

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 11-4303
CHIEF OPERATING OFFICER TO GRANT AN)
EASEMENT RELATING TO THE EXPO) Introduced by COUNCIL
CENTER CONDITIONAL USE MASTER PLAN) PRESIDENT TOM HUGHES

WHEREAS, on February 8, 2011, the MERC Commission approved a Expo Center Conditional Use Master Plan (the "CUMP") by Resolution No. 11-04 and authorized staff to forward the plan to Metro Council for their consideration, review and approval;

WHEREAS, on March 3, 2011, the Metro Council approved the CUMP and authorized staff to take actions necessary for approval of the CUMP with the City of Portland, Bureau of Development Services;

WHEREAS, the CUMP was approved by the City of Portland, Bureau of Development Services subject to certain conditions, one of which requires that Metro grant a public access easement over the existing South Access Road to the City of Portland, Bureau of Transportation.

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to grant a public access easement over the existing South Access Road to the City of Portland, Bureau of Transportation, as set forth in the attached Exhibit A or in a form otherwise approved by the Office of the Metro Attorney.

ADOPTED by the Metro Council this 27 day of October, 2011.


Tom Hughes, Council President

APPROVED
EX-170

Approved as to Form:


Alison Kean Campbell, Acting Metro Attorney

Exhibit A

PUBLIC ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **Metro**, an Oregon municipal corporation ("Metro"), in consideration of the sum of One and no/100 Dollars (\$1.00), and other good and valuable consideration, to it paid by the City of Portland, a municipal corporation of the State of Oregon, the receipt whereof is hereby acknowledged, does hereby grant unto said City of Portland (the "City"), a perpetual access easement for public use for the purpose of ingress and egress through, over and across a portion of Expo property described as follows ("Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD:

- A. Metro permits public rights of access and movement for vehicles, bicycles, and pedestrians within and through the Easement Area as though said access and movement existed within a public right-of-way.
- B. No building shall be erected within the Easement Area without the prior written consent of the City Engineer or designee.
- C. Metro represents and warrants that it has the authority to grant the easement..
- D. Metro agrees that the consideration recited herein is just compensation for the property or property rights conveyed, which includes damages to Metro's remaining property, if any, resulting from the acquisition or use of said property or property rights.

R/W # 7365
1N1E04 TL 100
2N1E33 TL 200

After Recording Return to:
106/800/Dee A. Walker

Tax Statement shall be sent to:

No Change

- E. The easement herein granted does not convey any right, title or interest to the Easement Area, except as stated herein.
- F. The easement herein granted is not a dedication of public right-of-way and it is understood and agreed that the City, by accepting this easement, is not accepting any liability for taxes, assessments, or other governmental charges relating to the property.
- G. Metro herein assumes responsibility for construction, reconstruction, maintenance and repair of the Easement Area. Metro shall defend, indemnify, and hold City, its officers, agents and employees harmless from any and all liability or claims for damages to persons or property which may arise or result from the Metro's failure to maintain, construct, reconstruct and repair said facilities
- H. Metro, its successors and assigns, agree to defend, indemnify and hold harmless the City, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from the presence or release of hazardous substances onto or from the Easement Area. This provision shall not apply to a release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of the City. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- I. Metro reserves all development rights appurtenant to the Easement Area for the Metro and Metro's heirs, successors, and assigns. This reservation of development rights includes, but is not limited to, the right to use the Easement Area for building setbacks, lot coverage, density calculations, and stormwater/pervious area.
- J. In accordance with the City of Portland Land Use Decision LU 11-102970 CUMS (HO 4110007), Metro retains the option to relocate the Easement Area along the southern boundary of the Expo Property. Metro shall provide the City with written notice of its intent to relocate the Easement Area and the parties shall record a new Public Access and Utility easement (the "Replacement Easement") within 90-days of receipt of Metro's notice. The Replacement Easement shall be 50-feet wide in order to accommodate the City's public right-of-way improvements. At such time that the Replacement Easement is recorded and the new road is constructed and opened for public use, this Public Access Easement shall automatically terminate and the City shall, within thirty (30) days of such termination, prepare and deliver a quitclaim document acknowledging such termination and extinguishment.

IN WITNESS WHEREOF, the above named has hereunto set its hand this _____ day of _____, 2011.

METRO

BY: _____

NAME: _____

TITLE: _____

STATE OF OREGON

County of _____

This instrument was acknowledged before me on _____, 20____,
by _____ as _____ of Metro,
an Oregon municipal corporation.

Notary Public for Oregon
My Commission expires _____

Approved as to form:

CITY ATTORNEY

BUREAU DIRECTOR OR DESIGNEE

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4303, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT RELATING TO THE EXPO CENTER CONDITIONAL USE MASTER PLAN

Date: Oct. 19, 2011

Prepared by: Cheryl Twete
503.797.1774

BACKGROUND

On March 3rd, 2011, the Metro Council approved the Expo Center Conditional Use Master Plan (CUMP) and authorized staff to take actions necessary for approval of the CUMP with the City of Portland, Bureau of Development Services. The CUMP was submitted to the City and subsequently approved by the City Hearings Office and became effective on June 27, 2011. There were no appeals to the decision.

The Hearings Officer decision was subject to five conditions, three of which applied to future development and two of which were required to be completed within 90 days. The purpose of Resolution 11-4303 is to authorize Metro's execution of a public access easement with the City of Portland for the existing South Access Road. In the previous Conditional Use Master Plan (2001), the City required that the road be open and available for public usage as a condition of approval. The City's requirements have changed and in the 2011 CUMP, Metro was required to provide a public access easement for this same roadway and sidewalk area. Easement negotiations with city Portland Bureau of Transportation staff have extended beyond the 90 day timeframe; however, because the parties are acting in good faith towards resolution, the city Bureau of Development Services staff has indicated that the extended timeframe is acceptable.

The 2011 CUMP approval conditions, and the public access easement, allow relocation of the easement at such time when a new, permanent South Access Road is developed along the southern perimeter of the Expo Center site. Staff anticipates that such road will be developed as part of the Columbia River Crossing local street network project.

ANALYSIS/INFORMATION

- 1. Known Opposition** None
- 2. Legal Antecedents** MERC Res.00-41 approving the previous CUMP, November, 15, 2000
Metro Res. 00-3019 approving previous CUMP, December 12, 2000
MERC Res. 11-04 approving the current CUMP, February 8, 2011
Metro Res. 11-4238 approving the current CUMP, March 3, 2011
- 3. Anticipated Effects** Staff has submitted to the City Bureau of Development Services the required additional information and modifications to the 2011 CUMP, excluding the executed public access easement, which will be submitted upon approval by the Metro Council to enable the 2011 CUMP to remain in effect.

4. Budget Impacts

Costs to prepare the public access easement are included in the consultant contract for the 2011 CUMP, under the direction of in-house project management and legal services. Other than recording fees, no additional budget impacts are expected. The Expo Center will continue to be responsible for maintenance and repair costs of the easement area; however, there are no known costs at this time.

RECOMMENDED ACTION

Staff recommends that the Metro Council adopt Resolution No. 11-4303 to approve granting and execution of the public access easement.