

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 03-3385
THE CHIEF OPERATING OFFICER TO)
ENTER INTO AND EXECUTE AN)
INTERGOVERNMENTAL EXCHANGE)
AGREEMENT AND RELATED)
EASEMENTS WITH THE PORT OF)
PORTLAND FOR A NON- CASH) Introduced by Chief Operating Officer
EXCHANGE OF PROPERTY) Michael J. Jordan, with the concurrence of
Council President David Bragdon

WHEREAS, Metro and the Port of Portland have negotiated a non-cash exchange of property wherein the Port will convey a Port-owned parcel (the "Triangle Parcel") located adjacent to Smith and Bybee Lakes Wildlife Area in exchange for Metro conveying to the Port a Metro-owned parcel located adjacent to the Expo Center (the "Expo Parcel");

WHEREAS, the Triangle Parcel is important to the realization of Metro's Smith-Bybee Lakes facility; the parcel is located on the north side of Smith Lake and was identified in a concept plan for recreational facilities at Smith-Bybee, approved and adopted by the Metro Council on December 2, 1999, Resolution No. 99-2865 (the "Recreation Facility Plan"), and Metro intends develop the Triangle Parcel into trailhead and visitor facilities for the wildlife area;

WHEREAS, the Expo Parcel is located adjacent to the Port's Vanport Wetlands/Radio Towers mitigation site; and the Expo Parcel would be partitioned off of the adjacent Expo parking lot so that the parcel could be incorporated into the Port's adjacent Vanport site;

WHEREAS, the proposed exchange would limit the uses of the two properties, with rights of reversion for violation of such limited uses: Metro would be limited to using the Triangle Parcel for educational and recreational uses associated with the Smith-Bybee Lakes Facility Plan; and the Port would be limited to using the Expo Parcel as a vegetative buffer and mitigation enhancements compatible with its adjacent Vanport Wetlands site;

WHEREAS, the Metro Council determines that the Expo Parcel and appurtenant easement are not needed for public use;

WHEREAS, the Metro Council also determines that the public interest will be furthered by exchanging the Expo Parcel and appurtenant easement for the Triangle Parcel and appurtenant easement; and

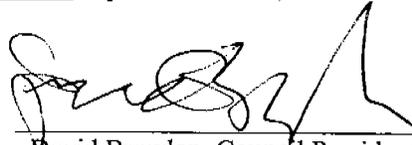
WHEREAS, the Metro Council also determines that the property to be received in exchange for the Expo parcel is of equal or superior useful value for public use;

NOW, THEREFORE,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into and execute an Intergovernmental Exchange Agreement and related Easements with the Port of Portland, and to take all actions necessary to complete the transfer of the Expo Parcel to the Port in exchange for receiving the Triangle Parcel and related easement from the Port, in substantially the form set forth in the

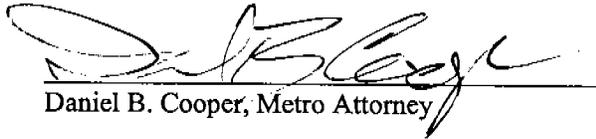
Intergovernmental Exchange Agreement and related Easements and exhibits attached hereto as Exhibit A or in forms approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 20th day of November, 2003.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3385, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AND EXECUTE AN INTERGOVERNMENTAL EXCHANGE AGREEMENT AND RELATED EASEMENTS WITH THE PORT OF PORTLAND FOR A NON-CASH EXCHANGE OF PROPERTY

Date: November 3, 2003

Prepared by: Jim Desmond

BACKGROUND

Resolution No. 03-3385 requests authorization for the Chief Operating Officer to enter into an Intergovernmental Agreement with the Port of Portland for a non-cash exchange of property and related easements, as further described herein and as previously outlined in a non-binding Memorandum of Understanding (MOU) entered into between the parties. The MOU and this proposed transaction were presented to the Metro Council at the Metro Council Informal Meeting on May 13, 2003. Metro and Port staff and attorneys have now negotiated an Intergovernmental Exchange Agreement and related deeds and easements for the Council's consideration.

Metro and the Port of Portland propose a property exchange involving a Port-owned parcel (the "Triangle Parcel") located adjacent to Smith and Bybee Lakes Wildlife Area and a Metro-owned parcel located at the Expo Center, adjacent to the parking lot (the "Expo Parcel"). The approximately 3.5-acre Triangle Parcel (legal description attached hereto as Attachment A) was identified in a concept plan for recreational facilities at Smith-Bybee, approved by the Metro Council in December, 1999 (the "Recreation Facility Plan"). Metro's intent is to develop the Triangle Parcel into a parking lot, trailhead and visitor facilities for the wildlife area. The Expo Parcel (legal description attached hereto as Attachment B) consists of approximately 6.75 acres of land located adjacent to Vanport Wetlands, a Port of Portland mitigation site. The Port would like to incorporate the Expo Parcel into its Vanport site. The Port has stated that it intends to use the Expo Parcel as a vegetative buffer and enhancements compatible with its adjacent Vanport Wetlands ("Radio Towers") site. Access easements would also be granted by each party to the other party simultaneous with the deed transfers.

The Triangle Parcel is located on the north side of Smith Lake. The property is zoned heavy industrial and is adjacent to the wildlife area, although it lies outside the boundary of the Smith and Bybee Lakes Wildlife Area. The Triangle Parcel was part of a larger parcel that was bisected by a new overpass for North Marine Drive, completed in the mid-1990's. The Port has since partitioned the Triangle Parcel in anticipation of this exchange. The Expo Parcel is part of the Expo complex that was transferred to Metro from Multnomah County in 1996. Expo has been considering alternative uses for the site.

In July, 2001, Metro and the Port entered into an intergovernmental agreement for access to perform environmental assessment work at the two sites. A level 1 environmental assessment of the Triangle Parcel found no evidence of contamination. An update of the 2000 level 1 assessment of the Expo Parcel recommended a level 2 assessment. The Level 2 Environmental Assessment, completed in October 2001, found contaminated dirt surrounding a stormwater outfall draining an Expo parking lot. Remediation work recommended by the level 2 was completed by MERC/Metro in December 2001. The Port has agreed in the MOU that Metro/MERC's remediation as recommended in the environmental assessment is complete.

In 2002, appraisals of the two sites were completed, and Metro and Port staff began negotiating a Memorandum of Understanding to outline the terms for the property exchange. After the MOU was brought before Council informally and then executed, the parties have been negotiating the Intergovernmental Exchange Agreement (“Exchange Agreement”), the related Bargain & Sale Deeds, and the appurtenant easements to be exchanged. The Exchange Agreement is attached to the accompanying resolution, and its provisions include:

- The parties’ mutual agreement to an even exchange;
- Exchange of the properties “as is,” with no representations or warranties;
- Roles and responsibilities in completing a lot line adjustment of the Expo Parcel and the adjacent Port-owned property;
- The parties’ mutual agreement to grant appurtenant easements for respective uses on both sites, and the agreement to pursue a revocable permit and/or street vacation from the Portland Department of Transportation to access the Triangle Parcel on Old Marine Drive;
- The Port’s contribution of \$10,000 toward facility and art design at Smith-Bybee;
- Metro’s removal of vegetation from property adjacent to the Expo Parcel;
- Metro’s removal of concrete and debris from the Expo Parcel;
- Metro’s revegetation of the Expo Parcel;
- To accomplish the Expo lot line adjustment, Metro may be required to fulfill certain requirements of the Expo Master Plan prior to Closing, as a condition of the lot line adjustment;
- Use restrictions on Expo Parcel: development of vegetative buffer and enhancements compatible with adjacent Vanport Wetlands site; uses shall not interfere with Metro’s or MERC’s use of the adjacent Expo parking lot and exposition center;
- Use restrictions on Triangle Parcel: uses consistent with the Smith-Bybee Recreation Facility Plan—multiple recreational uses, environmental education, a parking lot for public access and a public boat launch;
- Bargain and Sale Deeds with clauses providing for reversion if property ceases to be used for its intended purposes.

ANALYSIS/INFORMATION

1. Known Opposition

None known of.

2. Legal Antecedents

On December 2, 1999, the Metro Council adopted Resolution No. 99-2865, for the purpose of approving the Smith and Bybee Lakes Wildlife Area Recreation Facility Plan. The Plan identifies the Triangle Parcel and recommends its development with a trailhead and facilities. The current resolution under consideration provides for Metro’s acquisition of the Triangle Parcel and comports with the provision in Council Resolution No. 99-2865 that staff begin implementation of the Recreation Facility Plan. The Expo Master Plan adopted December 12, 2000, states that this Expo Parcel will be used as part of an “environmental reserve” area along Expo’s southern boundary.

Oregon Revised Statute 271.310 provides that a political subdivision may sell property to a governmental body or private individual whenever such property is not needed for public use, or whenever the public interest may be furthered. ORS 271.310(1). Even real property needed for public use may be exchanged for property that is of equal or superior useful value for public use. ORS 271.310(3).

3. Anticipated Effects

In accordance with the Memorandum of Understanding and the Exchange Agreement between Metro and the Port of Portland, Metro and the Port will simultaneously exchange the Port's Triangle Parcel for Metro's Expo Parcel. The Expo Parcel will be absorbed into the Port's adjacent property via property line adjustment through the City of Portland. Metro will take title in fee to the Triangle Parcel adjacent to the Smith and Bybee Lakes Wildlife Area. The Triangle Parcel will be eventually be used in Metro's redesigned trailhead and visitor facilities for the wildlife area. Metro will also receive an easement over the Port's adjacent private road for vehicular, boat, and pedestrian uses, and will access the property via a Revocable Permit Metro is seeking from Portland Department of Transportation (PDOT) over Old Marine Drive. The Port will access the Expo Parcel through an appurtenant easement adjacent to the property.

4. Budget Impacts

The Port's transfer to Metro of the Triangle Parcel is expected to offset any costs associated with the transaction, such as due diligence, normal closing costs associated with the transaction, survey work and costs of removal of debris and vegetation.

RECOMMENDED ACTION

Recommend Council adoption of Resolution No. 03-3385, authorizing the Chief Operating Officer to enter into and execute an Intergovernmental Exchange Agreement with the Port of Portland, and to execute the related Bargain and Sale Deeds and easements, and to complete the transfer of the Expo Parcel to the Port in exchange for receiving the Triangle Parcel from the Port, in substantially the form set forth in the attached Exchange Agreement and exhibits thereto.

INTERGOVERNMENTAL
EXCHANGE AGREEMENT

BETWEEN

THE PORT OF PORTLAND

AND

METRO

TABLE OF CONTENTS

DEFINITIONS

INTERGOVERNMENTAL EXCHANGE AGREEMENT

This Intergovernmental Exchange Agreement (the "**Agreement**"), dated as of this _____ day of _____, 2003 (the "**Effective Date**"), is entered into by and between THE PORT OF PORTLAND, a Port district of the State of Oregon (the "**Port**"), and METRO, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, by and through the METROPOLITAN EXPOSITION-RECREATION COMMISSION ("MERC") ("**Metro**").

RECITALS

A. The Port owns the following parcel of real property:

A parcel of land located in an area commonly known as Rivergate Industrial District, Multnomah County, Oregon, consisting of approximately 3.46 acres, described and shown on Port drawing RG 2001-17, attached hereto as **Exhibit A** (the "**Triangle Parcel**").

B. Metro owns the following parcels of real property:

A parcel of land consisting of approximately 6.04 acres located in Multnomah County, Oregon on the westerly boundary of Port-owned property commonly known as the "**Vanport Wetlands**" (formerly known as the Radio Tower Property), shown as "**Parcel 1**" on attached **Exhibit B**; and

A parcel of land consisting of approximately 0.7 acres, located in Multnomah County, Oregon, on the northerly boundary of the Vanport Wetlands, shown as "**Parcel 2**" on attached **Exhibit B**. Parcel 1 and Parcel 2 collectively shall be referred to herein as the "**Metro Parcel**."

The Triangle Parcel and the Metro Parcel collectively shall be referred to herein as the "**Property**."

C. The Port desires to convey the Triangle Parcel to Metro, in even exchange for which Metro desires to convey the Metro Parcel to the Port. In addition, the parties desire to exchange appurtenant easements with the Triangle Parcel and the Metro Parcel, as set forth below.

NOW, THEREFORE, the parties, intending to be legally bound by the terms of this Agreement, and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, agree as follows.

1. EXCHANGE

1.1 Mutual Agreement to Exchange

Metro agrees to convey the Metro Parcel, together with any and all improvements located thereon, in fee simple to the Port (subject to the condition subsequent described in Section 5.2), in exchange for which the Port agrees to convey the Triangle Parcel, together with any and all improvements located thereon, in fee simple to Metro (subject to the condition subsequent described in Section 5.1), upon the terms and conditions stated herein.

1.2 Even, Non-Cash Exchange

The parties acknowledge and agree that the conveyance by Metro of the Metro Parcel to the Port, and the conveyance by the Port of the Triangle Parcel to Metro, shall be an even, non-cash exchange, and that the consideration for the exchange shall be the mutual benefits derived by the Port from the Metro Parcel, and by Metro from the Triangle Parcel.

2. CLOSING AND ESCROW

2.1 Escrow Agent

Metro and the Port shall deliver a fully executed copy of this Agreement to Chicago Title Insurance Company of Oregon, downtown commercial escrow branch, 888 SW Fifth Avenue, Suite 930, Portland, Oregon 97204 (the "**Escrow Agent**") and both parties hereby authorize their respective representatives or attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement or to Close (defined below) this transaction. In the event of any conflict between such additional or supplemental escrow instructions and the express terms of this Agreement, the terms of this Agreement shall control.

2.2 Closing

For purposes of this Agreement, "**Close**," "**Closing**," or "**Closed**" with respect to the Property shall mean the date on which all of the necessary documents have been deposited with the Escrow Agent and the Escrow Agent has (a) recorded on behalf of Metro the Triangle Parcel Deed referred to in Section 5.1 and the Triangle Easement referred to in Section 6.1; (b) recorded on behalf of the Port the Metro Parcel Deed referred to in Section 5.2 and the Metro Easement referred to in Section 6.2; (c) issued or authorized the issuance of the title insurance policies referred to in Sections 7.1 and 7.2; and (d) complied with all other escrow instructions of Metro and the Port imposed as a condition of Closing.

2.3 Closing Date; Costs; Escrow instructions

Closing shall occur no later than fifteen (15) days following the satisfaction or waiver of all conditions described in Section 4, but in no event shall Closing occur later than December 23, 2003 (the "**Closing Date**") unless extended by mutual written agreement of the parties. This

Agreement shall be Closed at the downtown commercial escrow offices of the Escrow Agent. Each party will pay one-half (1/2) of the escrow fee, one-half (1/2) of the recording fees, and one-half (1/2) of any other Closing costs not specifically mentioned in this Section 2.3. In addition, each party shall pay the cost of a standard owner's title insurance policy on the parcel such party is transferring under this Agreement, and, if desired, each party shall pay the cost of extended title insurance coverage on the parcel such party is receiving under this Agreement, as provided in Section 7.

3. PRELIMINARY TITLE REPORT

3.1 Triangle Parcel Title Report

The Sixth Supplemental Preliminary Title Report, dated _____, 2003 and effective as of _____, 2003, Order No.221664, issued by the Escrow Agent, showing the condition of the title to the Triangle Parcel, is attached hereto as **Exhibit C** (the "**Triangle Parcel Title Report**"). By signature hereto, Metro acknowledges that it is accepting title to the Triangle Parcel subject to (i) all general and special exceptions shown in the Triangle Parcel Title Report; and (ii) all matters created or suffered by Metro (collectively, the "**Triangle Parcel Permitted Encumbrances**").

3.2 Metro Parcel Title Report

The Second Supplemental Preliminary Title Report, dated _____, 2003 and effective _____, 2003, Order No. 249039, issued by the Escrow Agent, showing the condition of the title to the Metro Parcel, is attached hereto as **Exhibit D** (the "**Metro Parcel Title Report**"). By signature hereto, the Port acknowledges that it is accepting title to the Metro Parcel subject to (i) all general and special exceptions shown in the Metro Parcel Title Report; and (ii) all matters created or suffered by the Port (collectively, the "**Metro Parcel Permitted Encumbrances**").

4. CONDITIONS PRECEDENT TO CLOSING

4.1 Conditions Precedent to Metro's Obligations

Metro's obligations with respect to this transaction are subject to satisfaction of the following conditions not later than the Closing Date or the date otherwise indicated:

4.1.1 No Material Change in Condition

As of the Closing Date, there shall have been no material adverse change related to the Triangle Property (defined in Section 11.1).

4.1.2 No Trespass by Railroad

It is a condition to Closing that Metro be satisfied that the Union Pacific Railroad and Burlington Northern-Santa Fe Railroad are not trespassing on the Triangle Parcel or interfering with Metro's future use of the Triangle Parcel.

4.1.3 Triangle Parcel Easement

The Triangle Easement described in Section 6.1 shall be granted simultaneously with the transfer of the Triangle Parcel to Metro.

4.1.4 Simultaneous Closing

Closing on the Metro Parcel shall have occurred or shall occur simultaneously with the Closing on the Triangle Parcel.

4.1.5 Metro Council Approval

This Agreement is expressly conditioned upon the formal approval by the Metro Council and the MERC Commission, in the form of a resolution by each governing body, of the terms and conditions set forth in this Agreement.

4.2 Conditions Precedent to the Port's Obligations

The Port's obligations with respect to this transaction are subject to satisfaction of the following conditions not later than the Closing Date or the date otherwise indicated:

4.2.1 No Material Change in Condition

As of the Closing Date, there shall have been no material adverse change related to the Metro Property (defined in Section 11.2).

4.2.2 Storm Water Management Plan

Prior to Closing, Metro shall provide to the Port Metro's storm water management and pollution control plan for the Expo Center, including the maintenance schedule and storm water sampling program for the Expo Center parking areas that discharge storm water onto the Metro Parcel. Prior to Closing, Metro shall also provide to the Port copies of all previous annual public reports available to Metro, up until Closing, of storm water system inspection and maintenance activities at the Expo Center.

4.2.3 Preliminary Approval of Plans

Metro wishes to take ownership of the Triangle Parcel in order to construct an educational and recreational facility (the "Facility") in connection with Metro's recreational facilities located on Smith and Bybee Lakes. The Facility will provide multiple recreational uses which will include biking, walking, hiking, wildlife viewing, canoeing and kayaking (non-gas powered boats only), fishing, and environmental education, a parking lot for public access, and a public boat launch with access to Smith and Bybee Lakes. Said uses shall be consistent with the

"Smith and Bybee Lakes Wildlife Area Recreation Facility Plan" as adopted by the Metro Council in December, 1999 or as amended by the Metro Council attached as **Exhibit E ("Lakes Facility Plan")** consistent with the February 1989 Rivergate Development Standards attached as **Exhibit F ("Standards")**. The Port has reviewed a conceptual plan of Metro's proposed facility, attached hereto as **Exhibit G**. Metro has also submitted to the Port Metro's 95% Construction Document Plans for the Facility dated February 28, 2003, attached hereto as **Exhibit H ("Preliminary Plans")**. Prior to Closing, Metro shall submit to the Port, for Port review and approval, any changes to the Preliminary Plans as permitted by this Agreement and the Triangle Easement. After Closing, Metro also shall submit to the Port final plans and "as built" for the Facility as provided in Section 10.1.1. The Port reserves the right to require Metro to make changes and additions to Metro's plans in order to satisfy, in the Port's reasonable judgment, the requirements of the Standards, and in order to accommodate the Port's access to, use of, and utility coordination within, the Triangle Property. The foregoing covenants in this Section 4.2.3 shall survive and be enforceable following Closing.

4.2.4 Metro Easement

The Metro Easement described in Section 6.2 shall be granted simultaneously with the transfer of the Metro Parcel to the Port.

4.2.5 Simultaneous Closing

Closing on the Triangle Parcel shall have occurred or shall occur simultaneously with the Closing on the Metro Parcel.

4.2.6 Commission Approval

This Agreement is expressly conditioned upon the formal approval by the Port of Portland Commission, in the form of a resolution, of the terms and conditions set forth in this Agreement.

4.2.7 Removal of Concrete; Revegetation

Prior to Closing, Metro shall demolish, remove, and dispose of the two (2) concrete covered areas ("Concrete Areas") located on the Metro Parcel, as indicated on Exhibit B, and shall remove all debris resulting from such demolition work. After the demolition, removal, and disposal work is complete, Metro shall remove any litter and shall hydroseed the Concrete Areas with a mixture of quick-germinating cover species grass seed and a native species grass seed, and cover the hydroseed with straw if necessary, such that the Metro Parcel shall be free from litter and in a naturally vegetated condition at the time of Closing. All the work required under this Section 4.2.7 shall be performed in a manner reasonably acceptable to the Port. Metro shall provide evidence of the proposed types of seeding to the Port for prior approval. Provided that the Port approves the seeding mixture and Metro otherwise meets its obligations under this Section 4.2.7, Metro shall not be required to maintain the seeding.

4.3 Conditions Precedent to Metro's and Port's Obligations

Metro's and the Port's obligations with respect to this transaction are subject to satisfaction of the following conditions not later than the Closing Date or the date otherwise indicated:

4.3.1 Lot Line Adjustment

The Port shall conduct and pay for all costs of a boundary survey of the Metro Parcel, and obtain approval from the City of Portland for a lot line adjustment to create separate legal lot parcels consisting of Parcels 1 and 2 ("Lot Line Adjustment"). The acreage, as determined by the boundary survey, shall be deemed conclusive and binding by both parties to this Agreement. The Port will be responsible for all applications and fees associated with the Lot Line Adjustment, provided that Metro agrees to cooperate with the Port to execute any required documentation for, and to work diligently and use best efforts to obtain City approval of, the Lot Line Adjustment and any other petitions or applications reasonably required by the Port in connection with its attempts to obtain the Lot Line Adjustment. The parties acknowledge and agree that as a result of the Lot Line Adjustment, a portion of the Port's existing chain link fence along the northwesterly boundary of Parcel 2 will be located within the area covered by the Metro Easement ("Metro Easement Area"). At the time Metro develops the Metro Easement Area in order to meet the requirements of the Master Plan, Metro shall relocate this portion of the Port's fence, at Metro's cost, to the area within the adjacent northern boundary of the Metro Parcel. Metro further acknowledges and agrees that after Closing Metro shall meet all requirements under the Master Plan within the Expo Center property, with no further impact to the Metro Parcel. The covenants under this Section 4.3.1 shall survive Closing.

4.4 Waiver/Satisfaction of Conditions

The conditions set forth in Section 4.1 may be waived only by Metro. The conditions set forth in Section 4.2 may be waived only by the Port. The conditions set forth in Section 4.3 may

not be waived by either party. Unless all conditions in Section 4 are satisfied or waived by expiration of the time limits as set forth above, this Agreement shall terminate without further liability to either party, except any liabilities which are specifically stated to survive termination.

5. FORM OF DEEDS

5.1 Triangle Parcel Deed

At Closing, the Port shall execute and deliver to Metro a Bargain and Sale Deed (the "**Triangle Parcel Deed**") in substantially the form set forth in **Exhibit I** conveying the Triangle Parcel to Metro. The consideration stated on the Triangle Parcel Deed shall be "other value given." The Triangle Parcel Deed will contain certain restrictive covenants to run with the land, including a right of repurchase in the event that the Facility is not constructed within the time period provided in the Triangle Parcel Deed, and a right of reentry in the event that the Triangle Parcel is not used for the purposes stated in the Triangle Parcel Deed.

5.2 Metro Parcel Deed

At Closing, Metro shall execute and deliver to the Port a Bargain and Sale Deed (the "**Metro Parcel Deed**") in substantially the form set forth in **Exhibit J** conveying the Metro Parcel to the Port, as delineated pursuant to the lot line adjustment described in Section 4.3.1. (The Triangle Parcel Deed and the Metro Parcel Deed collectively shall be referred to herein as the "**Deeds**.") The consideration stated on the Metro Parcel Deed shall be "other value given." The Metro Parcel Deed will contain certain restrictive covenants to run with the land, including a right of reentry in the event the Metro Parcel is not used for the purposes stated in the Metro Parcel Deed. The parties shall revise the Metro Parcel Deed to conform to the requirements of the Lot Line Adjustment. The final Metro Parcel Deed and legal descriptions shall be in forms acceptable to both parties. The Port shall bear all expenses associated with creating the legal descriptions of the Metro Parcel and remainder of the Expo property, as required by the Lot Line Adjustment process and by statute.

6. ACCESS EASEMENTS

6.1 Triangle Easement

At Closing, the Port shall grant to Metro an easement in the form attached hereto as **Exhibit K ("Triangle Easement")** to be recorded at Closing, granting Metro pedestrian, vehicular, and boat access over, upon, and across certain Port-owned property located adjacent to the Triangle Parcel, as further described in the Triangle Easement. The Triangle Easement shall grant Metro an easement for the purposes of installing, operating, maintaining and replacing a public trail, road, conservation activities, and associated recreational activities for the benefit and use of the public, subject to the terms and conditions provided in the Triangle Easement. Certain uses will be confined to designated areas within the Triangle Easement Area as further provided in

the Triangle Easement. The Triangle Easement shall be exclusive, with the exception of the use by the Port and certain other users as specified in the Triangle Easement.

6.1.1 Triangle Easement Area; Survey

If Metro obtains a Vacation of Old Marine Drive after Closing as provided in Section 10.1.2, then the Triangle Easement shall be amended to include the area of Old Marine Drive from Metro's new Main Entry to the eastern end of the Triangle Parcel (shown on attached **Exhibit A**). The areas within the Triangle Easement, both with and without the addition of Old Marine Drive, are labeled as such on attached **Exhibit A**. Metro shall survey, at Metro's sole cost, the area of the Triangle Easement to create a legal description for the Triangle Easement Area.

6.1.2 Port Access

The Port will abandon the Port's old entrance to the Port Road (shown on attached **Exhibit A**), and will access the Triangle Easement Area by Metro's Main Entry. Metro shall provide the Port and the other users specified in the Triangle Easement with a means of continued access through the locked gate to the Main Entry. The foregoing covenants under this Section 6.1.2 shall survive and be enforceable after Closing.

6.2 Metro Easement

At Closing, Metro will grant to the Port a nonexclusive easement in the form attached hereto as **Exhibit L ("Metro Easement")** to be recorded at Closing, granting the Port vehicular and pedestrian access over and across the private road extending along the southern boundary of the Expo Center parking lot ("**Metro Access Road**"), pedestrian access over and across the area between the Metro Access Road and the Metro Parcel, and vehicular and pedestrian access over and across the existing gravel driveway between the Metro Access Road and the Metro Parcel. The Port shall survey, at the Port's sole cost, the area of the Metro Easement to create a legal description for the Metro Easement Area. Upon completing the Metro Access Road Extension (defined in Section 10.2.1), Metro shall record an amendment to the Metro Easement to include within the Metro Easement Area the new extension or realignment of the Metro Access Road together with the adjacent real property between the extended or realigned Metro Access Road and the Metro Parcel, which covenant shall survive Closing.

7. TITLE INSURANCE

7.1 Port Policy

At Closing, Metro shall authorize the Escrow Agent to issue the Port a standard owner's policy of title insurance, insuring the vesting of fee title to the Metro Parcel in the Port, as separate parcels as delineated pursuant to the lot line adjustment described in Section 4.3.1, in the amount of Four Hundred and Twenty Thousand Dollars (\$420,000.00), subject only to the Metro Parcel Permitted Encumbrances.

7.2 Metro Policy

At Closing, the Port shall authorize the Escrow Agent to issue Metro a standard owner's policy of title insurance, insuring the vesting of fee title to the Triangle Parcel in Metro in the amount of Four Hundred and Sixty Thousand Dollars (\$460,000.00), subject only to the Triangle Parcel Permitted Encumbrances.

8. TAXES

8.1 Tax Exemption

The parties acknowledge that both the Triangle Parcel and the Metro Parcel are presently exempt from payment of real property taxes under Oregon law, and that since both the Port and Metro are tax exempt, no real property taxes should accrue on either the Triangle Parcel or the Metro Parcel.

8.2 Triangle Parcel Taxes

From and after Closing, in the event that the Triangle Parcel loses its tax-exempt status, Metro shall have full responsibility for payment of all applicable real property taxes relating to Metro's ownership of the Triangle Parcel unless the loss of such exemption has been caused by the sole actions of the Port. All taxes assessed before or after Closing relating to the Port's ownership or activities on the Triangle Parcel shall be paid by the Port.

8.3 Metro Parcel Taxes

From and after Closing, in the event that the Metro Parcel loses its tax-exempt status, the Port shall have full responsibility for payment of all applicable real property taxes relating to the Port's ownership of the Metro Parcel unless the loss of such exemption has been caused by the sole actions of Metro. All taxes assessed before or after Closing relating to Metro's ownership or activities on the Metro Parcel shall be paid by Metro.

9. POSSESSION

Metro shall be entitled to possession of the Triangle Parcel, and the Port shall be entitled to possession of the Metro Parcel, immediately upon Closing.

10. POST-CLOSING COVENANTS

The following covenants of Metro and the Port, respectively, under this Section 10 shall survive and be enforceable following Closing:

10.1 Metro Covenants

10.1.1 Plans and Permits

Metro shall obtain all necessary permits and approvals from the City of Portland and other appropriate agencies for the Facility and, to the extent such permits and approvals relate to the Port's access to, use of, and utility coordination within the Triangle Property, Metro shall provide copies of such permits and approvals to the Port. Metro shall submit to the Port final plans and "as built" drawings within ninety (90) days of completing construction of the Facility.

10.1.2 Revocable Permit; Vacation

As part of obtaining the necessary permits and approvals for the Facility as provided in Section 10.1.1, Metro shall obtain from the Portland Department of Transportation ("PDOT") a Revocable Permit to Use Dedicated Street Areas ("**Revocable Permit**") to use the portion of Old Marine Drive between Metro's Main Entry into the Facility and the eastern end of the Triangle Parcel for the same purposes as provided in the Triangle Easement. In addition to or in the alternative to seeking the Revocable Permit, Metro may, at Metro's discretion, apply to PDOT for the vacation of Old Marine Drive, with reversion to the Port of the fee title to Old Marine Drive ("**Vacation**"). In the event that Metro obtains the Vacation, the Port shall grant an easement to Metro within thirty (30) days of the Vacation granting Metro an easement in the vacated property in the same form as the Triangle Easement. Metro shall prepare, coordinate, and pay all costs associated with the Vacation and/or Revocable Permit applications and recordations. The Port will cooperate reasonably with Metro in obtaining the Revocable Permit and/or the Vacation, as applicable. Such Port cooperation will include but not be limited to (i) issuing a "letter of agreement with the Project" or such similar letter(s) or other documents, in form mutually acceptable to the parties, as may be required by PDOT in conjunction with the application for and the issuance of the Revocable Permit; and, if Metro seeks to obtain the Vacation, (ii) executing any necessary documents for the Vacation application. In the event that Metro does not obtain the Vacation, the Revocable Permit shall be sufficient to satisfy the condition under this Section 10.1.2.

10.1.3 Triangle Slope Easement

Metro acknowledges that 0.78 acres of the Triangle Parcel are subject to a slope easement to the City of Portland, included within the Triangle Parcel Permitted Encumbrances, and as shown and described on **Exhibit A** (the "**Triangle Slope Easement Area**"). From and after Closing, Metro shall be responsible for the ongoing landscaping and maintenance of the Triangle Slope Easement Area, to the extent such landscaping and/or maintenance are required by that certain Deed of Right of Way recorded November 2, 1998, Recorder's Fee No. 98-198434. The obligations under this Section 10.1.3 shall be restrictive covenants running with the land under the Triangle Parcel Deed described in Section 5.1.

10.1.4 Metro Slope Area

Within one (1) year after Closing, Metro shall remove all existing vegetation from the sloped area located on the gravel parking lot within the Expo Center to the north and west of the Metro Parcel, as indicated on attached **Exhibit B ("Metro Slope Area")**. After removal of the existing vegetation from the Metro Slope Area, Metro shall hydroseed the Metro Slope Area with a mixture of quick-germinating cover species grass seed and a native species grass seed. Metro shall provide evidence of the types of seeding to the Port for approval. Provided that the Port approves the seeding mixture and Metro otherwise meets its obligations under this Section 10.1.4, Metro shall not be required to maintain the seeding. Metro shall be responsible for any erosion control required for the Metro Slope Area as the result of Metro's future development of or any changed use within the Expo Center, including without limitation Metro's construction of the Metro Access Road Extension. All obligations of Metro described in this Section 10.1.4 shall be performed to the reasonable satisfaction of the Port and in accordance with the "Exposition Master Plan" approved by the City of Portland and included within the Metro Parcel Permitted Encumbrances.

10.1.5 Storm Water Reports

Metro will provide to the Port, promptly as received, copies of all annual public reports of storm water system inspection and maintenance activities at the Expo Center.

10.1.6 Old Entry to Port Road

After the Port has removed the asphalt and concrete pad and the gate at the Port's separate entry to Old Marine Drive as provided in Section 10.2.2, Metro shall plant screening vegetation and other improvements at such entry consistent with the Lakes Facility Plan.

10.1.7 Future Development

Metro shall keep the Port informed of all plans for future development at the Expo Center which may impact upon the Metro Parcel, and shall locate any new stormwater outfalls so that they drain to Metro's storm sewer system and not to the Metro Parcel. In addition, Metro's construction of the Metro Access Road Extension shall be performed so as to prevent drainage onto the Metro Parcel.

10.2 Port Covenants

10.2.1 Port Fence

Metro anticipates constructing an extension or realignment of the Metro Access Road westerly to North Force Avenue along the northern boundary of Parcel 1 as shown on attached **Exhibit B ("Metro Access Road Extension")**. By the later of Metro's completion of the Metro Access Road Extension or one (1) year following Closing, the Port will build a chain link fence along the southern boundary of the Metro Access Road Extension, to limit access between the Metro Parcel and the Expo Center.

10.2.2 Old Entry to Port Road

After Metro constructs its new entry gate to the Triangle Parcel, the Port will remove the asphalt and concrete pad and the gate at the Port's separate entry to Old Marine Drive.

10.2.3 \$10,000 Contribution

Pursuant to that certain First Amendment to Intergovernmental Agreement between the Port and Metro dated effective September 30, 2001, the Port shall contribute the sum of Ten Thousand Dollars (\$10,000.00) to Metro's Recreation Facilities and Public Art Design Project, to be used by Metro for the design and installation of public facilities including public art at the Smith and Bybee Lakes Wildlife Area. At least fifty percent (50%) of the Port's contribution shall be used by Metro for physical improvements and/or public art at the Triangle Property. The Port shall make such contribution within thirty (30) days of receipt of an invoice from Metro accompanied by supporting documentation for Metro's actual out-of-pocket expenses in connection with the above-described design and installation efforts.

10.2.4 Revocable Permit; Vacation

As part of obtaining the necessary permits and approvals for the Facility as provided in Section 10.1.1, Metro shall obtain from the Portland Department of Transportation ("PDOT") a Revocable Permit to Use Dedicated Street Areas ("Revocable Permit") to use the portion of Old Marine Drive between Metro's Main Entry into the Facility and the eastern end of the Triangle Parcel for the same purposes as provided in the Triangle Easement. In addition to or in the alternative to seeking the Revocable Permit, Metro may, at Metro's discretion, apply to PDOT for the vacation of Old Marine Drive, with reversion to the Port of the fee title to Old Marine Drive ("Vacation"). In the event that Metro obtains the Vacation, the Port shall grant an easement to Metro within thirty (30) days of the Vacation granting Metro an easement in the vacated property in the same form as the Triangle Easement. Metro shall prepare, coordinate, and pay all costs associated with the Vacation and/or Revocable Permit applications and recordations. The Port will cooperate reasonably with Metro in obtaining the Revocable Permit and/or the Vacation, as applicable. Such Port cooperation will include but not be limited to (i) issuing a "letter of agreement with the Project" or such similar letter(s) or other documents, in form mutually acceptable to the parties, as may be required by PDOT in conjunction with the application for and the issuance of the Revocable Permit; and, if Metro seeks to obtain the Vacation, (ii) executing any necessary documents for the Vacation application. In the event that Metro does not obtain the Vacation, the Revocable Permit shall be sufficient to satisfy the condition under this Section 10.2.4.

11. PROPERTY CONDITION

11.1 Triangle Parcel

Metro acknowledges that Metro has had an opportunity to inspect the Triangle Parcel and the Triangle Easement Area (collectively, the "**Triangle Property**") prior to Closing, and to conduct or obtain and to review all surveys, tests, audits and studies as Metro deems necessary to enable Metro to approve all aspects of the Triangle Property, including without limitation the environmental conditions of the Triangle Property, the suitability of the Triangle Property for Metro's intended use, soils and ground water conditions in and about the Triangle Property, and verification by Metro of the types, location, size, capacity and other specifications for existing utilities available to the Triangle Property and the adequacy of such utilities for Metro's intended use of the Triangle Property. Metro agrees to accept the Triangle Parcel in its "AS-IS" condition as of the date of the Closing, with no representations or warranties regarding the condition of the Triangle Parcel by the Port. Metro acknowledges that Metro has ascertained for itself the value and condition of the Triangle Parcel, and has not relied upon any implied or express warranties of the Port or the Port's employees or agents in connection with the Triangle Parcel, the purchase thereof, or the availability of Metro's or the Triangle Parcel's qualification for any local, state, or federal incentive, benefit, or grant program. The Port hereby specifically disclaims any warranty, guarantee, or representation, oral or written, either past, present, or future, of, as to, or concerning

(i) the nature and/or condition of the Triangle Parcel, including, without limitation, the environmental condition, soil and geology of the Triangle Parcel; (ii) existing or proposed governmental laws or regulations applicable to the Triangle Parcel, including without limitation land use or zoning of the Triangle Parcel; and (iii) the suitability of the Triangle Parcel for any structure that Metro may construct thereon, and the condition, suitability, or fitness for a particular purpose (whether or not known to the Port) of any improvement located on the Triangle Parcel, or the Triangle Parcel itself, for Metro's intended use. It is agreed that the Port will not be responsible for, and Metro hereby releases the Port from, any loss, damage, or costs that may be incurred by Metro by reason of any condition of the Triangle Parcel. This Section shall survive and be enforceable following Closing.

11.1.1 Triangle Property Environmental Reports

Metro has provided to the Port, at no cost to the Port, copies of all reports resulting from any soils and/or environmental studies conducted by Metro in connection with its due diligence of the Triangle Property, subject to Section 4.2.2. The Port shall have the right to reproduce and use these and any other reports provided by Metro to the Port in connection with the Triangle Property.

11.2 Metro Parcel

The Port acknowledges that the Port has had an opportunity to inspect the Metro Parcel and the Metro Easement Area (collectively, the "**Metro Property**") prior to Closing, and to conduct or obtain and to review all surveys, tests, audits and studies as the Port deems necessary to enable the Port to approve all aspects of the Metro Property, including without limitation the environmental conditions of the Metro Property, the suitability of the Metro Property for the Port's intended use, soils and ground water conditions in and about the Metro Property, and verification by the Port of the types, location, size, capacity and other specifications for existing utilities available to the Metro Property and the adequacy of such utilities for the Port's intended use of the Metro Property. The Port agrees to accept the Metro Parcel in its "AS-IS" condition as of the date of the Closing, with no representations or warranties regarding the condition of the Metro Parcel by Metro. The Port acknowledges that the Port has ascertained for itself the value and condition of the Metro Parcel, and has not relied upon any implied or express warranties of Metro or Metro's employees or agents in connection with the Metro Parcel, the purchase thereof, or the availability of the Port's or the Metro Parcel's qualification for any local, state, or federal incentive, benefit, or grant program. Metro hereby specifically disclaims any warranty, guarantee, or representation, oral or written, either past, present, or future, of, as to, or concerning (i) the nature and/or condition of the Metro Parcel, including, without limitation, the environmental condition, soil and geology of the Metro Parcel; (ii) existing or proposed governmental laws or regulations applicable to the Metro Parcel, including without limitation land use or zoning of the Metro Parcel; and (iii) the suitability of the Metro Parcel for any structure that the Port may construct thereon, and the condition, suitability, or fitness for a

particular purpose (whether or not known to Metro) of any improvement located on the Metro Parcel, or the Metro Parcel itself, for the Port's intended use. It is agreed that Metro will not be responsible for, and the Port hereby releases Metro from, any loss, damage, or costs that may be incurred by the Port by reason of any condition of the Metro Parcel. This Section shall survive and be enforceable following Closing.

11.2.1 Metro Property Environmental Reports

The Port has provided to Metro, at no cost to Metro, copies of all reports resulting from any soils and/or environmental studies conducted by Metro in connection with its due diligence of the Metro Property. Metro shall have the right to reproduce and use these and any other reports provided by the Port to Metro in connection with the Metro Property. The Port agrees that the previous removal by Metro of soil at the stormwater outfall area identified in the Phase II Environmental Site Assessment for the Metro Parcel, as documented in the "Report on Petroleum Contaminated Soil (PCS) Removal, Portland Expo Center," prepared by RMCAT Environmental Services, dated December 31, 2001, is complete. Notwithstanding the foregoing, any additional environmental actions required by a regulatory agency for this outfall area are to be completed by Metro, at Metro's cost, with the Port's cooperation.

12. REPRESENTATIONS AND WARRANTIES OF METRO

In addition to any other covenants, representations, or warranties of Metro contained in this Agreement, the following constitute representations and warranties of Metro to the Port:

12.1 Legal Authority

Metro represents and warrants to the Port that, upon approval by the Metro Council, Metro has the legal power, right, and authority to enter into this Agreement, and any document referenced herein, under the terms stated herein, and the persons executing this Agreement and the instruments referred to in this Agreement on behalf of Metro have the legal power, right and actual authority, including any and all required approvals or consents from Metropolitan Exposition-Recreation Commission, to bind Metro to the terms and conditions of this Agreement.

12.2 Binding Obligations

This Agreement and all documents required by it to be executed by Metro are and shall be valid and legally binding obligations of Metro, shall be enforceable against Metro, its successors, and assigns, in accordance with the terms of the Agreement and all such documents, and shall inure to the benefit of the Port and its heirs, personal representatives, successors, and assigns, but the Port shall not assign or otherwise transfer any interest in this Agreement or such documents without the prior written consent of Metro.

12.3 No Conflict

Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth in this Agreement, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Metro is a party.

12.4 Condition of the Metro Parcel

Metro represents and warrants that, as of Closing and to Metro's knowledge, Metro has disclosed to the Port the results of all reports, investigations, surveys, and other documentation in Metro's control and possession concerning environmental or other conditions relating to the Metro Parcel.

13. REPRESENTATIONS AND WARRANTIES OF THE PORT

In addition to any other covenants, representations, or warranties of the Port contained in this Agreement, the following constitute representations and warranties of the Port to Metro:

13.1 Legal Authority

The Port represents and warrants to Metro that, upon approval by the Port of Portland Commission, the Port has the legal power, right, and authority to enter into this Agreement, and any document referenced herein, under the terms stated herein, and the persons executing this Agreement and the instruments referred to in this Agreement on behalf of the Port have the legal power, right and actual authority to bind the Port to the terms and conditions of this Agreement.

13.2 Binding Obligations

This Agreement and all documents required by it to be executed by the Port are and shall be valid and legally binding obligations of the Port, shall be enforceable against the Port, its successors, and assigns in accordance with the terms of the Agreement and such documents, and shall inure to the benefit of Metro and its heirs, personal representatives, successors, and assigns, but Metro shall not assign or otherwise transfer any interest in this Agreement or such documents without the prior written consent of the Port.

13.3 No Conflict

Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth in this Agreement, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or

any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Port is a party.

13.4 Condition of the Triangle Parcel

The Port represents and warrants that, as of Closing and to the Port's knowledge, the Port has disclosed to Metro the results of all reports, investigations, surveys, and other documentation in the Port's control and possession concerning environmental or other conditions relating to the Triangle Parcel.

14. DEFAULT/FAILURE TO CLOSE

14.1 Failure to Close

If Closing does not occur as contemplated by this Agreement due to a default by either party, the remedies of the parties shall be as follows:

14.1.1 Default by the Port

In the event the exchange contemplated by this Agreement does not Close by the Closing Date as a result of any default of this Agreement by the Port, Metro shall be entitled to Metro's actual out of pocket expenses from the Port's breach, but no consequential or punitive damages, and the Port shall pay all escrow fees.

14.1.2 Default by Metro

In the event the exchange contemplated by this Agreement does not Close by the Closing Date by reason of any default of this Agreement by Metro, the Port shall also be entitled to the Port's actual out of pocket expenses from Metro's breach, but no consequential or punitive damages, and Metro shall pay all escrow fees.

14.2 Default After Closing

Should a default of this Agreement occur after Closing as to those matters that survive Closing, then the non-defaulting party shall have available to it, and shall be entitled to pursue against the defaulting party, all available remedies, either at law or in equity.

15. NO THIRD-PARTY BENEFIT

Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to any third parties.

16. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including without limitation any administrative proceeding and any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any

rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or any petition for review, in addition to all other amounts provided by law.

17. NOTICES

All notices required under this Agreement shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

If by mail to the Port:

The Port of Portland
Property & Development Services
P.O. Box 3529
Portland, OR 97208
Attention: Manager

With a copy to:

The Port of Portland
P.O. Box 3529
Portland, OR 97208-3529
Attention: Legal Department

If by hand delivery to the Port:

The Port of Portland
Property & Development Services
121 N.W. Everett
Portland, OR 97209
Attention: Manager

With a copy to:

The Port of Portland
121 N.W. Everett
Portland, OR 97209
Attention: Legal Department

To Metro at:

Metro
Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736
Attention: Jim Desmond, Director

Copies to:

Metropolitan Exposition-Recreation Commission
P.O. Box 2746
Portland, OR 97208
Attention: Mark B. Williams, General Manager

Metro
Office of Metro Attorney
600 N.E. Grand Avenue
Portland, OR 97232-2736

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

18. BROKERS

Metro and the Port each represent to one another that they have not dealt with any real estate agent or broker in connection with this Agreement and each (for purposes of this Section only, the "**Indemnitor**"), to the extent permitted by applicable law, agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses, including attorney, accountant and paralegal fees, arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Agreement. This obligation shall survive and be enforceable following the Closing or termination of this Agreement.

19. PERFORMANCE AND NON-WAIVER; MODIFICATION

Time is of the essence in the performance of the obligations set forth herein. Failure to enforce any provision of this Agreement shall not constitute a waiver of that provision or the future prompt enforcement of that provision. This Agreement may not be modified or amended, except by a written agreement executed by both parties.

20. GOVERNING LAW

This Agreement shall be governed, construed and enforced under the laws of the State of Oregon.

21. NO MERGER

The waivers, covenants, indemnities, representations, obligations, and warranties contained in this Agreement shall all survive the Closing and shall not merge into the Deeds and the recordation of the Deeds in the official records.

22. SEVERABILITY

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

23. HEADINGS AND TABLE OF CONTENTS

Section headings and the table of contents contained in this Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

24. EXHIBITS INCORPORATED BY REFERENCE

All Exhibits attached to this Agreement are incorporated by reference into this Agreement for all purposes.

25. DEFINED TERMS

Capitalized terms shall have the meaning given them in the text of this Agreement.

26. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Port and Metro relating to the exchange contemplated herein, and supersedes and replaces the Outline of Proposed Terms for an Exchange of Properties Between Metro and the Port of Portland dated May 19, 2003.

27. NO REPRESENTATIONS

It is understood and agreed by the parties that neither party nor such party's agents or employees have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this Agreement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Agreement. All oral agreements, if any, are void and expressly waived by the parties. This Agreement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

28. LAND USE

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 MAY 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.

29. NO OFFER; COMMISSION APPROVAL

This Agreement shall not constitute an offer, either by the Port to Metro or Metro to the Port, for the exchange of the Property and shall not be binding on either party until (a) this transaction has been approved, respectively, by the Port's Commission, Metro's Council, and the Metropolitan Exposition-Recreation Commission; and (b) this Agreement has been executed by both the Port's and Metro's authorized designees.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the date first above written.

METRO

THE PORT OF PORTLAND

By: _____

By: _____

Bill Wyatt, Executive Director

Title: _____

APPROVED AS TO LEGAL SUFFICIENCY

APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND

By: _____
Counsel for Metro

By: _____
Counsel for the Port of Portland

APPROVED BY METRO COUNCIL ON:

APPROVED BY PORT OF PORTLAND
COMMISSION ON:

APPROVED BY METROPOLITAN-
EXPOSITION-RECREATION COMMISSION
ON:

PROVIDE PAGES FOR VARIOUS EXHIBITS

- A Triangle Parcel map with easement areas, parking area, vacation area, old port entrance, and launch
- B Metro Parcel map with concrete area, vegetated slope area,
- C Triangle Parcel preliminary title report #221664 fifth supplemental dated _____
- D Metro Parcel preliminary title report #249039 first supplemental dated _____
- E Smith & Bybee Lakes Wildlife Area Recreational Facility Plan
- F Rivergate Development Standards
- G conceptual plan facility at Triangle Parcel
- H 95% Construction Document Plans for facility at Triangle Parcel
- I BS Deed Triangle Parcel
- J BS Deed Metro Parcel
- K Triangle Easement
- L Metro Easement

DRAFT

After Recording, Return To:
Karen Starin
Metro
600 NE Grand Avenue
Portland OR 97232-2736

Send Tax Statements to:
No change.

EASEMENT AGREEMENT

GRANTOR: **THE PORT OF PORTLAND**, a port district of the State of Oregon, whose address is P.O. Box 3529, Portland, Oregon 97208.

GRANTEE: **METRO**, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736

RECITALS

A. Just prior to the recording of this Easement Agreement (this "Easement"), Grantee acquired from Grantor certain real property located in an area known as Rivergate Industrial Park, in the City of Portland, Multnomah County, Oregon ("Triangle Parcel") pursuant to that certain Bargain and Sale Deed of even date herewith ("Triangle Parcel Deed"), in exchange for which Grantor acquired from Grantee certain real property in an area known as the Expo Center, in the City of Portland, Multnomah County, Oregon.

B. Grantee plans to construct an educational and recreational facility and parking lot (the "Facility") on the Triangle Parcel in connection with Grantee's recreational facilities located on Smith and Bybee Lakes, in order to provide multiple recreational uses for the public.

C. In connection with the Facility, Grantee desires an easement over, upon, and across certain real property owned by Grantor and located adjacent to the Triangle Parcel ("Grantor's Property"), for the purposes described below.

NOW, THEREFORE, in consideration of the above described exchange and the mutual promises and covenants contained in this Easement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. GRANT OF EASEMENT

Grantor hereby grants to Grantee, for the benefit of the public and for the uses and on the conditions set forth below, a perpetual, appurtenant easement over, upon, and across a portion of

Grantor's Property more precisely described in attached **Exhibit A** and shown on attached **Exhibit B** (the "Easement Area"). The Easement shall be exclusive, with the exception of the Other Users (as defined and further provided in Section 6). This Easement does not grant or convey to Grantee any fee ownership interest in the property described herein.

2. EASEMENT APPURTENANT

The Easement granted herein is appurtenant only to the Triangle Parcel.

3. GRANTEE'S USE

3.1 Permitted Uses and Improvements

Grantee shall have the right to use the Easement Area for the purposes of installing, operating, maintaining and replacing a public trail, conservation activities, and associated recreational activities for the benefit and use of the public, as provided in this Section 3.1 (collectively, all uses described in this Section 3.1 are the "Permitted Uses"). Such recreational activities will include biking, walking, hiking, wildlife viewing, environmental education, vehicular access, a parking lot for public access, and a public boat launch with access to Smith and Bybee Lakes for canoeing and kayaking (using only non-gas powered boats), as well as fishing, all as shown on attached **Exhibit B**. Certain areas on attached **Exhibit B** shall be used by Grantee solely for mitigation purposes and not for the educational and recreational activities described in the preceding sentence. The Permitted Uses shall be consistent with the "Smith and Bybee Lakes Wildlife Area Recreation Facilities Plan" as adopted by the Metro Council in December, 1999 and attached hereto as **Exhibit C** ("**Lakes Facility Plan**"), as amended from time to time by Metro Council consistent with the February 1989 Rivergate Development Standards recorded in Multnomah County Deed Records March 20, 1995, Fee No. 95-31707.

3.1.1 Port Road Area

A portion of the Easement Area ("Port Road Area") extends from the eastern end of the Triangle Parcel over and across Grantor's private road ("Port Road") to the point ("Port Road End") north and east of Grantee's boat launch on Smith Lake ("Launch"), all as shown on attached **Exhibit B**. The Port Road Area shall be used to provide pedestrian and vehicular access between the Facility and the Launch, and associated conservation and recreational activities. Grantee shall also have the right to provide for a public parking area for parallel parking of a maximum of ten (10) passenger vehicles on the north side of the Port Road at the Port Road End, as shown on attached **Exhibit B**.

3.1.2 Undeveloped Area

The remaining portion of the Easement Area ("Undeveloped Area") extends over undeveloped Grantor-owned property extending from the Port Road End to the Launch, as shown on attached **Exhibit B**. The Undeveloped Area shall be used solely for mitigation, to provide pedestrian access, and for the transport of canoes and kayaks between the Port Road End and the Launch. No vehicle access will be allowed in the Undeveloped Area.

3.1.3 Vacation

Grantee, at its option and sole expense, may seek a vacation of that portion of Old Marine Drive between the Main Entry and the Port Road as shown on attached **Exhibit D**, with reversion of fee title to Grantor ("Vacation"). Grantee shall prepare, coordinate, and pay all costs associated with the Vacation application and recordation. Grantor will cooperate reasonably with Grantee in executing necessary documents for the Vacation application. In the event that Grantee seeks and obtains the Vacation of Old Marine Drive, then the parties shall amend this Easement to include the vacated portion of Old Marine Drive and shall re-record the amended Easement.

4. LIMITS ON USE

The Easement Area may be used for no use other than the Permitted Uses without Grantor's prior written consent which may be withheld in Grantor's sole discretion. In conjunction with Grantee's use of the Easement Area, Grantee shall not: (i) violate any noise law, ordinance or regulation or cause substantial noise, vibration, fumes, debris, or electronic interference on or adjacent to the Easement Area; (ii) create any condition that is a safety hazard; (iii) interfere with Grantor's underground or above ground utilities or structures; (iv) interfere with use by Grantor of its adjacent property or by others tenants or other users of their property; or (v) interfere with the use and operation of the roadways within or adjacent to the Easement Area.

5. ENCUMBRANCES

This Easement is granted subject to all prior easements or encumbrances of record.

6. OTHER USERS

The Easement shall be exclusive, with the exception of (i) Grantor, which shall have the continued right to use the Easement Area as provided in Section 10; (ii) the Railroad, as further provided in this Section 6; and (iii) holders of prior recorded access easements (collectively, the "Other Users"). Grantee acknowledges that until present the Union Pacific Railroad and Burlington Northern-Santa Fe Railroad (collectively, "Railroad") have used the Easement Area for access in connection with the Railroad's operations, and Grantee agrees that the Railroad shall have continued rights to access and use that portion of the Easement Area, if any, along Old Marine Drive and the Port Road. The Other Users may access the Easement Area through Grantee's new main entry to the Facility shown on **Exhibit B** ("Main Entry"). Grantee will provide the Other Users with a means of continued access through the locked gate at the Main Entry.

7. TERM; TERMINATION

This Easement shall commence on the Effective Date below and shall continue in perpetuity unless terminated by mutual agreement of the parties. In addition, this Easement shall terminate upon Grantor's exercise of either its right of repurchase or right of reentry under the Triangle Parcel Deed. In the event of an abandonment of this Easement by Grantee for more than five (5) years, or the termination of this Easement as otherwise provided in this Section, Grantee, at

Grantee's sole expense, shall promptly restore the Easement Area as provided in Section 8.7.2, and shall promptly execute and deliver to Grantor recordable documents sufficient to remove this Easement as an encumbrance against Grantor's property. Grantor reserves the right to immediately terminate the Easement should Grantee breach any of the terms or conditions of this Easement and to seek any other remedies available to Grantor, both at law or in equity, for breach of this Easement.

8. GRANTEE'S OBLIGATIONS

8.1 Easement Maintenance

As between Grantee and Grantor, Grantee shall be responsible for routine maintenance of that portion of the 40-Mile Loop Trail and other improvements, including without limitation vehicle road surfaces and ballards, on which the Easement is located. The provisions of this Section 8.1 are not intended to alter the duties and obligations, if any, of third parties to maintain the 40-Mile Loop Trail and associated improvements, as may be required in existing agreements of such third parties. With respect to the Easement Area and all other improvements within the Easement Area, Grantee shall be solely responsible to maintain, repair, and replace the Easement Area and such improvements in good repair and safe condition for the public uses described in Section 3.1 and in accordance with all applicable laws. Grantee hereby releases Grantor from any obligation or liability whatsoever in connection with the maintenance or repair of the Easement Area and the improvements within the Easement Area..

8.2 Security

Grantee shall manage and, as appropriate, take reasonable measures to secure the Easement Area and its occupation or use so as to prevent any unauthorized access or waste disposal by any party on or relating to the Easement Area.

8.3 Utilities

Grantee shall promptly pay any charges for sanitary sewer, storm sewer, water, gas, electricity, telephone, and all other charges for utilities which may be furnished to the Easement Area at the request of Grantee. Grantee shall promptly pay any drainage fees and impervious surface fees directly attributable to Grantee's use of the Easement Area.

8.4 Taxes

Grantee shall be responsible for all taxes, fees or other assessments imposed by any governmental authority against Grantor's Property as a result of any improvements or uses by Grantee of the Easement Area as permitted by this Easement.

8.5 Liens

Grantee shall keep, or cause to be kept, the Easement Area free from any liens caused by Grantee or its contractors, employees, agents, licensees or invitees.

8.6 Compliance with Laws

Grantee shall conduct its activities under this Easement in compliance with all applicable state, federal, and local laws, regulations, agency guidance documents, Grantor's rules and regulations, and the terms of any permits applicable to the Easement Area or Grantor's property. Grantor is hereby obligated to obtain and comply with all state, federal, and local permits related to its uses under this Easement.

8.7 RESTORATION OF EASEMENT AREA

8.7.1 Disturbance

In the event that the Easement Area or any landscaping or other improvement located within or adjacent to the Easement Area is disturbed by the exercise of any rights granted herein or any associated construction, Grantee shall promptly remove any debris and restore the Easement Area including any disturbed landscaping or other improvement to a condition not less than the condition prior to the exercise of such rights.

8.7.2 Condition on Termination

If this Easement is terminated pursuant to Section 7, Grantee shall restore the Easement Area either to a condition not less than the condition of the Easement Area prior to the Effective Date of this Easement, or to a condition not less than that of Grantor's surrounding property. Restoration shall include the removal of all improvements constructed or used in the Easement Area by Grantee or, subject to Grantor's prior written consent, abandonment in place.

8.8 Construction of Improvements

Prior to the commencement of any construction or material reconstruction activities in the Easement Area, Grantee shall, except in the case of emergency, obtain from Grantor a Construction Permit and Right of Entry. All construction and maintenance required within the Easement Area for the Permitted Uses, including the cost to restore improvements which are affected by such construction or maintenance, shall, regardless of who performs such construction or maintenance, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits and approvals necessary for construction and reconstruction in the Easement Area, pay all applicable fees and, to the extent such permits and approvals relate to Grantor's access to, use of, and utility coordination within the Easement Area, Grantee shall provide copies of such permits and approvals to Grantor. Thirty (30) days prior to beginning any construction, Grantee shall notify Grantor of the dates of construction and provide Grantor with an initial construction schedule and a work plan detailing any partial closures of streets as well as obtain a Permit and Right of Entry as required in this Section 8.8. Grantee shall perform all work in the Easement Area in a manner which minimizes interruption to the operations of Grantor or Grantor's tenants. Grantee shall submit to Grantor final plans and "as built" drawings within ninety (90) days of completing construction of any improvements.

9. GRANTOR'S ENTRY

After Grantee constructs its new entry to Old Marine Drive, Grantor will remove the asphalt-and-concrete pad and the gate at Grantor's separate entry to Old Marine Drive as shown on attached **Exhibit B**, and abandon such entry. After Grantor has removed the pad and gate, Grantee shall plant screening vegetation and other improvements at such entry consistent with the Lakes Facility Plan.

10. GRANTOR'S USE

Grantor reserves the right to access and use the Easement Area for any lawful purpose not inconsistent with Grantee's permitted use, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services, paths, paved or unpaved roadways or driveways, parking lots, shallow-rooted landscaping, and continued operation and development of Grantor's property.

11. INDEMNIFICATION

Grantee agrees to defend (using legal counsel reasonably acceptable to Grantor), indemnify, and hold harmless and reimburse Grantor for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Cost and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred or suffered by Grantor and which, in whole or in part, directly or indirectly, arise from the following, unless exclusively resulting from Grantor's gross negligence or willful misconduct: (a) any act, omission or negligence of Grantee; (b) any use, occupation, management or control of the Easement Area by Grantee, whether or not due to Grantee's own act or omission and whether or not the resulting damage occurs on the Easement Area; (c) any condition created in or on the Easement Area by any party (other than the Other Users) including without limitation any accident, injury or damage occurring in or on the Easement Area after the Effective Date; ; (d) any Hazardous Substance Release or violation of Environmental Law for which Grantee is responsible under this Easement, including without limitation any injury or damage occurring therefrom; and (e) any breach, violation or nonperformance of any of Grantee's obligations under this Easement. For purposes of this Section (a) through (e), Grantee shall be deemed to include Grantee and Grantee's officers, directors, employees, agents, licensees, invitees (including without limitation the public for whose benefit this Easement is granted), and contractors, and Grantor shall mean Grantor, its commissioners, directors, agents, employees, contractors, licensees, and invitees.

12. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

12.1 Definitions

For the purposes of this Easement, the following definitions shall apply:

12.1.1 Environmental Law

"Environmental Law" shall include any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, including but not limited to, any storm water pollution control requirements, codes, ordinances and guidance documents now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, petroleum products, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, cultural resources protection, animals or plants, noise, or products, and relate to the protection of health, natural resources, safety or the environment.

12.1.2 Hazardous Substance

"Hazardous Substance" shall include any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or solid or regulated wastes or materials, or any other similar term in or under any Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products as well as dredged materials.

12.1.3 Environmental Costs

"Environmental Costs" shall include, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, natural resources restoration or damages, regulatory oversight costs or fees, any audit costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases (as defined in Section 12.1.4); and (v) violations of any environmental provisions of this Easement. Costs and damages as used in this Section shall include but not be limited to: (a) costs of preliminary assessment, evaluation, testing, analysis, remedial investigation, feasibility study, removal, remedial action, disposal, monitoring and maintenance, natural resources injury assessment and restoration, and agency and Grantor oversight costs; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; and (c) lost revenue and natural resources damages, and diminution of value, loss, or restriction on use of property.

12.1.4 Hazardous Substance Release

"Hazardous Substance Release" shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing or seepage of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under Environmental Law.

12.1.5 Best Management Practices

"Best Management Practices" shall mean those environmental or operational standards (i) required under any permits applicable to Grantee's operations on the Easement Area; (ii) implemented by a business or industry group pertinent to Grantee's operations on the Easement Area as a matter of common and accepted practice; (iii) articulated by a trade

association or professional association pertinent to Grantee's operations on the Easement Area; (iv) developed by Grantee for use in its operations; (v) developed under a voluntary process involving pertinent federal, state or local regulatory agencies for a business or industry group pertinent to Grantee's operations on the Easement Area; or (vi) developed from time to time by Grantor in cooperation with Grantee.

12.2 General Environmental Obligations of Grantee

Grantee shall manage and conduct all of its activities on the Easement Area or relating to this Easement (i) in compliance with all Environmental Laws and the environmental provisions of this Easement; (ii) in cooperation with Grantor in Grantor's efforts to comply with Environmental Law; and (iii) in adherence with the Best Management Practices applicable to Grantee's use of the Easement Area. Grantee shall manage and, as appropriate, secure the Easement Area and its occupation or use of the Easement Area so as to prevent any violation of Environmental Laws by any person on or relating to the Easement Area.

12.3 Use of Hazardous Substances

Grantee shall not be permitted to use, handle, store, or dispose of any Hazardous Substances on or under the Easement Area without the express prior written permission of Grantor which Grantor may withhold in its sole discretion, except that Grantee shall be permitted to use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of: (i) small quantities of ordinary landscaping supplies available at retail; and (ii) small quantities of petroleum-derived products fully contained within motor vehicles.

12.4 Environmental Inspection

Grantor reserves the right, at any time and from time to time, without notice to Grantee, to inspect the Easement Area and Grantee's operations on and use of the Easement Area: (i) for the presence of and/or Grantee's management of Hazardous Substances; (ii) for compliance with Environmental Law or the environmental provisions of this Easement, and/or (iii) to facilitate Grantor's environmental management, permitting and analysis related to the Easement Area or any other property of Grantor.

12.5 Grantee's Liability

12.5.1 Hazardous Substance Releases

Except as provided in Section 12.5.3, Grantee shall be responsible for any Hazardous Substance Release on the Easement Area, on other properties, in the air or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Grantee's occupancy or use of the Easement Area occurring at any time prior to or during the Term of this Easement or occurring or continuing after the Term of this Easement.

12.5.2 Grantee's Liability for Environmental Costs

Except as provided in Section 12.5.3, Grantee shall be responsible for all Environmental Costs arising under this Easement.

12.5.3 Limitation of Grantee's Liability

Notwithstanding anything to the contrary provided in this Easement, Grantee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Costs arising therefrom, that: (i) existed on the Easement Area prior to the Effective Date (except if caused by Grantee or Grantee's agents, employees or contractors); or (ii) are caused by Other Users or their respective agents, employees or contractors after the Effective Date.

12.6 Environmental Remediation

12.6.1 Immediate Response

In the event of a violation of Environmental Law, a violation of an environmental provision of this Easement, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Grantee is responsible under this Easement, Grantee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain and stop the Hazardous Substance Release and remove the Hazardous Substance.

12.6.2 Remediation and Removal

Grantee shall promptly undertake all remedial and/or removal actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any Environmental Law or environmental provision of this Easement is corrected. Grantee shall remediate, at Grantee's sole expense, all Hazardous Substances for which Grantee is responsible under this Easement or under any Environmental Law, and shall restore the Easement Area or other affected property or water to its pre-existing condition.

12.6.3 Report to Grantor

Within thirty (30) days following completion of any investigatory, containment, remediation and/or removal action required by this Easement, Grantee shall provide Grantor with a written report outlining, in detail, what has been done and the results thereof.

12.6.4 Grantor's Approval Rights

Except in the case of an emergency or an agency order requiring immediate action, Grantee shall give Grantor advance notice before beginning any investigatory, remediation or removal procedures. Grantor shall have the right to approve or disapprove the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Easement or by Environmental Law, whether on the Easement Area or on any affected property or water. Grantor will have the right to require Grantee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation and removal activities and/or require Grantee to seek a statement from DEQ of "No Further Action." Grantee will provide to the Grantor, at no cost to the Grantor, copies of all reports resulting from any investigatory, remediation or removal procedures conducted by Grantee under this Section 12. Grantee acknowledges that Grantor shall have the right to reproduce and use said reports.

12.7 Notice to Grantor

Grantee shall promptly notify Grantor upon becoming aware of (i) a violation or alleged violation of any Environmental Law related to this Easement or to Grantee's occupation or use of the Easement Area or any environmental provision of this Easement; (ii) any Hazardous Substance Release on, under or adjacent to the Easement Area or threat of or reasonable suspicion of any of the same; (iii) any notice or communication from a governmental agency directed to Grantee and relating to any Hazardous Substance Release or any violation or alleged violation of Environmental Law which relate to the Agreement or to Grantee's occupation or use of the Easement; and (iv) any Hazardous Substance Release or violation of Environmental Law discovered by Grantee on property or in the air or water adjacent to the Easement Area. If notice must be given on the weekend or after 5:00 p.m. on any day, Grantee shall notify Grantor by calling Grantor's emergency telephone number. That number currently is: (503) 335-1111 .

12.8 Grantor's Right to Perform on Behalf of Grantee

Except in the event of an emergency or an agency order requiring immediate action, Grantor shall have the right, upon giving Grantee seven (7) days' written notice, to perform its obligations arising under this Easement and charge Grantee the resulting Environmental Cost, plus a delinquency charge thereon from the date any funds were expended by Grantor. Grantor may not commence performance on behalf of Grantee under this Section if, within the seven (7) day notice period, Grantee promptly begins and diligently pursues to completion the performance of the obligations set forth in Grantor's notice.

13. PROPERTY CONDITION

Grantee acknowledges that it has inspected the Easement Area, obtained and reviewed all surveys, tests, audits and studies as Grantee deems necessary to enable Grantee to approve all aspects of the Easement Area, and has found it to be completely acceptable for Grantee's intended use. Grantee accepts the Easement Area AS-IS, with all faults. Grantor hereby specifically disclaims any warranty, guarantee, or representation, oral or written, either past, present, or future, of, as to, or concerning (i) the nature and/or condition of the Easement Area, including, without limitation, the environmental condition, soil and geology of the Easement Area; (ii) existing or proposed governmental laws or regulations applicable to the Easement Area, including without limitation land use or zoning of the Easement Area; and (iii) the condition, suitability, or fitness for a particular purpose (whether or not known to Grantor) for any of Grantee's intended purposes. It is agreed that Grantor will not be responsible for, and Grantee hereby releases Grantor from, any loss, damage, or costs that may be incurred by Grantee by reason of any condition of the Easement Area.

14. MEDIATION

If any dispute should arise between Grantor and Grantee concerning this Easement or the parties' obligations or activities under this Easement, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties, prior to commencement of

arbitration or litigation. If the parties fail to agree on a mediator, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

15. GOVERNING LAW

This Easement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Venue shall be in Multnomah County, Oregon.

16. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Easement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Easement requires Grantee to defend Grantor, it is agreed that such defense shall be by legal counsel reasonably acceptable to Grantor.

17. BINDING

This Easement shall be and hereby is made a part of each conveyance of all or any part of the Easement Area and shall run with the land as to all property burdened and benefited by this Easement. As used in this Easement, the terms "Grantee" and "Grantor" shall include the above named Grantee and Grantor, and such parties' successors and assigns.

18. NOTICES

All notices required under this Easement shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

If by mail to Grantor:

The Port of Portland
Property & Development Services
P.O. Box 3529
Portland, OR 97208
Attention: Manager

With a copy to:

The Port of Portland
P.O. Box 3529

Portland, OR 97208-3529
Attention: Legal Department

If by hand delivery to Grantor:

The Port of Portland
Property & Development Services
121 N.W. Everett
Portland, OR 97209
Attention: Manager

With a copy to:

The Port of Portland
121 N.W. Everett
Portland, OR 97209
Attention: Legal Department

To Grantee at:

Metro
Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736
Attention: Jim Desmond, Director

Copy to:

Metro
Office of Metro Attorney
600 N.E. Grand Avenue
Portland, OR 97232-2736

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

19. AMENDMENT

This Easement may not be amended except by written agreement of all parties. No amendment shall be effective until duly recorded in the records of Multnomah County, Oregon.

This grant is made and accepted effective this _____ day of _____, 2003 ("Effective Date").

GRANTOR

GRANTEE

THE PORT OF PORTLAND

METRO

By: _____
Bill Wyatt, Executive Director

By: _____

APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT OF PORTLAND

APPROVED AS TO LEGAL
SUFFICIENCY FOR METRO

Counsel for the Port of Portland

Counsel for Metro

APPROVED BY PORT COMMISSION:

APPROVED BY METRO COUNCIL:

Date: _____

Date: _____

APPROVED BY Metropolitan
Exposition-Recreation Commission:

Date: _____

**ACKNOWLEDGMENTS FOR
EASEMENT AGREEMENT BETWEEN
THE PORT OF PORTLAND AND
METRO**

STATE OF OREGON)
) ss
County of Multnomah)

This Easement was acknowledged before me on _____ 2003, by Bill Wyatt as Executive Director of the Port of Portland.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss
County of Multnomah)

This Easement was acknowledged before me on _____ 2003, by _____

as _____ of Metro.

Notary Public for _____
My Commission Expires: _____

EXHIBIT A

EASEMENT DESCRIPTION

**[[[MUST BE ATTACHED PRIOR TO SIGNATURE.
DISCARD THIS PLACEHOLDER PAGE]]]**

EXHIBIT B

Map

(easement areas, port gate, launch, boat parking area, port road area, vacation area, port road end,
main gate entry, undeveloped area,

**[[[MUST BE ATTACHED PRIOR TO SIGNATURE.
DISCARD THIS PLACEHOLDER PAGE]]]**

EXHIBIT C

Smith and Bybee Lakes Wildlife Area Recreation Facilities Plan

**[[[MUST BE ATTACHED PRIOR TO SIGNATURE.
DISCARD THIS PLACEHOLDER PAGE]]]**

EXHIBIT D

Map

(Vacation Area – Old Marine Drive from Metro's Main Entry to eastern end of Triangle Parcel)

**[[[MUST BE ATTACHED PRIOR TO SIGNATURE.
DISCARD THIS PLACEHOLDER PAGE]]]**

DRAFT

After Recording, Return To:
Loralie Sinnen
The Port of Portland
PO Box 3529
Portland OR 97208

Send Tax Statements to:
No change

EASEMENT AGREEMENT

GRANTOR: METRO, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736

GRANTEE: THE PORT OF PORTLAND, a port district of the State of Oregon, whose address is P.O. Box 3529, Portland, Oregon 97208.

RECITALS

A. Just prior to the recording of this Easement Agreement (this "Easement"), Grantee acquired from Grantor certain real property located in an area known as the Expo Center, in the City of Portland, Multnomah County, Oregon ("Metro Parcel") pursuant to that certain Bargain and Sale Deed of even date herewith ("Metro Parcel Deed"), in exchange for which Grantor acquired from Grantee certain real property located in an area known as Rivergate Industrial Park, in the City of Portland, Multnomah County, Oregon.

B. Grantee plans to use the Metro Parcel for development of a vegetative buffer and wetlands enhancements compatible with the adjacent "Vanport Wetlands" mitigation site, formerly known as the Radio Tower Site (the "Project").

C. In connection with the Project, Grantee desires an easement over, upon, and across certain real property owned by Grantor and located adjacent to the Metro Parcel ("Grantor's Property"), for the purposes described below.

NOW, THEREFORE, in consideration of the above described exchange and the mutual promises and covenants contained in this Easement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. GRANT OF EASEMENT

Grantor hereby grants to Grantee, for the uses and on the conditions set forth below, a perpetual, nonexclusive, appurtenant easement over, upon, and across a portion of Grantor's Property more precisely described in attached **Exhibit A** and shown on attached **Exhibit B** (the "Easement Area"). This Easement does not grant or convey to Grantee any fee ownership interest in the property described herein.

2. EASEMENT APPURTENANT

The Easement granted herein is appurtenant to the Metro Parcel, and shall not benefit any property other than the Metro Parcel.

3. GRANTEE'S USE

Grantee shall have the right to use the Easement Area for the purposes of pedestrian and vehicle ingress and egress over and across Grantor's private road extending along the southern boundary of the Expo Center parking lot ("**Metro Access Road**"), pedestrian access over and across the real property between the Metro Access Road and the Metro Parcel, and vehicle and pedestrian access over and across the existing gravel driveway between the Metro Access Road and the Metro Parcel, all as shown on attached **Exhibit B**, consistent with and limited by the deed restrictions and Permitted Uses on the Metro Parcel as set forth in the Metro Parcel Deed (the "Permitted Uses"). Grantor acknowledges and agrees that a portion of the Port's chain link fence is located within the Easement Area as the result of the lot line adjustment to create the Metro Parcel. Grantee shall have the right to maintain that portion of the Port's fence located within the Easement Area until such time as the fence must be moved to accommodate Grantor's development within the Expo Center, at which time Grantor shall relocate the fence at Grantor's sole cost to an adjacent location within the north boundary of the Metro Parcel.

3.1 Future Expansion of Easement Area

Grantor anticipates constructing a future extension or modified route of the Metro Access Road westerly to North Force Avenue. Upon completing the extension or modified route, Grantor shall record an amendment to this Easement to include within the Easement Area the new route or extension of the Metro Access Road together with the adjacent real property between such roadway and the Metro Parcel.

4. LIMITS ON USE

The Easement Area may be used for no use other than the Permitted Uses without Grantor's prior written consent which may be withheld in Grantor's sole discretion. In conjunction with Grantee's use of the Easement Area, Grantee shall not: (i) violate any noise law, ordinance or regulation or cause substantial noise, vibration, fumes, debris, or electronic interference on or adjacent to the Easement Area; (ii) create any condition that is a safety hazard; (iii) interfere with Grantor's underground or above ground utilities or structures; (iv) interfere with use by Grantor of its adjacent property or by others tenants or other users of their property; or (v) interfere with the use and operation of the roadways within or adjacent to the Easement Area.

5. ENCUMBRANCES

This Easement is granted subject to all prior easements or encumbrances of record.

6. TERM; TERMINATION

This Easement shall commence on the Effective Date below and shall continue in perpetuity unless terminated by mutual agreement of the parties. In addition, this Easement shall terminate upon Grantor's exercise of its right of reentry under the Metro Parcel Deed. In the event of an abandonment of this Easement by Grantee for more than five (5) years, or the termination of this Easement as otherwise provided in this Section, Grantee, at Grantee's sole expense, shall promptly restore the Easement Area as provided in Section 7.7, and shall promptly execute and deliver to Grantor recordable documents sufficient to remove this Easement as an encumbrance against Grantor's property. Grantor reserves the right to immediately terminate the Easement should Grantee breach any of the terms or conditions of this Easement and to seek any other remedies available to Grantor, both at law or in equity, for breach of this Easement.

7. GRANTEE'S OBLIGATIONS

7.1 Easement Maintenance

Grantor shall be responsible to maintain, repair, and replace the Metro Access Road and any extension thereof, as well as Grantor's other improvements within the Easement Area, each in good repair and safe condition in accordance with all applicable laws. Grantee shall only be responsible to repair and replace any portion of the Easement Area damaged as a result of use of the Easement Area by Grantee or its employees, agents, or contractors.

7.2 Security

Grantee shall be responsible to provide any security it deems necessary for the Easement Area, provided that Grantee shall have no obligation to secure the Easement Area.

7.3 Utilities

Grantee shall promptly pay any charges for sanitary sewer, storm sewer, water, gas, electricity, telephone, and all other charges for utilities which may be furnished to the Easement Area at the request of Grantee. Grantee shall promptly pay any drainage fees and impervious surface fees directly attributable to Grantee's use of the Easement Area.

7.4 Taxes

Grantee shall be responsible for all taxes, fees or other assessments imposed by any governmental authority against Grantor's Property as a result of any improvements or uses by Grantee of the Easement Area as permitted by this Easement.

7.5 Liens

Grantee shall keep, or cause to be kept, the Easement Area free from any liens caused by Grantee or its contractors, employees, agents, licensees or invitees.

7.6 Compliance with Laws

Grantee shall conduct its activities under this Easement in compliance with all applicable state, federal, and local laws, regulations, agency guidance documents, Grantor's rules and regulations, and the terms of any permits applicable to the Easement Area or Grantor's property. Grantor is hereby obligated to obtain and comply with all state, federal, and local permits related to its uses under this Easement.

7.7 Restoration of Easement Area

7.7.1 Disturbance

In the event that the Easement Area or any landscaping or other improvement located within or adjacent to the Easement Area is disturbed by the exercise of any rights granted herein or any associated construction, Grantee shall promptly remove any debris and restore the Easement Area including any disturbed landscaping or other improvement to a condition not less than the condition prior to the exercise of such rights.

7.7.2 Condition on Termination

If this Easement is terminated pursuant to Section 6, Grantee shall restore the Easement Area either to a condition not less than the condition of the Easement Area prior to the Effective Date of this Easement, or to a condition not less than that of Grantor's surrounding property. Restoration shall include the removal of all improvements constructed or used in the Easement Area by Grantee or, subject to Grantor's prior written consent, abandonment in place.

8. GRANTOR'S USE

Grantor reserves the right to access and use the Easement Area for any lawful purpose not inconsistent with Grantee's permitted use, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services, paths, paved or unpaved roadways or driveways, parking lots, shallow-rooted landscaping, and continued operation and development of Grantor's property.

9. INDEMNIFICATION

Grantee agrees to defend (using legal counsel reasonably acceptable to Grantor), indemnify, and hold harmless and reimburse Grantor for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Cost and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred or suffered by Grantor and which, in whole or in part, directly or indirectly, arise from the following, unless exclusively resulting from Grantor's gross negligence or willful misconduct: (a) any act, omission or negligence of Grantee; (b) any use, occupation, management or control of the Easement Area by Grantee, whether or not due to Grantee's own act or omission and whether or not the resulting damage occurs on the Easement Area; (c) any condition (including without limitation accidents, injuries or damages occurring in or on the Easement Area after the Effective Date) created in or on the Easement Area by any of

Grantee's agents, employees, contractors, or invitees; (d) any Hazardous Substance Release or violation of Environmental Law for which Grantee is responsible under this Easement, including without limitation any injury or damage occurring therefrom; and (e) any breach, violation or nonperformance of any of Grantee's obligations under this Easement. For purposes of this Section (a) through (e), Grantee shall be deemed to include Grantee and Grantee's officers, directors, employees, agents, licensees, invitees, and contractors, and Grantor shall mean Grantor, its commissioners, directors, agents, employees, contractors, licensees, and invitees.

10. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

10.1 Definitions

For the purposes of this Easement, the following definitions shall apply:

10.1.1 Environmental Law

"Environmental Law" shall include any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, including but not limited to, any storm water pollution control requirements, codes, ordinances and guidance documents now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, petroleum products, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, cultural resources protection, animals or plants, noise, or products, and relate to the protection of health, natural resources, safety or the environment.

10.1.2 Hazardous Substance

"Hazardous Substance" shall include any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or solid or regulated wastes or materials, or any other similar term in or under any Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products as well as dredged materials.

10.1.3 Environmental Costs

"Environmental Costs" shall include, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, natural resources restoration or damages, regulatory oversight costs or fees, any audit costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases (as defined in Section 10.1.4); and (v) violations of any environmental provisions of this Easement. Costs and damages as used in this Section shall include but not be limited to: (a) costs of preliminary assessment, evaluation, testing, analysis, remedial investigation, feasibility study, removal, remedial action, disposal, monitoring and maintenance, natural resources injury assessment and restoration, and agency and Grantor oversight costs; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; and (c) lost revenue and natural resources damages, and diminution of value, loss, or restriction on use of property.

10.1.4 Hazardous Substance Release

"Hazardous Substance Release" shall include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing or seepage of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under Environmental Law.

10.1.5 Best Management Practices

"Best Management Practices" shall mean those environmental or operational standards (i) required under any permits applicable to Grantee's operations on the Easement Area; (ii) implemented by a business or industry group pertinent to Grantee's operations on the Easement Area as a matter of common and accepted practice; (iii) articulated by a trade association or professional association pertinent to Grantee's operations on the Easement Area; (iv) developed by Grantee for use in its operations; (v) developed under a voluntary process involving pertinent federal, state or local regulatory agencies for a business or industry group pertinent to Grantee's operations on the Easement Area; or (vi) developed from time to time by Grantor in cooperation with Grantee.

10.2 General Environmental Obligations of Grantee

Grantee shall manage and conduct all of its activities on the Easement Area or relating to this Easement (i) in compliance with all Environmental Laws and the environmental provisions of this Easement; (ii) in cooperation with Grantor in Grantor's efforts to comply with Environmental Law; and (iii) in adherence with the Best Management Practices applicable to Grantee's use of the Easement Area. Grantee shall manage and, as appropriate, secure the Easement Area and its occupation or use of the Easement Area so as to prevent any violation of Environmental Laws by any person on or relating to the Easement Area.

10.3 Use of Hazardous Substances

Grantee shall not be permitted to use, handle, store, or dispose of any Hazardous Substances on or under the Easement Area without the express prior written permission of Grantor which Grantor may withhold in its sole discretion, except that Grantee shall be permitted to use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of: (i) small quantities of ordinary landscaping supplies available at retail; and (ii) small quantities of petroleum-derived products fully contained within motor vehicles.

10.4 Environmental Inspection

Grantor reserves the right, at any time and from time to time, without notice to Grantee, to inspect the Easement Area and Grantee's operations on and use of the Easement Area: (i) for the presence of and/or Grantee's management of Hazardous Substances; (ii) for compliance with Environmental Law or the environmental provisions of this Easement, and/or (iii) to facilitate Grantor's environmental management, permitting and analysis related to the Easement Area or any other property of Grantor.

10.5 Grantee's Liability

10.5.1 Hazardous Substance Releases

Except as provided in Section 10.5.3, Grantee shall be responsible for any Hazardous Substance Release on the Easement Area, on other properties, in the air or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Grantee's occupancy or use of the Easement Area occurring at any time prior to or during Term of this Easement or occurring or continuing after the Term of this Easement.

10.5.2 Grantee's Liability for Environmental Costs

Except as provided in Section 10.5.3, Grantee shall be responsible for all Environmental Costs arising under this Easement.

10.5.3 Limitation of Grantee's Liability

Notwithstanding anything to the contrary provided in this Easement, Grantee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Costs arising therefrom, that: (i) existed on the Easement Area prior to the Effective Date (except if caused by Grantee or Grantee's agents, employees or contractors); (ii) are caused by Grantor or the agents, employees or contractors of Grantor after the Effective Date; or (iii) are caused by other users of the Easement Area.

10.6 Environmental Remediation

10.6.1 Immediate Response

In the event of a violation of Environmental Law, a violation of an environmental provision of this Easement, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Grantee is responsible under this Easement, Grantee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain and stop the Hazardous Substance Release and remove the Hazardous Substance.

10.6.2 Remediation and Removal

Grantee shall promptly undertake all remedial and/or removal actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any Environmental Law or environmental provision of this Easement is corrected. Grantee shall remediate, at Grantee's sole expense, all Hazardous Substances for which Grantee is responsible under this Easement or under any Environmental Law, and shall restore the Easement Area or other affected property or water to its pre-existing condition.

10.6.3 Report to Grantor

Within thirty (30) days following completion of any investigatory, containment, remediation and/or removal action required by this Easement, Grantee shall provide Grantor with a written report outlining, in detail, what has been done and the results thereof.

10.6.4 Grantor's Approval Rights

Except in the case of an emergency or an agency order requiring immediate action, Grantee shall give Grantor advance notice before beginning any investigatory, remediation or removal procedures. Grantor shall have the right to approve or disapprove the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Easement or by Environmental Law, whether on the Easement Area or on any affected property or water. Grantor will have the right to require Grantee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation and removal activities and/or require Grantee to seek a statement from DEQ of "No Further Action." Grantee will provide to the Grantor, at no cost to the Grantor, copies of all reports resulting from any investigatory, remediation or removal procedures conducted by Grantee under this Section 10. Grantee acknowledges that Grantor shall have the right to reproduce and use said reports.

10.7 Notice to Grantor

Grantee shall promptly notify Grantor upon becoming aware of (i) a violation or alleged violation of any Environmental Law related to this Easement or to Grantee's occupation or use of the Easement Area or any environmental provision of this Easement; (ii) any Hazardous Substance Release on, under or adjacent to the Easement Area or threat of or reasonable suspicion of any of the same; (iii) any notice or communication from a governmental agency directed to Grantee and relating to any Hazardous Substance Release or any violation or alleged violation of Environmental Law which relate to the Agreement or to Grantee's occupation or use of the Easement; and (iv) any Hazardous Substance Release or violation of Environmental Law discovered by Grantee on property or in the air or water adjacent to the Easement Area. If notice must be given on the weekend or after 5:00 p.m. on any day, Grantee shall notify Grantor by calling Grantor's emergency telephone number. That number currently is: (503) 731-7827.

10.8 Grantor's Right to Perform on Behalf of Grantee

Except in the event of an emergency or an agency order requiring immediate action, Grantor shall have the right, upon giving Grantee seven (7) days' written notice, to perform its obligations arising under this Easement and charge Grantee the resulting Environmental Cost, plus a delinquency charge thereon from the date any funds were expended by Grantor. Grantor may not commence performance on behalf of Grantee under this Section if, within the seven (7) day notice period, Grantee promptly begins and diligently pursues to completion the performance of the obligations set forth in Grantor's notice.

11. PROPERTY CONDITION

Grantee acknowledges that it has inspected the Easement Area, obtained and reviewed all surveys, tests, audits and studies as Grantee deems necessary to enable Grantee to approve all aspects of the Easement Area, and has found it to be completely acceptable for Grantee's intended use. Grantee accepts the Easement Area AS-IS, with all faults. Grantor hereby specifically disclaims any warranty, guarantee, or representation, oral or written, either past, present, or future, of, as to, or concerning (i) the nature and/or condition of the Easement Area,

including, without limitation, the environmental condition, soil and geology of the Easement Area; (ii) existing or proposed governmental laws or regulations applicable to the Easement Area, including without limitation land use or zoning of the Easement Area; and (iii) the condition, suitability, or fitness for a particular purpose (whether or not known to Grantor) for any of Grantee's intended purposes. It is agreed that Grantor will not be responsible for, and Grantee hereby releases Grantor from, any loss, damage, or costs that may be incurred by Grantee by reason of any condition of the Easement Area.

12. MEDIATION

If any dispute should arise between Grantor and Grantee concerning this Easement or the parties' obligations or activities under this Easement, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties, prior to commencement of arbitration or litigation. If the parties fail to agree on a mediator, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

13. GOVERNING LAW

This Easement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Venue shall be in Multnomah County, Oregon.

14. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Easement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Easement requires Grantee to defend Grantor, it is agreed that such defense shall be by legal counsel reasonably acceptable to Grantor.

15. BINDING

This Easement shall be and hereby is made a part of each conveyance of all or any part of the Easement Area and shall run with the land as to all property burdened and benefited by this Easement. As used in this Easement, the terms "Grantee" and "Grantor" shall include the above named Grantee and Grantor, and such parties' successors and assigns.

16. NOTICES

All notices required under this Easement shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

To Grantor at:

Metropolitan Exposition Recreation Commission

777 NE Martin Luther King Jr. Blvd

Portland, OR 97232-2736

Attention: Mark Williams, General Manager

Copy to:

Metro

Office of Metro Attorney

600 N.E. Grand Avenue

Portland, OR 97232-2736

If by mail to Grantee:

The Port of Portland

Property & Development Services

P.O. Box 3529

Portland, OR 97208

Attention: Manager

With a copy to:

The Port of Portland

P.O. Box 3529

Portland, OR 97208-3529

Attention: Legal Department

If by hand delivery to Grantee:

The Port of Portland

Property & Development Services

121 N.W. Everett

Portland, OR 97209

Attention: Manager

With a copy to:

The Port of Portland

121 N.W. Everett

Portland, OR 97209

Attention: Legal Department

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

17. AMENDMENT

This Easement may not be amended except by written agreement of all parties. No amendment shall be effective until duly recorded in the records of Multnomah County, Oregon.

This grant is made and accepted effective this _____ day of _____, 2003 ("Effective Date").

GRANTOR

GRANTEE

METRO

THE PORT OF PORTLAND

By: _____

By: _____

Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY
FOR METRO

APPROVED AS TO LEGAL
SUFFICIENCY FOR THE PORT OF
PORTLAND

Counsel for Metro

Counsel for the Port of Portland

APPROVED BY METRO COUNCIL:

APPROVED BY PORT COMMISSION:

Date: _____

Date: _____

APPROVED BY Metropolitan Exposition-
Recreation Commission

Date: _____

**ACKNOWLEDGMENTS FOR
EASEMENT AGREEMENT BETWEEN
THE PORT OF PORTLAND AND
METRO**

STATE OF OREGON)
) ss
County of Multnomah)

This Easement was acknowledged before me on _____ 2003, by _____
as _____ of Metro.

Notary Public for _____
My Commission Expires: _____

STATE OF OREGON)
) ss
County of Multnomah)

This Easement was acknowledged before me on _____ 2003, by Bill
Wyatt as Executive Director of the Port of Portland.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss
County of Multnomah)

This Easement was acknowledged before me on _____ 2003, by _____
as _____ of Metropolitan Exposition-Recreation Commission.

Notary Public for _____
My Commission Expires: _____

EXHIBIT A

EASEMENT DESCRIPTION

**[[[MUST BE ATTACHED PRIOR TO SIGNATURE.
DISCARD THIS PLACEHOLDER PAGE]]]**

After Recording, Return To:

Metro

Attn: Alison Campbell
600 NE Grand Avenue
Portland OR 97232-2736

Send Tax Statements to:

Metro

Attn: Elaine Stewart
600 NE Grand Avenue
Portland OR 97232-2736

**BARGAIN AND SALE DEED
WITH RESTRICTIVE COVENANTS**

THE PORT OF PORTLAND, a Port district of the State of Oregon, (hereinafter Grantor"), conveys to METRO, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter (hereinafter "Grantee"), the real property described as follows (hereinafter the "Property"):

Parcel 2 of PARTITION PLAT NO. 2002-35, in the City of Portland,
County of Multnomah and State of Oregon.

Except all minerals and all mineral rights in said property, which said rights were retained by the State of Oregon in Deed recorded June 28, 1967, Book 568, Page 1121.

The true consideration for this conveyance is other property or value given which is the whole consideration.

This conveyance is made on the express condition that the Grantee (or its successors or assigns) shall use the Property only for the Permitted Uses (defined below) and, if the Property is ever used for any other purpose, Grantor (or its successors or assigns) may reenter and terminate the estate hereby conveyed and all rights of Grantee, its successors and assigns hereunder.

This Deed is also subject to all the covenants, restrictions and agreements (collectively referred to herein as "Restrictive Covenants") set forth below in this Deed which shall remain in force, as provided by law, and may be enforced by Grantor, its successors, or assigns either by action at law or suit in equity. Grantor shall not be responsible or liable to Grantee or any third parties for enforcement of or for failure to enforce these Restrictive Covenants. Invalidation of any of these Restrictive Covenants shall in no way affect any of the other provisions which shall remain in full force and effect. It is distinctly covenanted and agreed between the parties that all of the Restrictive Covenants hereinafter expressed shall be held to run with and bind the land conveyed and all subsequent owners and occupants thereof.

RESTRICTIVE COVENANTS:

1. Grantee acknowledges that 0.78 acres of the Property are subject to a slope easement under a Deed for Right-of-Way from Grantor to the City of Portland dated October 27, 1998 and recorded in Multnomah County Deed Records November 2, 1998, Fee No. 98198434 ("Slope Easement"). Grantee shall be responsible for the ongoing landscaping and maintenance of the area within the Slope Easement, to the extent such landscaping and/or maintenance are required by the Slope Easement.
2. The Property is subject to the 1989 Rivergate Industrial District Development Standards (hereinafter "1989 Standards"), recorded in Multnomah County Deed Records March 20, 1995, Fee No. 95-31707. There may also be other older Rivergate Industrial District Development Standards already recorded against the Property but the 1989 Rivergate Standards replace and supercede those older standards and the older standards shall not apply to the Property and this Deed.
3. Grantee shall use the Property for the following purpose (collectively, the "Permitted Uses"): to construct an educational and recreational facility (the "Facility") in connection with Grantee's recreational facilities located on Smith and Bybee Lakes. The Facility will provide multiple recreational uses which will include biking, walking, hiking, wildlife viewing, canoeing and kayaking (non-gas powered boats only), fishing, and environmental education, a parking lot for public access, and a public boat launch with access to Smith and Bybee Lakes. Said uses shall be consistent with the "Smith and Bybee Lakes Wildlife Area Recreation Facility Plan" as adopted by the Metro Council in December, 1999 or as amended by the Metro Council consistent with the 1989 Standards.
4. In the event (a) Grantee does not substantially complete construction of the Facility, including all landscaping and infrastructure improvements which are the responsibility of Grantee, within five (5) years after the date of this Deed; or (b) Grantee commences construction of the Facility within such five-year period but does not substantially complete such construction, including all the aforementioned landscaping and infrastructure, within six (6) years after the date of this Deed, then, barring extraordinary natural disasters, labor stoppages, and other extraordinary and uncontrollable actions which might delay construction, Grantee hereby agrees that Grantor shall have an irrevocable option to purchase the Property hereinabove described for the sum of FOUR HUNDRED SIXTY THOUSAND AND NO HUNDREDTHS DOLLARS (\$460,000.00), which sum is equal to the appraised value as determined by Real Property Consultants, dated December 5, 2001, report RPC#99-087R1 ("Appraised Value"), less any real estate brokerage fee paid by Grantor. Grantee and Grantor hereby acknowledge and agree that the Appraised Value was used as a basis for determining the consideration for the conveyance of the Property by this Deed from Grantor to Grantee in exchange for the conveyance of certain property from Grantee to Grantor by Deed of even date herewith. Exercise by Grantor of the option to repurchase will be effective upon tender of written notice of intention to repurchase by Grantor not more than thirty (30) days before the expiration of the five (5)-year period. For any future construction of buildings or site improvements, in the event that Grantee does not substantially complete construction within five (5) years after Grantee has begun the site work, Grantor shall have the same right of repurchase provided in this paragraph. In the event Grantor exercises either option to repurchase, as

provided in this Deed, the conveyance of title from Grantee to Grantor shall be by Bargain and Sale Deed. Said conveyance shall be closed in escrow at an escrow company licensed in the State of Oregon and mutually agreeable to both parties.

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 OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

IN WITNESS HEREOF, Grantor has caused this Deed to be signed by its _____ this ____ day of _____, 2003.

THE PORT OF PORTLAND

By: _____

Name: Bill Wyatt
Title: Executive Director

APPROVED AS TO LEGAL
SUFFICIENCY FOR THE PORT OF
PORTLAND

Counsel for the Port of Portland

APPROVED BY COMMISSION:

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on this ____ day of _____, 2003, by Bill Wyatt, as Executive Director of the Port of Portland.

Notary Public for Oregon
My Commission Expires _____

This conveyance is approved as to form and content and accepted by Metro.

METRO, a municipal corporation

By: _____
Michael Jordan, Chief Operating Officer

State of Oregon)
)ss.
County of Multnomah)

BE IT REMEMBERED, that on this _____ day of _____, 2003, before me, the undersigned, _____ a Notary Public for Oregon, personally appeared _____, as Chief Operating Officer for Metro, a municipal corporation, known to me to be the identical individual described in and who executed this instrument and acknowledged to me that he/she executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon

DRAFT

After Recording, Return To:
Loralie Sinnen
Port of Portland
Property & Development Services
PO Box 3529
Portland OR 97208

Send Tax Statements to:
Port of Portland
PO Box 3529
Portland OR 97208

**BARGAIN AND SALE DEED
WITH RESTRICTIVE COVENANTS**

METRO, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter (hereinafter Grantor"), conveys to THE PORT OF PORTLAND, a Port district of the State of Oregon (hereinafter "Grantee"), the real property described on **Exhibit A** attached hereto and incorporated herein (hereinafter the "Property"):

The true consideration for this conveyance is other property or value given.

This conveyance is made on the express condition that the Grantee (or its successors or assigns) shall use the Property only for the Permitted Uses (defined below) and, if the Property is ever used for any other purpose, Grantor (or its successors or assigns) may reenter and terminate the estate hereby conveyed and all rights of Grantee, its successors and assigns hereunder.

This Deed is also subject to all the covenants, restrictions and agreements (collectively referred to herein as "Restrictive Covenants") set forth below in this Deed which shall remain in force, as provided by law, and may be enforced by Grantor, its successors, or assigns either by action at law or suit in equity. Grantor shall not be responsible or liable to Grantee or any third parties for enforcement of or for failure to enforce these Restrictive Covenants. Invalidation of any of these Restrictive Covenants shall in no way affect any of the other provisions which shall remain in full force and effect. It is distinctly covenanted and agreed between the parties that all of the Restrictive Covenants hereinafter expressed shall be held to run with and bind the land conveyed and all subsequent owners and occupants thereof.

RESTRICTIVE COVENANTS:

1. Grantee acknowledges that a portion of the Property is subject to a Expo Master Plan between Grantor and the City of Portland created by City or Portland Conditional Use Action #01-00036 CU MS, recorded in Multnomah County Deed Records June 19, 2001, Fee No. 2001-090976 ("Master Plan"). Among other requirements, the Master Plan requires that the Property be used as an Environmental Reserve for habitat restoration. Grantee covenants and agrees that it shall take no action and shall not use the Property in any way that would violate the Master Plan and shall maintain the Property in compliance with the Master Plan.

2. Grantee shall use the Property for the following purposes (collectively, the "Permitted Uses"): development of vegetative buffer and wetlands enhancements compatible with the adjacent Grantee owned Vanport Wetlands (Radio Tower) site. Said uses shall not compete nor interfere with METRO's or MERC's use of the adjacent Grantor-owned Expo parking lot or the use or operations of the Exposition Center ("Expo Center"), without the prior written consent of Grantor. Among other uses, the Expo Center is used as a multi-purpose public assembly facility, a trade show and public exhibition location, and a business center. Grantee shall neither use nor permit the Property to be used for the following uses: temporary or permanent parking, industrial use, or the provision of services, facilities, commodities, or supplies which are or can be made available at the Expo Center.

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 OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

IN WITNESS HEREOF, Grantor has caused this Deed to be signed by its _____ this _____ day of _____, 2003.

METRO

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

DRAFT

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

Notary Public for Oregon

My Commission Expires _____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION