

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6665

**AUTHORIZING A PURCHASE AND SALE AGREEMENT, AND
RECIPROCAL EASEMENT AGREEMENT WITH TRIMET FOR
CERTAIN REAL PROPERTY LOCATED AT THE NORTHWEST
CORNER OF NORTHEAST INTERSTATE AVENUE AND
NORTH CHURCH AVENUE IN THE INTERSTATE CORRIDOR
URBAN RE NEWAL AREA AND AUTHORIZING A
INTERGOVERNMENTAL AGREEMENT WITH TRIMET
CONCERNING THE SAME**

WHEREAS, in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, the Portland Development Commission (“PDC”), has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the Interstate Corridor Urban Renewal Area (“ICURA”), which was adopted by the City Council of the City on August 23, 2000 (as amended from time to time, the “Urban Renewal Plan” or the “Plan”);

WHEREAS, the Plan, stipulates a general principal to optimize light rail investment through the creation of catalyst projects near light rail stations;

WHEREAS, the Interstate MAX Station Area Revitalization Strategy projects a demand for 1,700 to 3,400 new housing units in the vicinity of station areas along and near Interstate Avenue in the ICURA, serving a variety of income levels;

WHEREAS, the ICURA Housing Strategy includes goals to increase ownership opportunities for current and future residents and support expanded services, business and employment opportunities;

WHEREAS, to implement these goals, in 2001, PDC purchased certain real property located at the northeast corner of N. Killingsworth Street and NE. Interstate Avenue (the “Killingsworth Property”) to redevelop as a transit-supportive, mixed-use housing project (collectively, the “Project”);

WHEREAS, on July 9, 2008, the PDC Board of Commissioners (the “Board”) adopted Board Resolution No. 6620 authorizing the Executive Director to enter into a Disposition and Development Agreement to develop the Project on the Killingsworth Property (the “DDA”) with Killingsworth Station, LLC (the “Developer”), which Developer had been selected through a competitive solicitation process;

WHEREAS, a condition precedent to Developer’s and PDC’s performance under the DDA provides that PDC: (i) obtain title to an 808 square foot portion of certain adjacent real property owned by TriMet and located at the northwest corner of NE. Interstate Ave. and N.

Church Ave. (the "TriMet Land") for subsequent conveyance to Developer to enable an to expansion of the Project onto the TriMet Land; and (ii) obtain an access easement across a 680 square foot area of certain real property owned by TriMet and located at the northwest corner of NE. Interstate Ave. and N. Church Ave. (the "TriMet Easement");

WHEREAS, PDC has negotiated a purchase and sale agreement with TriMet for the TriMet Land (the "Purchase and Sale Agreement"). The purchase price for the TriMet Land is \$35,244 (the "Purchase Price");

WHEREAS, PDC has negotiated a reciprocal easement agreement with TriMet which provides ingress and egress across the TriMet Easement and provides TriMet ingress and egress across a 680 square foot portion of the Killingsworth Property (the "Reciprocal Easement Agreement"). The price of the TriMet Easement is \$13,600 (the "Easement Price");

WHEREAS, the Reciprocal Easement Agreement will allow TriMet ingress and egress access for the Interstate MAX light rail power substation and will allow future users of the Project access to the parking lot; and

WHEREAS, TriMet wishes to support the Project by reimbursing PDC for the Purchase Price and Easement Price in order to defray costs incurred for designing the Project to meet certain transit development goals, PDC and TriMet have negotiated an Intergovernmental Agreement that provides for such reimbursement (the "IGA").

NOW, T HEREFOR E, B E I T R ESOLVED that the Executive Director is hereby authorized to execute into the Purchase and Sale Agreement with TriMet, substantially in the form attached hereto as Exhibit A;

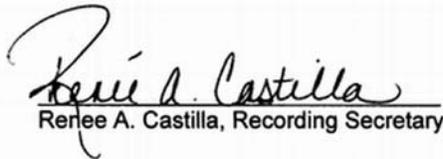
BE I T FURTHER RESOLVED that the Executive Director is hereby authorized to execute the Reciprocal Easement Agreement with TriMet, substantially in the form attached hereto as Exhibit B;

BE I T FURTHER R ESOLVED that the Executive Director is hereby authorized to execute the IGA with TriMet, substantially in the form attached hereto as Exhibit C;

BE IT FURTHER RESOLVED that the TriMet Land and the TriMet Easement shall, in accordance with the DDA, be conveyed to Developer on the Closing Date set forth therein; and

BE IT FURTHER RE SOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission January 29, 2009.


Renee A. Castilla, Recording Secretary

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into this 12th day of November 2008 (the "Effective Date"), by and between the Tri-County Metropolitan Transportation District of Oregon, a mass transit district of the State of Oregon ("Seller" or "TriMet") and the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("Buyer" or "PDC"). PDC and TriMet may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the Interstate Corridor Urban Renewal Area (the "URA"), which was approved by the City Council of the City on August 23, 2000 (as amended from time to time, the "Urban Renewal Plan");
- B. TriMet is the owner of certain real property located at the northwest corner of NE Interstate Ave. and N. Church Ave. in the URA as more particularly described in Exhibit A attached hereto (the "Parcel");
- C. PDC has found it necessary and in the public interest to implement the Urban Renewal Plan by acquiring a portion of the Parcel in order to maximize the development potential of the PDC funded project planned on the adjacent PDC-owned parcels which will serve as a catalyst for further redevelopment in the URA;
- D. Therefore, PDC desires to purchase from TriMet and TriMet desires to sell to PDC, a portion of the Parcel, together with any and all rights appurtenant thereto, as more particularly described in Exhibit B attached hereto (the "Property");
- E. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan was adopted; and
- F. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will acquire the Property.

NOW, THEREFORE, for and in consideration of the premises set forth above and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

AGREEMENT

1. **Purchase and Sale.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from the Seller the Property upon the terms and conditions set forth in this Agreement.
2. **Purchase Price.** Buyer agrees to pay to Seller the total sum of THIRTY-FIVE THOUSAND TWO HUNDRED FORTY-FOUR DOLLARS (\$35,244.00) (the “Purchase Price”) for the Property.
3. **Conveyance of Title.** Seller shall convey title to the Property by Bargain and Sale Deed in the form attached hereto as Exhibit C (the “Deed”).
4. **Closing.** This transaction contemplated by this Agreement shall close in escrow at the Portland offices of Security Title Guaranty Company on or before December 1, 2008 (the "Closing Date" or "Closing") unless otherwise agreed in writing by the Parties. In the event that this escrow agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the State of Oregon. The Parties agree to execute the necessary escrow instructions to allow the escrow agent to close this transaction in accordance with the terms of this Agreement. Closing shall be effectuated upon satisfaction or waiver of all conditions precedent and delivery by Seller of all documents required herein, including the Deed.
5. **Conditions Precedent to Closing.**
 - 5.1 Conditions Precedent to Buyer's Obligations. In addition to any other conditions contained in this Agreement, the following conditions precedent must be satisfied prior to Buyer's obligation to acquire the Property. These conditions are intended solely for Buyer's benefit and Buyer shall have the sole right and discretion to waive, by written notice, any of the conditions. In the event any condition is not satisfied or waived on or before Closing, or other date as set forth herein, Buyer shall have the right to terminate this Agreement.
 - 5.1.1 Title. On the Closing Date, the Seller shall convey fee simple title to the Property by the Deed. Fee simple title the Property shall be good and marketable and shall be insured by an Owner's Standard Form of Title Policy issued by Security Title Guaranty Company (“Title Company”) in the full amount of the Purchase Price, insuring fee simple title vested in Buyer or its nominees. The cost of the title policy shall be at Buyer’s expense. Title insurance shall be subject only to the standard exceptions of such policy, current taxes not yet delinquent and the Permitted Exceptions, as hereinafter defined. Buyer shall have the right, if Buyer so elects, to cause the title policy to be issued as an ALTA extended coverage policy, provided Buyer pays the additional premiums and survey costs associated therewith.

- 5.1.2 Preliminary Title Report. Within five (5) days of the Effective Date, Seller, at Buyer's expense, shall cause the Title Company to deliver to Buyer a Preliminary Title Report covering the Property, together with legible copies of all plats and exceptions to title referenced in the Preliminary Title Report. Within five (5) days of its receipt of the Preliminary Title Report, Buyer shall give written notice to Seller of the exceptions that Buyer shall require Seller to remove of record at or before Closing (the "Unacceptable Exceptions"). Exceptions to which Buyer makes no objection are deemed "Permitted Exceptions". Seller shall thereafter have ten (10) days to use its best efforts to remove such Unacceptable Exceptions at Seller's sole cost or inform Buyer in writing that it is unable to remove any such exception. All new exceptions appearing on subsequent title reports shall be considered unacceptable, unless accepted in writing by Buyer. If for any reason Seller cannot remove any of the Unacceptable Exceptions before Closing, then Buyer may elect to either:
- 5.1.2.1 accept title to the Property subject to such exceptions;
 - 5.1.2.2 waive its objection in writing to Seller and elect to have any monetary lien or encumbrance removed at Closing to the extent that it can be satisfied and removed by application of all or a portion of the Purchase Price payable to Seller at Closing; or
 - 5.1.2.3 refuse to accept the Property and terminate this Agreement.
- 5.1.3 Representations, Warranties, and Covenants of Seller. Seller shall have duly performed every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct to the best of Seller's knowledge after reasonable inquiry as of the Closing Date.
- 5.1.4 No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property.
- 5.1.5 Seller's Deliveries. The Seller shall have timely delivered each item to be delivered by the Seller pursuant to this Agreement.
- 5.1.6 Title Insurance. As of Closing, the Title Company shall have issued or committed to issue the title policy to Buyer.
- 5.1.7 Taxes. Seller agrees that any taxes, assessments and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied of record by Seller. If Seller shall fail to do so, Buyer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real

property taxes payable during the year in which Closing occurs and any rents or income applicable to the Property shall be prorated as of Closing.

- 5.2 Failure of Conditions to Closing. In the event any of the conditions set forth in Section 5.1 are not timely satisfied or waived, for a reason other than the default of Buyer or the Seller, this Agreement, and the rights and obligations of Buyer and Seller, shall terminate.
 - 5.3 Prorates. Except as otherwise provided herein, all items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.
6. **Deliveries at Closing.**
- 6.1 By Seller. On or before the Closing Date, the Seller shall deliver the following to Buyer.
 - 6.1.1 Deed. The Deed, duly-executed and acknowledged in recordable form by Seller, conveying title to the Property to Buyer.
 - 6.1.2 Nonforeign Certification. Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. Seller will give an affidavit to Buyer to this effect in the form required by that statute and related regulations.
 - 6.1.3 Documents. Such other fully executed documents and funds as are required to close the sale in accordance with this Agreement.
7. **Deliveries to Buyer at Closing.** Seller shall deliver exclusive possession of the Property to Buyer at Closing.
8. **Costs.** Buyer shall pay the cost of recording the Deed, and all other recording charges, if any. Buyer shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Buyer shall pay any and all costs associated with its request for the title policy to be issued as an ALTA extended coverage policy. Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by Buyer and Seller, respectively. Buyer shall pay all escrow fees. Buyer shall pay all other costs and expenses.
9. **Seller's Representations and Warranties.** After reasonable inquiry and to the best of Seller's knowledge, Seller hereby warrants and represents to Buyer the following matters, and acknowledges that they are material inducements to Buyer to enter into this Agreement.
- 9.1 Representation Regarding Seller's Authority.

- 9.1.1 Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.
 - 9.1.2 All requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Seller in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
 - 9.1.3 The persons executing this Agreement and the instruments referred to herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement.
 - 9.1.4 This Agreement and all documents required to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.
 - 9.1.5 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein 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 Seller is a party, or, affecting the Property.
- 9.2 Contracts, Leases, Options Affecting Property. As of the date of this Agreement, Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, options to purchase the Property, leases, mortgages, licenses, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affects or encumbers the Property or any portion thereof, with the exception of matters of record. Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Property, and to Seller's knowledge, no such rights encumber the Property, and will not, through Closing. This Paragraph in no way limits Seller's ownership interest in the remainder of the Parcel not conveyed to Buyer, or its ability to transfer its interest or a portion thereof in such remaining Parcel.
- 9.3 Liens, Notices. There are no:
- 9.3.1 Intended public improvements or private rights, which will result in the creation of any liens upon the Property or any portion thereof.

- 9.3.2 Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof;
 - 9.3.3 Actual or impending mechanic's liens against the Property or any portion thereof.
- 9.4 **Changed Conditions.** If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations ceases to be true before Closing, Seller shall work with the Buyer using commercially reasonable efforts to remedy the problem prior to Closing. If the problem is not remedied before Closing, Buyer may elect to either: 1) terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and any payments shall be refunded to Buyer; or 2) defer the Closing Date for a period not to exceed thirty (30) days or until such problem has been remedied, whichever occurs first.
- 10. **Condition of Property.** Buyer acknowledges and agrees that Buyer will be concluding the purchase of the Property based upon Buyer's inspection and investigation of the Property, and is purchasing the Property subject to the representations and warranties set forth herein. Buyer specifically acknowledges that Seller makes no representations or warranties regarding environmental matters. No part of this Section 10 shall, however, be deemed to invalidate or waive any claim or rights of contribution that may arise under environmental laws.
- 11. **Seller's Representations, Warranties and Covenants Regarding the Property through Closing.** Seller further represents, warrants, and covenants that, until this transaction is closed or terminated, whichever comes earlier, it shall:
 - 11.1 Maintain the Property in its present state, with no alteration of the Property in any way; and
 - 11.2 Comply with all government regulations.
- 12. **General Representation.** Seller's representations and warranties contained herein are true and accurate, and are not misleading. Seller's representations and warranties contained herein shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at the time.
- 13. **Buyer's Representations and Warranties.** Buyer hereby represents, warrants and covenants with Seller that:
 - 13.1 Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated herein;

- 13.2 All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referred to herein and the consummation of the transactions contemplated herein; and
- 13.3 The persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.
14. **Risk of Loss.** Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or part of the Property is damaged by fire or by any other cause of any nature, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Buyer of written notice from Seller of such casualty.
15. **Notices.** All notices in connection with this Agreement will be deemed given at the time of delivery if made by personal delivery, by facsimile, or by delivery by private express courier service; if mailed, three days after deposit by certified or registered mail, postage prepaid.

To Seller: Jillian Detweiler
TriMet
710 NE Holladay Street
Portland, Oregon 97232
(503) 962-2292 (ph)
(503) 962-2289 (fax)

To Buyer: Matthew Collier
Portland Development Commission
222 NW 5th Ave.
Portland, OR 97209

with a copy to:

Portland Development Commission
Attn: General Counsel
222 NW 5th Ave.
Portland, OR 97209

The foregoing addresses may be changed by written notice, given in the same manner.

16. **Brokerage Commissions.** Buyer represents that it has retained no real estate broker in connection with this transaction. Seller represents that it has retained no real estate broker in connection with this transaction. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the Party against whom the claim is asserted will hold the other Party harmless and defend from said claim.

17. **Further Actions of Buyer and Seller.** Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the Closing in accordance with the provisions herein.
18. **Legal and Equitable Enforcement of This Agreement.**
 - 18.1 Default by the Seller. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by Seller, Buyer shall be entitled to the refund of the Purchase Price, and shall be entitled to seek specific performance of Seller's obligations.
 - 18.2 Default by Buyer. In the event Closing and the consummation of the transactions herein contemplated do not occur by reason of any default by Buyer, Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Accordingly, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer in the event of any such default by Buyer and under this Agreement is and shall be, and Seller's sole and exclusive remedy (whether at law or in equity), is and shall be an amount equal to the sum of \$5,000. The payment of such amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to represent liquidated damages to Seller. Upon such default by Buyer, this Agreement shall be terminated and neither Party shall have any further rights or obligations hereunder.
19. **Miscellaneous.**
 - 19.1 Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
 - 19.2 Mediation. If any dispute should arise between the parties concerning the Parties' obligations or activities under this Agreement, 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.
 - 19.3 Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

- 19.4 Successors and Assigns. Buyer may not assign its interest in this Agreement and the Property to any other person or entity without the express, written consent of Seller, which shall not be unreasonably withheld. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement, and this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.
- 19.5 Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 19.6 Interpretation of Agreement. This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
- 19.7 Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here.
- 19.8 Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision.
20. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the State of Oregon. The parties expressly agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.
21. **Statutory Notices.** 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 THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010

OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.”

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BUYER:
The CITY OF PORTLAND, a municipal
corporation of the State of Oregon, acting by
and through the PORTLAND
DEVELOPMENT COMMISSION

SELLER:
Tri-County Metropolitan Transportation
District of Oregon

Bruce A. Warner, Executive
Director_____

Neil Mc Farlane, Executive Director
Capital Projects & Facilities

Approved as to Form:

Approved as to Form:

Lisa Gramp
Assistant General Counsel

Lance Erz
Assistant General Counsel

Exhibit A
TriMet Parcel Description

Exhibit B
Property Description

Lot 1, Block 1, NORTH ALBINA, in the City of Portland, Multnomah County, Oregon.
EXCEPTING THEREFROM the West 20 feet taken for the widening of North Interstate Avenue
ALSO EXCEPTING THEREFROM that portion conveyed to the City of Portland in Deed for
Right-of-Way Purposes, recorded July 3, 2003, Recorder's No. 2003-154928

Exhibit C

**FORM OF
BARGAIN AND SALE DEED**

After recording return to and,
until a change is requested, all
tax statements shall be sent to:

BARGAIN AND SALE DEED

The **Tri-County Metropolitan Transportation District of Oregon**, a mass transit district of the State of Oregon (which, together with any successor public agency designated by or pursuant to law, is herein called “Grantor” or “TriMet”), conveys to the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, as the duly designated Urban Renewal Agency of the City of Portland (which, together with any successor public agency designated by or pursuant to law, is herein called “Grantee” or “PDC”), the following described real property (herein called the “Property”):

The conveyance is made pursuant to that certain Purchase and Sale Agreement by and between TriMet and PDC, dated November 12, 2008 (the “Agreement”). Any capitalized terms in this Bargain and Sale Deed shall have the meanings set forth in the Agreement, unless otherwise defined herein. The Purchase Price for the Property is THIRTY-FIVE THOUSAND TWO HUNDRED FORTY-FOUR DOLLARS (\$35,244.00).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY

ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Dated this _____ day of _____, 2008.

TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON

By: _____
Neil McFarlane, Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Neil McFarlane as Executive Director of the Tri-County Metropolitan Transportation District of Oregon, on its behalf.

Notary Public for Oregon
My commission expires:

Accepted:

Grantor's Name and Address

Tri-County Metropolitan Transportation
District of Oregon
710 NE Holladay Street
Portland, OR 97232

**Grantee's Name and Address and
After Recording Return To:**

Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209

RECIPROCAL EASEMENT FOR INGRESS AND EGRESS

This Reciprocal Easement for Ingress and Egress ("Easement") is entered into this ____ day of _____, 2008, between the Tri-County Metropolitan Transportation District of Oregon ("Grantor" or "TriMet") and the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("Grantee" or "PDC") (collectively "Parties").

Recitals

1. TriMet is the owner of the parcel of property that is described and shown as Lot 1 on Exhibit A, which is attached hereto and incorporated by this reference herein. TriMet maintains a substation on Lot 1, which serves its Interstate MAX light rail alignment. TriMet requires vehicular access to its substation.
2. PDC is the owner of the parcel of property that is described and shown as Lot 8 on Exhibit A, which it intends to transfer to a development company ("Developer") that plans to construct a mixed-use development consisting of housing and retail services.
3. Developer plans to build a driveway ("Driveway") for ingress and egress to Lots 1 and 8 that is partially upon Lot 1 (owned by TriMet) and partially upon Lot 8 (owned by PDC). The Driveway will be built at the location shown on Exhibit A. TriMet consents to the construction of the Driveway on this portion of TriMet's property.
4. The Parties each desire to use the Driveway for purposes of ingress and egress to their property, and to grant to the other and receive from the other an Easement for Ingress and Egress purposes, as set forth herein.

Therefore, in consideration of the payment of \$13,600 from PDC to TriMet and the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Agreement

1. TriMet grants to PDC, its successors and assigns, a non-exclusive, perpetual easement for ingress and egress purposes over Lot 1, in the location set forth in Exhibit A, for the use and benefit of Lot 8.
2. PDC grants to TriMet, its successors and assigns, a non-exclusive, perpetual easement for ingress and egress purposes over Lot 8, in the location set forth in Exhibit A, for the use and benefit of Lot 1.
3. Grantee shall be solely responsible for all repair and maintenance of the Driveway, unless damaged by the fault or negligence of TriMet. The Parties agree that normal wear and tear on the Driveway caused by TriMet's access is not damage caused by the fault or negligence of TriMet.
4. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, Grantor agrees to indemnify, defend and hold Grantee harmless for, from and against any loss, damage, claim, cost or expense (including attorney fees) caused by the negligence of TriMet, its agents, employees, contractors or invitees during the use of the Easement.
5. Grantee agrees to indemnify, defend and hold TriMet harmless for, from and against any loss, damage, claim, cost or expense (including attorney fees) caused by the negligence of Grantee, its agents, employees, contractors or invitees during the use of the Easement.
6. It is understood that the Reciprocal Easement herein granted over and across Lots 1 and 8 does not convey any right or interest in the above-described lots except as stated herein, nor prevent either Party from the use of its property, as long as such use is not inconsistent with the use of the Easement by the other party.
7. Each party's rights and obligations under this Reciprocal Easement bind and benefit its successors and assigns.

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

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE PORTLAND DEVELOPMENT COMMISSION
AND TRIMET FOR
REDEVELOPMENT OF KILLINGSWORTH BLOCK**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) between the Portland Development Commission (“PDC”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) is effective the ___ day of _____, 2008 (the “Effective Date”). PDC and TriMet may collectively be referred to herein as the “Parties.”

RECITALS

- A. TriMet and PDC are authorized to enter into this Agreement pursuant to the provisions of ORS 190.010.
- B. The Interstate MAX project began operation on May 1, 2004.
- C. The Parties have placed transit-oriented development as a high priority around MAX station areas.
- D. PDC purchased property at the northeast corner of the intersection of N. Interstate Avenue and N. Killingsworth Street (the “Killingsworth Block”). The property is adjacent to the Killingsworth Street MAX Station and the Line #72-Killingsworth bus.
- E. PDC has managed a process to select a developer and is now proceeding with the development of the Killingsworth Block. The current development proposal entails approximately 54 for-sale residential units serving a mix of incomes, and 9,000 square feet of ground floor commercial space (collectively, the “Project”)
- H. The Project will enhance the effectiveness of the adjacent Interstate MAX and bus by increasing the population near the Killingsworth Street MAX Station area. Achieving the proposed density will require public subsidy to offset such costs as elevators, steel or concrete frame construction and structured parking.
- I. TriMet has an interest in having successful transit-oriented development projects along the Interstate MAX alignment and is willing to provide funds to assist PDC in the development of the Project.
- J. The Parties desire to enter into this Agreement to provide for environmental analyses; real estate packaging including design and engineering; estimates of operating income and expenses and capital costs and negotiations to secure financing and tenants, and pedestrian connections and access links between transit services and the Project.
- K. The Parties are willing to cooperate in the redevelopment of the Project in accordance with this Agreement.

NOW THEREFORE, the Parties agree that:

AGREEMENT

1. **Scope of Work.** PDC and its contractors shall perform the work in the attached Exhibit A relating to redevelopment of the Killingsworth Block (the “Work”). The primary elements of this effort include staff and professional services related to the design, financing, and permitting of the Project; preparation of the site and pedestrian improvements. The Work shall be completed on the schedule set forth in Exhibit A.

2. **Term.** This Agreement shall become effective on the date of last signature and the work described on the Scope of Work attached at Exhibit A (the “Work”) shall be completed **by June 30, 2010**, subject to extension, continuations, or renewals mutually agreed upon in writing by the Parties.

3. **Project Staff.** PDC staff or its contractors, in PDC’s sole discretion, will provide the services set forth in this Agreement. Matthew Collier is the PDC project staff person assigned to this Agreement. Jillian Detweiler is the TriMet project staff person assigned to this Agreement.

4. **Funding.** TriMet agrees to pay PDC for the cost of services performed under this Agreement, including any outside consulting costs, in an amount up to but not to exceed **\$45,294**. TriMet’s involvement with the Project is limited to redevelopment activities as set forth in this Agreement. TriMet will make payments to PDC in accordance with the schedule set forth in Exhibit A within 30 days of receiving a PDC invoice in a form acceptable to TriMet. Invoices shall contain the contract number, the dates services were furnished, a detailed description of the services furnished, and a price breakdown showing prices and units. Invoices under this Agreement shall be submitted in an original with two copies to:

Jillian Detweiler
TriMet
710 NE Holladay Street
Portland, OR 97232

5. **Notices.** Any notice provided for under this Agreement shall be sufficient if in writing and delivered to the following addressee:

If to TriMet:

Jillian Detweiler
TriMet
710 NE Holladay Street
Portland, OR 97232

If to PDC:

Matthew Collier
Portland Development Commission
222 NW Fifth Avenue, Suite 7000
Portland, OR 97209

6. **Performance; Reporting Requirement.** PDC is responsible for the performance of the

Work and will provide progress reports regarding the Work as requested by TriMet. PDC shall maintain fiscal records pertinent to this Agreement for at least three (3) years following completion of the Work under this Agreement. PDC shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, PDC shall maintain all other records pertinent to this Agreement in such a manner as to clearly document its performance hereunder.

7. **Indemnification.** To the extent permitted by Oregon Law (ORS 30.260 through 30.300) and the Oregon Constitution, Article XI, Section 7, PDC shall indemnify, defend and hold harmless TriMet, its officers, agents, and employees against all claims, demands, actions, and suits brought against any of them arising from PDC's performance of the Work under this Agreement.

8. **Compliance With Laws.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any suit for enforcement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

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

10. **Termination.** This Agreement may be terminated by either of the Parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. Such termination shall not serve to nullify performance obligations existing prior to the date of termination. Payment to PDC shall be prorated up to and including the date of termination. All unused and/or unspent funds at termination, if any, will be returned to TriMet within 30 days following the date of termination of this Agreement.

11. **Documents are Public Property.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with this Project, shall become public property. As related to third parties, this provision shall not waive any right or privilege not to disclose held by PDC or TriMet.

12. **Adherence to the Law.** For all activities related to this Agreement, the Parties shall adhere to all applicable laws governing its relationships with its employees, including, but not limited to, laws, rules, regulations, and policies concerning workers' compensation and minimum and prevailing wage requirements, and to all applicable laws relating to procurement of services (including construction services) and goods.

13. **Federal Funding Limitations.** The Parties hereto understand that federal funds may be used to pay for a portion of the Project. To the extent applicable to each of the respective Parties, this Agreement is subject to all federal provisions prescribed for third-party contracts.

14. **Subcontractor and Assignments.** No Party to this Agreement may assign or delegate any of the rights or obligations set forth hereunder without obtaining prior written approval from the other Party. Any attempted assignment of rights or delegation of duties without the written consent of the other Party shall be void. TriMet shall incur no liability to third parties for payment owing or made by the PDC or its assigns for work associated with the Project.

15. **Mediation.** The parties, prior to any litigation, shall attempt to settle any dispute arising out of this Agreement, or the breach thereof, through mediation in City of Portland, Oregon. The Parties will attempt to agree on a single mediator. The cost of mediation shall be shared equally by the Parties. If the Parties agree on a mediator, the mediation shall be held within 60 days of selection of the mediator unless the Parties otherwise agree to a different schedule. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the parties shall have all other remedies available at law or in equity.

16. **Severability.** If any terms or provisions of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court or arbitrator to be invalid or unenforceable, the remainder of this Agreement and the application of those terms and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

17. **Entire Agreement; Amendments.** This Agreement including the Recitals and all Exhibits attached hereto and which are hereby incorporated by this reference, shall constitute the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement shall bind either Party unless in writing and signed by all Parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. The Parties, by the signatures below of their authorized representatives, acknowledge having read and understood this Agreement and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed effective as of the date first set forth herein by their duly authorized representatives.

Portland Development Commission

By: _____
Bruce Warner, Executive Director

Approved as to Form:

By: _____
PDC Legal Counsel

Tri-County Metropolitan Transportation District of Oregon

By: _____
Neil McFarlane, Executive Director Capital Projects

Approved as to Form:

By: _____
TriMet Legal Counsel

EXHIBIT A

SCOPE OF WORK KILLINGSWORTH BLOCK PREDEVELOPMENT

Task 1: Negotiate agreements with Developer Team necessary to assure that the Project conforms with the Parties' intentions in terms of transit-supportiveness.

Sub-Tasks

- Draft, negotiate, and finalize the Disposition & Development Agreement with the Developer Team

Task 1 Deliverables: Disposition & Development Agreement.

Task 1 Expenditures: PDC Staff, including legal and project staff.

Task 2: Negotiate with Developer Team for the completion of building design.

Sub-Tasks

- Negotiate with Developer Team for the completion of preliminary design, design development, and construction drawings necessary to apply for and obtain applicable City approvals, including but not limited to design review, land division, and building permits
- Negotiate with Developer Team for its application for applicable City approvals, including but not limited to design review, land division, and building permits
- Negotiate with Developer Team for the completion of design analyses to determine optimal means of integrating the Interstate MAX substation into the Project
- Negotiate with Developer Team for the completion of professional technical studies as required for the Project, including but not limited to a traffic study, geotechnical and topographical surveys, applications for any necessary zoning entitlements, etc.

Task 2 Deliverables: Conceptual Development drawings; Design Development drawings; Construction Drawings; Traffic Analysis; Geotechnical Survey; Topographical Survey; Proof of Payment for permits.

Task 2 Expenditures: PDC Project Staff, and, if paid by PDC, Land Use and Building Permit Application Fees; Architectural and Other Professional Contractors (Traffic Analyst, Geotechnical Engineer, etc.)

Compensation & Performance Schedule

The Parties agree to the following schedule and compensation amount. TriMet agrees to make partial payment for sub-tasks as identified above, prior to the completion of the entire task.

Completion of Tasks 1 and 2 (June 30, 2010): \$45,294

Total Not to Exceed \$45,294

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6665

Title:

**AUTHORIZING A PURCHASE AND SALE AGREEMENT, AND
RECIPROCAL EASEMENT AGREEMENT WITH TRIMET FOR
CERTAIN REAL PROPERTY LOCATED AT THE NORTHWEST
CORNER OF NORTHEAST INTERSTATE AVENUE AND
NORTH CHURCH AVENUE IN THE INTERSTATE CORRIDOR
URBAN RENEWAL AREA AND AUTHORIZING A
INTERGOVERNMENTAL AGREEMENT WITH TRIMET
CONCERNING THE SAME**

Adopted by the Portland Development Commission on January 29, 2009.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: February 20, 2009