTRICT OF OREGON) Introduced by Interim Chief Operating Officer
(TriMet) FOR THE EXPO CENTER INTERSTATE) Mark B. Williams, with the concurrence of
MAX PROJECT IMPROVEMENTS) Council President David Bragdon
)

WHEREAS, the Tri-County Metropolitan Transportation District of Oregon (TriMet) is constructing the Interstate Max light rail which shall include a station and parking lot on Metropolitan Exposition-Recreation Commission (MERC) Expo property;

WHEREAS, in June of 2000, Metro, MERC and TriMet signed a Memorandum of Understanding between Metro and TriMet for the purpose of establishing a framework for negotiating an intergovernmental agreement between the parties for Interstate Max improvements on Expo's East parking lot; and

WHEREAS, since that time, MERC staff along with Metro's Office of Metro Attorney have been negotiating the terms and conditions of the intergovernmental agreement, including a property transfer, easements and a park-and-ride arrangement; and

WHEREAS, Metro/MERC and TriMet staffs have agreed upon all terms and conditions, including financial compensation in the intergovernmental agreement, attached hereto as Exhibit "A," and entitled Intergovernmental Agreement Between Metro, by and Through The Metropolitan Exposition-Recreation Commission (MERC), and the Tri-County Metropolitan Transportation District of Oregon (TriMet) for the Expo Center Interstate Max Project Improvements (hereinafter referred to as the "Expo Center Interstate Max IGA"), and recommend that the Expo Center Interstate Max IGA be approved; and

WHEREAS, it is appropriate for Metro to transfer to TriMet the property interests possessed by Metro and needed by TriMet for the light rail line and station subject to the terms and conditions set forth in the Expo Center Interstate Max IGA;

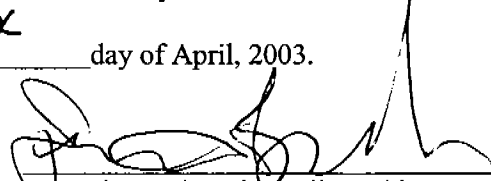
WHEREAS, in MERC Resolution No. 03-18, a copy of which is attached hereto and made a part hereof as Exhibit "B," the MERC Commission approved the Expo Center Interstate Max IGA and forwarded it to the Metro Council for approval; now therefore

BE IT THEREFORE RESOLVED that the Metro Council:

1. Hereby approves the Expo Center Interstate Max IGA, in substantially the form attached hereto as Exhibit "A," with TriMet for the Expo Center Interstate Max Project Improvements on the East Parking Lot at Expo, transferring certain of Metro's property interests in certain real property as set forth therein.

2. Further authorizes the Interim Chief Operating Officer to sign, on behalf of Metro, the Expo Center Interstate Max IGA in substantially the form attached hereto as Exhibit "A."

ADOPTED by the Metro Council this 10th day of April, 2003.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

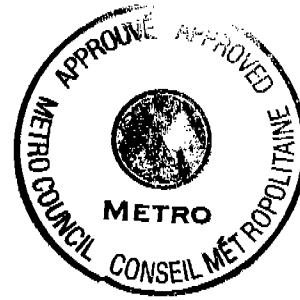


Exhibit A to Resolution No. 03-3316

INTERGOVERNMENTAL AGREEMENT BETWEEN METRO, BY AND BETWEEN METRO, BY AND THROUGH THE METROPOLITAN EXPOSITION-RECREATION COMMISSION, AND THE TRI-COUNTY METROPLITAN TRANSPORTATION DISTRICT OF OREGON FOR EXPO CENTER INTERSTATE MAX PROJECT IMPROVEMENTS

**INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO, BY AND THROUGH THE METROPOLITAN
EXPOSITION-RECREATION COMMISSION, AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
FOR EXPO CENTER INTERSTATE MAX PROJECT IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT FOR EXPO CENTER INTERSTATE MAX PROJECT IMPROVEMENTS is made between METRO ("Metro"), by and through the METROPOLITAN EXPOSITION-RECREATION COMMISSION ("MERC") and the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON ("TriMet") this the 14th day of March, 2003 ("Expo Center Interstate Max Agreement" or "Agreement").

RECITALS

- A. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, the "Act") Metro Council adopted a final land use order on July 23, 1998, for the South/North Light Rail Project.
- B. As of April 1999, Metro completed a supplemental draft Environmental Impact Statement identifying a new alternative for a portion of South/North Light Rail Project, in the area north of the Rose Quarter, such alternate being called the Full-Interstate Alignment Alternative.
- C. This Full-Interstate Alignment commonly referred to as the North Interstate MAX Light Rail Project ("Project"), is a light rail project designed to accommodate transportation needs in North and Northeast Portland business and residential areas.
- D. Following public notice, Metro held a public hearing on October 28, 1999, and adopted Resolution No. 99-2853A entitled For the Purpose of Adopting a Land Use Order Amending the Light Rail Route, Light Rail Stations, and Park-and-Ride Lots, Including their Locations ("Revised Alignment") and approving the Project as a phase of the South/North Light Rail Project.
- E. The Portland City Council has identified the Project as the region's next priority rail transportation project and has confirmed its support through Resolution No. 35800 adopted June 7, 1999.
- F. The Act defines the relationship between TriMet and other governmental entities following the adoption of the final land use order for the Project, and states "The State and all counties, cities, special districts and political subdivisions shall:
 - (a) Amend comprehensive or function plans, including public facility plans and their land use regulations, to the extent necessary to make them consistent with a land use final order, and

- (b) Issue the appropriate development appraisals, permits, licenses and certificates necessary for the construction of the Project or Project extension consistent with a land use final order. Development appraisals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of a land use final order.”
- G. TriMet cannot construct or implement the Project without the use of City of Portland (hereinafter “City”) streets, and the City is willing to allow TriMet to use City streets without being compensated for such use.
- H. The City has a duty to the general public to provide safe and convenient streets and to protect itself from unreasonable financial burdens imposed by TriMet’s use of the streets.
- I. The Project is, or will be, subject to budgetary limitations imposed by the U.S. Department of Transportation, Federal Transit Administration (FTA), and Finance Agreements. The Project is, or will be, subject to all terms and conditions of the FTA grant agreement insofar as there is Federal participation in costs of the Project.
- J. TriMet desires to purchase and use portions of Metro/MERC property at the Portland Exposition Center (“Expo Center”) for construction of a light rail station and the creation of a Park & Ride facility for light rail and other transit users. Metro and MERC desire to sell to TriMet such property and allow such use subject to the terms and conditions set forth herein.
- K. The MERC and the Metro Council have approved a 10-year master plan for the Expo Center, which calls for reducing the traffic impact of Expo Center events in part through enhanced transit ridership and reduced emphasis on automobile trips. The Expo Center Master Plan is also consistent with the provisions of the “2000 Regional Transportation Plan” as adopted by Metro Council.
- L. The Expo Master Plan has been approved by the City of Portland and is now in effect.
- M. This Agreement is also intended to assist MERC in carrying out the obligations contained in the Expo Master Plan and the “2000 Regional Transportation Plan,” including, but not limited to those obligations concerning public transportation, light rail usage and public transit.
- N. Where this Agreement refers to the sale or transfer of any interest in or right to real or other property, “MERC” shall mean Metro, acting by and through its Metropolitan Exposition-Recreation Commission.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Real Property.** The real property rights to be transferred in accordance with the terms set forth in this Agreement are: Fee simple title to Parcel 1 (the "Permanent Use Area"); temporary construction easements over Parcels 2 and 3 ("Construction Easements"), and a 15-year non-exclusive lease for parking over Parcel 4 (the "Park & Ride Lot"); as defined herein and as shown in the attached Exhibit 1, incorporated herein by reference (all parcels referred to collectively herein as the "Property").
2. **Permanent Use Area; Purchase Price.** MERC hereby agrees to sell and convey to Tri-Met at Closing (defined below), and Tri-Met agrees to purchase from MERC, fee simple title to Parcel 1 (the "Permanent Use Area"), subject to any required land divisions, if any, for which Tri-Met will apply and incur all expenses. At Closing Metro shall execute the bargain and sale deed in the form attached hereto as Exhibit 2 ("Deed"), subject to all easements, encumbrances and exceptions of record, for recording in the real property records of Multnomah County. MERC understands and MERC and Tri-Met have agreed that Tri-Met will dedicate Parcel 1 to the City of Portland as public right-of-way for the permanent use of track way, station improvements, electrical substation, electrical catenary, supporting poles, signals and communication facilities and landscaping areas.

At Closing, TriMet shall deposit into escrow with the Escrow Agent (defined below) the sum of One Million Four Hundred Four Thousand Three Hundred Twenty-Five Dollars (\$1,404,325.00) by cash, a wire transfer of funds, a certified check or a cashier's check, for payment to Metro and MERC, for the dedication of Parcel 1.

3. **Park & Ride Lot; Lease Price.** Metro agrees to grant to TriMet a 15-year non-exclusive lease for use of 300 parking spaces for a Park & Ride lot on Parcel 4 ("Park & Ride Lot") upon terms set forth in the Park & Ride Agreement attached hereto as Exhibit 3 and incorporated herein by reference.

Purchase Price for Park & Ride Lease. On September 1, 2004 or when the Park & Ride is made available for public use, whichever occurs earlier, TriMet shall pay MERC the lump sum of Six Hundred Fifty-Nine Thousand Three Hundred Twenty-Five Dollars (\$659,325.00) by cash, a wire transfer of funds, a certified check or a cashier's check, for the Park & Ride Lease in accordance with the terms set forth in the Park & Ride Lease Agreement attached hereto as Exhibit 3.

4. **Construction Easements.**

- a. **Construction Easement -- Parcel 2.** At Closing, Metro shall grant TriMet a non-exclusive easement over Parcel 2 as legally described in Exhibit 1 for temporary use for construction purposes ("Construction Easement -- Parcel 2"). The Construction Easement shall be in the form attached hereto as Exhibit 4 and incorporated herein by reference. The term of the Construction Easement -- Parcel 2 shall be for a total of 24 months commencing June 1, 2001 and ending

June 1, 2003.

- b. **Purchase Price for Construction Easement -- Parcel 2.** At Closing, TriMet will deposit into escrow with the Escrow Agent (defined below) the Purchase Price for the Construction Easement - Parcel 2 in the amount of Forty Five Thousand Dollars (\$45,000.00) by cash, a wire transfer of funds, a certified check or a cashier's check, for payment at Closing to Metro and MERC, for the purchase of the Construction Easement -- Parcel 2, in accordance with the terms set forth in Exhibit 4.
- c. **Construction and Staging Easement -- Parcel 3.** At Closing, Metro shall grant TriMet an exclusive easement over Parcel 3 as legally described in Exhibit 1 for temporary use for construction staging purposes ("Construction and Staging Easement -- Parcel 3") for a term of twenty-four months from October 1, 2001 through September 30, 2003.
- d. **Purchase Price for Construction and Staging Easement -- Parcel 3.** At Closing, TriMet will deposit into escrow with the Escrow Agent (defined below) the Purchase Price for the Construction and Staging Easement -- Parcel 3 in the amount of One Hundred Eighty Five Thousand Dollars (\$185,000.00) by cash, a wire transfer of funds, a certified check or a cashier's check, for payment at Closing to Metro and MERC, for the purchase of the Construction and Staging Easement -- Parcel 3, in accordance with the terms set forth in the Construction and Staging Easement agreement attached hereto as Exhibit 4.
- e. **Conditions to Construction and Construction and Staging Easement.** The Construction Easement and Construction and Staging Easement are subject to the following conditions:
 - i. In accordance with the Permit of Entry granted by MERC dated June 14, 2001, during performance of the work on the Construction Easement TriMet shall minimize impacts to driveways and Expo Center parking and circulation. During Expo Center events, TriMet shall completely maintain access to the parking lot and circulation within the parking lot for the public.
 - ii. TriMet and TriMet's contractors will provide the Expo Center's Operations Manager current construction schedules. Expo Center management shall have the right to comment on the schedules and TriMet shall incorporate Expo Center's comments into the schedules. TriMet's contractors will coordinate its work at Expo Center with Expo Center management and contact the Operations Manager or his designate daily regarding any construction issues that may impact Expo Center operations.
 - iii. Utilization of the Property, Construction Easement, and Staging Area will ensue only upon actual use by Contractor and consistent with schedules to be provided in compliance with (2) above. TriMet will make a good faith attempt to accommodate Expo Center requests for adjustment of schedules.

5. **Waterline Easement – Parcel 5.** At Closing, Metro shall grant TriMet or the City of Portland Bureau of Water (“Bureau of Water”) an exclusive easement over Parcel 5 as legally described in Exhibit 1 for operation and maintenance of a waterline (“Waterline Easement – Parcel 5”). The Waterline Easement shall be in a form mutually acceptable to Metro, MERC, TriMet and the City of Portland Water Bureau.

Purchase Price for Waterline Easement –Parcel 5. At Closing, TriMet will deposit into escrow with the Escrow Agent (defined below) the Purchase Price for the Waterline Easement – Parcel 5 in the amount of One Hundred Dollars (\$100.00) by cash, a wire transfer of funds, a certified check or a cashier’s check, for payment to Metro and MERC at Closing, for the purchase of the Waterline Easement -- Parcel 5.

6. **Conditions Precedent to Closing and Transfer of Real Estate Interests.** In addition to any other conditions contained in this Agreement, the following conditions precedent shall be satisfied at or prior to Closing:
 - a. **Metro Council and MERC Commission Approvals.** This Agreement and the transaction contemplated herein are expressly conditioned upon the formal approval, in the form of resolutions from the Metro Council and from the MERC Commission, of all terms and conditions set forth herein and in the attached exhibits.
 - b. **Federal, State, and TriMet Approvals.** Prior to Closing, TriMet shall have applied for and received all applicable federal, state, and TriMet approvals required for execution of this Agreement, and for paying all amounts, including but not limited to the lump sum payment for the Park & Ride Lease.

In the event any condition contained in this Agreement is not satisfied or waived on or before Closing, the Closing Date shall be automatically extended for sixty (60) days for the parties to seek to satisfy such condition(s). If the condition(s) has not been satisfied or waived on or before the extended Closing Date and if the parties have not mutually agreed in writing to further extend this Agreement, then this Agreement shall terminate.

7. **Termination of Permits of Entry.** Upon termination of this Agreement or failure to Close in accordance with the terms set forth herein, TriMet’s permits of entry for all parcels shall immediately terminate and TriMet shall vacate the Property. In event of such termination, TriMet shall pay MERC within 30 days of termination the value of TriMet’s previous occupancy of the Property, in accordance with the pro-rated values as established by the purchase prices herein.
8. **Closing.** Upon satisfaction of all terms and conditions precedent set forth herein, and upon payment of all amounts and Purchase Prices set forth herein, this transaction shall close in escrow on or before May 31, 2003 unless extended by

mutual agreement of the parties in writing or as otherwise extended as set forth herein (the "Closing Date" or "Closing"). The escrow agent shall be licensed in the State of Oregon as an escrow company mutually satisfactory to the parties ("Escrow Agent"). The parties agree to execute the necessary escrow instructions to allow the escrow agent to close this transaction in accordance with the terms of this Agreement. TriMet and MERC shall each pay one-half of the escrow agent's fees for transacting the closing and any recording fees necessary to complete the conveyance of the Property. TriMet, Metro and MERC hereby authorize their respective attorneys to execute and deliver to the Escrow Agent any additional or supplemental escrow instructions as may be necessary or convenient to implement the terms of this Agreement and to Close the transactions contemplated herein.

9. **Title Insurance.** Within 10 days after the date of recording of the deed, MERC shall cause to be furnished, at its expense, a standard owner's title insurance policy in the amount of One Million Four Hundred Thirty Three Thousand Six Hundred Fifty Dollars (\$1,404,325.00), insuring fee simple title vested in TriMet subject only to the usual printed form exceptions in such title insurance policies and all other exceptions or items currently of record.
10. **Covered Walkway.** TriMet will reimburse MERC the cost of design and construction of a covered, unenclosed walkway, including a canopy with supporting footings, a sidewalk, and electrical lighting; and for the supporting footings, sidewalk, and electrical conduit for a second walkway (both walkways referred to herein as "Walkway") in an amount not to exceed Six Hundred Thousand Dollars (\$600,000.00) in accordance with the letter agreement between TriMet and MERC dated December 7, 2000, and this Agreement.
 - a. **Construction Cost.** If MERC's actual construction costs exceed \$600,000, the parties agree to negotiate in good faith a reasonable cost allocation of the excess cost. All costs shall be reimbursed to MERC incrementally as design or construction progresses, within 30 days following invoice. MERC will be solely responsible for overseeing design, construction and related work.
 - b. **Termination of Walkway Construction for Default.** If either party fails to perform in the manner called for in this Section, or fails to comply with any other provision of this Section regarding the covered walkway, the non-defaulting party may, with 90 days written notice setting forth the manner in which the party is in default, terminate performance under this Section 2 for default. If the default identified in the notice has not been cured in 90 days, termination under this Section shall be effective upon the 90th day following such written notice. Within the 90 days from the written notice, MERC and TriMet shall endeavor to correct any problem giving rise to the default notice. Termination under this Section for default shall not excuse the parties from otherwise performing under this Agreement and the exhibits attached hereto. Furthermore, termination under this Section for default shall not preclude the non-defaulting party from exercising all other legal rights and remedies available to it.

11. **Construction of TriMet's Facilities.** After Closing, TriMet shall construct trackway, station facilities, an electrical substation, landscaping and pedestrian access pathways on the Permanent Use Area (Parcel 1).
12. **TriMet's Environmental Responsibilities.** TriMet shall not use, handle or store hazardous substances on the Construction Easements, Park & Ride Lot, or Permanent Use Area, unless specifically agreed to in writing by Metro and MERC and in that case only those substances reasonably and necessarily used in the course of TriMet's permitted uses of the areas and in accordance with all applicable law. In the event of any release of substances, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar terms in or under any environmental law, including fuels, petroleum and petroleum-derived products, on the Construction Easements, Park & Ride Lot, or Permanent Use Area, on other properties, in the air or in adjacent or nearby waterways (including groundwater), which results from or occurs in connection with TriMet's occupancy or use of the Construction Easements, Park & Ride Lot, or Permanent Use Area, TriMet shall be responsible for, and shall fully defend, indemnify and hold harmless Metro and MERC, for such release, and shall promptly notify Metro and MERC by telephone and in writing; and TriMet shall clean up and restore said areas and affected properties to the extent required by law and compatible with Metro and MERC's current and intended future uses of the Construction Easements, Park & Ride Lot, Permanent Use Area, and other affected properties. TriMet shall not store, treat, deposit, place or dispose of treated or contaminated soil, industry by-products, or water on the Construction Easements, Park & Ride Lot, or Permanent Use Area without the prior written consent of Metro and MERC, which consent may be granted or denied in Metro and MERC's sole discretion.
13. **Insurance.** TriMet will maintain a self-insurance program or a commercial general policy of insurance to provide insurance coverage over it and its' contractor's activities on the Property in an amount not less than the Oregon Tort Claims limits for public agencies. Metro and MERC shall be named as additional insureds.
14. **Expo Center Event Fare Program.** Subject to all appropriate TriMet and MERC approvals, TriMet and MERC agree to implement an event fare program that allows Expo Center patrons to use their advance sale event tickets as their fare to and from the Expo Center via "TriMet" on the day of the event ("Expo Center Experimental Event Fare Program") on terms setforth in the attached Event Fare Program Agreement Exhibit 5. The Expo Center Experimental Event Fare Program will have a two year experimental term, at the end of which MERC and TriMet will adjust any problematic issues, and otherwise determine the viability of the Program.
15. **General Provisions**
 - a. **Liability.** TriMet shall hold harmless, defend and indemnify MERC and Metro and their officers, agents, and employees against any and all liability, damages,

claims, settlements, loss, costs and expenses in connection with any action, suit or claim arising out of the work of TriMet, its employees, officers, agents or contractors under this Agreement within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution. MERC shall hold harmless, defend and indemnify TriMet and its officers, agents, and employees against any and all liability, damages, claims, settlements, loss, costs and expenses in connection with any action, suit or claim arising out of MERC work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution.

- b. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

John Baker
TriMet
710 NE Holladay Street
Portland, OR 97232
(503) 962-2144
(503) 962-2289 (fax)

Mark Hunter
MERC
777 NE Martin Luther King Jr. Blvd
Portland, OR 97232
(503) 731-7827
503) 731-7870 (fax)

- c. **Dispute Resolution.** If the Project Managers from each party cannot resolve any dispute arising out of this Agreement, the matter will be referred to their respective superiors for resolution. If the supervisors are unable to resolve the dispute within 30 days of referral, the matter will be referred to MERC's General Manager and TriMet's General Manager, who will attempt to resolve the issue. If the General Managers are not able to resolve the dispute, the parties will submit the matter to arbitration with the Commercial Arbitration Rule of the American Arbitration Association. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as provided in Oregon law. The parties shall each pay their own costs, but will share equally in fees and costs of the arbitration and/or arbitration service provided, however, that the arbitration may award cost to the prevailing party. The parties shall continue in the performance of their respective obligations notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the parties.
- d. **Interest of Members of Congress.** No member of, or delegate to, the Congress of the United States shall be permitted to any share or part of this Agreement or to any benefit arising there from.
- e. **Effective Date.** This Agreement shall be in force and in effect upon the signatures of all parties to this Agreement as set forth herein.
- f. **Disadvantaged Business Enterprise.** In cooperation with the performance of this Agreement MERC will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that

disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

- g. **Equal Employment Opportunity and Adherence to Law.** In connection with the execution of this Agreement neither party shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.
- h. **Termination for Default.** If either party fails to perform in the manner called for in this Agreement, or fails to comply with any other provisions of this Agreement, the non-defaulting party may with 90 days written notice, with opportunity to cure, terminate this Agreement for default. Termination shall be effected by delivering a written notice of termination on the defaulting party, setting forth the manner in which the party is in default.

Opportunity to Cure. Within the 90 days from written notice, MERC and TriMet shall endeavor to correct any problem giving rise to the default notice. If the parties agree on a new performance schedule, the non-defaulting party may allow the other party to continue work under this Agreement or under a new mutually agreeable performance schedule. In the case of termination and failure to cure, either party will be paid the amounts due for work performed or occupancy already granted and terminating on the date of termination, unless in the termination agreement the parties specify to the contrary. The right to terminate for default shall not preclude the non-defaulting party from exercising all other legal rights and remedies available to it.

- i. **Maintenance of Records.** MERC shall maintain records to show actual costs involved in accomplishment of the Covered Walkway and the cost incurred for the period of time specified. MERC shall cooperate in good faith with TriMet and FTA to provide records in a form satisfactory to FTA.
- j. **Audit and Inspection for Records.** MERC shall allow the authorized representatives of TriMet, the United States Department of Transportation, and the controller General of the United States to inspect and audit all data and records of MERC relating to its performance under the Agreement. TriMet shall be responsible for all auditing costs incurred by TriMet, MERC, and Metro.
- k. **Documents.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs or models which are prepared or developed in connection with this Project shall become public property. However, nothing set forth in this Agreement shall be construed as altering any provision or exemption provided for in federal and/or state public records and public meetings laws and regulations, and the parties explicitly reserve all such exemptions and exceptions set forth in those laws and regulations. All design drawings and documents prepared by MERC staff under this Agreement shall

be the Property of MERC. Nothing herein will prevent TriMet from copying original design drawings and documents and providing reproducible copies thereof.

1. **No Third-Party Beneficiaries.** Metro, MERC and TriMet are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

m. **LAND USE DISCLAIMER. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.**

IN WITNESS HEREOF, the parties have agreed to all provisions of this Agreement as of the date first noted herein.

METRO

By: _____
Mark Williams, Chief Operating Officer

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**



Neil McFarlane, Executive Director Capital
Projects & Facilities

APPROVED AS TO FORM

APPROVED AS TO FORM

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

By: _____
Sheryl Manning, General Manager



APPROVED AS TO FORM

Attachments:

Exhibit 1 Property Legal Description

Exhibit 2 Bargain and Sale Deed w/ Exhibit A – Property Description

Exhibit 3 Park & Ride Agreement w/ Exhibit A - Premises Description

Exhibit 4 Construction Easement w/Exhibit 1

Exhibit 5 Event Fare Agreement

Exhibit 1

File 5949-1229
Metro Expo Center
2060 N. Marine Drive
Portland, OR 97217

2N1E33 200

Interstate MAX Project
RDK, Thomas/Wright, Inc., 01/24/01
Amended: RDK 05/07/01, RDK 12/03/01, NDP 11/27/02
Parcel(s) 3 4 5

Parcel 1

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at the southeast corner of said Document No. 99200795 tract;

Thence N 65°03'44" W along the southwesterly line of said tract a distance of 73.65 feet to a point which bears N 19°23'27" W a distance of 5,686.55 feet from the northeast corner of the John Rankin DLC;

Thence N 04°26'48" W a distance of 19.85 feet to a point of tangency;

Thence northeasterly 128.71 feet along the arc of a tangent curve to the right with a radius of 250.00 feet through a central angle of 29°29'51" (the long chord of which bears N 10°18'08" E, 127.29 feet);

Thence N 25°03'03" E a distance of 20.73 feet;

Thence N 23°57'47" W a distance of 25.17 feet;

Thence N 25°03'03" E a distance of 17.75 feet;

Thence S 65°11'06" E a distance of 19.00 feet;

Thence N 25°03'03" E a distance of 197.91 feet;

Thence N 64°56'59" W a distance of 19.00 feet;

Thence N 25°03'03" E a distance of 35.67 feet;
Thence S 65°13'42" E a distance of 19.00 feet;
Thence N 25°03'03" E a distance of 196.71 feet;
Thence N 64°56'59" W a distance of 19.00 feet;
Thence N 25°03'03" E a distance of 60.77 feet;
Thence S 65°09'00" E a distance of 18.92 feet;
Thence N 24°39'06" E a distance of 252.00 feet;
Thence N 65°11'06" W a distance of 19.08 feet;
Thence N 24°48'49" E a distance of 40.07 feet;
Thence N 30°39'04" W a distance of 11.33 feet;
Thence N 59°20'56" E a distance of 4.00 feet;
Thence N 29°59'25" W a distance of 96.57 feet to the southerly line of North Marine Drive;
Thence S 34°57'08" E along said southerly line a distance of 70.83 feet;
Thence S 26°43'19" E along said southerly line a distance of 119.59 feet;
Thence S 26°51'44" E along said southerly line a distance of 84.03 feet to the east line of said Document No. 99200795 tract;
Thence S 24°56'16" W along said east line a distance of 882.27 feet to the Point of Beginning;
The parcel to which this description applies contains 108,479 square feet, more or less.

Parcel 2 Non-exclusive Temporary Construction Easement

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at the southeast corner of said Document No. 99200795 tract;

Thence N 65°03'44" W along the southwesterly line of said tract a distance of 161.15 feet to a point which bears N 20°00'53" W a distance of 5,748.03 feet from the northeast corner of the John Rankin DLC;

Thence N 25°00'01" E a distance of 387.08 feet;

Thence N 62°39'37" W a distance of 20.99 feet;

Thence N 24°43'59" E a distance of 310.26 feet;

Thence S 64°59'33" E a distance of 21.00 feet;

Thence N 24°59'18" E a distance of 85.24 feet;

Thence S 65°22'42" E a distance of 161.73 feet to the east line of said Document No. 99200795 tract;

Thence S 24°56'16" W along said east line a distance of 784.32 feet to the Point of Beginning;

Except Parcel 1 as previously described above.

The parcel to which this description applies contains 42,212 square feet, more or less.

Parcel 3 Exclusive Construction Staging Area

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at a point on the southerly line of North Marine Drive which bears N 14°13'09" W a distance of 6,629.64 feet from the northeast corner of the John Rankin DLC;

Thence southeasterly along said southerly line a distance of 49.92 feet along the arc of a 671.20 foot radius curve right (the radius point of which bears S 44°04'46" W) through a central angle of 04°15'41" (the chord of which bears S 43°47'24" E, 49.91 feet);

Thence S 34°57'08" E along said southerly line a distance of 21.62 feet to the westerly line of the above described Parcel 1;

Thence tracing the westerly line of said Parcel 1 along the following courses:

S 29°59'25" E a distance of 96.57 feet;

Thence S 59°20'56" W a distance of 4.00 feet;

Thence S 30°39'04" E a distance of 11.33 feet;

Thence S 24°48'49" W a distance of 40.07 feet;

Thence S 65°11'06" E a distance of 19.08 feet;

Thence S 24°39'06" W a distance of 155.05 feet;

Thence N 65°22'42" W a distance of 196.45 feet;

Thence N 24°34'31" E a distance of 204.01 feet;

Thence S 65°25'29" E a distance of 27.01 feet;

Thence N 24°34'31" E a distance of 86.13 feet to the Point of Beginning;

The parcel to which this description applies contains 46,145 square feet, more or less.

Parcel 4 Temporary Parking Easement

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at a point on the westerly line of the above described Parcel 1, which point bears N 19°18'37" W, 5715.86 from the northeast corner of the John Rankin DLC;

Thence N 64°45'17" W a distance of 56.25 feet;

Thence N 25°00'01" E a distance of 35.35 feet;

Thence N 64°59'59" W a distance of 8.00 feet;

Thence N 24°54'54" E a distance of 660.90 feet;

Thence N 65°05'06" W a distance of 293.28 feet;

Thence N 24°39'46" E a distance of 245.06 feet;

Thence S 65°25'29" E a distance of 161.63 feet;

Thence N 24°34'31" E a distance of 103.80 feet to the southerly line of North Marine Drive;

Thence southeasterly along said southerly line a distance of 49.92 feet along the arc of a 671.20 foot radius curve right (the radius point of which bears S 44°04'46" W) through a central angle of 04°15'41" (the chord of which bears S 43°47'24" E, 49.91 feet);

Thence S 34°57'08" E along said southerly line a distance of 92.45 feet;

Thence S 26°43'19" E along said southerly line a distance of 119.59 feet;

Thence S 26°51'44" E along said southerly line a distance of 84.03 feet to the east line of said Document No. 99200795 tract;

Thence S 24°56'16" W along said easterly line a distance of 856.16 feet;

Thence N 64°45'17" W a distance of 88.37 feet to the Point of Beginning;

Except Parcel 1 as previously described above.

The parcel to which this description applies contains 115,131 square feet, more or less.

Parcel 5 Waterline Easement

Five strips of land, each being 10.00 feet wide, in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., and the northeast one-quarter of Section 4, Township 1 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records. The sidelines of the strip lying 5.00 feet on both sides of the following described centerlines:

Strip 1

Beginning at a point on the westerly line of the above described Parcel 1, which point bears N 27°23'40" W, 138.08 feet from the southeast corner of said Document No. 9200795 tract, and which point bears N 19°03'31" W, 5,771.92 feet from the northeast corner of the John Rankin DLC;

Thence N 19°56'57" W a distance of 57.09 feet;

Thence N 25°03'03" E a distance of 56.78 feet to a point herein defined as Point "A";

Thence continuing N 25°03'03" E a distance of 223.02 feet to a point herein defined as Point "B";

Thence continuing N 25°03'03" E a distance of 257.57 feet to a point herein defined as Point "C";

Thence continuing N 25°03'03" E a distance of 17.57 feet to a point herein defined as Point "D";

Thence continuing N 25°03'03" E a distance of 102.54 feet;

Thence S 64°53'59" E a distance of 33.25 feet to the westerly line of the above described Parcel 1 and the terminus of the this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the westerly line of the above described Parcel 1.

Strip 2

Beginning at the above defined Point "A";

Thence S 64°52'16" E a distance of 15.00 feet to the westerly line of the above described Parcel 1 and the terminus of this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the westerly line of the above described Parcel 1 and the easterly line of the above described Strip 1.

Strip 3

Beginning at the above defined Point "B";

Thence S 65°02'36" E a distance of 15.00 feet to the westerly line of the above described Parcel 1 and the terminus of this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the westerly line of the above described Parcel 1 and the easterly line of the above described Strip 1.

Strip 4

Beginning at the above defined Point "C";

Thence S 64°46'54" E a distance of 15.00 feet to the westerly line of the above described Parcel 1 and the terminus of this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the westerly line of the above described Parcel 1 and the easterly line of the above described Strip 1.

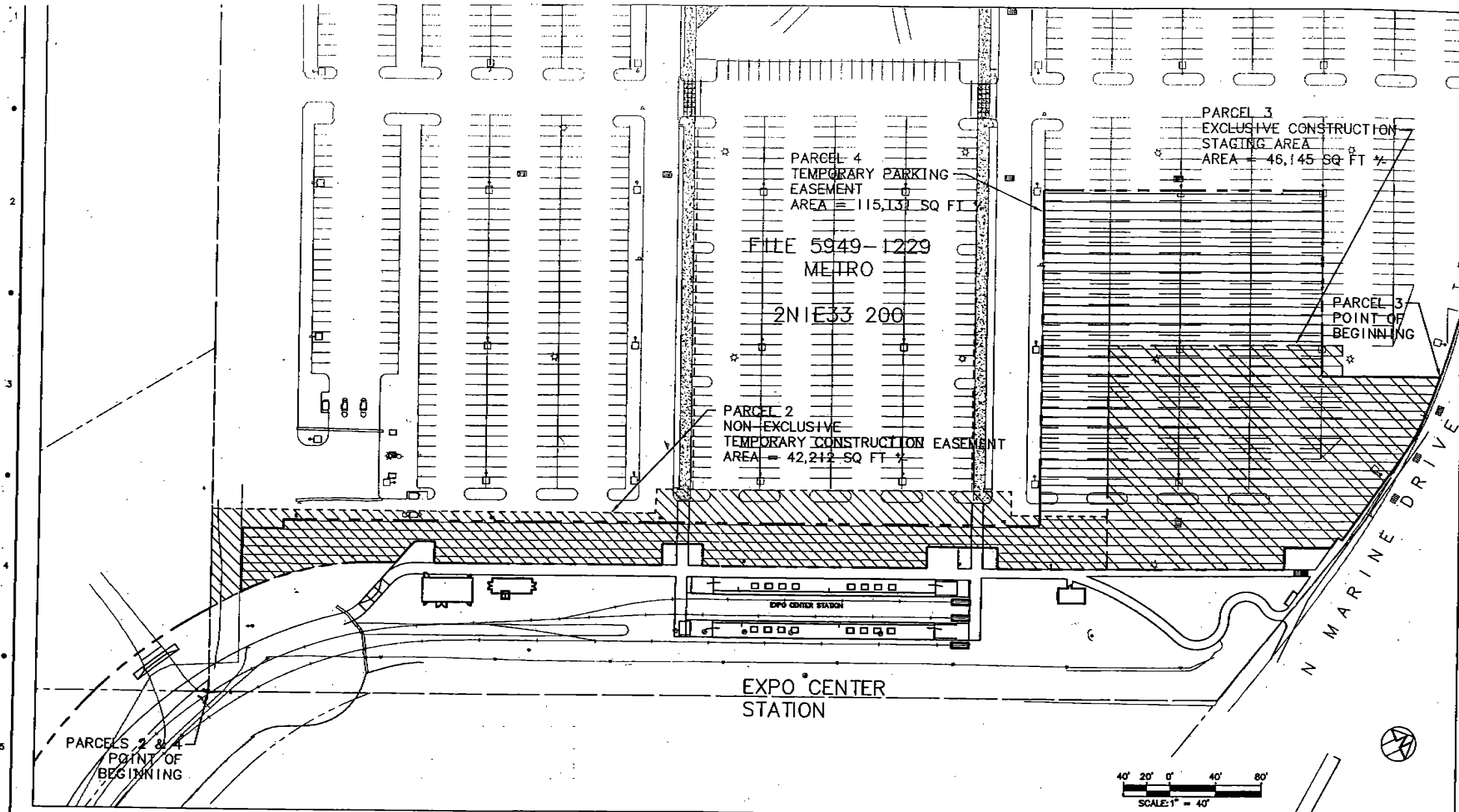
Strip 5

Beginning at the above defined Point "D";

Thence S 64°56'57" E a distance of 15.00 feet to the westerly line of the above described Parcel 1 and the terminus of this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the westerly line of the above described Parcel 1 and the easterly line of the above described Strip 1.

The Parcel to which these descriptions apply (Strips 1, 2, 3, 4, and 5) contains 7,880 square feet, more or less.



NO.	DATE	BY	CHK.	APPR.	REVISIONS
1	04/07	RDK			REVISED LEGAL DESCRIPTION DUE TO DESIGN CHANGE
2	12/3	RDK			REVISED LEGAL DESCRIPTION DUE TO DESIGN CHANGE
3	11/27	NDP			ADD PARCELS 4 TEMP PKG AND 6 WATERLINE EASEMENT

DESIGNED	DATE
RDK	01/23/01
DRAWN	DATE
JC	01/25/01
CHECKED	DATE
APPROVED	DATE

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

PB
CIVIL
DESIGN
TEAM

TWI
THOMAS
WRIGHT
INC.
Engineers - Surveyors

TRI-MET
CAPITAL PROJECTS
AND
FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

DATE: _____

INTERSTATE MAX PROJECT
LINE SECTION 10C
TEMPORARY EASEMENTS
5949 - 1229 / METRO EXPO CENTER
SHEET 2 OF 2

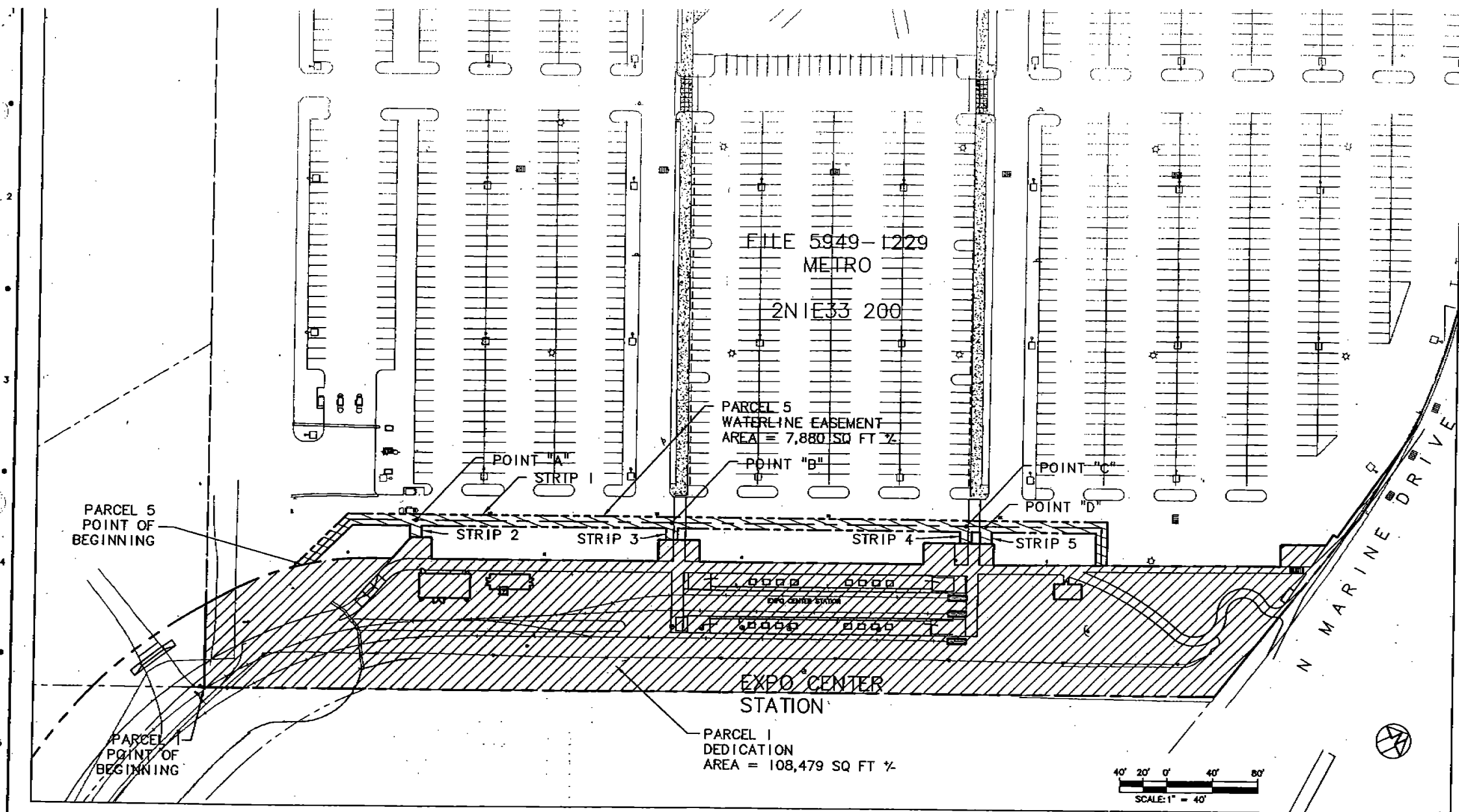
SCALE: 1"=40'

DRAWING NO.: RDV1229-EDF2

CONTRACT NO.:

SHEET NO.:

**THIS PRINT IS
HALF
SIZE
REPRODUCED**



1	04/07	RDK	REVISED LEGAL DESCRIPTION DUE TO DESIGN CHANGE	DESIGNED	DATE	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON CIVIL DESIGN TEAM TRIPLAS WRIGHTING CAPITAL PROJECTS AND FACILITIES DMSION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232	INTERSTATE MAX PROJECT LINE SECTION 10C DEDICATION AND WATERLINE EASEMENT 5949 - 1229 / METRO EXPO CENTER SHEET 1 OF 2
2	12/3	RDK	REVISED LEGAL DESCRIPTION DUE TO DESIGN CHANGE	RDK DATE	01/23/01		
3	11/23	NDP	ADD PARCELS 4 TEMP PKG AND 5 WATERLINE EASEMENT	JC DATE	01/23/01		
NO.	DATE	BY	APPRO.	REVISIONS	APPROVAL	DATE	SUBMITTED: _____ DATE: _____ APPROVED: _____ DATE: _____ SCALE: 1"=40' DRAWING NO: RDV1229-10F2 CONTRACT NO: _____ SHEET NO: _____



Exhibit 2

Bargain and Sale Deed

GRANTOR'S NAME AND ADDRESS:

METRO
600 N.E. Grand Ave.
Portland OR 97232

AFTER RECORDING RETURN TO:

Tri-County Metropolitan Transit District of Oregon
710 N.E. Holladay Street
Portland, OR 97232

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING ADDRESS:

Tri-County Metropolitan Transit District of Oregon
710 N.E. Holladay Street
Portland, OR 97232

BARGAIN AND SALE DEED

METRO, a municipal corporation, Grantor herein, conveys to TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON ("Tri-Met"), Grantee herein, the real property described on the attached Exhibit A.

The true and actual consideration for this conveyance is \$1,404,325.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING PRACTICES AS DEFINED IN ORS 30.930.

DATED this ____ day of _____, 2003.

METROPOLITAN EXPOSITION-RECREATION COMMISSION

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____,
2003 by _____, of METRO.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

ACCEPTANCE

THIS DEED IS accepted hereby this ____ day of _____, 2003.

Tri-County Metropolitan Transportation District of Oregon

By: _____
Neil McFarlane, Executive Director, Capital Projects

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____,
2003 by _____, and on behalf of Tri-County Metropolitan
Transportation District of Oregon.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

Exhibit "A"

File 5949-1229
Metro Expo Center
2060 N. Marine Drive
Portland, OR 97217

2N1E33 200

Interstate MAX Project
RDK, Thomas/Wright, Inc., 01/24/01
Amended: RDK 05/07/01, RDK 12/03/01, NDP 11/27/02

Parcel 1

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at the southeast corner of said Document No. 99200795 tract;

Thence N 65°03'44" W along the southwesterly line of said tract a distance of 73.65 feet to a point which bears N 19°23'27" W a distance of 5,686.55 feet from the northeast corner of the John Rankin DLC;

Thence N 04°26'48" W a distance of 19.85 feet to a point of tangency;

Thence northeasterly 128.71 feet along the arc of a tangent curve to the right with a radius of 250.00 feet through a central angle of 29°29'51" (the long chord of which bears N 10°18'08" E, 127.29 feet);

Thence N 25°03'03" E a distance of 20.73 feet;

Thence N 23°57'47" W a distance of 25.17 feet;

Thence N 25°03'03" E a distance of 17.75 feet;

Thence S 65°11'06" E a distance of 19.00 feet;

Thence N 25°03'03" E a distance of 197.91 feet;

Thence N 64°56'59" W a distance of 19.00 feet;

Thence N 25°03'03" E a distance of 35.67 feet;
Thence S 65°13'42" E a distance of 19.00 feet;
Thence N 25°03'03" E a distance of 196.71 feet;
Thence N 64°56'59" W a distance of 19.00 feet;
Thence N 25°03'03" E a distance of 60.77 feet;
Thence S 65°09'00" E a distance of 18.92 feet;
Thence N 24°39'06" E a distance of 252.00 feet;
Thence N 65°11'06" W a distance of 19.08 feet;
Thence N 24°48'49" E a distance of 40.07 feet;
Thence N 30°39'04" W a distance of 11.33 feet;
Thence N 59°20'56" E a distance of 4.00 feet;
Thence N 29°59'25" W a distance of 96.57 feet to the southerly line of North Marine Drive;
Thence S 34°57'08" E along said southerly line a distance of 70.83 feet;
Thence S 26°43'19" E along said southerly line a distance of 119.59 feet;
Thence S 26°51'44" E along said southerly line a distance of 84.03 feet to the east line of said Document No. 99200795 tract;
Thence S 24°56'16" W along said east line a distance of 882.27 feet to the Point of Beginning;
The parcel to which this description applies contains 108,479 square feet, more or less.

EXHIBIT 3

INTERGOVERNMENTAL AGREEMENT BETWEEN METRO, ACTING BY AND THROUGH ITS METROPOLITAN- EXPOSITION AND RECREATION COMMISSION AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON FOR PARK & RIDE LEASE

THIS PARK & RIDE LEASE AGREEMENT ("Park & Ride Agreement") is entered into by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district ("TriMet") and METRO, acting by and through its METROPOLITAN-EXPOSITION AND RECREATION COMMISSION ("MERC") on this the ____ day of _____ 2003.

RECITALS

- A. TriMet desires to purchase a lease to use portions of MERC managed property located at the Expo Center for operation of a Park & Ride facility ("Park & Ride"), and the parties have entered into an intergovernmental agreement known as the "Intergovernmental Agreement For Expo Center Interstate Max Project Improvements" dated _____, 2003, that, among other things, agrees to lease TriMet the Park & Ride ("Expo Center Agreement").
- B. The parties desire to memorialize their agreement with respect to the Park & Ride upon the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the parties agree as follows:

1. Park & Ride Lease; Compensation.

- a. Subject to the lump-sum lease payment being made to MERC in accordance with Section 1(b) below, Metro hereby grants to TriMet, its successors and assigns, a nonexclusive lease ("Park & Ride Lease"), to use solely for the purposes set forth in Paragraph 3 below, the 300 parking spaces as shown in Exhibit A ("Premises"), in accordance with and upon satisfaction of the terms and conditions set forth herein and in the Expo Center Agreement.
- b. TriMet shall pay MERC Six Hundred Fifty-Nine Thousand Three Hundred Twenty-Five Dollars (\$659,325.00) ("Lease Amount") in cash, a wire transfer of funds, a certified check, or a cashier's check, as compensation for the Lease for the initial term of Fifteen (15) Years). Such compensation shall be due and payable in advance to MERC in a lump sum in advance the earlier of September 1, 2004, or when the Park & Ride is made available to the public

for use. This lump sum Lease Amount shall be fully payable and available to MERC at the beginning of the Lease Term. This Park & Ride Agreement (and the Expo Center Agreement) are expressly conditioned on such lump-sum payment receiving prior FTA approval as required by 49 CFR § 639.13 by the Closing Date as set forth in the Expo Center Agreement. If the advance lump sum payment of the Lease Amount does not receive prior FTA approval by the Closing Date, and if the lump sum Lease Amount is not paid to MERC as set forth herein, then this Park & Ride Lease Agreement and all rights hereunder shall terminate.

2. Term; Termination.

a. The Lease shall be in effect for a period of 15 years, commencing the earlier of September 1, 2004, or when the Park & Ride is made available to the public for use ("Term"). Tri Met shall have the right in its sole discretion to renew this Lease Agreement for one additional ten (10) year lease extension period ("Lease Extension Period"), subject to the negotiation of a fair and appropriate compensation agreement between the parties, as set forth below. Beginning one year prior to the expiration of the Term or any renewal period, TriMet and MERC shall negotiate in good faith the terms of the renewal or extension of this Agreement. Any Lease Extension Periods agreed upon shall be included in the definition of "Term". If this Agreement is terminated prior to the expiration of the initial 15-year Term, within 90 days thereof, MERC shall refund to TriMet any funds paid for the Lease for the portion of the Term eliminated by early termination as required herein, in accordance with the provisions and restrictions on termination and repayment as set forth in section 9(h) below regarding Unilateral Termination.

b. Compensation for Additional Ten (10) Year Lease Extension Period. In the event that Tri Met wishes to renew the Lease Agreement for the additional ten (10) year Lease Extension Period, TriMet shall make annual rental payments to MERC for such additional periods. TriMet's payment to MERC for the Extension Period shall be determined as follows: The value of the Lease Extension Period will be appraised as an annual rental amount by an appraiser selected by the parties. The appraiser shall be licensed in the state of Oregon and experienced in industrial, recreational, and special use property and familiar with the requirements of the Uniform Relocation Assistance and Property Acquisition Act of 1970, as amended, USPAP, and other applicable appraisal standards. The parties shall jointly appoint the appraiser from a list of appraisers provided by each party and shall share equally in the fees for and costs of the appraisal. In the event the parties cannot agree on the appraiser, the parties may apply to the Presiding Judge of the Multnomah County Circuit Court for appointment of such an appraiser from the lists provided by each party which shall be the same lists initially prepared by the parties. Such appointment shall not be subject to appeal, unless the parties can by clear and convincing evident demonstrate that fraud or corruption has been involved in the appointment of such appraiser.

- c. Once the appraiser has been selected or appointed, the parties shall within 30 calendar days of the selection or appointment, develop joint appraisal instructions for the appraiser. If the parties cannot, in good faith, agree on the joint instructions or the appraised valuation, the matter shall be resolved under the Dispute Resolution provisions of this Lease Agreement.
3. Use of Premises. TriMet and its patrons may use, on a non-exclusive basis, the Premises Monday through Friday during the hours of train operations ("Hours of Operation") for a Park & Ride Lot solely for the parking of passenger vehicles. MERC shall not grant to any third-party use of the Premises which interferes with TriMet's Lease. It is expressly agreed to and acknowledged by the parties that TriMet patrons will have first priority for parking on the Premises prior to 10 a.m., during which time MERC shall not charge a parking fee to TriMet Park & Ride patrons. After 10 a.m. daily, MERC may utilize all unoccupied spaces on the Premises for general parking, and MERC may charge a parking fee to all who park there after that time.
 4. Access to Premises. TriMet and its patrons may use adjacent walkways and roadways belonging to Metro for reasonable vehicle and pedestrian ingress to and egress from the Premises.
 5. Signs; Security. TriMet may install signs on the Premises at locations approved by MERC indicating that the Premises are available for use as a Park & Ride Lot, individual signs stating "Lot Full", and any other restrictions or limitations related to use consistent with this Agreement. TriMet shall be responsible for providing security to TriMet's facilities and to the Park & Ride during the Hours of Operation.
 6. Maintenance. MERC shall be responsible for maintaining the Premises from all normal wear and tear and for maintaining Metro's other property used for ingress to or egress from the Premises. However, this provision shall not create or form the basis of any MERC liability nor shall it create any third-party rights or a duty to any third party. TriMet shall be responsible for periodically examining the Premises and no present condition shall constitute a fault. MERC shall notify TriMet of any major damage to the Premises occurring during the Hours of Operations beyond normal wear and tear that MERC attributes solely to TriMet and/or its patrons ("Major Park & Ride Damage"). TriMet and MERC shall negotiate in good faith to share the cost of repairing Major Park & Ride Damage. With respect to normal wear and tear maintenance, during each twelve (12) months of the Lease Term, TriMet shall pay to MERC a share of MERC's cost of maintaining and repairing the Premises. Such amount shall be fifty percent (50%) of the actual costs incurred by MERC in maintaining and repairing the Premises, but shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) per year, this amount to be reviewed yearly for comparison with actual costs to MERC for maintenance and repair, and adjusted accordingly to reflect actual costs. MERC shall submit all invoices on a semi annual basis to TriMet's Finance Department, and shall reference the contract number.

7. Removal upon Termination. Upon termination of this Lease, TriMet shall cease using the Premises. TriMet shall remove all signs and any structures placed on the Premises by TriMet, and shall repair any damage to the Premises caused by the removal of TriMet's signs or structures.
8. Authority. The parties signing below represent that they have authority to bind the party for which they sign, subject to formal approval by the MERC Commission and the Metro Council.

9. General Provisions.

- a. **Liability.** TriMet shall hold harmless and indemnify MERC and Metro and their 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 the work of TriMet, its employees, officers, agents or contractors under this Agreement within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution. MERC 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 MERC work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution.
- b. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

Young Park
TriMet
710 NE Holladay Street
Portland, OR 97232
(503) 962-2138
(503) 962-2281 (fax)

Chris Bailey
MERC
2060 N. Marine Dr
Portland, OR 97217
(503) 731-7827
(503) 731-7870 (fax)

- c. **Dispute Resolution.** If the Project Managers from each party cannot resolve any dispute arising out of this Agreement, the matter will be referred to their respective supervisors for resolution. If the supervisors are unable to resolve the dispute within 30 days of referral, the matter will be referred to MERC's General Manager and TriMet's General Manager, who will attempt to resolve the issue. If the General Managers are not able to resolve the dispute, the parties will submit the matter to arbitration with the Commercial Arbitration Rule of the American Arbitration Association. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as provided in Oregon law. The parties shall each pay their own costs, but will share equally in fees and costs of the arbitration and/or arbitration service provided, however, that the arbitration may award cost to the prevailing party. The parties shall continue in the performance of their respective obligations notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the parties.

- d. **Interest of Members of Congress.** No member of, or delegate to, the Congress of the United States shall be permitted to any share or part of this Agreement or to any benefit arising there from.
- e. **Effective Date.** This Agreement shall be in force and in effect upon the signatures of all parties to this Agreement as set forth, subject to formal approval by the MERC Commission and the Metro Council.
- f. **Disadvantaged Business Enterprise.** In connection with the performance of this Agreement MERC will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.
- g. **Equal Employment Opportunity and Adherence to Law.** In connection with the execution of this Agreement neither party shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.
- h. **Unilateral Termination.** If TriMet wishes to terminate the Park & Ride Lease prior to the termination of the 15-year Lease Term, TriMet shall notify MERC at least one (1) year prior to the date on which TriMet wishes the termination to be effective. MERC will refund TriMet a proportionate amount of the lump-sum Lease Amount pre-payment made by TriMet for the unused portion of the Lease Term as required herein within 90 days of the effective termination date. Notwithstanding the foregoing, however, in no event shall TriMet be able to terminate the Park & Ride Lease prior to the end of the fifth (5th) year of the Lease without MERC consent, and MERC shall not have to refund any amounts for at least those five years. If TriMet terminates the Lease after the fifth year of the Lease Term, MERC will refund TriMet a pro-rated portion of the original Lump Sum Lease Amount, calculated by the number of years remaining in the Lease Term at the effective date of termination, as a fraction of the 15-year total lease term years, multiplied by the original Lump Sum Lease Amount ("Refund Amount"), which amount shall not include any additional amounts, payments or interest.
- i. **Termination for Default.** If either party fails to perform in the manner called for in this Agreement, or fails to comply with any other provisions of this Agreement, the non-defaulting party may, with 90 days written notice, with opportunity to cure, terminate this Agreement for default. Termination shall be effected by delivering a written notice of termination on the defaulting party, setting forth the manner in which the party is in default.

Opportunity to Cure. Within the 90 days from written notice, MERC and TriMet shall endeavor to correct any problem giving rise to the default notice. The parties agree to bargain in good faith regarding curing the default. If at

the end of the 90 day period, or such other period as agreed to by the parties, the default is not cured, then the Park & Ride Lease and all rights hereunder shall terminate. In the case of termination, either party will be paid only the amounts due for work performed or occupancy already granted and terminating on the date of termination, unless in the termination agreement the parties specify to the contrary.

- j. Maintenance of Records.** MERC shall maintain records to show actual costs involved in accomplishment of the Project and the cost incurred for the period of time specified. MERC shall cooperate in good faith with TriMet and FTA to provide records in a form satisfactory to FTA.
- k. Audit and Inspection for Records.** MERC shall allow the authorized representatives of TriMet, the United States Department of Transportation, and the controller General of the United States to inspect and audit all data and records of MERC relating to its performance under the Agreement. TriMet shall be responsible for all auditing costs incurred by Metro and MERC.
- l. Documents.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs or models which are prepared or developed in connection with this Project shall become public property. However, nothing set forth in this Agreement shall be construed as altering any provision or exemption provided for in federal and/or state public records and public meetings laws and regulations, and the parties explicitly reserve all such exemptions and exceptions set forth in those laws and regulations. All design drawings and documents prepared by MERC staff under this Agreement shall be the Property of MERC. Nothing herein will prevent TriMet from copying original design drawings and documents and providing reproducible copies thereof.
- m. No Third-Party Beneficiaries.** MERC and TriMet are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

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- n. Amendment.** This Agreement may only be expressly modified or amended in

writing(s) signed by duly authorized representatives of TriMet and MERC.

IN WITNESS HEREOF, the parties have agreed to all provisions of this Agreement as of the date first noted herein.

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**

By: _____
Sheryl Manning, Executive Director

By: _____
Neil McFarlane, Executive Director Capital
Projects & Facilities

APPROVED AS TO FORM:

APPROVED AS TO FORM:

METRO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

EXHIBIT A

Parcel 4 Temporary Parking Easement

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at a point on the westerly line of the above described Parcel 1, which point bears N 19°18'37" W, 5715.86 from the northeast corner of the John Rankin DLC;

Thence N 64°45'17" W a distance of 56.25 feet;

Thence N 25°00'01" E a distance of 35.35 feet;

Thence N 64°59'59" W a distance of 8.00 feet;

Thence N 24°54'54" E a distance of 660.90 feet;

Thence N 65°05'06" W a distance of 293.28 feet;

Thence N 24°39'46" E a distance of 245.06 feet;

Thence S 65°25'29" E a distance of 161.63 feet;

Thence N 24°34'31" E a distance of 103.80 feet to the southerly line of North Marine Drive;

Thence southeasterly along said southerly line a distance of 49.92 feet along the arc of a 671.20 foot radius curve right (the radius point of which bears S 44°04'46" W) through a central angle of 04°15'41" (the chord of which bears S 43°47'24" E, 49.91 feet);

Thence S 34°57'08" E along said southerly line a distance of 92.45 feet;

Thence S 26°43'19" E along said southerly line a distance of 119.59 feet;

Thence S 26°51'44" E along said southerly line a distance of 84.03 feet to the east line of said Document No. 99200795 tract;

Thence S 24°56'16" W along said easterly line a distance of 856.16 feet;

Thence N 64°45'17" W a distance of 88.37 feet to the Point of Beginning;

Except Parcel 1 as previously described above.

The parcel to which this description applies contains 115,131 square feet, more or less.

EXHIBIT 4

After Recording Return to:
TriMet
Capital Projects & Facilities Division
710 NE Holladay Street
Portland, OR 97232

CONSTRUCTION EASEMENT AND CONSTRUCTION & STAGING EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that METRO ("Metro"), by and through the METROPOLITAN EXPOSITION-RECREATION COMMISSION ("Grantor" or "MERC"), in consideration of the sum of FORTY FIVE THOUSAND DOLLARS (\$45,000.00) for the Construction Easement – Parcel 2), plus the sum of ONE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$185,000.00) for the Construction and Staging Easement – Parcel 3), the receipt and sufficiency of which are hereby acknowledged, hereby grants unto the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district ("Grantee" or "TriMet"), its successors and assigns, the following interests located in the City of Portland, County of Multnomah, and State of Oregon:

- 1) A non-exclusive easement over Parcel 2 as legally described in Exhibit 1 for temporary use for construction purposes ("Construction Easement – Parcel 2"). The term of the Construction Easement – Parcel 2 shall be for a total of 24 months commencing June 1, 2001; and
- 2) An exclusive easement over Parcel 3 as legally described on Exhibit 1 for temporary use for construction staging purposes ("Construction and Staging Easement – Parcel 3") from October 1, 2001 through September 30, 2003.

Exhibit 1 is fully incorporated by this reference. Parcels 2 and 3 are jointly referred to herein as the "Property" or "Easements".

1. **Conditions to Easements.** The Easements are subject to the following conditions:
 - a) In accordance with the Permit of Entry granted by MERC dated June 14, 2001, during performance of the work on the Construction Easement TriMet shall minimize impacts to driveways and Expo Center parking and circulation. During Expo Center events, TriMet shall completely maintain access to the parking lot and circulation within the parking lot for the public.
 - b) TriMet and TriMet's contractors will provide the Expo Center's Operations Manager current construction schedules. Expo Center management shall have the

right to comment on the schedules and TriMet shall incorporate Expo Center's comments into the schedules. TriMet's contractors will coordinate its work at Expo Center with Expo Center management and contact the Operations Manager or his designate daily regarding any construction issues that may impact Expo Center operations.

c) Utilization of the Easements will ensue only upon actual use by contractors and consistent with schedules to be provided in compliance with (2) above. TriMet will make a good faith attempt to accommodate Expo Center requests for adjustment of schedules.

2. Subject to the limitations and conditions of the Oregon Constitution and ORS 30.260 to 30.300, the Grantee agrees to indemnify, defend and hold harmless Grantor for, from, and against all claims made for injury to person or property caused by Grantee's, or its agents', employees', or contractors' negligence during the actual use by Grantee of the Property for any of the above-described purposes.
3. The Grantee shall have the right, in accordance with the terms stated herein, at any time during the term of these Easements, to enter upon the Property for the purposes hereinabove mentioned. In connection therewith, Grantee may remove any trees, shrubs, or other materials necessary or convenient to accomplish said purposes. Grantee, at its expense, shall repair any damage to the Property caused by Grantee's use for the purposes above described, except for any improvements paid for as part of these Easements.
4. The easements herein granted do not convey any right or interest to title in the above-referenced Property, except as stated herein. Grantor does covenant with Grantee that the Property is free from all liens and encumbrances that would interfere with Grantee's use of the Easements provided herein, subject to those rights showing as recorded exceptions on title reports for the Property as of the date of execution of this Easement, and that Grantor and its successors shall warrant and defend the same to Grantee against the lawful claims and demands of all persons whomsoever other than those rights showing as recorded exceptions on title reports for the Property as of the date of execution of this Easement.
5. **Extension Period/ Additional Payments.** In the event that TriMet's use or occupancy of the Easement areas extends beyond the expiration of the two-year terms as set forth herein, then the term(s) of TriMet's Easement(s) shall be extended to month-to-month tenanc(ies), and TriMet shall pay MERC a monthly rental fee of one-twelfth the yearly rate for each Easement as established by the purchase prices herein, and TriMet shall make such payments monthly within ten days after the beginning of the extended term(s) of the Easement(s).
6. **TriMet's Environmental Responsibilities.** TriMet shall not use, handle or store hazardous substances on the Easements, unless specifically agreed to in writing by Metro and MERC and in that case only those substances reasonably and necessarily used in the course of TriMet's permitted uses of the areas and in accordance with all applicable law. In the event of any release of substances, pollutants, materials, or

products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar terms in or under any environmental law, including fuels, petroleum and derived-derived products, on the Easements, on other properties, in the air or in adjacent or nearby waterways (including groundwater), which results from or occurs in connection with TriMet's occupancy or use of the Easements, TriMet shall be responsible for, and shall fully defend and indemnify Metro and MERC within the maximum liability limits under the Oregon Tort Claims Act and the Oregon Constitution for such release, and shall promptly notify Metro and MERC by telephone and in writing; and TriMet shall clean up and restore said areas and affected properties to the extent required by law and compatible with Metro and MERC's current and intended future uses of the Easements and other affected properties. TriMet shall not store, treat, deposit, place or dispose of treated or contaminated soil, industry by-products, or water on the Easements without the prior written consent of Metro and MERC, which consent may be granted or denied in Metro and MERC's sole discretion.

It is understood and agreed that Grantee, by accepting these Easements, is not accepting any liability for any discharge or release of regulated, hazardous materials or toxic substances (collectively, "Hazardous Materials") onto or from the Property prior to the effective date of these Easements, and that the Grantor is not attempting to convey any such liability. After the effective date of these Easements, Grantee's liability for Hazardous Materials shall be limited to circumstances where it causes or allows a discharge or release of Hazardous Materials or negligently aggravates an existing condition on the Property in violation of environmental laws, or is otherwise liable under environmental or other laws.

These Easements and all covenants contained herein shall touch and concern the land and be binding on the successors, assigns and legal representatives of the Grantor and Grantee.

IN WITNESS WHEREOF, Metropolitan Exposition-Recreation Commission has caused these presents to be signed by its duly authorized representative, this ____ day of _____, 2003.

METROPOLITAN EXPOSITION-RECREATION COMMISSION

By: _____
Sheryl Manning, General Manager

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2003, by Sheryl Manning, as General Manager of Metropolitan Exposition-Recreation Commission.

Notary Public for Oregon
My Commission Expires: _____

ACCEPTANCE

THIS EASEMENT IS accepted hereby this ____ day of _____, 2003.

Tri-County Metropolitan Transportation District of Oregon

By: _____
Neil McFarlane, Executive Director, Capital Projects

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this ____ day of _____, 2003 by _____, and on behalf of Tri-County Metropolitan Transportation District of Oregon.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT 1

File 5949-1229
Metro Expo Center
2060 N. Marine Drive
Portland, OR 97217

2N1E33 200

Interstate MAX Project
RDK, Thomas/Wright, Inc., 01/24/01
Amended: RDK 05/07/01, RDK 12/03/01, NDP 11/27/02

Parcel 2 Non-exclusive Temporary Construction Easement

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at the southeast corner of said Document No. 99200795 tract;

Thence N 65°03'44" W along the southwesterly line of said tract a distance of 161.15 feet to a point which bears N 20°00'53" W a distance of 5,748.03 feet from the northeast corner of the John Rankin DLC;

Thence N 25°00'01" E a distance of 387.08 feet;

Thence N 62°39'37" W a distance of 20.99 feet;

Thence N 24°43'59" E a distance of 310.26 feet;

Thence S 64°59'33" E a distance of 21.00 feet;

Thence N 24°59'18" E a distance of 85.24 feet;

Thence S 65°22'42" E a distance of 161.73 feet to the east line of said Document No. 99200795 tract;

Thence S 24°56'16" W along said east line a distance of 784.32 feet to the Point of Beginning;

Except Parcel 1 as previously described above.

The parcel to which this description applies contains 42,212 square feet, more or less.

Parcel 3 Exclusive Construction Staging Area

A tract of land in the southeast one-quarter of Section 33, Township 2 North, Range 1 East, W.M., Multnomah County, Oregon being a portion of the third and fourth described parcels of that certain tract of land described in Document No. 99200795, recorded October 29, 1999, Multnomah County Deed Records to wit;

Beginning at a point on the southerly line of North Marine Drive which bears N 14°13'09" W a distance of 6,629.64 feet from the northeast corner of the John Rankin DLC;

Thence southeasterly along said southerly line a distance of 49.92 feet along the arc of a 671.20 foot radius curve right (the radius point of which bears S 44°04'46" W) through a central angle of 04°15'41" (the chord of which bears S 43°47'24" E, 49.91 feet);

Thence S 34°57'08" E along said southerly line a distance of 21.62 feet to the westerly line of the above described Parcel 1;

Thence tracing the westerly line of said Parcel 1 along the following courses:

S 29°59'25" E a distance of 96.57 feet;

Thence S 59°20'56" W a distance of 4.00 feet;

Thence S 30°39'04" E a distance of 11.33 feet;

Thence S 24°48'49" W a distance of 40.07 feet;

Thence S 65°11'06" E a distance of 19.08 feet;

Thence S 24°39'06" W a distance of 155.05 feet;

Thence N 65°22'42" W a distance of 196.45 feet;

Thence N 24°34'31" E a distance of 204.01 feet;

Thence S 65°25'29" E a distance of 27.01 feet;

Thence N 24°34'31" E a distance of 86.13 feet to the Point of Beginning;

The parcel to which this description applies contains 46,145 square feet, more or less.

Exhibit 5

**INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO, ACTING BY AND THROUGH ITS METROPOLITAN-
EXPOSITION AND RECREATION COMMISSION, AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
FOR EXPERIMENTAL INTERGOVERNMENTAL EXPO EVENT FARE
PROGRAM**

THIS EXPERIMENTAL INTERGOVERNMENTAL EVENT FARE PROGRAM AGREEMENT ("Agreement") is entered into by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district ("TriMet") and METRO, acting by and through its METROPOLITAN-EXPOSITION AND RECREATION COMMISSION ("MERC") on this the ____ day of _____ 2003.

RECITALS

- A. MERC is the operator of the Exposition Center and together with the Metro Council has approved a 10-year master plan for the Expo Center, which calls for reducing the traffic impacts of Expo Center events in part through enhanced transit ridership and reduced emphasis on automobile trips.
- B. TriMet is constructing the Interstate MAX light rail project (the "Project") whose northern terminus is the Expo Center. Through an intergovernmental agreement dated the same date hereof MERC has granted TriMet various property interests in the area of the Expo Center, including a 15-year lease for the use of 300 spaces for a Park & Ride facility, and the parties have entered into a Park & Ride Facility Lease Agreement dated March __, 2003.
- C. To encourage the use of the public transportation to and from the Expo Center, MERC and TriMet hereby enter into an agreement for an experimental event fare program, upon the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Agreement, the parties agree as follows:

1. **Experimental Expo Event Fare Program Term.** Subject to all appropriate TriMet and MERC approvals, TriMet and MERC agree to implement the Experimental Expo Event Fare Program ("Program") on the terms and conditions set forth herein. The fare instrument shall be issued by MERC and /or its ticket outlets pursuant to Section 2 of this Agreement as a valid fare for Expo Center advance ticket patrons to travel on TriMet to and from an Expo Center event on the date of the Expo Center event (in the case of multi-day events, one day in the

event period) and as otherwise described below, when duly presented as fare payment. The Program shall commence on the date of the opening of Interstate MAX to the public and shall remain in effect for two years. Subject to required agency approvals, during the second year of the Program, the parties agree to negotiate in good faith to extend the Program after the two year term, including renegotiation of the Program Cost in consideration of actual mode split and value of transit service.

2. **Program Fare Instrument.** MERC agrees to issue a Program fare instrument for all advance sale tickets purchased for events at the Expo Center through commercial ticket outlets. The Program fare instrument shall include the word "TriMet" printed on the front, the name and date of the event, and a statement indicating that the fare instrument shall be valid for transit travel in all zones, for all hours on the day of the event, on all fixed-route TriMet service, door-to-door LIFT service, and the Portland Streetcar.
3. **Program Cost** The Program Cost shall be \$1,500.00 per year commencing on the date of opening of Interstate MAX to the public. MERC shall reduce TriMet's payment obligation for maintenance under the parties' Park and Ride Facility Lease Agreement dated March ____ 2003, to reflect the Program Cost owed to TriMet under this Agreement.
4. **Advertising.** MERC will cooperate with TriMet to advertise and promote the Program and use of transit in conjunction with events held at the Expo Center.
5. **Records.** MERC shall maintain accurate records of aggregate attendance for all ticketed Expo Center events (not event specific) and of the number of advance tickets sold per event. Upon request, MERC shall provide the foregoing records and other all available records, data, and information concerning attendance to TriMet. MERC will exercise its best efforts to pass these obligations on to its tenants through appropriate agreements, if the tenants have such information and MERC does not. To the fullest extent possible and subject to public records laws, TriMet agrees to maintain all information received under this paragraph as confidential and shall not divulge the same unless required to do so by a court of law.
6. **Dispute Resolution.** If the Project Managers from each party cannot resolve any dispute arising out of this Agreement, the matter will be referred to their respective supervisors for resolution. If the supervisors are unable to resolve the dispute within 30 days of referral, the matter will be referred to MERC's General Manager and TriMet's General Manager, who will attempt to resolve the issue. If the General Managers are not able to resolve the dispute, the parties will submit the matter to arbitration with the Commercial Arbitration Rule of the American Arbitration Association. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as provided in Oregon law. The parties shall each pay their own costs, but will share equally in fees and costs

of the arbitration and/or arbitration service provided, however, that the arbitration may award cost to the prevailing party. The parties shall continue in the performance of their respective obligations notwithstanding the dispute. This dispute resolution procedure may be modified by mutual agreement of the parties.

7. **Project Managers.** All routine correspondence and communication regarding this Agreement shall be between the project managers:

Kathryn Coffel,
Director of Marketing Information
TriMet
4012 SE 17th Ave.
Portland, OR 97202
(503) 962-5860
(503) 962-6469 (fax)

Chris Bailey
MERC
2060 N. Marine Dr
Portland, OR 97217
(503) 731-7827
(503) 731-7870 (fax)

8. **Liability.** Tri-Met shall hold harmless and indemnify MERC and Metro and their 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 the work of Tri-Met, its employees, officers, agents or contractors under this Agreement within the maximum liability limits under the Oregon Tort Claims Act. MERC shall hold harmless and indemnify Tri-Met 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 MERC work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.
9. **Termination.** The parties may mutually terminate this Agreement in writing at any time, provided, however, that this Agreement will be null and void if TriMet's Intergovernmental Event Fare ordinance is not approved by the TriMet Board.
10. **Termination for Default.** If either party fails to perform in the manner called for in this Agreement, or fails to comply with any other provisions of this Agreement, the non-defaulting party may upon 60 written days notice or such longer period of time designated in the notice, terminate this Agreement for default. Termination shall be effected by serving a written notice of termination on the defaulting party, setting forth the manner in which the party is in default.

Within the 60 days from notice, MERC and Tri-Met shall endeavor to correct any problem giving rise to the default notice. If the parties agree on a new performance schedule, the serving party may allow the other party to continue work under this Agreement, or to treat the termination as a termination for convenience. In the case of termination, either party will be paid only the amounts due for work performed, unless in the termination agreement the parties specify to the contrary.

11. **Documents.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs or models which are prepared or developed in connection with this Project shall become public property. However, nothing set forth in this Agreement shall be construed as altering any provision or exemption provided for in federal and/or state public records and public meetings laws and regulations, and the parties explicitly reserve all such exemptions and exceptions set forth in those laws and regulations.

12. **No Third-Party Beneficiaries.** MERC and TriMet are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

13. **Authority.** The parties signing below represent that they have authority to bind the party for which they sign.

IN WITNESS HEREOF, the parties have agreed to all provisions of this Agreement as of the date first noted herein.

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

By: _____
Sheryl Manning, Executive Director

APPROVED AS TO FORM:

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**

By: _____
Neil McFarlane, Executive Director

APPROVED AS TO FORM:

METRO

By: _____
Mark Williams, Chief Operating Officer

APPROVED AS TO FORM:

Exhibit B to Resolution No. 03-3316

MERC Resolution 03-18

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 03-18

For the purpose of approving an Intergovernmental Agreement between Metro, by and through the Metropolitan Exposition-Recreation Commission (MERC), and the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) for the Expo Center Interstate Max Project Improvements.

WHEREAS, in June of 2000, Metro, MERC and Tri-Met signed a Memorandum of Understanding between Metro and the Tri-County Metropolitan Transportation District for the purpose of establishing a framework for negotiating an Intergovernmental Agreement between the parties for Interstate Max improvements on Expo's East parking lot; and

WHEREAS, since that time, MERC Staff along with Metro's Office of Metro Attorney have been negotiating the terms and conditions of the Agreement, including a property transfer, easements and a park and ride arrangement; and

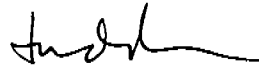
WHEREAS, Metro/MERC and Tri-Met Staffs have agreed upon all terms and conditions within the agreement attached hereto as Exhibit "A," including financial compensation, and recommend that the Agreement be approved; and

WHEREAS, the MERC Commission is to approve the Agreement prior to forwarding the agreement to the Metro Council for its consideration.

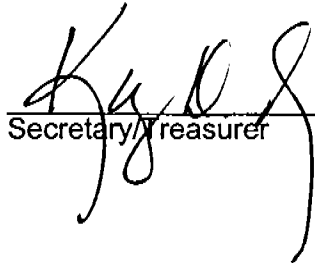
BE IT THEREFORE RESOLVED:

1. The Metropolitan Exposition-Recreation Commission (Commission) hereby approves the Agreement in substantially the form attached hereto as Exhibit "A," with the Tri-County Metropolitan Transportation District of Oregon for the Expo Center Interstate Max Project Improvements on the East Parking Lot at Expo.
2. The Commission further forwards the approved Agreement to the Metro Council for its consideration of approval, and if approved by the Metro Council, authorizes the General Manager of the Commission to sign on behalf of MERC, the Agreement in substantially the form attached hereto as Exhibit "A."

Passed by the Commission on March 26, 2003.



Chair



Secretary/Treasurer

Approved As To Form:
Daniel B. Cooper, Metro Attorney

By: Kathleen Paul

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3316, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO, BY AND THROUGH THE METROPOLITAN EXPOSITION-RECREATION COMMISSION (MERC), AND THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) FOR THE EXPO CENTER INTERSTATE MAX PROJECT IMPROVEMENTS

Date: March 31, 2003

Prepared by: Sheryl Manning
MERC Acting General Manager

BACKGROUND

In June of 2000, a Memorandum of Understanding was entered into between Metro, MERC and TriMet for the purpose of establishing a framework for negotiating an Intergovernmental Agreement between the parties to allow for Interstate Max improvements on the Expo Center's East parking lot.

Since that time, MERC staff along with the Office of the Metro Attorney have been negotiating a variety of issues associated with the construction of the IMAX improvements and adjacent use of areas on the parking lot. All areas of the parking lot were appraised by certified appraisers and values for those areas were ultimately established to the satisfaction of all concerned. Related issues associated with the establishment of the station site, park-and-ride, event fare, canopy walkway system and general language have also been resolved.

A copy of the final Expo Center Interstate Max IGA is attached to Resolution 03-3316 as Exhibit "A."

ANALYSIS/INFORMATION

- 1. Known Opposition:** None.
- 2. Legal Antecedents:** Oregon Laws 1996, Chapter 12 (House Bill 3478), pursuant to which the Metro Council adopted a final land use order on July 23, 1998 for the South/North Light Rail Project; Metro Council Resolution No. 99-2853A, approving a land use order amending the light rail route, light rail stations, and Park-And-Ride Lots, including their locations and approving the project as a phase of the South/North Light Rail Project; Portland City Council Resolution No. 35800, confirming its support for the project and identifying the project as the region's next priority rail transportation project; Metro Council Resolution No. 00-2969B, adopting the "2000 Regional Transportation Project"; Metropolitan-Exposition Recreation Commission Resolution No. 00-41, adopting the Expo Master Plan; and Metro Council Resolution No. 00-3019, approving the Expo Master Plan.
- 3. Anticipated Effects:** The Expo Center Interstate Max IGA calls for initial payments from TriMet, at Closing, as defined in the Expo Center Interstate Max IGA, of \$1,404,325 for Parcel #1 (the Station Site), \$45,000 for Parcel #2 (the Construction Easement), \$185,000 for Parcel #3 (the Staging Easement) and \$100 for Parcel 5 (the Waterline Easement), for a total of \$1,634,425. An additional \$659,325 for Parcel #4 (the Park-and-Ride) will be paid by the opening of the Park-and-Ride or September 1, 2004, whichever is sooner. Two-thirds of the Parcel #4 amount is potentially

refundable to TriMet if the Park-and-Ride is terminated within five (5) years or fewer. Interest on deposited funds is retained by MERC.

TriMet will also reimburse MERC up to \$600,000.00 for design and construction of an unenclosed walkway including a canopy with support footings, sidewalk, lighting, and a second walkway with sidewalk, support footings and electrical conduit. Tri Met has reimbursed MERC for the design of the walkways to date.

The park-and-ride non-exclusive lease is for an initial 15-year term. The lease gives TriMet exclusive rights to use 300 parking spaces before 10am Monday-Friday, after which MERC can charge a parking fee for any unoccupied spaces.

TriMet also has the right to renew the lease for one additional ten-year period. The rental amount for the additional 10-year period will be determined as an annual rental amount by an appraiser jointly selected by the parties.

The Expo Center Interstate Max IGA provides for a two year Experimental Expo Event Fare Program in which TriMet will honor all Expo Center event tickets sold in advance as valid fare on all TriMet transportation modes to and from the Expo Center on the day of the event. The Expo Center Interstate Max IGA provides that in the second year of the program, the parties will negotiate in good faith to extend the program, including negotiation of cost in consideration of actual mode split and value of transit service.

- Budget Impacts:** The Agreement calls for initial payments from Tri-Met, at Closing, as defined in the Agreement (essentially on or before May 31, 2003), of \$1,404,325 for Parcel #1 (the Station Site), \$45,000 for Parcel #2 (the Construction Easement), \$185,000 for Parcel #3 (the Staging Easement) and \$100 for Parcel 5 (the Waterline Easement), for a total of \$1,634,425. An additional \$659,325 for Parcel #4 (the Park and Ride) will be paid by the opening of the Park and Ride or September 1, 2004, whichever is sooner. Two thirds of the Parcel #4 amount is potentially refundable to Tri-Met if the Park and Ride is terminated within 5 years or fewer. Interest on deposited funds are retained by MERC. Funds received under this IGA are committed to Phase III of Expo's master plan for redevelopment.

Tri-Met will also reimburse MERC up to \$600,000.00 for design and construction of an unenclosed walkway including a canopy with support footings, sidewalk, lighting, and a second walkway with sidewalk, support footings and electrical conduit. Tri Met has reimbursed MERC for the design of the walkways to date.

RECOMMENDED ACTION

Staff recommends that the Metro Council approve the Expo Center Interstate Max IGA between Metro, by and through the Metropolitan Exposition-Recreation Commission (MERC), and the Tri-County Metropolitan Transportation District of Oregon (TriMet), for the Expo Center Interstate Max Project Improvements, for the considerations stated therein.