



CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

CITY COUNCIL – REGULAR MEETING

Troutdale City Hall - Council Chambers
219 E. Historic Columbia River Hwy. (Lower Level, Rear Entrance)
Troutdale, OR 97060-2078

Tuesday, November 10, 2015 – 7:00PM

Mayor

Doug Daoust

City Council

David Ripma

Eric Anderson

Larry Morgan

Glenn White

Rich Allen

John Wilson

City Manager

Craig Ward

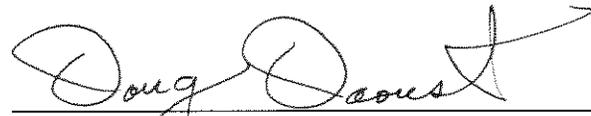
1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.**
2. **CONSENT AGENDA:**
 - 2.1 **MINUTES:** September 15, 2015, Work Session.
3. **PUBLIC COMMENT:** Public comment is limited to comments on non-agenda items. *Remarks shall be limited to 5 minutes for each speaker unless a different time is allowed by the Mayor. The Mayor and Council should avoid immediate and protracted response to citizen comments.*
4. **PUBLIC HEARING / RESOLUTION:** A Public Hearing and Resolution Declaring the Public Necessity to Construct Segments of the 40-Mile Loop Trail and Need to Acquire Real Property. *Erich Mueller, Finance Director*
5. **RESOLUTION:** A Resolution for an Exclusive Franchise Agreement with Waste Management to Provide Solid Waste and Recycling Collection Services. *Amy Pepper, Civil Engineer*
6. **PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance Amending Chapter 8.40 of the Troutdale Municipal Code and Reassigning Staff Responsibility for Solid Waste. *Amy Pepper, Civil Engineer*
7. **RESOLUTION:** A Resolution Authorizing Execution of Intergovernmental Agreements for: 1) Levee Cost Sharing with Multnomah County and the Port of Portland; 2) Levee Analysis Cost-Sharing Phase II (MCDD and SDIC); and 3) Cost Sharing of Levee Ready Columbia Expenses not Covered by IFA Loans. *Craig Ward, City Manager*

8. **REPORT:** A Letter of Intent for the USPS Relocation Project Payment from the Portland Development Commission. Craig Ward, City Manager

9. **STAFF COMMUNICATIONS**

10. **COUNCIL COMMUNICATIONS**

11. **ADJOURNMENT**



Doug Daoust, Mayor

Dated: 11/5/15

City Council Regular Meetings will be replayed on Comcast Cable Channel 30 and Frontier Communications Channel 38 on the weekend following the meeting - Saturday at 2:30pm and Sunday at 9:00pm.

Further information and copies of agenda packets are available at: Troutdale City Hall, 219 E. Historic Columbia River Hwy. Monday through Friday, 8:00 a.m. - 5:00 p.m.; on our Web Page www.troutdaleoregon.gov or call Sarah Skroch, City Recorder at 503-674-7258.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to: Sarah Skroch, City Recorder 503-674-7258.

DRAFT

**Troutdale City Council Work Session
Troutdale City Hall – Council Chambers
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060-2078**

Tuesday, September 15, 2015

1. Roll Call

Mayor Daoust called the meeting to order at 7:01pm.

PRESENT: Mayor Daoust, Councilor Ripma, Councilor Anderson, Councilor Morgan, Councilor White, Councilor Allen, and Councilor Wilson.

ABSENT: None.

STAFF: Craig Ward, City Manager; Ed Trompke, City Attorney; and Sarah Skroch, Deputy City Recorder.

GUESTS: See attached.

2. Discussion: Recreation and Parks District, new information.

Mayor Daoust stated we have a discussion tonight and I think that I will limit comments to just elected officials tonight, there will be plenty of time for public comment in the future. We will get into a discussion on sustainable parks and recreation services. What I'd like to do is calibrate the discussion by going through a PowerPoint Presentation that I put together. I hope that it answers some questions or frames some of the discussion a little bit more than just opening it up for a free for all discussion right at the beginning.

Mayor Daoust stated I'm getting us off the notion that Doug wants to hand our parks over to somebody else, which is completely opposite from what the truth is. This is a vision that I have, that granted is borrowed heavily from Corvallis and what they think about their parks. This is the kind of vision that really registers with me and what I'm looking for, for the parks, not only in Troutdale but in East County.

Mayor Daoust presented a PowerPoint Presentation to the City Council. A copy is attached to the minutes as Exhibit A.

Mayor Daoust stated people view parks as a regional asset. The problem is that we fund them on an individual city basis and that creates issues.

Councilor Anderson asked what kind of issues?

Mayor Daoust replied in that there is 4 different funding mechanisms in East County and they're not equal. Some cities can't afford to fund parks and some can afford them more than others.

Councilor Anderson asked who can't afford to fund parks?

Mayor Daoust replied Gresham for example.

Councilor Wilson stated regarding the Board structure, that hasn't been set yet. There's been discussions of it being at large which would override the model structure.

Mayor Daoust replied the bottom line point is that the model structure is up to us and the board make up is up to us.

Councilor Allen asked I don't understand, you said the board structure would be up to us. Wouldn't it be up to the district?

Mayor Daoust replied it would be up to the elected officials and the stakeholders.

Councilor Allen asked of all the cities in the district?

Mayor Daoust replied yes.

Councilor Morgan stated then we'd have a governing document that would govern that institutional organization.

Councilor Allen replied which we wouldn't actually have control over, we'd just have a vote.

Councilor Morgan stated no, we'd craft whatever we wanted to be established.

Councilor Allen replied as Troutdale we would just have a vote but we wouldn't have control over it because it involves all the cities.

Councilor Wilson stated he's talking about the new structure of the board. The make-up of the original board included 4 cities trying to decide how that structure goes. It may be at large or it may be by city. That's still open, we haven't gotten that far.

Councilor Ripma stated Gresham is bigger than the other 3 cities put together. The final governing board, however it evolves, is going to have to reflect that if it's going to be some sort of fair system. You're going to end up having a district dominated by Gresham.

Councilor Morgan asked based on what?

Councilor Ripma replied they're bigger than the rest of us put together. Also, the Corvallis model that Mayor Daoust brought up at the beginning is totally inapplicable to Troutdale because Corvallis is the biggest city in Benton County and it' the County seat. The idea that a model set

up for a County like Benton that has 1 big city in it would apply to Troutdale where we're the small fry in a district totally dominated by another city wouldn't work.

Mayor Daoust stated I'm not borrowing the model. I borrowed their vision statement.

Councilor Anderson asked did you say Linda Florence (Reynolds School District Superintendent) was in favor of this?

Mayor Daoust replied yes.

Councilor Anderson asked does she have any skin in the game?

Mayor Daoust replied she'll definitely be at the table but we'd have to ask her for money.

Councilor Anderson asked is she going to reduce her rental fees for their gyms? Will they bring back middle school athletics?

Mayor Daoust replied that would all be part of the discussion and they're good questions. The school districts would definitely be at the table. We shouldn't do this on our own. The school districts have a lot of athletic fields, a lot of gymnasiums, they have opportunities to make money if they open those up and allow a coordinated use. They have tennis courts that are in disrepair and they don't have enough money to maintain them.

Councilor Wilson stated if you go down the street to Mt. Hood Community College, there are nice courts there. Even though you are saying it'll be more sustainable by having a parks district, I can look at Tualatin Hills and it's not sustainable. They always have to go back with more levies or bonds in order to maintain what they have because of their growth. They're great at building things but they're not great at maintaining them.

Mayor Daoust stated in comparing Troutdale's soccer recreation classes to other cities, ours is the most expensive.

Councilor Wilson replied we use 2 different companies. For one of the companies we charge \$52 and they meet 1 day a week for 6 weeks for 30 to 45 minutes. The \$105 camp is a 5 day program that is 3 hours each day. You have to be able to compare apples to apples. It's the same company so there has to be a difference in what they're offering.

Councilor Ripma stated what you're talking about is setting up a whole new government entity with its own taxing powers, however we define it. Saying all this money will go to Reynolds and the City, it's our citizen's money. It'll be governed mostly by citizens not from Troutdale presumably for the benefit of the entire area. You can't prove that it'll actually benefit the citizens of Troutdale financially at all. But there's no way you can doubt that it'll be another layer of government.

Mayor Daoust asked why don't we get the answer to that?

Councilor Ripma replied if you're talking about a feasibility study, then I would like to suggest that it will be the thin end of the wedge. You study an area like the 4 cities and if it seems feasible then you have a vote of that area. We shouldn't start down that road because we'll end up losing the vote. Every citizen in Troutdale could vote against this and we could still end up in it. I'm worried that you're suggesting we engage in a feasibility study of some kind and you're trying to make a case that it's very logical. It's in fact the first step to forming a district.

Councilor Anderson stated I'm concerned that this Council voted this concept down 6 to 1 a couple of months ago and I'm also concerned that we ranked our work sessions with the fire contract, I believe, being the number one topic. I'm not saying that anything you've presented is right, wrong, good, bad or indifferent. I think you've done a wonderful presentation. I just think it's premature given the fact that we've already taken action on this, given the fact that we've taken no action on this, and given the fact as defined by this Council the number 1 work session coming out of the gates in the fall was the fire contract and here we are talking about this and I have to ask why.

Councilor Wilson replied I asked for it.

Councilor Anderson stated the reason we did it that way is because we didn't want to kick the can down the road. I know Fairview is discussing it and Wood Village doesn't want to be a part of it. There's a segment of this Council that wants a 4 minute response time and we need to figure out how we're going to deliver it.

Mayor Daoust replied we will get to that work session. The only reason we're having this one tonight is because Councilor Wilson wanted it as soon as possible.

Councilor Anderson asked then why did we go through the exercise of ranking the work session topics?

Councilor White stated we agonized over the best way to do our road maintenance. What we all agreed on was that we wanted the people using the roads to pay for it. That's why we came up with the gas tax idea. This breaks away from that idea where everyone in Troutdale would be paying for something that they may never use. We had Councilors run for office against the park district and they won by good margins. We also took a dull axe to our Parks Master Plan to avoid having a fee added on to the utility bills. I thought the cuts were good. People love our parks. I'm not against cooperating with other cities. When it make sense, we'll step up and do like Troutdale always does and take care of parks.

Councilor Wilson stated I talked with a couple of Fairview Councilors and they would rather cooperate with us to have a combined recreation program than form a district with a new tax base.

Councilor Morgan stated I understand the apprehension that Councilor Ripma has. But if we don't look at all of our options then we're presupposing a certain outcome based on our own priorities. I don't think that ultimately a district will be the best option for obvious reasons but to not have a study about all the options so we can make informed decisions, seems not only counterproductive but near sided.

Councilor Wilson replied we cut \$220,000 out of our parks for this budget and I was not one of those people.

Councilor Morgan stated we've all talked about supporting parks but when push comes to shove, we're not willing to support all options and ask the citizens what they would like us to do long term.

Councilor Anderson stated I think when we were doing the outreach on the gas tax, people wanted to talk more about parks than a gas tax.

Mayor Daoust stated I understand all the questions and comments. Where I'm coming from is that meeting we had last October with Springwater, that was not a decisional meeting, it was an emotional meeting. Where I come from as a decision maker is that I like to look at the facts. Before I make a decision, I relate that to possibly the feasibility study, but we as a Council have not had a discussion about a parks district, we have not had a discussion about a utility fee, we have not had a discussion about the options that we could take under our belt about maintaining our parks program. We have not had that discussion and that's why as Mayor that I want to be able to continue the discussion, that's all I'm asking for.

Councilor White stated I resent the comment that it was an emotional decision. We didn't even want to read a proclamation to get this ball rolling. The Council was bypassed by the Springwater Corridor and went to our Parks Department. Several of us Councilors had to go to their meetings to gather information. They lost their credibility with me and it was not an emotional decision.

Councilor Allen stated I don't believe in free money. I think the reason why this didn't come out in Troutdale prior to this is that it wasn't a Troutdale induced solution to a Troutdale problem. It was funding problems that they had in Gresham that they were looking for different sources of funding and they'd been turned down by Council and the public and this was another alternative to get better funding. Troutdale has a good parks system and has the ability to put more money into our parks if there's something that we want to do. Instead of hearing buzz words, I'd really like to hear what it is that Troutdale doesn't have that we want and people are willing to pay for.

Councilor Ripma stated we were giving you clear direction when we last discussed this that we didn't want you out promoting it and it's come up a couple of times in Council Concerns. I know you're protesting that you're not but this is a sales job for us joining a feasibility study with the other 3 cities to consider forming a district. That was Gresham's plan in 2010 and it's in the report that you sent to us that Gresham recommended going forward with a district, it was the most popular, and trying to get the other cities to join. I have no objection to Gresham forming a district if they want. The question of whether it's good for Troutdale was discussed and I felt it was clear direction that we didn't want to go forward. I have read in the press several times and it looks like you're out there promoting the idea of a feasibility study which is the start of forming the district. If we want to have a discussion about adding a monthly fee to the water bills then we could or we could always do a 5 year levy but we haven't got any plans to do that. I'd like to make it clear that we would like the discussion of joining the other 3 cities in a feasibility study to form a district to stop. We don't want it.

Councilor Wilson stated just to be clear, Shane Bemis doesn't want to participate in this. He doesn't want to put any skin in the game at this point. They haven't been in to meet with their City Council because they don't think it'll pass there. The couple of times I mentioned a utility fee, I've been told by the Mayor that it's one way of looking at it and that's where it's died.

Councilor Anderson stated this is tenacity. It's obvious that you're passionate about this. This is much more palatable in terms of the vision than Springwater's. If Gresham doesn't want to be a part of this then that's a relief for me. If there have already been discussions with Fairview and they're on board with doing a joint recreation program and looking into that, then I'm fine with that as well. But, I still go back to what I said and that is I don't want to have another work session or discussion about this. Keep having your discussions and if you find a solution then bring it to us in the form of a resolution and we'll vote on it.

Councilor Morgan asked a 3 cities feasibility study is ok?

Councilor Wilson replied for a recreation IGA.

Councilor Ripma stated not forming a separate district.

Councilor Anderson asked is Fairview a proponent of the recreation IGA?

Brian Cooper, Fairview City Councilor, replied I've been tasked to come up with all options. What I'm going to present to my Council is all the options that I can present. Do I think a district is the right option? I don't know. Do I think an IGA is the right option? Maybe. Fairview has been talking about recreation for 13 years and it's high time we do something about it. Does your program suit what we want, it could. Again, what would that cost and what would it look like. There are a lot of questions that need to be answered. What I'm hoping to get out of you is that you're willing to look at options. We're not going to spend any money and if any needs to be spent then it'll come before Council to decide. My staff can't talk to you staff about options unless you allow them to.

Mayor Daoust stated my request is to simply continue the discussion.

Councilor Allen stated the Parks District has a lot of force behind it and my concern is that it'll be forced on us whether we want it or not.

Mayor Daoust replied there's no force behind it, we're the leaders.

Councilor Allen stated this is bigger than just Troutdale.

Mayor Daoust replied it is Troutdale, Fairview, Wood Village, and Gresham.

Councilor Wilson replied you have no support from Gresham.

Mayor Daoust stated there are a couple of Councilors in Gresham that are interested.

Councilor Wilson stated I felt that if we let the nose of the camel into the town then the rest of the camel is coming with it, whether we want it to or not. I feel that working with Fairview and Wood Village to create a recreation program is the right way to go.

Craig Ward stated the comment was made that staff won't talk without Council direction and that is not true. The Managers of the 3 cities have met and talked about this several times. A couple of facts to consider are that we have a part time Recreation Coordinator who's full and isn't interested in working full time. She's doing a great job in my opinion of running our Recreation Program and that's all that she wants to do and she doesn't have time to do more. The basic principal that I use in talking to the managers of the 3 cities is that I'm willing to consider the expansion of the Recreation Program but to do that we will have to hire staff. We don't need staff in Troutdale so Fairview and Wood Village are going to have to chip in to hire staff in order to provide more programs. As far as I can tell, that seems to have been the end of the conversation. Mollie, our Recreation Coordinator, is prepared to work on developing a 3 cities program but it has to start with some skin in the game and that skin is going to equate to at least a part time Recreation Coordinator which is going to translate into real money. It's a pretty expensive ante to get in. I wanted to reassure you that we are open and we have had conversations and we're prepared to have more if that's the direction that the 3 Councils want to go.

Councilor Anderson stated keep the discussion going on the 3 city recreation initiative. As Brian has put it, they've been talking about recreation in Fairview for 13 years and nothings free. I think where there's a will there's a way and I think based on what I'm hearing from Fairview, there's a will there.

Councilor White stated Larry and myself worked on the fire negotiation team and we discovered something in that where Fairview's rate went up and Troutdale's rate went up but Wood Village's went down and that was based on how they came up with the funding mechanism that was based on property value. I think we're going to continue down that pattern with that type of a 3 cities merger that Troutdale will end up subsidizing Wood Village and so will Fairview. That isn't a criticism against Wood Village, they didn't do anything wrong it was just mathematics.

Mayor Daoust stated I'd like to open the meeting up to comments from other elected officials that are here.

Shirley Craddick, Metro Councilor, stated I'm here tonight because I really am a believer in the value that a robust parks system can bring to a community. It has an impact on making a city more desirable, particularly in the east part of the region where our crime isn't going down but going up. There is value to a good recreation program that can be available to all children and all students to be able to be involved in activities that are outside and not get in to mischief as much. This is a grassroots effort that is coming before you and the other 3 cities from the citizens in your community. Our job as a group of elected officials is to be the leaders and to aspire and help make our cities a better place to live.

Councilor Anderson asked what grassroots effort are you referring to?

Shirley Craddick replied that's where this is coming from. There's a group of people working together to try to get a better parks system in east Multnomah County. This is coming from the citizens and not from the top down.

Councilor Anderson asked so they are going to put a citizen's initiative on the ballot to create a parks district?

Shirley Craddick replied no I'm not saying that. They want a better parks system so they have approached me and they are approaching you because they'd like you to be involved in these discussions. A parks system brings so much to our community. It engages our citizens, it has a recreation program that could be fully developed over the years that will involve many more students. You are the only city that has a recreation program and I value that. But it's not adequate. It's time for us to invest in the east part of the region. We are continually challenged by where the prosperity in the metro region is more on the other side of the region than on this side and parks contribute to that. We know that the top 3 reasons that businesses use to site their locations includes parks. Our job is how do we improve our parks systems and make it better, particularly in a part of the region that has a lot more crime than other parts of the metro region. We also know that parks contributes significantly to our economy. I looked at your City goals and I can see how important it is for you to be able to make some of these projects happen. A parks system can help contribute to that indirectly because businesses and people want to move to where there's a good parks system. We know that parks systems can raise property values and that's good because it'll help generate more revenue for your city. If you own a home it'll generate more revenue with a property value increase when you're ready to sell your home. It's our job to be aspirational and help continue this discussion. I recognize that you have a lot of concern. I know Councilor Ripma, you're really concerned about another taxing district but none of us are able to have an adequate parks system under your general funding. How do we improve that? A parks district could be a benefit where it would bring additional revenue in. If you're concerned that Gresham will get all the money, they are the big player in the room with a population of almost 110,000 and they'll pay the biggest share of the funding. However, it would be 1 district. So if your child was going to play soccer then they could go the soccer field in Troutdale, Gresham, Fairview, or Wood Village. If you're going to swim it could at Gresham High School, Reynolds High School, or Barlow High School depending on which pool is open on a particular evening. The dollars would be distributed throughout the district in an equitable way. The other thing is tournaments. Tournaments can bring in millions of dollars into your community over 1 weekend. There are so many other benefits to this. I'm involved with this because I want to be and I'm not representing Metro in this discussion. It fulfills our greater goals of being a better community. I hope you'll be involved in this discussion, allow discussion, move forward, and don't kill it before it even begins. I had a discussion with Mayor Bemis and he's not opposed to this by any means. He's a very practical person and he knows that if Troutdale, Wood Village and Fairview are not in this discussion then there's no reason for Gresham to be in it. He would like to work with all of the cities in this discussion. He says why should I come to the table because the 3 small cities are going to have to take the lead in this first and then I know Gresham would come to the table.

Councilor Wilson stated the message that I got from him was that he talked to Mayor Daoust and very strongly told him that the City of Gresham is not interested in participating in this. They don't

want to make an investment in the feasibility study and quite frankly the Springwater Parks and Community District hasn't even been able to get a meeting with the City Council. At a meeting that I attended a Gresham City Councilor told Cathy (Sherick) to just take the 5 minutes and she didn't want that, she wanted to be able to sit down and talk to the Council. They're having a hard time even getting in front of the Gresham City Council.

Mayor Daoust stated I talked with Shane Bemis a couple of times about a park district. The only thing that he said, and he didn't even say it strongly, was I don't think it will pass in Gresham. He thinks it wouldn't pass in Gresham if it went out for a public vote. We do know that there are a couple of Councilors in Gresham that are interested in this discussion. Shane may be in the type of position that I am, only opposite, where his Council wants to discuss it but he doesn't. We don't really know where Gresham is at this point in time because we haven't sat at the table with the elected officials in the entire region yet. I think if we invited Gresham then those 2 or 3 Councilors would show up and Shane would have to decide where he stands.

Shirley Craddick stated I'm a believer that it's our community's decision to determine if they want to do this or not. It's not our job to interfere with allowing the community to at least have the opportunity to make that decision. We should at least keep the discussion going and begin to reach out to the public. A feasibility study would allow us to reach out to the community and see what their interest is in. That would guide us to determine the next steps.

Councilor Allen stated Troutdale already has parks, open spaces, trails, and a recreation program and we could always put more money into it if that's what the people of Troutdale want to do. We don't need to do a special district in order to put more money into the parks. We could do it now if we want to. If the people of Troutdale tell us that there's something they want then we could fund it.

Councilor Wilson stated people from our parks department are not supporting this. I've had discussions with people in my neighborhood. None of them are asking for an expanded parks system. They don't want to have the burden of another tax. I think there are people in this audience today that might want to move forward with this but I'd say the majority don't.

Councilor Allen stated there's a percentage of this that'll get sucked up into overhead when we already have a system that's in place.

Councilor Wilson stated if the people of Troutdale really want to expand the programs and would be willing to pay a utility fee then we could do that and then 100% of the money stays in Troutdale.

Mayor Daoust stated I'm glad we have all the answers in front of us right now without even reaching out to the public or the stakeholders.

Councilor White stated for the record I'd like to hear from people that took the time to show up tonight.

Mayor Daoust replied I already said that I would allow elected officials to speak because it's elected officials that are going to have to decide about going forward or not. There will be a

chance to speak later and if we have public meetings later then there are many opportunities to do that. If this Council wants to shut the door tonight then there won't be any more opportunity.

Councilor Ripma stated to cut the evening short, I would like to shut the door to further promotion of the feasibility study for a regional district. I don't think a majority of us want it and I for one did run against a parks district and was elected over opposition. I appreciate the effort you put in to this and I know you're dedicated to it. But please, it isn't a good deal for Troutdale. A feasibility study to form a district is not something we should even start. We shouldn't even entertain it. Listen to us, let's put this aside. If there are other things like a joint recreation program then I'm all for doing that and cooperating with the other cities but further efforts to form a district or to do a feasibility study, I would appreciate if you would stop.

Shirley Craddick replied a feasibility study wouldn't necessarily look at just 1 option. Part of the process would be to look at all of the options.

Councilor Ripma stated if the feasibility study were done without consideration of a district that would be fine but the whole idea is to study the formation of a district.

Shirley Craddick replied isn't that the voters decision and not your decision?

Councilor Ripma stated if the citizens want to form a district by petition without our approval then I can't stop them.

5. Adjourn

MOTION: Councilor Anderson moved to adjourn. Seconded by Councilor Morgan. Motion passed unanimously.

Meeting adjourned at 8:19pm.

DRAFT

Doug Daoust, Mayor

Dated: _____

ATTEST:
DRAFT

Sarah Skroch, Deputy City Recorder

Sustainable Parks and Recreation Services

Doug Daoust
Mayor

1

Vision

- Parks and Recreation will play a pivotal role in maintaining a high standard of livability in our community. We will enhance the quality of life for residents with our network of attractive, well managed parks, trails, and natural areas and create a premier destination for visitors.
- Programs and services offered will be excellent in terms of value and quality. We will invite the citizens to make healthy, sustainable choices by offering a variety of recreational and wellness activities, facilities, volunteer opportunities, and educational programs.
- The community will experience a sense of ownership of their parks. People of all ages, abilities, and incomes will enjoy attractive and accessible facilities and an exceptionally diverse selection of innovative and fun recreational opportunities."

2

Benefits

HEALTH BENEFITS: *Access to parks and recreation facilities leads to healthy lifestyles for people of all ages.*

Strong evidence shows that when people have access to parks, they exercise more.

- Every time sedentary people walk a mile, they add 21 minutes to their life. On average, every hour you spend exercising increases your life expectancy by two hours.
- Exercise increases the brain's capacity for learning.



3

Benefits

ENVIRONMENTAL BENEFITS: *Parks, open spaces and trails play a key role in preserving water and air quality, reducing congestion and protecting wildlife.*

- Through the provision of parks, open spaces and protected natural environment, recreation can contribute to the environmental health of our communities.
- Trail and pathway systems save energy and protect air quality by encouraging non-motorized transportation.



4

Benefits

COMMUNITY BENEFITS: *Parks and Recreation sources give communities a vital identity. Well-maintained, accessible parks and recreation facilities are key elements of strong, safe, family-friendly communities.*

- When citizens get involved with their parks and recreation systems, their quality of life improves.
- Parks and recreation opportunities encourage citizens to be engaged in their communities – as volunteers, stewards, advocates and students.
- Community recreation reduces alienation, loneliness, and anti-social behavior.



5

Benefits

ECONOMIC BENEFITS: *Parks enhance property values, contribute to healthy and productive workforces and help attract and retain businesses.*

- Parks and recreation facilities make communities desirable places to live, work, play and visit.
- Parks and recreation services motivate business relocation and expansion in the community.
- In a national public opinions survey, 57% of respondents said that if they were in the market to buy a new home, they would be more likely to select a home if it was close to parks and open space.



6

Perspective

"I think that one of the main hinderances we have in our parks and recreation is a lack of a real regional perspective. The reality is that the public at large within the region view our facilities and our amenities as regional assets, and we know they are funded on a city basis and that creates issues. The level of funding just doesn't reach the level of need by all the people who are living in this general area."

7

Parks Maintenance Spending

- Troutdale \$631,846
- Fairview \$314,150
- Wood Village \$173,403
- Gresham \$2,596,650



8

Other Parks Funding

- City of **Sherwood** (pop. 20,000) spends \$1.5M and they operate several parks and community facilities.
- City of **Salem** (pop. 160,000) Spends only \$2.1M
- City of **Hillsboro** (pop. 97,368) spends \$33M
- **T-Hills** (pop. @120,000) spends \$44M (only \$26M is from Property tax)
- City of **Berkeley Soda tax** (pop. 116,728) is projected to raise \$1.2 million.



9

East County is underserved

- 22,000 school age kids and 3 school districts.
- No middle school sports programs?
- Services for teens is the biggest gap, next to services to seniors.
- it's not just kids needing services.
- We want enhanced, scalable services that are sustainable.

10

East County needs:

- Recreation Clearinghouse & Program Guide: Create a bi-annual recreation guide that provides information about the many different recreation options available.
- Grants & Scholarships: to support successful recreation programs and events. Initiate a scholarship fund to support access of low-income residents to existing recreation programs.
- Programs & Classes: Contract with recreation providers to schedule and facilitate programs in existing parks and facilities.
- Outdoor Events: Recruit event providers to increase community events at existing City parks and facilities.
- Indoor Events: Recruit event providers to increase community events at indoor City facilities.
- Drop-In Activities: Provide drop-in recreation activities at different locations throughout the community to improve recreation access for residents.

11

Economic benefit and Community benefit

Reynolds School District Superintendent:

- In favor of a Parks District analysis/study
- Willing to share facilities
- Sees it crucial to improving graduation rates and minimizing Youth crime
- Having a developed infrastructure to help the less fortunate in the community
- Supports out of school programs

Big Tournaments - THPRD brings \$1 million back into their economy

12

Districts in Oregon

- There are 75 special districts in Oregon
- There are 47 Parks and Recreation districts in Oregon
 - Tualatin Hills Parks & Recreation Dept.
 - Hillsboro Parks & Recreation
 - Bend Metro Parks & Recreation
- Interesting one: Tigard-Tualatin Aquatic District was set up specifically to manage the two pools in the school district. .09/1000. Formed in 2010 by a grassroots group using initiative process

13

Hot Buttons

(with a Parks District option)

- **Power structure and control** (giving our parks away)
 - Solution: IGA's with the PD- maintain city control; Define the model; 5-member Board by City
- **Funding allocations within the district (Gresham sucking sound)**
 - Solution: The District model / structure / Board
 - Solution: look into seriously, with Feasibility Study answers
- **Tax burden on citizens**
 - Solution: Education; Feasibility Study answers to questions; vs. aspiring to make our community better

14

Options - Unlimited Possibilities

Using a rule of thumb that 4-Cities voters will support an average per-household increase to their taxes of \$50/year. Based on that number, the revenue generation for each option looks like this:

- **Property tax Levy:** A \$0.30 operating levy would generate about \$2 million in annual revenue, costing an average household (based on the real market value median of \$230,000) \$48/year. An operating levy has a lifespan of five years, generating in total almost \$10 million.
- **General Obligation Bond:** A \$25 million bond measure would cost the average household \$48.25/year over the life of the bond, which usually is 20 years.
- **Regional Park and Recreation District:** A \$0.25 property tax levy would generate roughly \$2.3 million/year at an annual household cost ranging from \$31 to \$53 (Troutdale being on the high end, Wood Village on the low end).
- **Park Utility Fee:** A \$4/month/residential and commercial fee would generate over \$2.1 million annually, and cost the average ratepayer \$48/year.

15

Options

- **3 or 4 City IGA** (Intergovernmental Agreement) for park and/or Recreational services
- **IGA between a City and a Parks District** (like Beaverton has with THPRD)
- All the options listed before, only on a single City basis.
- Do nothing, after considering the other options.

16

Park District Income

4 cities (population 139,002):

\$1.00/1000 = \$9,427,715

\$.50/1000 = \$4,713,857

\$.25/1000 = \$2,356,928

3 Cities (population 29,605)

\$1.00/1000 = \$2,167,580

\$.50/1000 = \$1,083,790

\$.25/1000 = \$541,895

17

Utility Fee vs District

- At \$50/year per household:
- Troutdale Utility Accounts = 4,800 x \$4/month =
\$19,200/month = **\$230,000 / year**
- 4-City Parks District, \$.25/1000 = **\$2,356,928 / year**

18

Questions we need to answer in a feasibility study.

- Is the special district the right option?
- Do we want a limited Recreation program organization?
- Do we want to use economy of scale to combine the east county parks departments into a single organization?
- What other types of organizational structure are available to us?
- How much does a robust parks and recreation system cost?
- How will the board of directors be structured?
- What other option can we consider?

19

Questions we need to answer in a feasibility study.

- Stakeholder interviews and citizen polling / sentiment
- Structure / Model flexibility
- Youth crime statistics related to recreation opportunities
- Property tax Compression effects and capacity (Measure 5 Gen. gov. cap of \$10/1000)
- Cost Needs assessment
- Potential PRD boundaries
- Political willingness and taxing district competition

20

Questions we need to answer in a feasibility study.

- Current financial landscape
 - what services may disappear without a PRD
 - potentially what grows if a PRD is successful
- Effects on a City's General fund; unencumbering for reallocation toward other city needs

21

City of Beaverton

- Relationship between the City and Tualatin Hills Park and Rec. District is very good. Long time agreement that is a **blend** of responsibilities.
- **Tualatin Hills:**
 - Has IGA with the City
 - maintains most Beaverton parks
 - IGA with School District to use fields
 - IGA with Senior Citizen facilities for services
 - have their own employees
- **City of Beaverton:**
 - IGA with TH; maintains a few key parks of their choosing
 - has some parks employees that work for the City

22

Tennis anyone?

- An example: A district wanted to organize and host a tennis league that utilized Lewellyn Park tennis courts.
- That partnership agreement could be X amount of maintenance for use of the park.
- Troutdale would continue the maintenance of it's park with a influx of offsetting funds.
- A district could pay RSD to fix their tennis courts. Better maintenance options.



23

Soccer anyone?

A cost comparison of Troutdale's program and other cities. 85% of our recreation program is outsourced to non-local companies. As a whole, Troutdale is the most expensive (\$105) and you get the least from it.

Kidz love soccer (Soccer 1 classes) 4-6 year olds

- West Linn (5 classes) \$67
- WA County (8 classes) \$70
- Tualatin (8 classes) \$89
- Salem (7 classes) \$81
- Sellwood (7 classes) \$72
- Hillsdale (6 classes) \$92
- Troutdale (5 classes) \$105

How about a youth soccer program that uses paid Reynolds kids as coaches; the money stay's in East County.



24

Recreation program

Here are the statistics of registration to our recreation programs for the past year (Aug 2014 – Aug 2015) (note: non-residents pay a 20% surcharge):

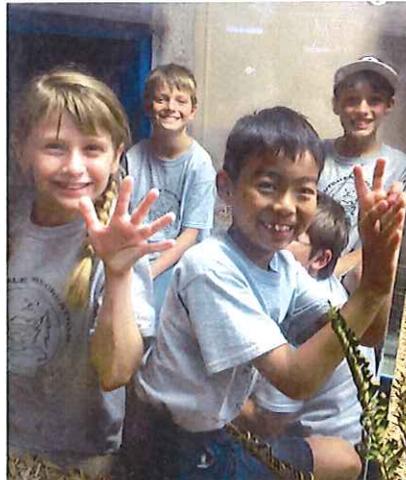
Total #	1,116
Wood Village	29
Fairview	11
Gresham	130



25

House Bill 3141 was passed by the 2007 Oregon Legislature

- As a means to address childhood obesity in grades K-8 by the 2017-18 school year.
- State mandate to increase physical activity in schools.
- Opens the door for discussions on what school facilities we have, and if they are adequate for meeting this mandate.
- How can a comprehensive feasibility study help answer the questions on space needs?



26

It's way more than Parks

[Harvest Christian Church](#) in Troutdale - there will be a gym, a recording studio, a food pantry and meeting rooms open to the public. Pastor Mike Halstead hopes the gym will be used by the community every night of the week.

Fairview has something similar. **Anthem Church** bought the old Bally gym building and has offered up the basketball gym and old dance studio.



27

The Community wants the opportunity to support us

- Over 50 Groups and Stakeholders have already agreed to come to the table to discuss and promote the movement once/IF the Elected leaders agree.
 - Soil & Water Conserv. District
 - Intertwine Alliance
 - Non-profits
 - Little League, Soccer, Mom's Club
 - School Districts
 - Police organizations



28

Request

- **Continue the discussion** between elected leaders of the 4 cities
- Come up with broad goals; include stakeholders. What are we trying to create?
- Explore the options, without committing to a Parks District. Join Fairview
- Staff gather information; (Needs assessment?)



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A Public Hearing and Resolution Declaring the Public Necessity to Construct Segments of the 40-Mile Loop Trail and Need to Acquire Real Property.

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: November 10, 2015 STAFF MEMBER: Erich Mueller DEPARTMENT: Finance</p>
<p>ACTION REQUIRED Resolution PUBLIC HEARING Yes</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable <u>Comments:</u></p>
<p>STAFF RECOMMENDATION: Approve.</p>	
<p>Exhibits: A. Trail map and information regarding the 40-mile loop trail B. Real property appraisal performed by Zell and Associates</p>	

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)

Goal: Pursue the connection of the 40-Mile Loop Trail.

Issue / Council Decision & Discussion Points:

- ◆ Since at least 2006 the City has planned for a public trail along the Sandy River.
- ◆ Multiple entities are involved in the construction of the 40-mile loop trail.
- ◆ The cost to acquire the three properties required to construct this segment of the trail may be paid from parks system development charge funds.

Reviewed and Approved by City Manager:

Sarah Swack for Craig Ward

BACKGROUND:

The 40-mile loop stems from a 1903 vision to provide an interconnected system of parks and parkways around the city of Portland, Exhibit A. The planned loop around the city has extended much like the city itself, but the original name has stuck even while the full loop now exceeds 140 miles and connects more than 30 parks in six cities.

Many sections of the trail are now constructed and in use. However, a few gaps remain and one of which exists in Troutdale. The adopted 2006 Parks Master Plan includes development of a public trail along the Sandy River as a public recreational amenity.

The 40 Mile Loop trail is listed in the city's adopted Parks Master Plan capital improvements and thus qualifies for use of park system development charge (SDC) funds.

Property adjacent to the river and the I-84 freeway is privately owned. Thus, to construct the trail the city must acquire the property. To that end, and at Council's direction, city staff has procured a real estate appraisal, included as Exhibit B, and the city attorney has opened discussions with the property owners.

The three involved properties are appropriate for the 40-mile loop trail facility. Each parcel is small and is mostly overlain by floodplains and steep slopes. These factors prevent locating buildings on the parcels. One parcel has obtained approval to erect a billboard. Given the floodplain and steep slope the property appraisal has valued the property at less than the value identified by the county tax assessor as real market value.

Acquiring these parcels also fosters the difficult goal of trail connectivity. . ODOT has recently constructed a portion of the trail under the new I-84 bridge. This acquisition of parcels will offer connectivity to that, and to the urban renewal area. In the future, this property acquisition will also help the 40-mile trail connect to the future Gorge Hub bicycle facility which is planned for Depot Park, and the other trail facilities planned to be constructed along the Sandy River through the urban renewal area.

SUMMARY:

The resolution is just the next step in acquisition process which directs staff to work with legal counsel to continue the process.

PROS & CONS:

- A.** Approving the proposed resolution authorizes the next step in the acquisition process and demonstrates progress toward designated Parks Master Plan projects.

B. Not approving the resolution halts the acquisition process and progress on a Parks Master Plan goal.

RECOMMENDATION: Staff recommends adoption of the resolution.

<p>Current Year Budget Impacts: <input checked="" type="checkbox"/> Yes (describe) <input type="checkbox"/> N/A Budgeted appropriations are available in the current year from the Parks Improvement Fund for this real property acquisition.</p> <p>Future Fiscal Impacts: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A</p> <p>Community Involvement Process: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A</p>

HISTORY OF THE 40-MILE LOOP

*"A connected system of parks and parkways is manifestly far more complete and useful than a series of isolated parks."*¹

The 40-mile loop concept was originally proposed in 1903 by John Charles Olmsted, who was brought to Portland from Boston to plan a park system for the 1905 Lewis and Clark Centennial Exposition and World's Fair.

Olmsted stressed that, "Parks should be connected and approached by boulevards and parkways... They should be located and improved to take advantage of the beautiful natural scenery. The above system of scenic reservations, parks and parkways and connecting boulevards would... form an admirable park system for such an important city as Portland is bound to become."

The desired linking parkways were to serve the recreation craze of the time—Sunday drives in carriages or the newfangled motorized touring car for those fortunate enough to have them. Scenic, separated walking or biking paths were to parallel the boulevards and parkways.

It was then a remarkable and visionary concept. Portland was still largely meadows and forested hillsides. Fortunately, city leaders of the time had the foresight to recognize the importance of parks to a livable community. Many outstanding park lands were acquired, though linking them was long put off to the future.

¹ Report of the Park Board, Portland, Oregon, 1903, Olmsted Bros.

Olmsted's connected system was to be a 40-mile loop encircling the city. The name *40-Mile Loop* stuck, even as the planned loop trail lengthened to more than 140 miles connecting more than 30 parks in two counties and six cities. The 40-Mile Loop has been designated an Oregon Recreation Trail.

The trail connects parks along the Columbia, Sandy and Willamette Rivers and Johnson Creek in an almost continuous loop. There is something for everyone along the route, whether hiking or biking, whether in a stroller or a wheelchair, whether skating or boarding or even horse-back riding. The loop includes accessible trails and nature trails along forested hillsides and overlooking wetlands and wildlife. The trail is part of a larger regional trail network that continues to grow.

The 40-Mile Loop can be reached by MAX light rail or TriMet buses at many points. It connects the downtowns of Portland, Gresham, and Troutdale. It links major public attractions, institutions and campuses and is used by neighborhood residents, visitors, students and office and industrial workers. The loop is our gateway to and through the natural, nearby open spaces so basic to the quality of our lives.

Over a century after being proposed, the 40-Mile Loop is nearly complete. A few gaps remain. Now is the time to close the gaps, to complete the 40-Mile Loop in support of the health and welfare of the community.

SUPPORT THE 40-MILE LOOP LAND TRUST

Interested individuals, foundations, and businesses finance the operations of the 40-Mile Loop Land Trust. The Trust remains independent of any governmental body and is managed by a citizen board of directors.

The benefits of the 40-Mile Loop Trail are personal, social, economic and environmental. Connectivity helps build community through access to natural, cultural, and historical features.

Some of the ways in which you can be involved include:

- Donations and grants for specific projects
- Gifts of land and easements for trails
- Gifts by will or trust

For more information on how to become involved or to donate, contact:

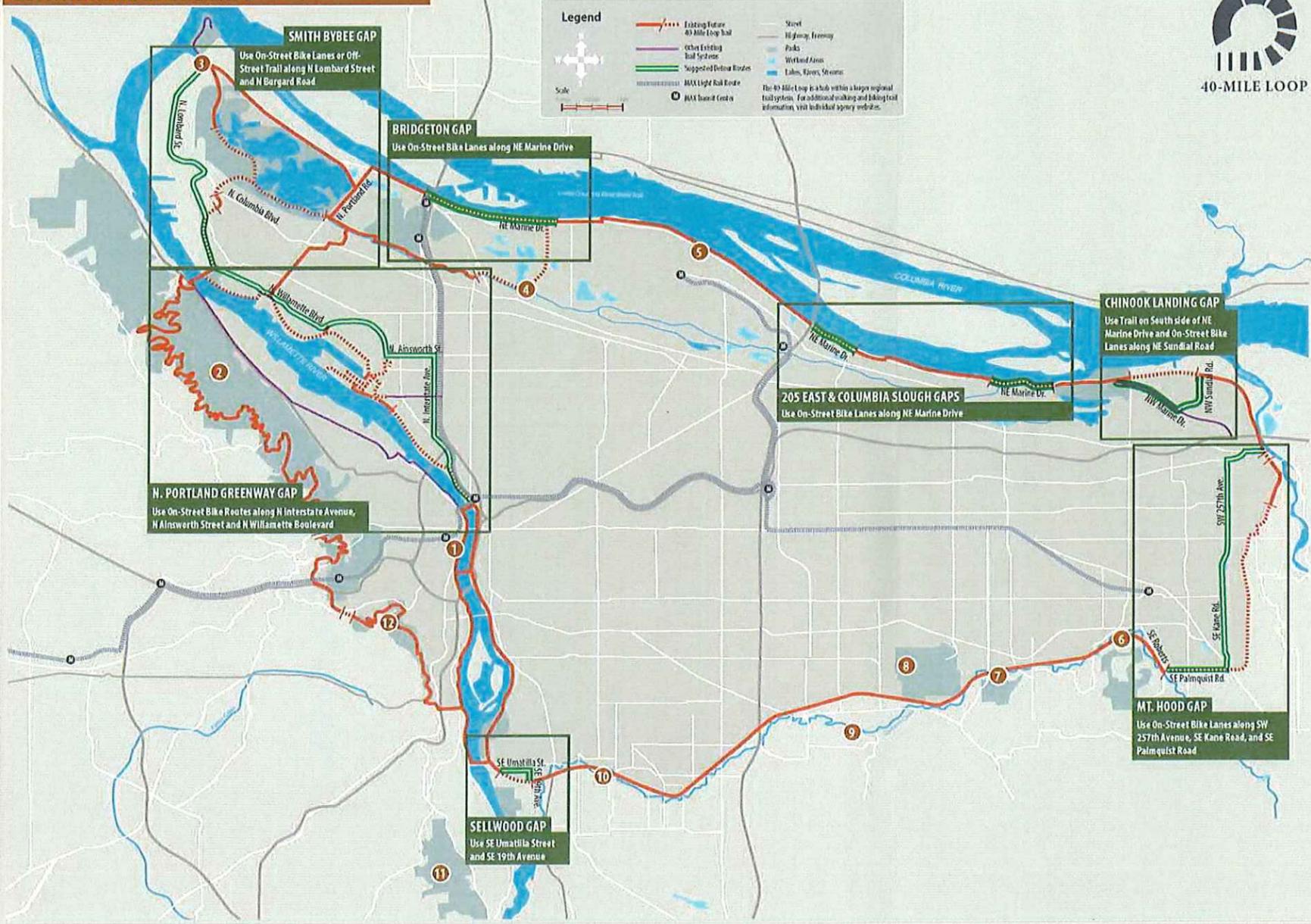
40-Mile Loop Land Trust www.40mileloop.org
P.O. Box 262
Portland, OR 97207

THE 40-MILE LOOP LAND TRUST IS A NON-PROFIT ORG. CORP. AND CHARITABLE CONTRIBUTIONS ARE DEDUCTIBLE PURSUANT TO SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE. SEE YOUR TAX ADVISOR FOR ADVICE REGARDING YOUR PERSONAL TAX SITUATION.

GENERAL INFORMATION

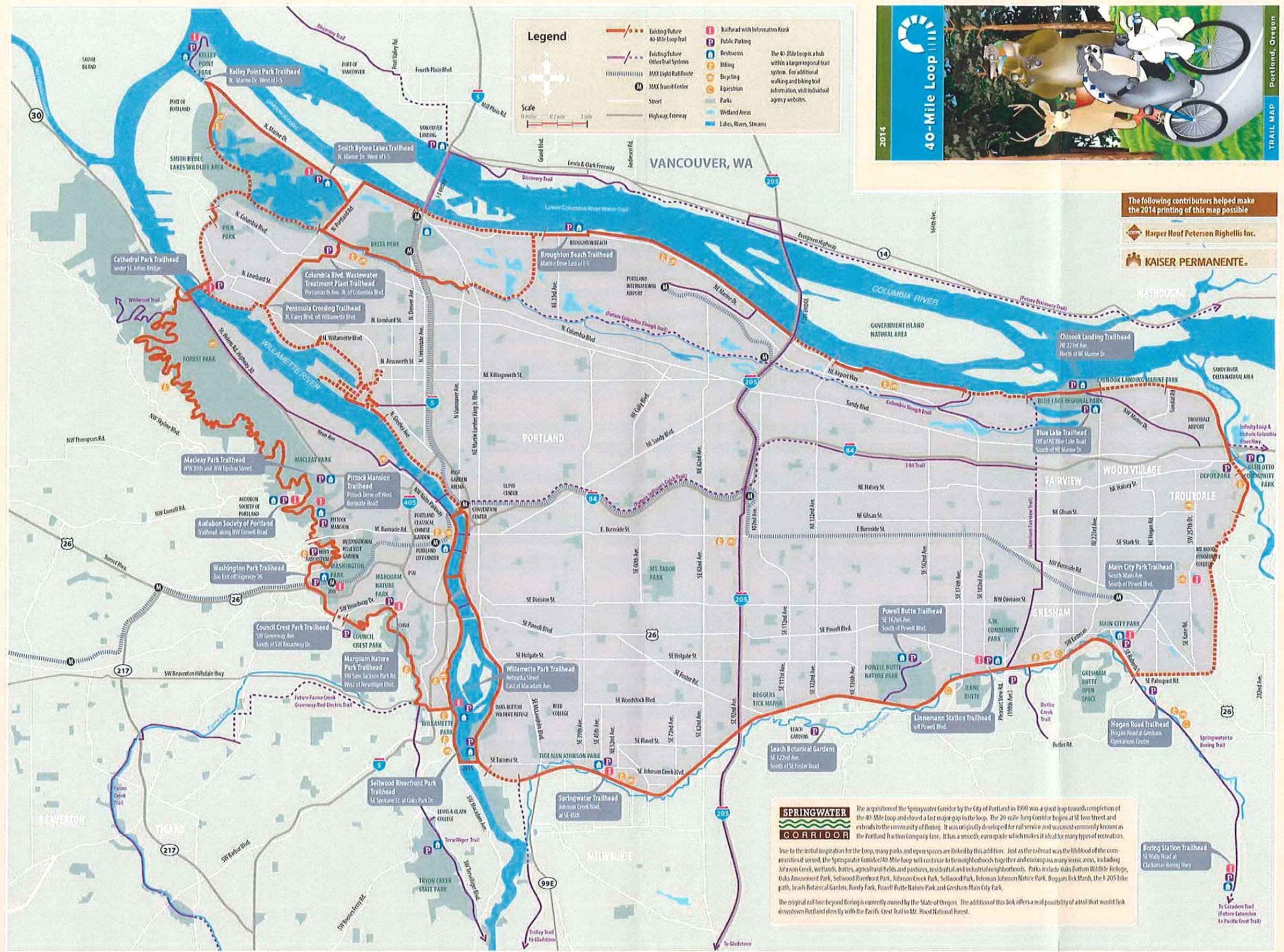
Emergency	911
Fairview City Hall	www.fairvieworegon.gov 503-665-7929
Gresham Parks and Recreation	www.greshamoregon.gov/parks/ 503-618-2525
Metro Regional Parks & Greenspaces	www.metro-region.org 503-797-1850
North Clackamas Parks & Recreation District	www.ncprd.com 503-742-4348
Portland Visitors Association	www.travelportland.com 800-962-3760
Portland Parks & Recreation	www.portlandparks.org 503-823-7529
Port of Portland	www.portofportland.com 503-415-6000
TriMet/MAX	www.trimet.org 503-238-7433
Troutdale City Hall	www.ci.troutdale.or.us 503-665-5175
Tualatin Hills Park and Recreation District	www.thprd.com 503-645-6433
Vancouver/Clark Parks and Recreation	www.ci.vancouver.wa.us/parksrec 360-487-8311
The Intertwine	www.theintertwine.org 503-445-0991

GETTING AROUND THE GAPS



POINTS OF INTEREST

- TOM MCCALL WATERFRONT PARK** stretches along the Willamette River in the downtown area and is the site of several major festivals throughout the year. It features broad lawns, grand trees, fountains and memorials.
- FOREST PARK** is the largest wilderness park within a city in the United States. With over 5,100 acres, the park is home to over 100 species of birds and 60 species of mammals. More than 70 miles of trail, including the 40-Mile Loop Wildwood Trail, allow people to explore the park and connect to surrounding neighborhoods and landmarks.
- KELLEY POINT PARK** is situated at the confluence of the Willamette and Columbia Rivers. A cottonwood forest and large open meadow border the Columbia Slough northwest of Smith and Bybee Lakes Wildlife Area. From the sandy beach along the Columbia, spectacular views of sailboats, steamers, tankers, and barges illustrate Portland's maritime heritage.
- COLUMBIA SLOUGH** links Kelley Point Park through Smith and Bybee Lakes Wildlife Area to Blue Lake Regional Park. The slough includes wetlands and wildlife refuges for osprey, bald eagles, and herons. It is navigable by canoe or kayak with portages.
- MARINE DRIVE TRAIL** is an asphalt trail that parallels the Columbia River and offers many spectacular views of the river landscape, Government Island and Mt. Hood. This is a great trail for bicycling but requires several major street crossings.
- MAIN CITY PARK** is a 17.5-acre park that provides recreation facilities and is a hub for the Gresham community, linking Gresham to many recreation opportunities through the 40-Mile Loop/Springwater Corridor.
- LINDEMANN STATION** has been reconstructed on the site of the former circa 1903 railroad station where the Troutdale Branch once intersected the Springwater Division Line. The new station has local railroad memorabilia and artifacts of early Gresham life and is an interpretive center and trailhead for the Springwater Corridor.
- POWELL BUTTE NATURE PARK** is a 593-acre open hilltop that was formed by volcanic action. From its 630-foot elevation summit, breathtaking views of the surrounding city and the mountains beyond abound. The top of the butte is an open meadow, with a remnant stand of orchard trees and forested slopes below. Home to a great variety of wildlife, the butte offers hiking, horse-back riding and picnicking opportunities.
- LEACH BOTANICAL GARDEN** is Portland's foremost native wildflower garden. Located in a tranquil, wooded ravine straddling Johnson Creek, this 9-acre botanical garden features a labeled plant collection of 1500 plant species, educational facilities, exhibits, library and a gift shop. The garden entrance is off SE Foster Road at SE 122nd.
- TIDEMAN JOHNSON PARK** is a small 6-acre urban wilderness park nestled in the flood plain of Johnson Creek. A special feature is a fish ladder, where trout, steelhead and occasional salmon have been spotted.
- TRYON CREEK STATE PARK** is a 641-acre natural day-use area located within the city limits of Portland. The park has 8 miles of hiking trails, over 3 miles of horse trails, and 3 miles of bicycle trails. Of special interest is the Trillium Festival in April each year. Tryon Creek State Park has a wonderful wheelchair-accessible trail named after this wildflower.
- MARQUAM NATURE PARK** winds through the West Hills of Portland, surprising city dwellers with a quiet retreat close to the downtown core. The park connects the Oregon Zoo/World Forestry Center/Vietnam Memorial complex in Washington Park to the north through Council Crest with Willamette Park through Terwilliger Parkway and George Himes Park to the south. Most of this 9-mile trail section passes through Douglas fir forest, with spectacular views from the top of Council Crest.



Legend

- Existing/Future 40-Mile Loop Trail
- Existing/Future Other Trail Systems
- MAX Light Rail Route
- MAX Transit Center
- Street
- Highway, Freeway
- Trailhead with Information Kiosk
- Public Parking
- Restrooms
- Hiking
- Bicycling
- Equestrian
- Parks
- Wetland Areas
- Lakes, Rivers, Streams

Scale: 0 miles, 0.2 miles, 1 mile

The 40-Mile Loop is a hub within a larger regional trail system. For additional walking and biking trail information, visit individual agency websites.



2014
40-Mile Loop

Portland, Oregon
TRAIL MAP

The following contributors helped make the 2014 printing of this map possible:

- Harper Houf Peterson Righellis Inc.
- KAISER PERMANENTE.

SPRINGWATER CORRIDOR

The acquisition of the Springwater Corridor by the City of Portland in 1990 was a giant leap towards completion of the 40-Mile Loop and closed a last major gap in the loop. The 20-mile-long Corridor begins at SE 15th Street and extends to the community of Boring. It was originally developed for rail service and was most commonly known as the Portland fraction company line. It has a smooth, even grade which makes it ideal for many types of recreation.

True to the initial inspiration for the Loop, many parks and open spaces are linked by this addition. Just as the railroad was the lifeblood of the communities it served, the Springwater Corridor/40-Mile Loop will continue to tie neighborhoods together and encompass many scenic areas, including Johnson Creek, wetlands, buttes, agricultural fields and pastures, residential and industrial neighborhoods. Parks include Oaks Bottom Wildlife Refuge, Oaks Amusement Park, Sellwood Riverfront Park, Johnson Creek Park, Sellwood Park, Tideman Johnson Nature Park, Beggs Tick Marsh, Leach Botanical Garden, Bursky Park, Powell Butte Nature Park and Gresham Main City Park.

The original rail line beyond Boring is currently owned by the State of Oregon. The addition of this link offers a real possibility of a trail that would link downtown Portland directly with the Pacific Crest Trail in Mt. Hood National Forest.

Boring Station Trailhead
SE Wily Road at
Clackamas-Boring Hwy

To Cascade Trail
(Future Extension
to Pacific Crest Trail)

ZELL & ASSOCIATES

Real Estate Appraisers and Counselors

An Appraisal Report

Three Riverside Industrial Zoned Lots
Located at:

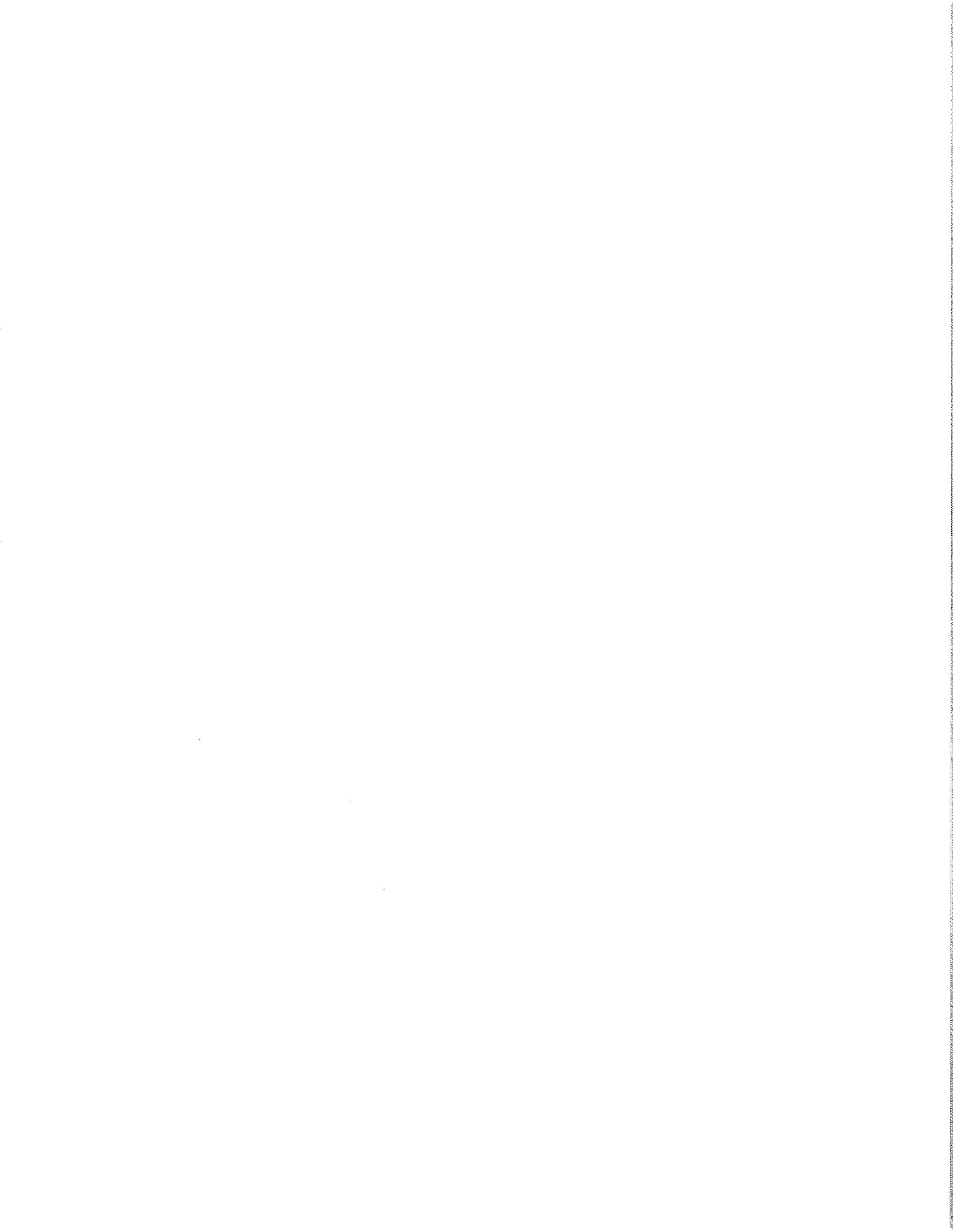
East of NE Harlow Road and North of Interstate 84
In the City of Troutdale, OR 97060

Prepared for:
City of Troutdale
Attn: Erich Mueller, Finance Director
219 East Historic Columbia Highway
Troutdale, OR 97060

Date of Appraisal: July 22, 2015

Prepared by:
Craig Zell, MAI, SRA &
Jason K. Russell, MAI

Zell Report No.: 15-104 Troutdale Riverside Lots



Zell & Associates

Appraisers and Consultants

August 19, 2015

City of Troutdale
Attn: Erich Mueller, Finance Director
219 East Historic Columbia Highway
Troutdale, OR 97060

Zell Report Number: 15-104 – Troutdale Riverside Lots

Mr. Mueller:

At your request, we have personally inspected and performed an appraisal report of the fee simple interest in the three vacant tax lots totaling 1.33-acres of industrial zoned land in the City of Troutdale, Oregon more fully described herein.

The purpose of this report is to present a supportable estimate the 'as is' value of each tax lot that comprises the subject properties. It is understood this report is for use by the Client to establish supportable market value for potential acquisition to connect to a 40-mile loop trail project.

In the appraisal process, we have reviewed the data from the market area, trends in the district, sales and asking prices of comparable properties. We have considered the "as is" values of the property through the use of the sales comparison approach after other approaches were considered.

After due consideration of the information contained in the report and based upon our knowledge of market conditions as of the date of inspection, July 22, 2015, the market value of the subject property is estimated to be:

As Is Fee Simple Value Tax Lot 100:	\$8,900
As Is Fee Simple Value Tax Lot 200:	\$3,300
As Is Fee Simple Value Tax Lot 300:	\$34,100

City of Troutdale
Attn: Erich Mueller, Finance Director
August 19, 2015
Page Two

File No. 15-104 - Troutdale Riverside Lots

The value concluded in this report is expressly subject to the conditions, assumptions and comments appearing on the subsequent pages attached. The report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), and the laws of the State of Oregon.

Respectfully submitted,



Craig Zell, MAI, SRA
Oregon Certification C000108
Expires May 31, 2016



Jason K. Russell, MAI
Oregon Certification C000932
Expires March 31, 2017

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ADDENDA

Certification
Qualifications
Engagement Letter
Billboard Approval

SUMMARY OF FACTS AND CONCLUSIONS

Client: City of Troutdale, Attn: Erich Mueller, Finance Director

Intended User: City of Troutdale, Attn: Erich Mueller, Finance Director.

Subject Property: The subject property consists of three contiguous tax lots totaling 1.33-acres. The parcels have little usable area as the eastern side slopes steeply down to the Sandy River. The parcels will allow the extension of a 40-mile loop trail that was conceived over 100-years ago and only now being realized.

Location: The subject property lots are located east of NE Harlow Road and north of Interstate 84 in the City of Troutdale, OR.

Legal Description: The subject property consists of three contiguous parcels which can be legally described by the County Assessor's map numbers as Tax Lots 100, 200 and 300 within Township 1 North, Range 3 East, Section 25B, Multnomah County, Oregon.

Site Size: According to public records, the subject property contains a total of 1.33 acres. The following table details each parcel size.

<i>Map & Tax Lot</i>	<i>Size (AC)</i>	<i>Size (SF)</i>
1N-3E-25B, TL 100	0.89	38,768
1N-3E-25B, TL 200	0.33	14,375
1N-3E-25B, TL 300	0.11	4,792
Totals	1.33	57,935

It is noted that Tax Lot 200 has both a 0.33-acre and 0.63-acre size listed on county records. The plat map indicates a size of 0.33-acres for TL 200. Based on comparison with the adjacent tax lots we conclude that TL 200 is 0.33-acres.

Zone: The subject parcels are zoned Industrial Park (IP), by the City of Troutdale. Consistent with the adjacent parcels to the west that have larger site areas.

Property Rights Appraised: Fee Simple

Effective Date of Value: July 22, 2015

Date of Inspection: July 22, 2015

Date of Report: August 19, 2015

Purpose of the Appraisal: The purpose of this report is to present a supportable estimate of the 'as is' market value of the subject property and to communicate the data and reasoning used by the appraisers to support the opinion of market value.

Intended Use: The use of this report is to establish the market value for potential acquisition to connect to a 40-mile loop trail project.

Assignment Conditions: None that would affect the value conclusions.

Report Organization: This is an Appraisal Report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2. This format provides a summary-level narrative of the appraisal process, subject and market data and valuation analyses.

Scope and Identification of the Appraisal Problem: The purpose of this report is to estimate the market value of the subject property.

Assessment and taxation: According to Multnomah County the subject property tax assessments are summarized in the following table.

<i>Tax ID</i>	<i>Map & Tax Lot</i>	<i>Land Assess.</i>	<i>Impr. Assess.</i>	<i>Total RMV</i>	<i>MAV</i>	<i>Taxes</i>
R320586	1N-3E-25B, TL 100	\$80,620	\$0	\$80,620	\$45,270	\$873.01
R320621	1N-3E-25B, TL 200	\$57,110	\$0	\$57,110	\$28,160	\$565.72
R320622	1N-3E-25B, TL 300	\$10,400	\$0	\$10,400	\$9,400	\$181.03
Totals		\$148,130	\$0	\$148,130	\$82,830	\$1,619.76

These taxes have been paid in full.

Flood Hazard area: According to FEMA Flood Map 41051C0217H, dated December 18, 2009, the subject lies within Zones AE and X. Zone AE is within the flood plain.

Census Tract: The subject lies within census tract 103.06.

Ownership and Sales History: Title to Tax Lot 100 is currently vested in John R. Meyer, which has owned this parcel for many years. Title to Tax Lot 200 is currently vested in Columbia Ridge Community Church, which has owned the parcel for many years. Title to Tax Lot 300 is currently vested in Gary Dempsey and Molly Hall, which have also owned this parcel for many years. After a cursory check the subject property is not listed for lease or for sale and no other transactions have occurred within the past 3 years.

Highest and Best Use: The subject properties are within a floodplain that is effectively comprised of small areas near the roadway and steeply sloped topography down to the Sandy River. Due to the limited building area between flood zone “AE” and the roadway Tax Lots 100 and 200 are suited for open space only. The highest and best use is therefore as open space. It is noted that a preliminary approval for a billboard was approved on Tax Lot 300 by the City of Troutdale in June 2015, suggesting that it is possible to site a billboard on this parcel. As such, there is additional value beyond the open space use.

Valuation Methodology: Each approach to value is considered in this report but only the sales comparison approach is applicable, which is used to determine the value of the land. Consideration is given to the potential of Tax Lot 300 to site a billboard via the income approach.

Exposure Time: 12 months

The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. Exposure time is always presumed to occur prior to the effective date of the appraisal. The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but also adequate, sufficient and reasonable effort. Exposure time is different for various types of real estate and value ranges and under various market conditions. (*Appraisal Standards Board of The Appraisal Foundation, Statement on Appraisal Standards No. 6*)

Indicated Value:

As Is Fee Simple Value Tax Lot 100:	\$8,900
As Is Fee Simple Value Tax Lot 200:	\$3,300
As Is Fee Simple Value Tax Lot 300:	\$34,100

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report and the certification of value are expressly contingent upon and subject to the following:

1. The legal description is assumed to be correct and all matters of a legal nature or facts which might be revealed by a survey are excluded from the opinion of value herein¹.
2. That the title to the property is assumed to be good and merchantable.
3. That the property is free and clear of all liens or encumbrances including taxes and assessments not specifically referred to in the appraisal.
4. That management and ownership of the property is responsible.
5. The sketch of the subject improvements, if any, is intended to assist the reader in visualizing the property and is correct only to a reasonable degree of accuracy, as it was made without the aid of a survey.
6. Subsoil characteristics of the subject site appear to be suitable for the intended use. No further studies were undertaken and no responsibility is assumed. Subsurface rights were not considered in making this appraisal.
7. We are not qualified to detect the presence of toxic or hazardous substances or materials that may influence or be associated with the subject or adjacent properties. We have made no investigation or analysis as to the presence of such materials.
8. It is assumed that full compliance has been made with all applicable federal, state and local environmental regulations and laws unless specifically stated otherwise in this report. It is assumed that all applicable zoning and use regulations and restrictions have been complied with unless specifically stated otherwise in this report. It is assumed that the improvements, if any, are within the boundaries or property lines of the property described and that there is no encroachment or trespass unless specifically stated otherwise in this report.
9. The distribution of the total valuation in this report between land and improvements applies only under the existing program of utilization. Any fractional use of the portions of this report with any other appraisal is invalid.
10. Possession of this report, or any portion thereof, does not carry right of publication. Neither all nor any portion of this report may be disseminated to the public through any media or communication without the prior written consent of the author of this report, nor may it be used for any purpose by anyone but the client without previous written consent of the appraiser and then only under the proper qualifications and in its entirety.
11. In the event of subpoena or other required appearance before any court or other formal hearing concerning any or all of the subject matter of this report, the customary charge will be made for

such appearance and I am not required to give further consultation or testimony unless arrangements have been made previously.

12. The comparable sales data outlined in this report has been checked as closely as possible for errors and is considered accurate, but this accuracy is limited to the reliability of the people contacted who were involved in the sale and to the information they passed on to the appraiser during his investigation.
13. That general economic conditions and interest rates will remain relatively constant or experience no significant change during the projected marketing period.
14. The liability of the appraiser, his employees and subcontractors is limited to the initial employer (client) only, and only up to the amount of the fee actually received for the assignment. Further, there is no accountability, obligation or liability to any third party. If the appraisal report is placed in the hands of anyone other than the initial employer, the initial employer shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser is in no way responsible for any costs incurred to discover or correct any deficiency (if any) in the property.
15. Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing assumptions and limiting conditions.

Extraordinary Assumptions and Hypothetical Conditions

We were not provided with a preliminary title report. It is assumed upon inspection that there are no easements or encumbrances which would adversely affect the utility or market value of the subject property.

This appraisal assumes that the subject is 100% free and clear from any and all hazardous waste and/or materials. As the appraisers are not experts in the detection of such materials, only observations are made as to the existence of hazardous waste and none were observed. If there is a concern in this regard, the client and any intended users are urged to contact experts for additional information.

This appraisal report is operating under the Hypothetical Condition that the billboard on Tax Lot 300 exists. The owner and representative have received approval from the City of Troutdale to build the sign and it could be completed in a short amount of time.

GENERAL CONSIDERATIONS

Intended Use and User of the Appraisal Report

The client is the intended user of this report. Any other user is prohibited without the prior written consent of the appraiser. Reliance on the analysis or conclusions within this report is limited to the user. The appraiser's responsibility is limited solely to the client.

The use of this report is to present a supportable estimate of the market value for potential acquisition to connect to a 40-mile loop trail project.

Scope of the Appraisal

The scope of the appraisal encompasses the necessary research and analysis to prepare the report in accordance with the intended use. The report is intended to comply with the laws of the State of Oregon and was prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).

Property Identification and Inspection

The property was identified by means of the Multnomah County assessor's map and County records. An on-site inspection of the property was performed by means whereby the appraiser drove and walked along Harlow Road at the subject's western side sufficient to view significant features of the land. No other tangible property was considered. Additional features of the property were obtained from internet sources including aerial photography, wetland and zoning information.

Scope of Research

Research involved review of county and city building codes and consultation with Steve Winstead at the building and planning department in Troutdale, research for comparable sales data from RMLS, CoStar Comps, public records, and conversations with local builders and developers. Information was helpful from the Appraisal Institute and their publications regarding the use of and valuation of billboards. The sales data was confirmed by one of the staff of Zell & Associates through interviews with a person knowledgeable of the sale or with the county assessor office.

The highest and best use conclusion was developed through an analysis of the physical aspects of the subject property and its surrounding area. Each of the applicable approaches to value was considered and ultimately the sales comparison approach was used in this analysis.

For this purpose, sales were identified by review of the above-mentioned sources and confirmed with one of the parties to the transaction, typically the real estate agent or the buyer. In some cases where the interviews were inconsequential or unavailable, public

records were reviewed and documents were relied upon for details of the transaction. Each of the sales used in the analysis was physically viewed and photographed. This data was then adjusted for superior and inferior characteristics and applied to the subject to support and form the opinion of market value.

Report Organization

This is an appraisal report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2. This format provides for a summary-level narrative of the appraisal process, subject and market data and valuation analyses.

Definition of Market Value

This appraisal has been completed for the purpose of estimating market value of the subject property, defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. buyer and seller are typically motivated;*
- b. both parties are well informed or well advised, and each acting in what they consider their own best interest;*
- c. a reasonable time is allowed for exposure in the open market;*
- d. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto;*
- e. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."²*

² Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions [f].

Property Rights Appraised

This assignment concerns the appraisal of the fee simple interest in the subject sites and the leased fee potential of the Hypothetical billboard. 'Fee simple' is defined as:

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."³

'Leased Fee Estate' is defined as:

"A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship (i.e., a lease)."⁴

Date of the Inspection, Value and Report Production

The property was inspected by Jason K. Russell, MAI on July 22, 2015, which is the effective date of value. Craig Zell has viewed the property from the street and each of the comparable sales.

Personal Property, Fixtures, and Intangible Items

No personal property, fixtures, or intangible items were included in this valuation.

Competency Provision

The Uniform Standards of Professional Appraisal Practice (USPAP) requires that *"prior to accepting or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently."*⁵ The appraiser hereby certifies that he/she has the necessary experience and knowledge to complete this assignment competently.

Unavailability of Information

It is considered that all necessary information necessary to complete this assignment properly was available to the appraiser during the course of assignment unless otherwise noted in the individual sections of the appraisal.

³ The Dictionary of Real Estate Appraisal, Fifth Edition, Appraisal Institute, Chicago, 2010, Page 140.

⁴ The Dictionary of Real Estate Appraisal, Fifth Edition, Appraisal Institute, Chicago, 2010, Page 111.

⁵ USPAP, 2014-15 Edition, The Appraisal Foundation

Location of the Property and Identification of the Market

The subject property is located in the City of Troutdale. However, as the property consists of open space, of which there are few transactions, the market area was expanded to include the greater Portland metro area.

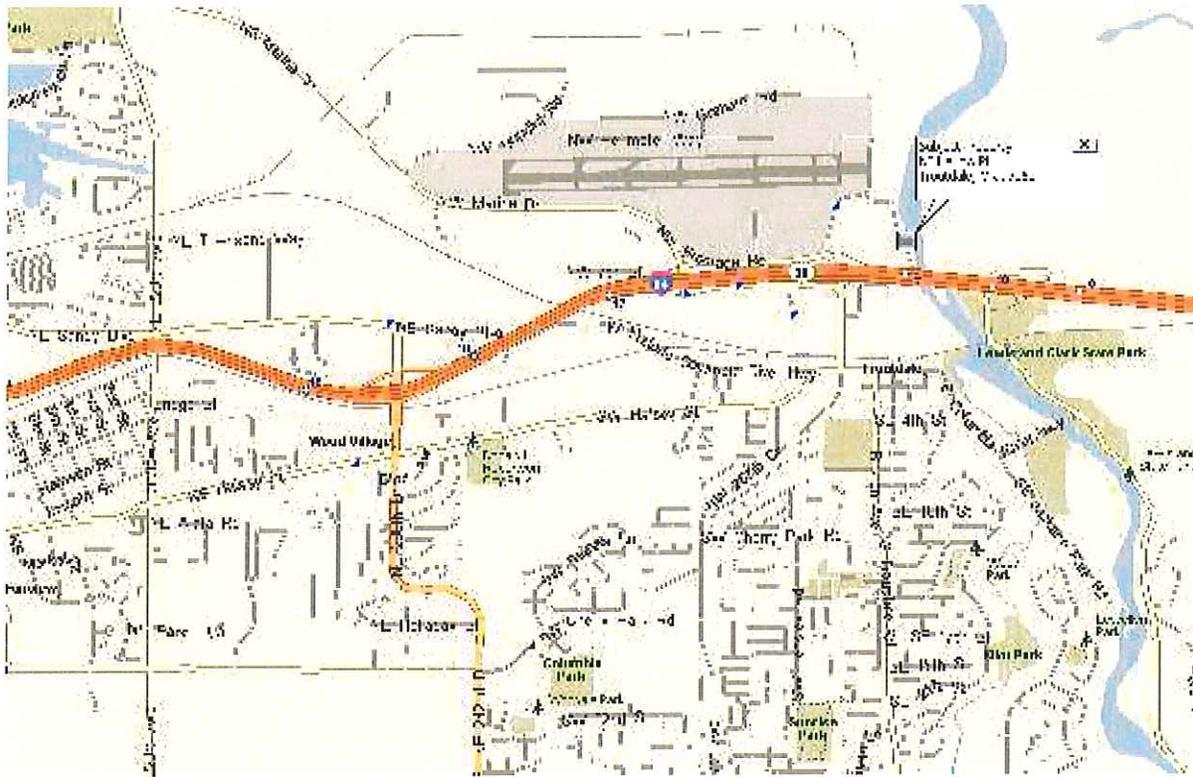
Legal Description

The subject property is three parcels which can be described as Tax Lots 100, 200 and 300 within Township 1 North, Range 3 East, Section 25B, Multnomah County, Oregon.

Compliance

This appraisal has been prepared in compliance with our best interpretation of the current Uniform Standards of Professional Appraisal Practice except as noted earlier, any client Supplemental Standards, and the laws of the State wherein the property is located. Should this report be transferred to another party and/or is reviewed by another party and there are questions or additional work necessary to comply with their subsequent standards, the appraiser reserves the right to charge appropriate additional fees for the work and time expended.

NEIGHBORHOOD DESCRIPTION



The subject properties are located east of Harlow Road (Place) and north of Interstate 84 in the City of Troutdale, OR.

Boundaries

Boundaries in the subject neighborhood are essentially the Troutdale city limits. Comparable information has been used from this the greater Portland area due to the lack of data in the smaller community of Troutdale.

Transportation

The subject is located north of Interstate 84 off of Marine Drive. Marine Drive (also known as Frontage Rd.) provides access to I-84 where it terminates and begins again to the west as it runs along the Columbia River and eventually becomes Lombard Street near Kelly Point Park, at the confluence of the Willamette and Columbia Rivers. The other significant east-west arterial in the area is NE Halsey and Sandy Boulevard, which runs from about NE 238th southwest of the subject all the way into Portland's inner east side. Major north-south arterials include NE 257th, 238th, and NE 223rd Avenues.

Shopping and Employment

Shopping, restaurants and services are available to the south along the frontage road and at the Wood Village exit on I-84 where the Troutdale Outlet Mall is located. Other services are available throughout Troutdale. The city of Gresham concentrated to the south also has many shopping and employment opportunities. McMenamins Edgefield complex hosts a variety of musical concerts and corporate meetings and employs many of the area residents in its hotel, pub and distillery, golf course, winery, vineyard and movie theater. This was an outgrowth of the county's poor farm on its 300 acres originally used for those that needed a "leg up" in life and transformed into one of the McMenamins' major entertainment facilities.

Schools and Education

There are three elementary schools to choose from along with one middle school and one high school. Mount Hood Community College is a valuable resource, located on the border of Troutdale, educating the community by offering a breadth of college level courses and training.

Character of the Neighborhood

The subject's immediate area is generally large-scale industrial north of I-84, west of the Sandy River and east of 223rd Avenue. Northeast of the subject is the Portland-Troutdale airport, which is operated by the Port of Portland and serves general aviation, flight schools, aircraft maintenance and Columbia Gorge based tourist flights. Troutdale is generally the eastern end of suburban development in the Portland area and therefore, to the east is little development outside of rural residential and occasional services. West of NE 223rd Avenue is the Blue Lake Park and intensive suburban style subdivision development. To the west of the subject between Sandy Boulevard and the Columbia River is generally dominated by industrial development.

OVERVIEW OF THE OPEN SPACE MARKET

During the course of this appraisal the appraisers sought to investigate as many open space sales as possible in order to determine for what purposes buyers are purchasing this type of land throughout the Portland-Vancouver Statistical Market Area.

Most sales of open space were so called “blended’ sales”: Sales where the land is purchased for use as open space or general preservation, but the negotiations focus on another highest and best use for the land. These sales are the most common by far. Most land is appraised as residential/commercial or timber/farmland depending on whether the property is located inside the urban growth boundary and the individual specific zoning.

These sales must not be confused for true open space sales. True open space sales, where no development potential is present due to legal restrictions, environmental concerns such as wetlands, or lack of access, are considerably rarer. Three basic uses seem to be present for these undevelopable parcels. Use for density transfer, for wetlands mitigation, or for open space are the most likely scenarios.

Density transfer occurs where a parcel is assembled with a neighboring development and through the approval process (typically as a Planned Unit Development) the developer is able to achieve a higher density on the developable area by “transferring” the density out of the undevelopable parcel.

The second use for open space land is for wetlands mitigation purposes. Often during the course of development a developer will affect a wetland in some way. In order to counter this damage, the developer will be required to undertake compensatory mitigation. In these cases however the properties purchased are not wetlands at the time of purchase but low quality farmland, flood prone farmland, or sometimes even contaminated land which must then be enhanced. These purchases are infrequent as wetlands are often worked around on site, or developers mitigate by purchasing credits from a wetland mitigation bank.

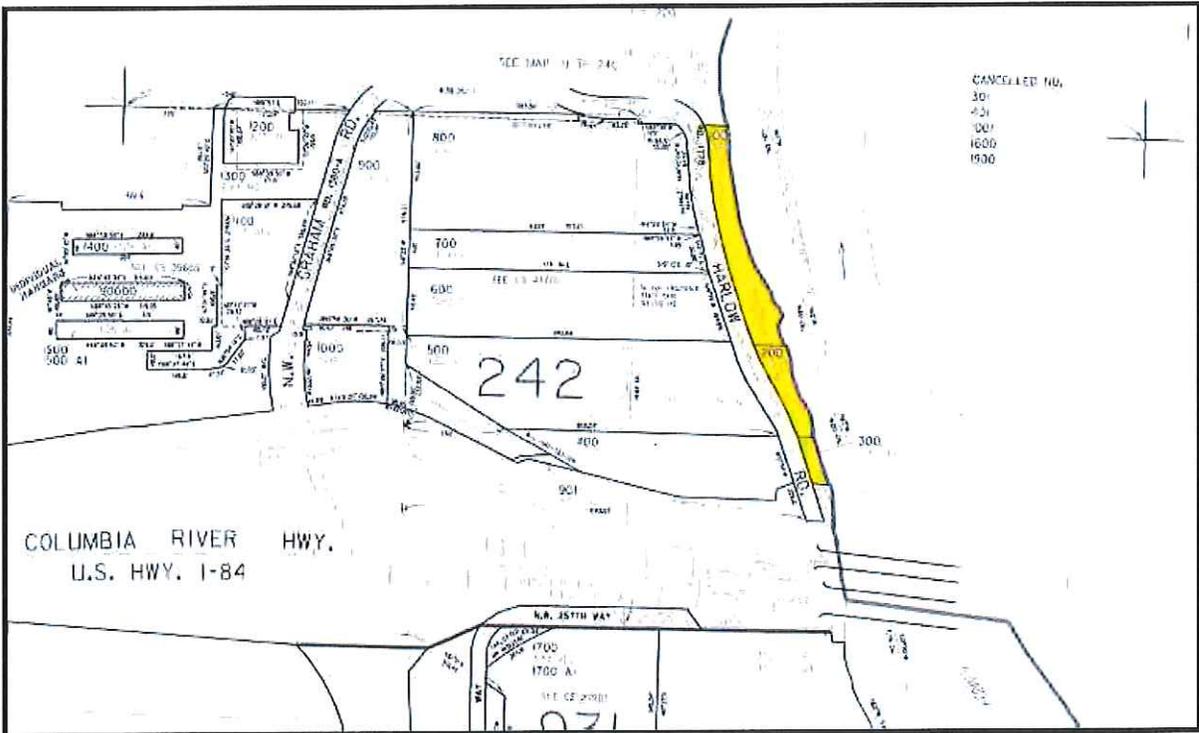
The final use is as open space for public or private use. Governmental agencies such as Metro, Nature Conservancy, Ducks Unlimited or regional park districts are actively purchasing unusable land to preserve as habitat in order to meet mandates set forth by their own mission statements or imposed by external forces. Currently, agencies are working together to acquire land and provide linkages along watersheds for the benefit of residents and wildlife alike. Urban trails are very popular now and of course the prices paid to complete these linkages always depend on the potential uses of the underlying land. Other private groups such as the Columbia Land Trust, Trust for Public Land, and the Wetland Conservancy acquire wetlands (usually through donation) and restore/improve them for the preservation or enjoyment of their members.

In conclusion, there is a limited market for wetlands and other “undevelopable land” and the values obtained can vary widely and depend on many factors. These sales represent the best data available and various acquisition scenarios over a period of many years.

SITE DESCRIPTION



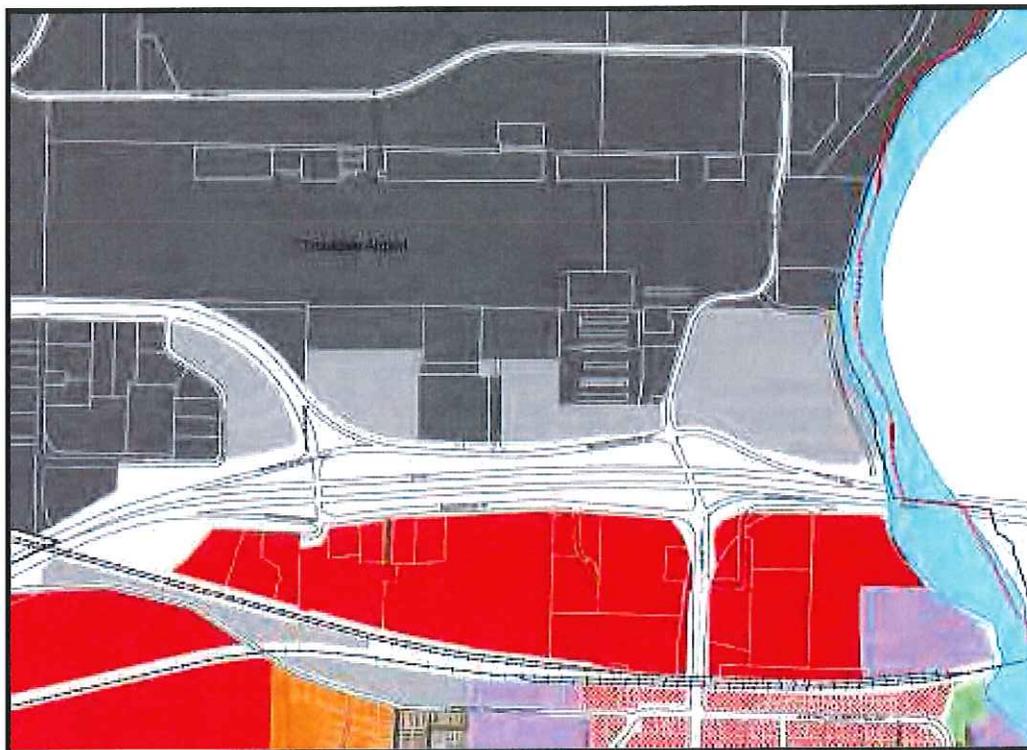
Aerial Photo



Plat Map



FEMA Flood Map



Zoning Map

Location:

The subject property lots are located east of NE Harlow Road and north of Interstate 84 in the City of Troutdale, Oregon.

Size and Shape:

According to public records, the subject property contains a total of 1.33 acres. The following table details each parcel size.

<i>Map & Tax Lot</i>	<i>Size (AC)</i>	<i>Size (SF)</i>
IN-3E-25B, TL 100	0.89	38,768
IN-3E-25B, TL 200	0.33	14,375
IN-3E-25B, TL 300	0.11	4,792
Totals	1.33	57,935

It is noted that Tax Lot 200 has both a 0.33-acre and 0.63-acre size listed on county records. The plat map indicates a size of 0.33-acres for TL 200. Based on comparison with the adjacent tax lots we conclude that TL 200 is 0.33-acres.

Topography:

The subject parcel have small level areas near Harlow Road and then are steeply sloped down to the Sandy River. A topography map is included below.



Current Use:

Vacant. It is noted that Tax Lot 300 has received preliminary approval from the City of Troutdale for a potential billboard. Steve Winstead of the building and planning department indicated that a preliminary approval

for a billboard was granted in June 2015. He also noted that the Oregon Department of Transportation has signed off on the proposed height. The billboard will provide 672-SF signage at a height of 60-FT. Meadows Outdoor Advertising has sought and received approvals on behalf of the owner. Mr. Casady the Meadows Outdoor Advertising representative refused to provide any information regarding the agreement with the owners of Tax Lot 300.

Zoning/Development Potential:

The subject parcels are zoned Industrial Park (IP), by the City of Troutdale. Consistent with the adjacent parcels to the west that have larger site areas. All of the parcels are subject to a 20-FT setback from Harlow Road and much of the site are is within the AE flood zone. Due to the physical and legal issues, the subject has limited development potential outside of open or park space.

Potential for Re-zone:

Not likely at this time.

Accessibility:

The subject is most easily accessible from Harlow Road.

Adjacent Properties:

West of the parcels include vacant industrial zoned land, one parcel is improved with a self –storage facility and one parcel has an older home on industrial land.

Flood Hazard Area:

According to FEMA Flood Map 41051C0217H, dated December 18, 2009, the subject has small areas in Zone X and areas in Zone AE within the flood plain.

Wetlands:

The subject is does not contain wetlands, although much of the site is classified in the flood zone.

Easements or Encumbrances:

We have not been provided with a preliminary title report. It is assumed upon inspection that there are no easements or encumbrances which would adversely affect the utility or market value of the subject property.

Hazardous Waste/Materials:

There were no obvious hazardous materials observed at the site during the inspection of the property, but I have no expertise in this area. If there is concern over this issue, the client is advised to consult with an expert in this area.

SUBJECT PROPERTY PHOTOGRAPHS



Looking south at the end of trail as it approaches the subject parcels



Looking north along Tax Lot 300



View northeast of Sandy River from Tax Lot 300



View of area on Tax Lots 200



Looking northeast of Sandy River from subject TL 200



View south along Harlow Road (subject on left)



View southeast of Sandy River from TL 100



View south along Harlow Road Tax Lot 100 on left

HIGHEST AND BEST USE ANALYSIS

Highest and Best Use is defined as:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability."⁶

In testing legal permissibility, current land use regulations are considered, along with any reasonably probable modification of such land use. Physical possibility concerns suitability of the property for various kinds of development, considering such factors as size, shape, topography, soil conditions, and overall utility of the site. Financial feasibility concerns potential income to be generated by improvement of the site. An integral part of feasibility analysis is interpretation of supply and demand, the rate of absorption, and the effects of financing. Among the uses which are legally permissible, physically possible, and financial feasible, the use which obtains maximum profit or return is considered to be the highest and best use.

Legally Permissible

The subject property is zoned IP, Industrial Park by the City of Troutdale. This is the same zoning as the parcels across Harlow Road. The purpose of the district is to provide for clean, employee intensive industries, offices, services and retail commercial uses. Based on the required 20-FT front setback and the small site area outside the flood plain there are limited uses beyond public open space or trail uses.

Physically Possible

Due to the flood plain, small area near the road and steep slopes, development of the property is not physically possible.

Financial Feasibility

Due to the presence of physical challenges, development of the subject is not financially feasible except for limited uses such as natural trail and other recreational uses.

Maximally Productive

The legal and physical aspects of the subject property have been considered along with market aspects, the maximally productive use of the subject sites are for use as open space.

⁶ The Dictionary of Real Estate Appraisal, Fifth Edition, Appraisal Institute, Chicago, IL, 2010, Page 171

Highest and Best Use Conclusion

Due to the subject's zoning, physical characteristics and market aspects, the highest and best use "As Vacant" is as open space. As noted there is potential for Tax Lot 300 to accommodate an advertising billboard. This will be considered in the valuation of this tax lot as there is at least one user that has applied for a billboard use.

VALUE PROCEDURE

There are three basic approaches that are generally accepted by the professional societies in the appraisal of real property and the estimation of market value. These are: The cost approach; the sales comparison approach; and the income approach. Each method utilizes data collected from market activity when available or appropriate.

The sales comparison approach relies upon market transactions of similar properties and after comparison of various factors such as zoning, topography, terms of sale, date of sale, and most importantly for agricultural land, soil conditions. After adjusting for differences between the subject and the comparables, we are able to arrive at an indication of value in the competitive marketplace.

The cost approach is based on the principle of substitution which states that "...a prudent investor will pay no more for a property than the amount for which the site can be acquired and for which improvements that have equal desirability and utility can be constructed without undue delay."

The income approach estimates the value of future benefits (income) in terms of the present. Gross income is estimated from comparable income producing properties, from which expenses are subtracted and the net income is then capitalized at a rate, which reflects the risk of the particular property. This method then indicates a present value of the income stream for the subject property.

For the subject we will be employing the sales comparison approach exclusively in order to conclude the As Is Fee Simple Value of the subject property's open space. The Hypothetical billboard's contributory value will be determined via the income approach.

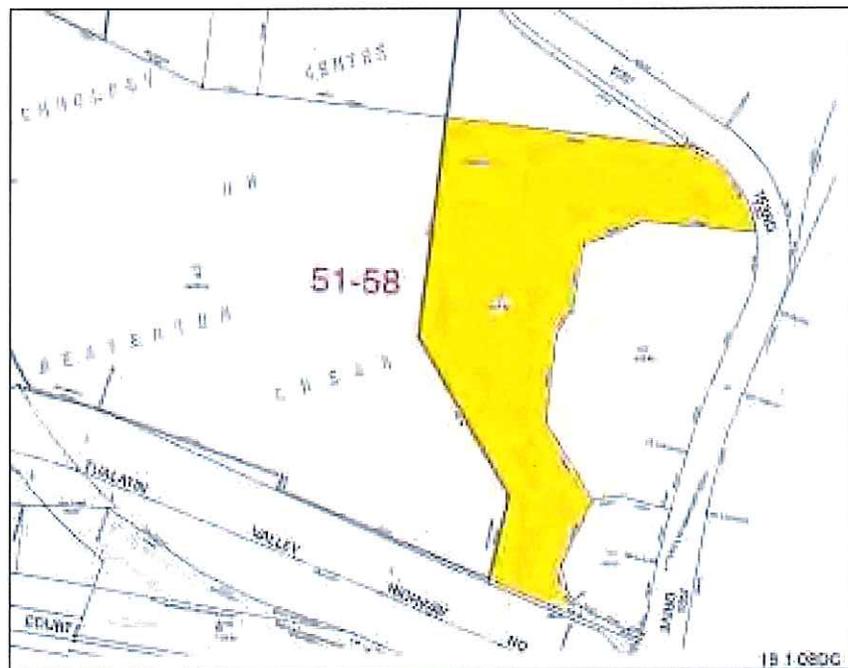
SALES COMPARISON APPROACH – Open Space

The sales comparison approach reviews sales in the competitive market area, and attempts to extract various units of comparison, which are then applied to the subject property and adjusted for comparability. We have analyzed seven total sales spanning the past 3-4 years, all of which were purchased for conservation or public use because they were poorly suited to other uses. They also encompass sales transactions on a price per acre basis. For open space sale comparables, there is no basis for time or market conditions that would indicate appreciation or a decline in value over the comparables time span.

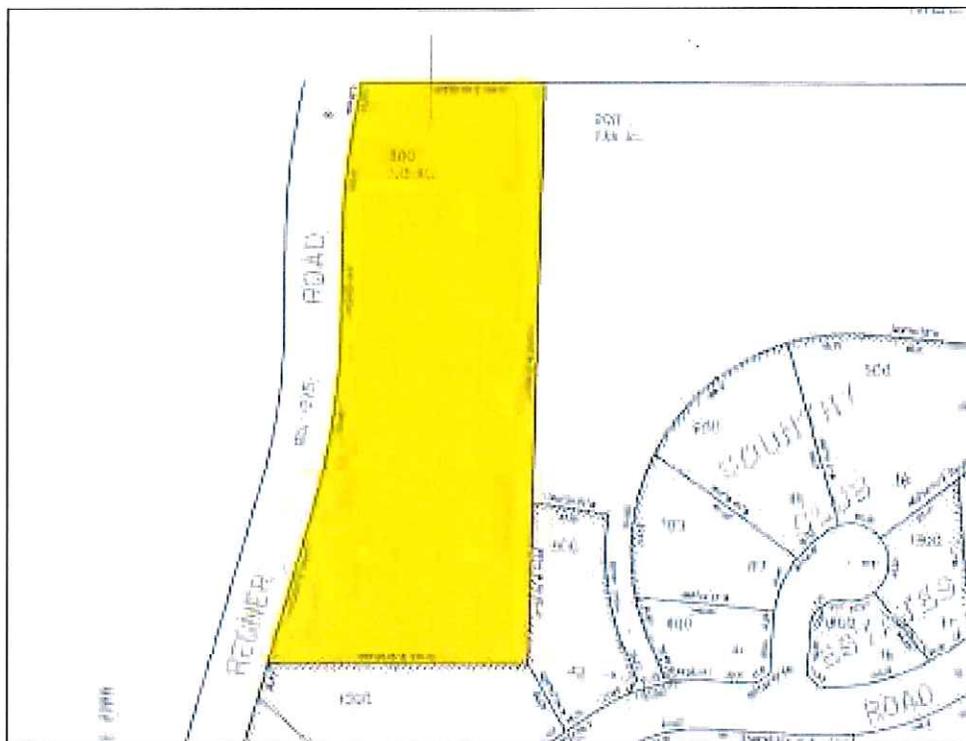
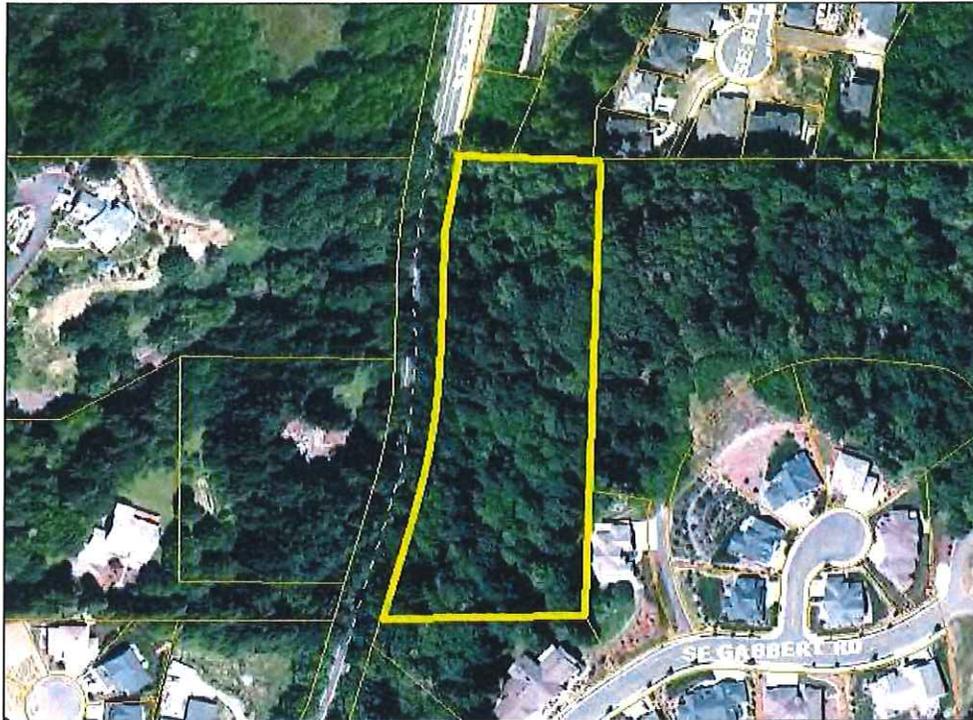
Open Space Sale Comparable Table								
Sale No.	Location	Zoning	Sale Date	Sale Price	Size (Acres)	Price Per Acre	Topography	Comments
Subj	Tax Lot 100	IP			0.89		Level to steep	Small site area near roadway, steeply sloping down to the Sandy River, flood plain AE, limited use beyond public open space/trail.
	Tax Lot 200	IP			0.33			
	Tax Lot 300	IP			0.11			
1	SW 153rd Ave & TV Hwy Beaverton, OR	OI	Mar-13	\$17,030	5.24	\$3,250	Level	Beaverton Creek and adjoining wetlands, entirely unbuildable.
2	SE Regner Rd., s/o SE 29th Ave Gresham, OR	LDR-7	Apr-12	\$22,000	3.13	\$7,029	Very Steep	Very steep parcel with creek running through and environmental overlays. Purchased as speculative home site but not feasible.
3	SE Jennings Avenue Milwaukie, OR	R15	Sep-11	\$22,000	2.33	\$9,442	Very Steep	Steep slopes, creeks and drainages along with wetlands. Bought by contractor as speculative home site, but not feasible.
4	South End Road Oregon City, OR	R10	Jan-11	\$120,000	6.74	\$17,804	Very Steep	Bought for development, but infeasible, very steep with slopes 40% to 50%.
5	SW Hall Boulevard Tigard, OR	R12	Mar-10	\$25,000	1.21	\$20,661	Level	Creek and wetlands with overlays, unbuildable.
6	SE 106th Ave & Foster Road Portland, OR	EG2	Apr-11	\$50,000	2.98	\$16,779	Level	Johnson Creek and adjacent wetlands with overlays make this unbuildable.
7	SE 115th Ave n/o Springwater Cor. Portland, OR	IG2	Jan-10	\$58,000	4.22	\$13,744	Level	Mostly unusable due to wetlands and adjacent Springwater Corridor.
			Minimum	\$17,030	1.21	\$3,250		
			Maximum	\$120,000	6.74	\$20,661		
			Average	\$44,861	3.69	\$12,673		
Zell & Associates								

PHOTOS AND PLAT MAPS OF THE COMPARABLE SALES

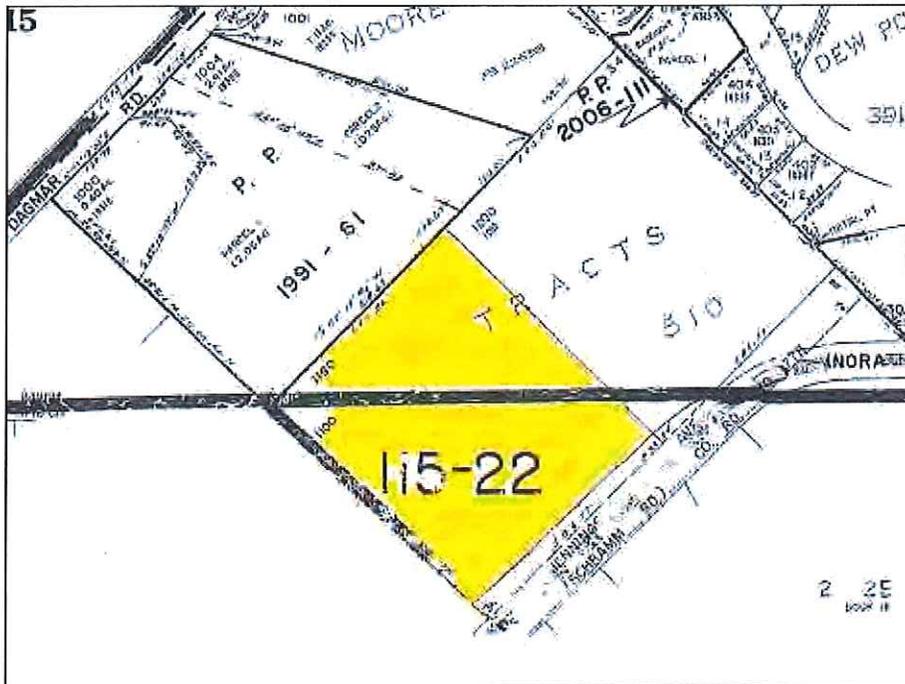
Sale Comparable 1 – SW 153rd Avenue & TV Highway, Beaverton



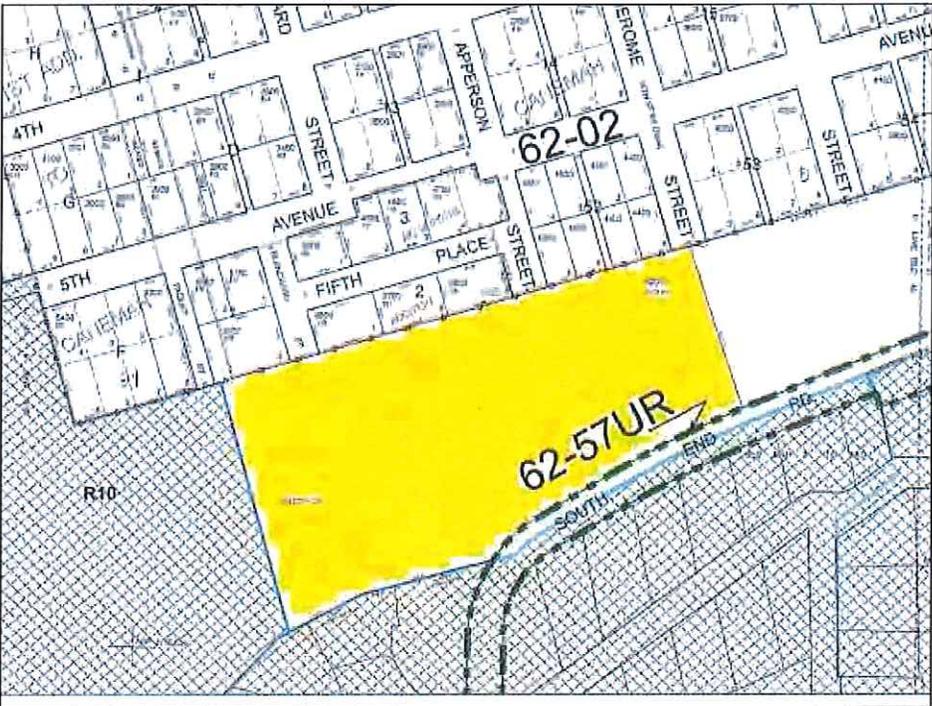
Sale Comparable 2 – SE Regner Road, Gresham



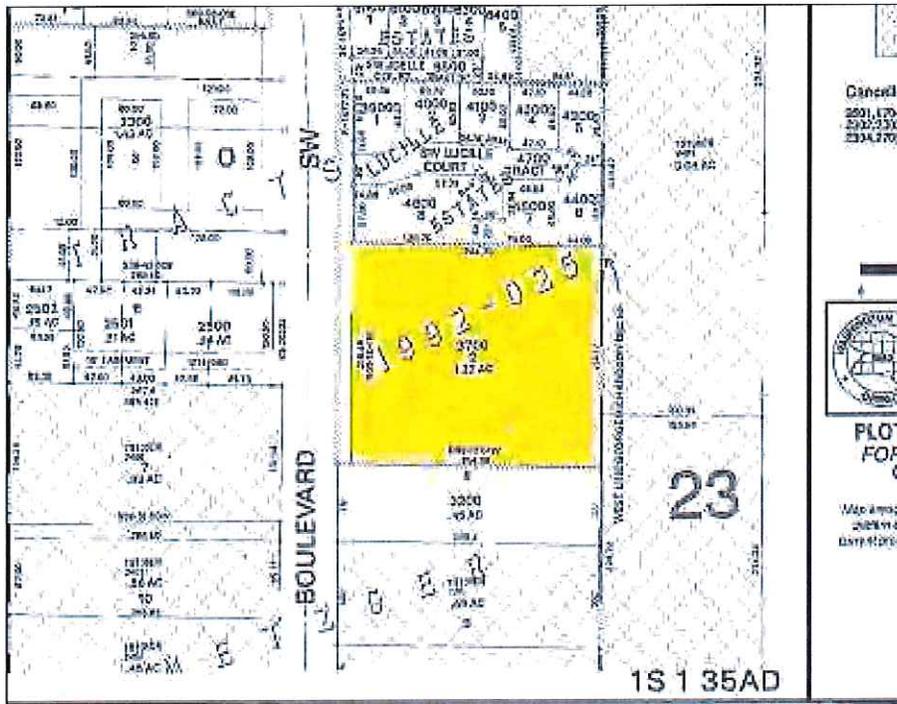
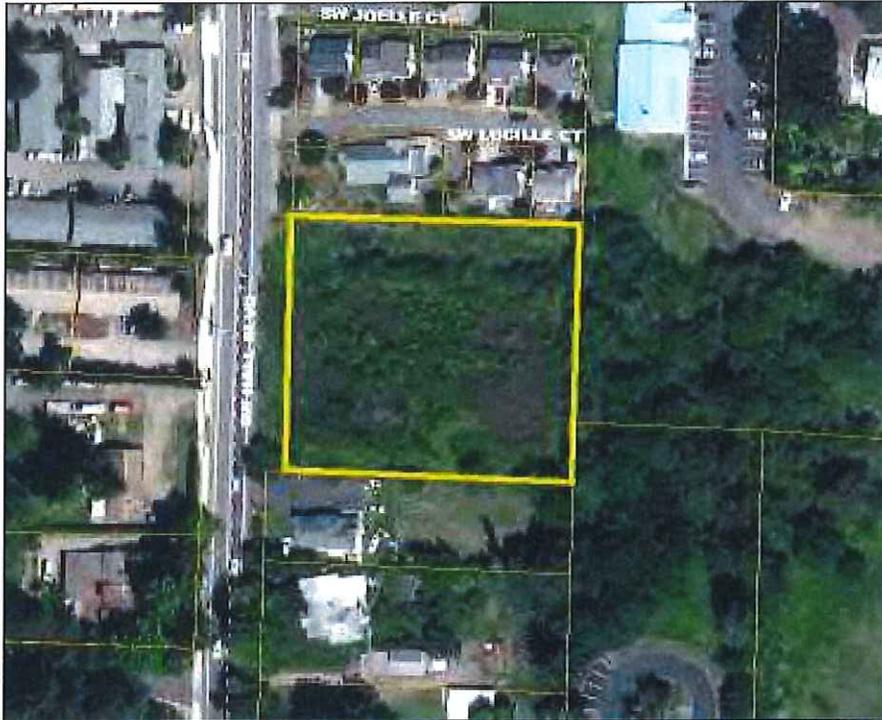
Sale Comparable 3 – SE Jennings Road, Milwaukie



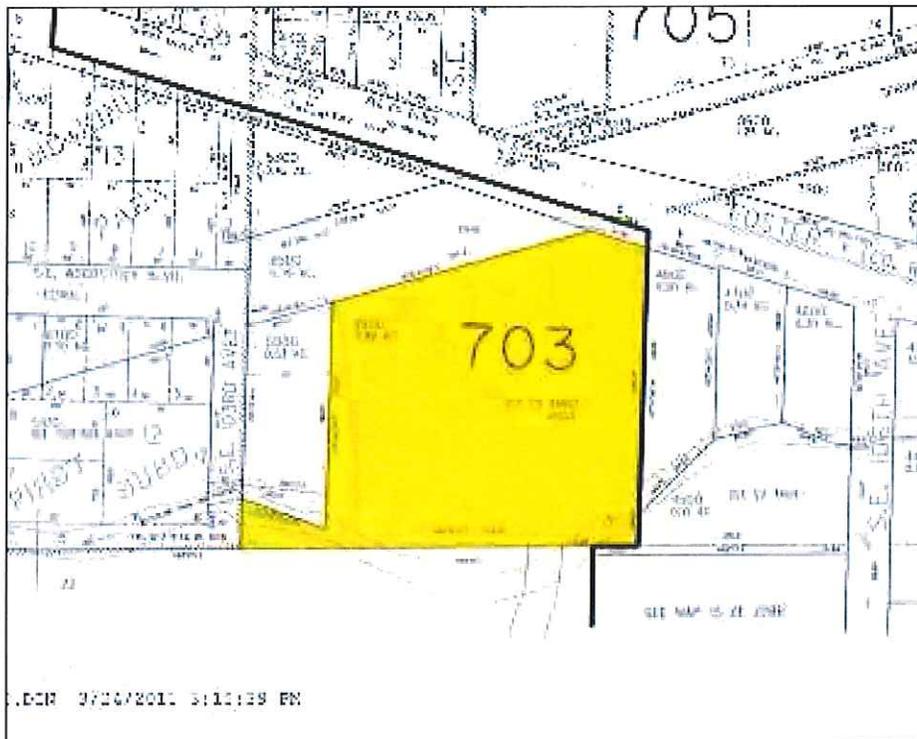
Sale Comparable 4 – South End Road, Oregon City



Sale Comparable 5 – SW Hall Boulevard, Tigard



Sale Comparable 6 – SE 106th Avenue & Foster Road, Portland



Analysis of Comparable Sales

The following sales are the most recent and relevant sales available. They represent sales to public entities and each is different in the underlying economic use of the site.

Sale 1 (\$3,250/Acre): Comparable 1 is the sale from an institutional investor to a park district. This comparable is comprised of a creek, wetlands and a floodplain. Comparable 1 was never marketed and the seller was more interested in disposing of a liability than in maximizing a sales price. Comparable 1 is at the low end of the range.

Sale 2 (\$7,029/Acre): Comparable 2 is residential zoned land that is impacted by the presence of a creek, very steep slopes and environmental overlays. This was purchased as a speculative home site and was marketed for an extended period. This comparable is closer to the middle of the range and would be higher if not for the significant physical challenges.

Sale 3 (\$9,442/Acre): Comparable 3 represents a parcel which is very steep and also contains some creek area and seasonal drainages. There are also overlays and buffers which render this parcel unbuildable. It was purchased as a speculative home site but has not yet been built on likely due to the significant physical challenges. Comparable 3 is near the middle of the range of open space comparables.

Sale 4 (\$17,804/Acre): This parcel is located in the Canemah neighborhood in Oregon city with the southern end adjacent to South End Road and the northern end which is about 200' lower in elevation adjacent 5th Street. This comparable was purchased by the city of Oregon City for use as open space with a rough trail having been cut through. While this site had significant challenges to development, it was not impossible, which accounts for the price at the higher end of the range.

Sale 5 (\$20,661/Acre): This comparable is the sale of a square 1.21-acre parcel which is about 90% covered in wetlands and the entire site being covered by a vegetated corridor overlay making it unbuildable. The buyer was hoping to enhance the wetlands on this site which would then be applied to offsetting development on other wetland sites. This property was marketed several times and is located at the upper end of the range due to the possibility of offsetting other development.

Sale 6 (\$16,779/Acre): This property was purchased by the city of Portland as it is adjacent the Springwater corridor and has Johnson Creek running through one corner. Some small scale development may be possible but with much difficulty and at a high cost. Most of the property is covered by wetlands and buffers. The higher price is attributable to the remote development possibility.

Sale 7 (\$13,744/Acre): Comparable 7 is located a few blocks east of comparable 6. This comparable is adjacent the Springwater Corridor trail and has a small usable area with most of it

being unusable due to wetlands and unusable. Like comparable 6, this was also purchased by the city of Portland. This price indicates some small possibility of development.

Conclusion of Land Value

There is a pretty clear indication of value for undevelopable open space and passive public use at \$3,250 to about \$20,661 per acre with an average of \$12,673 which is a wide variance that results from the motivation of the purchaser and the use to which the property may be put or to the motivation of the seller that has been using the land for their benefit. Properties with limited economic use and or potential for active public use are represented by the high end of the value range.

The subject property has little to no economic use due to the small level site area, steep slopes and required setbacks. Considering the subject's location, physical characteristics and lack of development potential, a conclusion in the lower-end of the range is most supportable. Therefore, we concluded a unit value of \$10,000 per acre to be applied to each site area. This results in about \$0.23 per square foot.

It is noted that across the street a 3.24 acre Industrial zoned parcels has been offered at vary prices, but most recently at \$3.75 per square foot. This parcel has a larger usable area and will at some point be developed into a commercial or industrial property. Based on the offering price of \$3.75/SF and our conclusion of \$0.23/SF for the subject sites indicate a 93.87% discount from the asking rate. Typically unusable sites can be traded at discounts of 80% to 95% of similar usable sites. The conclusion at \$0.23/SF is a reasonable depiction of market value.

Tax Lot 100 - Therefore, the concluded value for the Tax Lot 100 open space as of July 22, 2015 is (\$10,000/Acre x 0.89 acres = \$8,900), rounded to:

EIGHT THOUSAND NINE HUNDRED DOLLARS

\$8,900

Tax Lot 200 - Therefore, the concluded value for the Tax Lot 100 open space as of July 22, 2015 is (\$10,000/Acre x 0.33 acres = \$3,300), rounded to:

THREE THOUSAND THREE HUNDRED DOLLARS

\$3,300

Tax Lot 300 - Therefore, the concluded value for the Tax Lot 100 open space as of July 22, 2015 is (\$10,000/Acre x 0.11 acres = \$1,100), or \$1,100. As noted, this tax lot has received preliminary approval for an advertising billboard, a use much more intensive than purely open space. The location near Interstate 84 suggests good exposure to freeway traffic. In order to determine the contributory value of the billboard an income approach is applied.

Income Approach – Billboard

The income approach estimates the present value of future benefits (income). Gross income is estimated from an analysis of market rents, from which expenses are subtracted and the net income is then capitalized at a rate that reflects the risk of the particular property. Capitalizing the net operating income provides a value indication for the property.

As a structure in fee simple ownership along with the underlying land, the subject billboard represents a fairly rare form of real estate. Typically, the outdoor advertiser will lease a site from a landowner in order to erect their own billboard structure and thus only part of the income generated by the billboard lease can be attributed to the underlying real estate. In our case, we assume the billboard is owned by the leasee or outdoor advertiser, which makes only a portion of the income attributable to the real estate. Given the strict laws in place in the State of Oregon that prohibit billboards and the lack of available permits from the Department of Transportation, the subject is a desirable commodity.

Estimate of Net Operating Income

Estimating market rate for billboard leases is difficult given the outdoor advertisers reluctance to disclose actual lease agreements or speak in anything other than generalities. We have previously seen a permanent bulletin in the Portland Metro area (14' x 48'), at a published lease rate of \$7,500 to \$9,000 per month for a 12 month run. Other smaller billboards in North and Northeast Portland were available at \$300 to \$400 per month. Small gaps between longer leases can also be rented at lower costs. Prices are negotiable and that the leases can vary greatly depending on demand at that particular time ("feast or famine"). Discounts of 25% to 30% from published rates are common, with discounts up to 50% possible in leaner years. The subject's location as is a positive, but it is somewhat smaller than standard size (10' x 30') is slightly negative.

In some instances advertisers pay the owner 50% of net advertising income "bonus" over the base rent. Base land leases range from \$250 up to \$400 per month. At the end of the annual term, at the end of the term the advertiser pays the owner the difference between the base rent and the 50% maximum figure (annual "true up").

If the instance of the subject Meadows Outdoor Advertising is seeking approvals and developing the property and no lease information has been provided. There has been no income reported for the subject billboard, we have decided to estimate future stabilized income by choosing a number similar to the land base rate.

For this analysis we conclude a net annual revenue of \$3,600 (\$300 x 12) yields a potential gross income (PGI) of \$3,600.

According to knowledgeable market representatives a 25% average national vacancy rate is common. Since we are only considering the land base rent a lower 5% figure is warranted. Therefore we have utilized a 5% figure to account for any potential vacancy, as well as periods of turnover, resulting in an effective gross income (EGI) of \$3,420.

Estimate of Expenses

It is typical that the advertiser pays for the utilities, sign permit, reserves and routine maintenance associated with the operation of the sign. All other expenses such as taxes and management are paid for by the owner. We have also included a 10% charge for administration to reflect the cost to an operator for the time and accounting required in the leasing and operation of the site.

Selection of the Capitalization Rate

Extracting cap rates from market transactions is the preferred method of obtaining a rate. Unfortunately, the scarcity of billboard sales in this market makes this difficult. Therefore we have consulted market participants who provided some national data as well as examining the Price Waterhouse Cooper Investor survey. Extracted cap rates (OAR) range from 5.33% to 11.96% with a mean of 8.27% and a median of 7.86%. The mode, which is the average of the two is 8.07%. The PwC survey for Q1 2015, shown below, uses all cash transactions with no leverage (financing) and shows across the board declines in cap rates:

PwC REAL ESTATE INVESTOR SURVEY First Quarter 2015

	REGIONAL MALL		CBD OFFICE		WAREHOUSE		APARTMENT	
	1Q 2015	4Q 2014	1Q 2015	4Q 2014	1Q 2015	4Q 2014	1Q 2015	4Q 2014
Discount Rate (IRR) a								
Range	5.50% - 12.00%	5.50% - 11.00%	5.50% - 11.00%	5.50% - 11.00%	5.75% - 9.00%	5.75% - 9.00%	5.50% - 10.00%	5.50% - 10.00%
Average	8.19%	8.15%	7.46%	7.45%	7.17%	7.17%	7.33%	7.34%
Change (b.p.)		+ 4		+ 1		0		- 1
Overall Cap Rate (OAR) a								
Range	4.00% - 9.00%	4.00% - 10.00%	3.50% - 8.00%	3.75% - 8.00%	4.50% - 7.00%	4.50% - 7.00%	3.50% - 8.00%	3.50% - 8.00%
Average	6.38%	6.21%	6.11%	6.16%	5.77%	5.82%	5.36%	5.36%
Change (b.p.)		+ 17		- 5		- 5		0
Residual Cap Rate								
Range	4.75% - 10.00%	4.75% - 10.00%	5.00% - 9.00%	5.00% - 9.00%	5.50% - 7.25%	5.50% - 8.00%	4.25% - 8.50%	4.25% - 9.00%
Average	6.96%	6.79%	6.59%	6.59%	6.38%	6.49%	5.96%	6.03%
Change (b.p.)		+ 17		0		- 11		- 7

The average OAR among the four major property categories is 6.47%. The same four categories reported by Realty Rates average 8.1%, a much higher number. Using the two published reports and the sales data, an OAR of 7.50% is reasonable.

Conclusion of Value

The exhibit below shows the results of the income approach using a 7.5% cap rate:

INCOME APPROACH TO VALUE		
Income	Projected Gross Revenue	\$3,600
	100% Net Revenues	\$3,600
	PGI	\$3,600
Vacancy/Rent Loss	5%	\$180
	EGI	\$3,420
Expenses	Taxes	\$600
	Adminstration at 10%	\$342
	License and Permit	\$0
	Replacement Reserves	\$0
	Total Expenses	\$942
	NOI	\$2,478
Cap Rate	7.50%	\$33,040
	Rounded	\$33,000

Comparing this data suggest that the contributory value of the lease of the land for a billboard could be up to at least \$33,000 on this tax lot. As previously stated this billboard has received approval, and for this analysis hypothetically exists. Combining the land value (\$1,100) with the contributory value of a billboard base lease (\$33,000), yields a market value of Tax Lot 300 at (rounded):

THIRTY-FOUR THOUSAND ONE HUNDRED DOLLARS

\$34,100

RECONCILIATION AND FINAL VALUE CONCLUSION

Consideration of the various analyses and approaches resulted in the following conclusion:

As Is Fee Simple Value Tax Lot 100:	\$8,900
As Is Fee Simple Value Tax Lot 200:	\$3,300
As Is Fee Simple Value Tax Lot 300:	\$34,100

The previous sections analyzed factors within the regional and immediate markets for indications of population growth, supply and demand, typical pricing, and ranges of value within which the subject must compete. These factors were utilized in estimating market value of the completed lots.

The valuation process began with the estimation highest and best use. We concluded that the highest and best use of the subject was for open space.

Sales of open space or unbuildable land were found and analyzed. A subjective unit value of \$10,000 per acre was concluded as it is between the range of values for open space due to the unlikely possibility of development. Therefore, the best use for the land is for it to be incorporated into the public open space or trail extension for the public benefit.

Tax lot 300's highest and best use was concluded to be for use as a billboard site. The increase in value of outdoor advertising sites over the years combined with Oregon's 2007 law capping the number of permits makes this property a rare resource. We used the income approach only to value the lease income on this parcel. Using projected levels of income we projected a probable stabilized income. After expenses the NOI was capitalized at an appropriate rate, one that reflects the current economic uncertainty, for a value indication of \$33,000.

In review of the methodology and the quantity and quality of the data, the quality was sufficient to conclude a value for each of the subject's components. The quality of the data was good, and was reliably confirmed to a degree that the full "story" was able to be learned which enabled the appraiser to adjust for inferior and superior features in the sales. Therefore, the value conclusions rendered previously is felt to accurately depict current and near future occurrences.

ADDENDA

Certification

Certificate of Appraisal

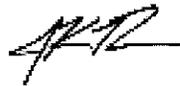
I certify the following to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The undersigned, Jason K. Russell, MAI, has made a personal inspection of the property that is the subject of this report and the comparables applied to the subject for comparison purposes. Craig Zell, MAI, SRA has also inspected the subject property, but not the comparables used in this appraisal. Mr. Zell has reviewed the report and concurs with the values herein.
3. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased, professional analyses, opinions and conclusions.
4. Craig Zell, SRA, MAI and Jason K. Russell, MAI have no present or prospective interest in the property that is the subject of this report. Craig Zell, SRA, MAI and Jason K. Russell, MAI have no personal interest or bias with respect to the parties involved, and my compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this report.
5. Data used in the analysis may have been obtained from other professionals; however, if so, the data has been independently investigated, analyzed, and verified by the undersigned. Information furnished by others is believed reliable and correct, but no responsibility can be assumed for its accuracy.
6. My analyses, opinions and conclusions were developed and this report has been prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice and in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
7. The employment of the appraiser was not conditioned upon the appraisal producing a specific value or a value within a given range; the appraisal assignment was not based on a requested minimum valuation nor specific valuation or approval of a loan. I further certify that I have the knowledge and experience to complete the assignment competently.
8. It is the intent of this appraisal to meet the appraisal standards mandated by state and federal law. This appraisal assignment was not based on a requested minimum or specific valuation.
9. The value estimated in this report is based on the assumption that the property is not affected by the existence of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any hazardous substances or detrimental environmental conditions.
10. As of the date of this report, Craig Zell, MAI, SRA has completed the requirements of the continuing education program of the Appraisal Institute. As of the date of this report, Jason K. Russell, MAI has completed the requirements of the continuing education program of the Appraisal Institute.
11. Craig Zell, SRA, MAI and Jason K. Russell, MAI have not performed appraisal services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.



8/17/2015

Craig Zell, MAI, SRA Date
Oregon Certification Number: C000108
Expiration Date: May 31, 2016



8/17/2015

Jason K. Russell, MAI Date
Oregon Certification Number: C000932
Expiration Date: March 31, 2017

Qualifications

QUALIFICATIONS OF CRAIG ZELL, MAI, SRA

Real Estate Appraiser and Counselor

General and Special Education

Portland State University: Political Science

Portland & Mt. Hood Community Colleges: Real Estate related

Courses and general continuing education, 1973-84

American Institute of Real Estate Appraisers:

Courses for MAI and SRA designation 1984-1992

Various seminars for license renewal and education, incl:

The Appraisal of Special Purpose Properties, AI,

Subdivision Analysis, Appraisal Institute,

Condemnation Appraising, Appraisal Institute,

Sales Comparison Valuation of Small, Mixed -Use Properties, Appraisal Institute,

Land Use Planning—Marylhurst Univ.

Evaluating Commercial Construction—Appraisal Institute,

USPAP-7 hr The Appraisal Foundation –

Non-USPAP Regulatory Compliance – Bob Keith –

Participant and Group Facilitator--AARO Spring Conferences,

Highest and Best Use Market Analysis-- Appraisal Institute

Association of Regulatory Officials Conference,

Uniform Standards of Professional Appraisal Practice

Uniform Appraisal Standards for Federal Land Acquisitions

Supervisor Appraiser/Appraiser Assistant Training

Business Ethics,

Real Estate Finance, Value and Investment,

The Law of Easements,

Loss Prevention,

Oregon Land Use Law

Professional Affiliations and Licenses

Appraisal Institute

Member Appraisal Institute (MAI)

Senior Residential Appraiser (SRA)

President, Oregon Chapter Appraisal Institute, 1996

Treasurer, Oregon Chapter Appraisal Institute, 1995

Secretary, Oregon Chapter Appraisal Institute, 1994

Government Affairs Committee Chairman-Oregon Chapter, 1997-2002

Education Committee Chairman, Oregon Chapter, 1987/1988

Candidate Guidance Chairman, Oregon Chapter, 1989-1992

National Subcommittee on Residential experience review, 1988-1990

Regional Standards and Ethics Panel Member 1989-1992

Appraisal Institute Regional Committee Member 1991-1994; 1997-2001

Regional Chair Public Relations 2001-2004

State Certification Instructor - Residential (R2/G2)

Certified Appraiser - State of Oregon-#C000108-General Properties

State of Washington-#1100709—General Properties

Qualified as expert witness: Multnomah, Washington, Clackamas County Circuit Courts, Federal Bankruptcy Court. Circuit Court Hutchinson, Kansas

Member Appraisal Review & Advisory Committee - Oregon Appraiser Certification and Licensure Board (ACLB)

Appointed by Gov. Kitzhaber to ACLB as General Certified Appraiser Board member – 2002-2006,

Re-appointed to ACLB by Gov. Kulingowski 2006-2010 Elected Chair 2004 to 2010

General Experiences and Qualifications

Appraisals and consultation on commercial and residential properties with an emphasis on land for residential, commercial and industrial subdivisions, income properties, and special use properties. 40+ years in real estate industries, including development of single and multi-family properties; Title Insurance, brokerage and investments. 10+ years as appraisal consultant and review appraiser for Metro Open Spaces Program; Authored initial Metro land supply report dubbed "The Zell Report;"

Representative Appraisal Assignments

Analysis of highest and best use for residential and commercial subdivisions in all sizes, price ranges and for all purposes including financing, litigation, arbitration, estate tax purposes and others.

Valuation of Townhouse, Condominium and Rowhouse projects and apartment properties.

Various office, retail and industrial properties, including office park, strip centers, and warehouses.

Marinas for feasibility analysis, financing and lease negotiations.

Analysis of Special Purpose Properties including wetlands, Passive Recreation, National Historic properties, retreats and other complex appraisal assignments. Ten years with Metro Parks and Open Spaces program as consultant and review appraiser wherein the program purchased over 8,000 acres in 200+ transactions.

Single family dwellings, attached and detached, in the Portland metropolitan area.

Land use consultation and author of initial Buildable Land Inventory for Metro

Sample of Clients Served

Lending Institutions

American Pacific Bank
Bank of America
Bank of Oswego
Clackamas County Bank
Community Financial Corp
HomeStreet Bank
Banner Bank
FannieMae (FNMA)
Capital Pacific Bank
Hong Kong and Shanghai Bank
Liberty Federal Bank
1st Independent Bank
Riverview Bank
U. S. Bancorp
Washington Federal Savings
Umpqua Bank
West Coast Bancorp.
Wells Fargo
Zions Bank

American Land Conservancy
Bridgestone/Firestone, Inc.
Fidelity Title
First American Title
GSL Properties
Arbor Custom Homes
Don Morissette Homes
Oregon Health Sciences Center
Oregon Graduate Center
Portland Golf Club
J. C. Reeves Corp.
Newland Communities
Robert Randal Corp.
Schnitzer Investment
Shelburne Development
Standard Insurance Co.
Teamsters Local 162
Trust for Public Lands
Three Rivers Land Conservancy
United Methodist Church
Legend/Matrix Development
Centex Homes
Pacific Lifestyle Homes
Marnella Homes
Habitat for Humanity

Government Agencies

Beaverton School District No. 48
Federal Deposit Ins. Corp.
City of Gresham
Clackamas County
General Services Admin.
Small Business Administration
Portland Public Schools
Tualatin Hills Park and Recreation
City of Portland
City of Tualatin
City of Sherwood
City of Wilsonville
Metro
Vancouver Parks and Recreation

Attorneys/Firm

Michelle Suter/Commercial Law Group
Greene & Markley
O'Donnell, Ramis et al
Bullivant Houser et al
Jordan Schrader
Miller Nash
Garvey, Shubert et al
Copeland, Landye et al
Schwabe Williamson & Wyatt
Stoel Rives, et al
Davis, Wright, Tremain, et al
Ball Janik

Corporations

Blazer Homes/Dennis Derby



Appraiser Certification and Licensure Board

State Certified General Appraiser

28 hours of continuing education required for renewal

Craig E Zell
Zell & Associates
6800 SW 105th AVE STE 210
Beaverton, OR 97008

License No.: C000108

Issue Date: June 1, 2014

Expiration Date: May 31, 2016

Gae Lynne Cooper, Interim Administrator

STATE OF WASHINGTON

DEPARTMENT OF LICENSING - BUSINESS AND PROFESSIONS DIVISION

THIS CERTIFIES THAT THE PERSON NAMED HEREON IS AUTHORIZED, AS PROVIDED BY LAW, AS A



CERTIFIED GENERAL REAL ESTATE APPRAISER

CRAIG E ZELL
6800 SW 105TH AVE STE 210
BEAVERTON OR 97008-5468

Cert/Lic No.

1100709

Issued Date

06/16/1992

Expiration Date

05/22/2016

Pat Kohler, Director

JASON K. RUSSEL, MAI

Certified General Appraiser

Jason is a graduate of Oregon State University in Corvallis. Extensive experience includes appraisal of subdivision projects, land valuations, proposed condominiums, industrial, general office retail, and mixed-use developments.

EDUCATION

Oregon State University
Bachelor of Science in Business, Communications minor, 1997

Real estate courses, exams and seminars sponsored by the Appraisal Institute:

Uniform Standards of Professional Practice (USPAP) 7 hours	2/15
Vineyard-Winery Valuation Seminar	5/14
Evaluating Commercial Construction	4/13
Uniform Standards of Professional Practice (USPAP) 7 hours	1/13
Online Eminent Domain and Condemnation	6/12
Litigation Appraising: Specialized Topics and Applications	9/11
Uniform Standards of Professional Practice (USPAP) 7 hours	1/11
General Appraiser Report Writing and Case Studies	6/10
Course 550 Advanced Applications	5/10
Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book)	4/10
Course 520, Advanced Sales Comparison and Cost Approaches	4/09
Uniform Standards of Professional Practice (USPAP) 7 hours	3/09
Course 400G, General Market Analysis and Highest and Best Use	4/08
Business Practices and Ethics	3/08
Uniform Standards of Professional Practice (USPAP) 15 hours	6/07
Course 300GR, Real Estate Finance Statistics and Valuation Modeling	5/07
Course 510, Advanced Income Capitalization	5/07
Course 320, General Applications	4/07
Course 310, Basic Income Capitalization	9/06
Subdivision Analysis	6/05

Real estate course, exams and seminars sponsored by the American College of Real Estate Appraisal

Basic Appraisal Principles and Practices	7/03
Residential Case Studies	8/03

College related courses:

Financial Accounting	Quantitative Business Methods
Managerial Accounting	Operations Management
Finance for Business	Business Law
Strategic Management and Business Policy	Reasoning and Writing
Writing in Business	

REAL ESTATE EXPERIENCE

Staff Appraiser	RSP & Associates LLC February 2005 – January 2010
Assistant Appraiser	Oleson R.E. Appraisers May 2004 – February 2005

PROFESSIONAL LICENSES

State of Washington Certified General Real Estate Appraiser – No. 1101913, expiring 3/25/2016
State of Oregon Certified General Appraiser – No. C000932, issued 1/2/2008, expiring 3/31/2016

PROFESSIONAL ORGANIZATIONS

Member of the Appraisal Institute – No. 455106



Appraiser Certification and Licensure Board

State Certified General Appraiser

28 hours of continuing education required for renewal

Jason K Russell
PO Box 1078
Newberg, OR 97132

License No.: C000932

Issue Date: April 1, 2015

Expiration Date: March 31, 2017


Gae Lynne Cooper, Administrator

STATE OF WASHINGTON

DEPARTMENT OF LICENSING - BUSINESS AND PROFESSIONS DIVISION

THIS CERTIFIES THAT THE PERSON NAMED HEREON IS AUTHORIZED, AS PROVIDED BY LAW, AS A



CERTIFIED GENERAL REAL ESTATE APPRAISER

JASON KURT RUSSELL
PO BOX 1078
NEWBERG OR 97132

Cert/Lic No.
1101913

Issued Date
01/30/2008

Expiration Date
03/25/2017


Pat Kahler, Director

Engagement Letter

ZELL & ASSOCIATES

Real Estate Appraisers and Counselors

Zell Report Number 15-104
Appraisal Assignment

DATE OF AGREEMENT: JULY 10, 2015

PARTIES TO AGREEMENT:

Client:

City of Troutdale
Erich Mueller, Finance Director
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078

Phone: (503) 674-7231

E-mail: erich.mueller@troutdaleoregon.gov

Appraiser:

Craig Zell, MAI, SRA
Zell & Associates
6800 SW 105th Avenue, Suite 210
Beaverton, OR 97008

Phone: 503-469-9355

Fax: 503-469-0106

E-mail: craig@zello.com

Client hereby engages Appraiser to complete an appraisal assignment as follows:

PROPERTY IDENTIFICATION

Property ID=R32058, Property ID=R320621, Property ID=R320622

PROPERTY TYPE

Vacant riverside lots

INTEREST VALUED

Fee simple

INTENDED USERS

Client

Note: No other users are intended by Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

INTENDED USE

Add to City of Troutdale's trail system and connect to 40 mile loop trail project.

Note: No other use is intended by Appraiser. The intended use as stated shall be used by Appraiser in determining the appropriate Scope of Work for the assignment.

TYPE OF VALUE

Market value

DATE OF VALUE

Current

HYPOTHETICAL CONDITIONS, EXTRAORDINARY ASSUMPTIONS

None anticipated

APPLICABLE REQUIREMENTS OTHER THAN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and the laws of the State of Oregon.

ANTICIPATED SCOPE OF WORK

Site visit

On site visit and inspection of property

Valuation approaches

Sales comparison approach / Cost approach / Income approach

Note: Appraiser shall use all approaches necessary to develop a credible opinion of value.

APPRAISAL REPORT

Report option

Summary Appraisal Report

Form or format:

Narrative

CONTACT FOR PROPERTY ACCESS, IF APPLICABLE

Erich Mueller (503) 674-7231

INSPECTION DATE

Week of July 13, 2015

DELIVERY DATE

August 7, 2015 approx.

DELIVERY METHOD

Electronic PDF by Email

NUMBER OF COPIES

One electronic PDF by email

PAYMENT TO APPRAISER

\$3,500 due at completion of assignment.

PROPOSED IMPROVEMENTS

N/A

PROPERTIES UNDER CONTRACT FOR SALE

The property is not for sale

CONFIDENTIALITY

Appraiser shall not provide a copy of the written Appraisal Report to, or disclose the results of the appraisal prepared in accordance with this Agreement with, any party other than Client, unless Client authorizes, except as stipulated in the Confidentiality Section of the ETHICS RULE of the Uniform Standards of Professional Appraisal Practice (USPAP).

CHANGES TO AGREEMENT

Any changes to the assignment as outlined in this Agreement shall necessitate a new Agreement. The identity of the client, intended users, or intended use; the date of value; type of value; or property appraised cannot be changed without a new Agreement.

CANCELLATION

Client may cancel this Agreement at any time prior to the Appraiser's delivery of the Appraisal Report upon written notification to the Appraiser. Client shall pay Appraiser for work completed on assignment prior to Appraiser's receipt of written cancellation notice, unless otherwise agreed upon by Appraiser and Client in writing. Please note that if cancelled prior to research and inspection the client is obligated to pay a setup fee of \$100. If cancelled after research has begun or inspection has occurred, the client will be obligated to pay for time incurred up to cancellation date.

NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement shall create a contractual relationship between the Appraiser or the Client and any third party, or any cause of action in favor of any third party. This Agreement shall not be construed to render any person or entity a third party beneficiary of this Agreement, including, but not limited to, any third parties identified herein.

USE OF EMPLOYEES OR INDEPENDENT CONTRACTORS

Appraiser may use employees or independent contractors at Appraiser's discretion to complete the assignment, unless otherwise agreed by the parties. Notwithstanding, Appraiser shall sign the written Appraisal Report and take full responsibility for the services provided as a result of this Agreement.

TESTIMONY AT COURT OR OTHER PROCEEDINGS

Unless otherwise stated in this Agreement, Client agrees that Appraiser's assignment shall NOT include participation in or preparation for sworn testimony in a judicial, arbitration or administrative proceeding, or attendance at any judicial, arbitration, or administrative proceeding relating to this assignment. Additional services such as testimony, arbitration, or mediation by phone and/or attendance at judicial or administrative proceedings will be billed at a rate of Two Hundred Dollars (\$200.00) per hour for MAI's or Principals, and One Hundred Dollars (\$100.00) per hour for associates. Any clerical assistance will be billed at Forty Five Dollars (\$45.00) per hour.

APPRAISER INDEPENDENCE

Appraiser cannot agree to provide a value opinion that is contingent on a predetermined amount. Appraiser cannot guarantee the outcome of the assignment in advance. Appraiser cannot insure that the opinion of value developed as a result of this Assignment will serve to facilitate any specific objective by Client or others or advance any particular cause. Appraiser's opinion of value will be developed competently and with independence, impartiality and objectivity.

EXPIRATION OF AGREEMENT

This Agreement is valid only if signed by both Appraiser and Client within 5 days of the Date of Agreement specified.

GOVERNING LAW & JURISDICTION

The interpretation and enforcement of this Agreement shall be governed by the laws of the state in which the Appraiser's principal place of business is located, exclusive of any choice of law rules.

By Appraiser:

By Client:



(Craig Zell, MAI, SRA)

Date signed: July 10, 2015



Erich Mueller, Finance Director

Date signed: 7/10/2015

Approvals



**CITY OF TROUTDALE
TYPE II LAND USE APPLICATION**

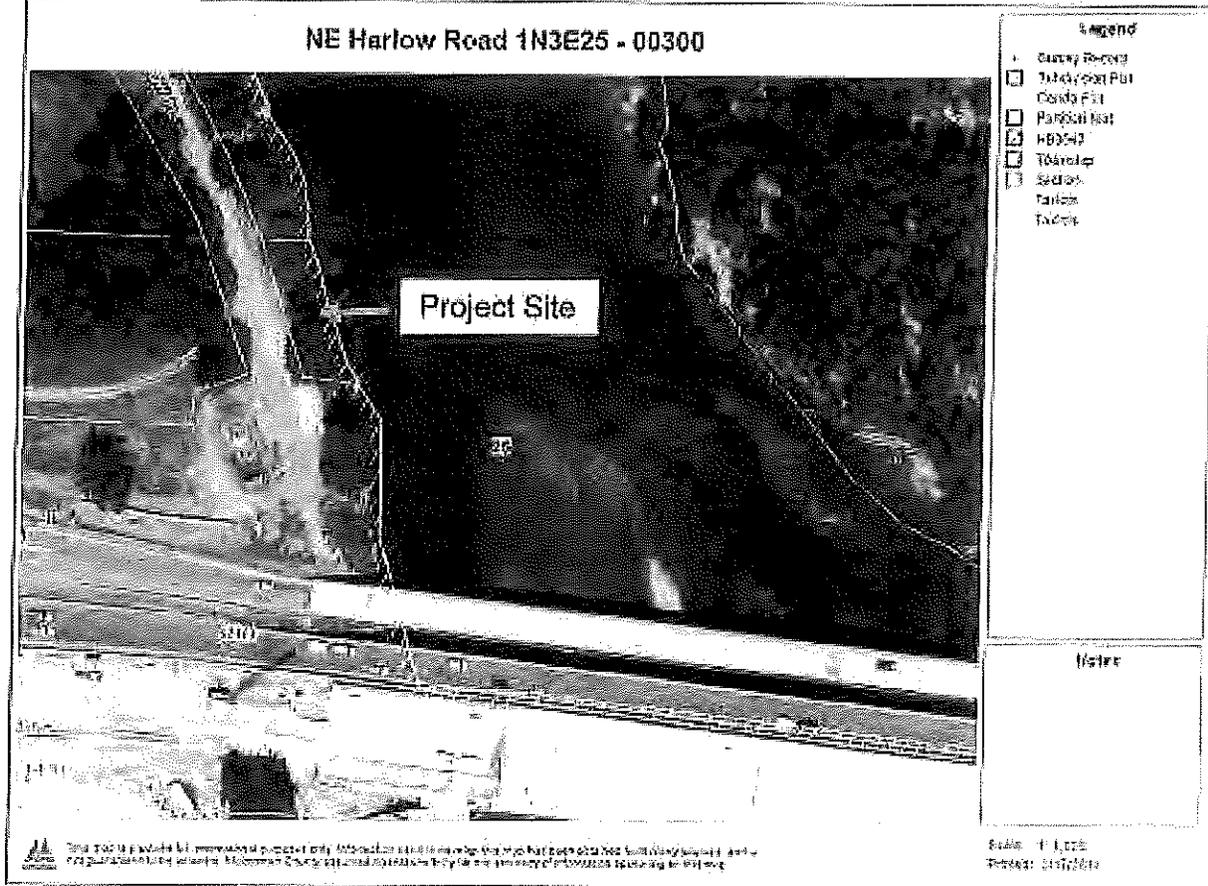
**NOTICE OF SITE AND DESIGN REVIEW MEETING AND
REQUEST FOR COMMENTS**

FILE NO. 15-033: Freeway Sign Installation

Applicant	Brian Casady, Meadow Outdoor Advertising
Property Owner	Gary Dempsey, Molly Hall
Proposal	Install a 60' tall 672 square foot freeway sign on vacant property east of NE Harlow Road.
Location	751 NE Harlow Place
Site Size	.11 acres
Tax Map & Tax Lot	1N3E26 - 00300
Plan Designation	Industrial
Zoning District	Light Industrial (LI)
Overlay Zoning	Airport Landing Field (ALF) Vegetation Corridor (VECO) Flood Management Area (FLMA)

APPLICABLE CRITERIA

- Troutdale Development Code (TDC): 1.000 Introductory Provision; 2.000 Procedures for Decision Making; 3.160 Light Industrial; 4.100 Airport Landing Field; 4.300 VECO; 4.600 FLMA; 5.600 Erosion Control and Water Quality; 5.800 Stormwater Management; 7.0.000 Signs
- Troutdale Municipal Code Tree Removal
- Construction Standards for Public Works Facilities
- Building and Fire Codes
- FAA Regulations

VICINITY MAP**PROCEDURE**

- Site and Design review is required for all uses in the Light Industrial district per TDC 3.165A.
- The Type II Site and Design Review is specifically requested for the proposed development in the VECO provisions (TDC 4.313C):

C. Type II Procedure. The Site and Design Review Committee shall approve plans for any permitted use in the underlying zoning district requiring a building permit, other than a single-family dwelling, under the Type II site and design review land use application.

- Tree removal is identified as part of the development proposal and mitigation options are identified in the VECO section of the code. According to the Troutdale Municipal Code Chapter 13.10.270D, tree removal can be requested in conjunction with a land use application. In addition to the mitigation requirements of the VECO, the applicant must satisfy the following criteria:

D. An application for a tree removal permit in conjunction with a land use permit shall be considered as part of the land use permit and shall be subject to the application, notice, hearing and appeal procedures applicable to the proposed development pursuant to the Troutdale Development Code. An application for any land use permit shall show trees regulated by this section on a site plan. A tree removal permit may be granted in the following circumstances:

1. If a tree is diseased, hazardous, in danger of falling, in close proximity to existing structures or proposed construction, or interferes with utility services or pedestrian or vehicular traffic safety;
2. If the tree removal will have no significant impact on erosion, soil retention, stability of earth, flow and character of surface waters and streams, protection of nearby trees and windbreaks; and, if the tree removal will have no significant impact on the environmental quality of the area, including scenic and wildlife habitat values;
3. If the tree removal is necessary in order to construct reasonably required improvements; or
4. If, in the opinion of the fire marshal, tree removal is necessary to protect existing or proposed structures.

- The applicant may apply for a Type II Site & Design Review with a tree removal permit for the installation of a freeway sign and the removal of ___ # of trees on the property.
- Applicant must identify trees to be removed on a site plan.

LOT NOTES

- Applicant will be required to submit property information to determine lot of record.
- The vacant lot is .11 acres in area and is located between NE Harlow Road and the Sandy River. The western portion of the lot closest to the road is relatively flat. The eastern portion of the lot has a >25% easterly slope.
- The proposed development and disturbance will occur outside of the 100 year flood plain on the flat bench of the western portion of the property.
- The entire lot appears to be in the vegetation corridor (VECO), making the "net area" of the lot zero. (Net area being the amount of land left over that isn't constrained by ROW or within a community resource protection overlay district, such as the VECO or FLMA). The lot may then be considered nonconforming and subject to this provision.

6.365 Nonconforming Lot. If a lot, or the aggregate of contiguous lots or parcels of land held in a single ownership, has an area or dimension which does not meet size requirements, the lot or aggregate holdings may be developed subject to all other requirements. If there is an area deficiency, residential use shall be limited to a single-family dwelling. [Adopted by Ord. 705, ef. 5/10/01]

- The VECO section of the Development Code permits uses of the underlying zoning district if the VECO development standards are met, and administrative setback variances can be granted to avoid development on 25%+ slopes.

Notwithstanding the provisions of chapter 6.220, Type II Variance, of this code, where necessary to avoid construction within the vegetation corridor and slope district, the following provisions are available for lots of record affected by the vegetation corridor and slope district:

f. Setbacks may be reduced up to 50% from the underlying zoning district setback dimension where necessary to avoid construction on slopes of 25% or greater or within the required vegetation corridor, and otherwise meet the standards of this chapter.

- NOTE: Development on this lot may require ROW dedication and street improvements. Please contact Travis Hullin, Chief Engineer for additional information.

SIGN LOCATION, HEIGHT AND SETBACKS NOTES

- Applicant's submittal indicates the sign height to be 60' above I-84.
- The sign appears to be at least 800 feet from the next freeway sign and with 800 feet south and 1,000 feet north of the center median of I-84.
- Setback requirements for a freestanding sign are measured from the sign board.
- The setbacks for the LI zone are 20' front, 10' side, no rear setback.
- The lot's front property line is along NE Harlow Road

DEVELOPMENT NOTES – Signs on Vacant Land

TDC 10.016 Definitions.

Freeway Sign. A freestanding sign that is located within 800 feet south and 1,000 feet north of the center median of Interstate 84, and that is more than 24 feet in height, with a sign face of more than 150 square feet.

- A freeway sign is permitted in the zone where the vacant land is located
- The location of the freeway sign must meet building setbacks of the vacant property

- The location of the freeway sign meets proximity requirements to the freeway and other freeway sign
- Freeway signs are not included in the "Prohibited" section of TDC 10.030.

TDC 1.020 Definitions:

Development. Any manmade change to improved or unimproved real estate including, but not limited to, construction, installation or change of a building or structure; land division; storage on the land; tree cutting; drilling; and site alteration such as that due to land surface mining, dredging, grading, paving, excavating, or clearing.

- The installation of a freeway sign on vacant property may be considered a manmade change to unimproved real estate.
- Freeway sign development may be considered an installation of a structure. Supporting structure is defined in the Sign section of the TDC.

TDC 10.015 Definitions

Supporting Structure. A structure specifically intended for supporting or containing a sign.

- By definition, the installation of a freeway sign means development. Development of a freeway sign is permissible in the LI district. There is no language in the Sign Development code indicating that a sign must only be installed in conjunction or in addition with an existing development on a property.

SUBMISSION REQUIREMENTS - VECO

Submission Requirements. For the purpose of minimizing sedimentation of protected water features, maintaining water quality, and minimizing erosion and landslide hazards where development is proposed within the vegetation corridor and slope district, the Director shall require submission of the following information:

A. Site Development Application. A site development application, for the purpose of implementing this chapter, shall consist of a grading and erosion control plan and a water quality plan. The applicant or developer shall be responsible for submitting such information with a land use application, or in the case of single-family construction, submitted with the construction plans.

Grading and erosion control plan. The grading and erosion control plan for the development shall comply with the Technical Guidance Handbook, Erosion Prevention and Sediment Control Plans, by the City of Portland Bureau of Environmental Services and the Unified Sewerage Agency of Washington County, this chapter, and chapter

- 5.600, Erosion Control and Water Quality Standards, of this code. The grading plan shall include information on terrain (two foot contours), drainage, direction of drainage flow, location of surface and subsurface devices, retaining walls, water wells, dams, sediment basins, storage reservoirs, gas pipeline easements, or other in-ground utilities, either public or private, which may be affected by the proposed grading operations.
- a. A current topographical survey shall be prepared for the entire site. The contours shall be at two-foot intervals.
 - b. At least three slope measurements along the affected water feature shall be made, at no more than 100-foot increments.
 - c. The contour maps identifying slope percentages shall be prepared and certified by a licensed professional. The mapping shall depict the width of the vegetation corridor as established in sections 4.316, Width of Vegetation Corridor, and 4.317, Method for Determining Vegetation Corridors Next to Primary Protected Water Features, of this chapter. The vegetation corridor width will vary from site to site.
 - d. The grading plan shall also include a construction phase erosion control plan and a schedule of operations, and shall be prepared by a professional engineer registered in Oregon.

Water quality plan. The applicant's engineer shall provide a water quality plan, consistent with the provisions of chapter 5.600, Erosion Control and Water Quality Standards, of this code and with the State of Oregon Department of Environmental Quality's National Pollutant Discharge Elimination System (NPDES) program administered by the City.

A hydrology, geology, and soils report of the site in accordance with the following:

1. Prepared by a licensed professional and certified by the same.
2. Includes information on the hydrological activities of the site, the effect of hydrologic conditions on the proposed development, and any hydrological or erosion hazards.
3. Quantifies the current stormwater volume and rate that leaves the site and shows direction of flow within the site and toward adjoining properties.
4. Includes recommendations for the engineering and location of onsite detention facilities to meet the standards of chapter 5.800, Stormwater Management, of this code.
5. Depicts all stormwater facilities (swales, detention or retention ponds) existing or proposed, and shows the finished contours and elevations, including all cut and fill slopes and proposed drainage channels.
6. Describes how the site is suitable for the proposed use, and why there is no practicable alternative to the site.
7. Includes geological characteristics of the site and identifies any geological hazard that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility.
8. Includes information on the nature, distribution, and strength of existing soils and an assessment of grading procedures required to impose the minimum disturbance to the existing topography and native vegetation.

- No.

C. Vegetation Report. This report shall consist of a survey of existing vegetative cover, whether it is native or introduced. Measures for enhancement or revegetation with approved plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. The revegetation plan shall be prepared by a licensed landscape architect, landscape designer, botanist, or arborist with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation, in compliance with chapter 5.600, Erosion Control and Water Quality Standards, of this code.

- The applicant has submitted everything needed for these requirements.

AIRPORT LANDING FIELD

Please note the additional requirements for development in the airport landing field zoning overlay. For more information about airport imaginary surfaces height restrictions, please contact Jeff Caines, Aviation Planner, at the Dept. of Aviation (information under "key contacts" section). Please note that a determination is required from the Dept. of Aviation that the proposed sign will not pose a hazard to aviation safety. The required FAA 7460 form is attached. This form is also able to filled out online: <http://www.faa.gov/documentLibrary/media/Form/FAA%207460-1%20.pdf>

4.114 Additional Requirements and Limitations.

- A. To meet the standards and reporting requirements established in FAA Regulations, part 77, no structure shall penetrate into the airport imaginary surfaces as defined in section 1.030, Airport Overlay Definitions, of this code.
- B. No place of public assembly shall be permitted in the airport approach safety zone.
- C. No structure or building shall be allowed within the clear zone.
- D. Whenever there is a conflict in height limitations prescribed by this overlay zone and the primary zoning district, the lowest height limitation fixed shall govern; provided, however, that the height limitations here imposed shall not apply to such structures customarily employed for aeronautical purposes.
- E. No glare-producing materials shall be used on the exterior of any structure located within the airport approach safety zone.

- Applicant has a recorded application in with FAA. Working towards it. See Condition.

PROCEDURE

The subject development proposal underwent a preapplication conference on April 23, 2016 where relevant approval criteria and agency/department input was discussed with the applicant. Staff determined the proposal required a Type II Site and Design Review (SDR). Type II SDRs require notice to affected agencies/departments and neighboring

property owners. Affected agencies/departments and property owners within 250 feet of the subject site were notified and invited to comment on the proposal on May 21, 2015.

AGENCY COMMENTS

Request for comments on the proposed tenant improvement was sent to the following agencies:

- Planning
- Building
- Public Works
- Gresham Fire
- Multnomah County Transportation

Comments from Building, Public Works, Multnomah County and Gresham Fire were received and are attached to this report.

PUBLIC COMMENTS

As of June 10, 2015, no comments from neighboring property owners were received.

ATTACHMENTS

1. Building Comments – 5/26/2015
2. Public Works Comments – 6/9/2015
3. Multnomah County Comments – 6/11/2015
4. Gresham Fire Comments – 5/26/2015
5. Applicant Narrative – 5/13/2015

EVALUATION

The application narrative provided by the applicant (Attachment #5) substantially and accurately demonstrates compliance with the applicable development code provisions for the proposed freeway sign installation at that weird place on the western fringe of Sandy River on the eastern scrape of Harlow Road. Staff hereby adopts the applicant narrative and its substantive reports for the purposes of this SDR.

DECISION

The Site and Design Review (SDR) to install a 60' tall 672 SF freeway sign is approved subject to compliance with the following conditions of approval.

CONDITIONS CODE

The color-coded markings are intended to provide timely guidance to the applicant through the permitting process. These markings are for informational purposes only. For questions about submittal requirements for each condition, please contact the corresponding Department or Agency for more information.

_____ Submit prior to building permit applications

SDR: Freeway Sign Installation 15-533 9

Submit with building permit applications

Prior to issuance of permit

Prior to use of new development

CONDITIONS OF APPROVAL

1. **Building Conditions:**

2. **Gresham Fire Conditions:**

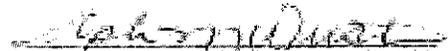
3. **Public Works Conditions:**

4. **Multnomah County Conditions:**

5. **General Conditions:**

- A. Approval of the proposed improvements shall be void after 2 years of the notice of decision date unless substantial completion has taken place.
- B. Any other conditions or regulations required by Multnomah County, Gresham Fire and Emergency Services, the state of Oregon, or to comply with state or federal codes are hereby made a part of this decision.

Signed, this 16th day of July, 2015


Stephen M. Winstead, AIA
Planning Director

BUILDING DEPARTMENT
CITY OF TROUTDALE

ATTACHMENT 1

16 JUL 15

MEMORANDUM

FROM: Stephen Winstead,
Building Official, Flood Plain Manager

SUBJECT: Response to request for comments on 15-033, Freeway Sign Installation

References: (a) Oregon Structural Specialty Code (2014)

1. Permits are required for this project in accordance with Section 105.1 of Reference (a) if the work is not in the public right of way. Separate electrical permits are required if a service is required.

Stephen Winstead
Building Official
City of Troutdale

Date: July 9, 2015

To: Mark McCaffery, Planner

CC: File

- Steve Gaschler, Public Works Director
- Dayid Schaffor, Water & Streets Superintendent
- Mike Sorenson, Wastewater Superintendent
- Amy Pepper, Civil Engineer
- John Bushard, Civil Engineer

From: Travis Hultin, Chief Engineer *TW*

RE: Type II Site and Design Review, Freeway Sign on Harlow Place (File No. 15-033)

The Public Works Department has reviewed the Type II Site and Design Review submittal for the Meadows Outdoor Advertising Freeway Sign. These comments are divided into two categories: general comments and proposed conditions. General comments are informational points to guide the applicant in the proper planning of public works infrastructure for this project, to inform the applicant of possible extraordinary issues and/or to provide the basis for findings. Proposed conditions are requirements that Public Works recommends be formally imposed on the developer in the final order. Note that references to the "City Standards" herein refer to the *Construction Standards for Public Works Facilities*.

General Comments/Findings

1. Any and all utility and transportation plans submitted with this application have been reviewed for the purpose of determining the feasibility of providing utility and transportation facilities for the project in accordance with City Standards. This land use approval does not constitute final approval of details, including but not limited to alignments, materials and points of access, connection or discharge, that are depicted or suggested in the application. The applicant is required to submit detailed construction drawings and/or plat drawings for the project, as applicable. The City of Troutdale Public Works Department will review plans, in detail, when they are submitted and approve, reject or require modifications to the plans or drawings based upon conformance with City Standards, the TDC and the professional engineering judgment of the Chief Engineer.
2. It is the opinion of the Public Works Department that the proposed freeway sign can be developed in accordance with the requirements of the Troutdale Development Code (as it pertains to Public Works requirements) and Construction Standards, provided it fully addresses the comments and conditions contained herein, and can be approved.

TRANSPORTATION

3. NE Harlow Place is a commercial/industrial street. The minimum required total width of right-of-way for C/I streets is 60', or 30' half-width. Current half-width appear to be 25'. A minimum of 5' ROW dedication on the subject property frontage of Harlow Place is required. See proposed condition 1.

4. The Transportation System Plan (TSP) calls for a trail (bike/ped multi-use path) along the east side of Harlow Place, which is a critical link in the "40-mile loop" trail that connects the levee trail in the City's Industrial area to the Sandy Riverfront Trail proposed in the City's urban renewal area immediately to the south, and points beyond in both directions. The standard width for multi-use paths is 10', vs. the typical 5' wide pedestrian sidewalk on commercial streets. In order to construct this multi-use path in the future, an additional 5' of right-of-way will be needed. At the preapplication conference, the applicant indicated that they are amenable to dedicating additional property to the City to support construction of the future trail. See proposed condition 2.
5. When development occurs on a site, the developer is required to provide half-street improvements on the property's frontage meeting the City's standards, including pavement widening, curb/gutter, sidewalk and related appurtenances. However, as curb and gutter design should be integrated for the entirety of Harlow Place, and this property is currently separated by a significant distance from existing curb and gutter, it is prudent to defer the construction of curb and gutter with the provision of a waiver of remonstrance obligating the property owner to contribute proportional cost to future integrated improvements along Harlow Place. Pavement widening can be completed effectively now, and the applicant is required to provide pavement widening to meet the C/I cross section standard. See proposed conditions 3 and 4.
6. On the subject property's frontage, the TSP indicates a regional trail segment rather than standard sidewalk. The trail improvements will occur with a future integrated trail project along Harlow Place. Therefore, it is prudent to defer path construction with the provision of a waiver of remonstrance obligating the property owner to contribute proportional cost to future integrated improvements along Harlow Place. See proposed condition 3.
7. Harlow Place is a dead-end street with no truck turnaround. However, at the southern terminus of this street is the multi-use path under the Sandy River Bridge that accommodates emergency vehicle access, including fire trucks. Therefore, a cul-de-sac or other turnaround is not required by Public Works, but nonetheless may be required by the Fire Marshal.

STORM WATER

8. The proposed installation is within the VECO and drains directly to a primary protected water feature (Sandy River). Therefore, storm water quality treatment for runoff from onsite impervious areas is required. See proposed condition 5.
9. The applicant is required to provide storm drainage and storm water quality facilities associated with required half-street improvements. However, as stormwater drainage and water quality design should be coordinated and integrated for the entirety of Harlow Place, stormwater improvements associated with the street improvements should be deferred with the provision of a waiver of remonstrance obligating the property owner to contribute proportional cost to future integrated improvements along Harlow Place. Minimal interim drainage improvements will be required to ensure the street drains in the interim. See proposed conditions 6 and 7.

WATER

10. The applicant has not indicated a need for water service. No water system improvements are required by Public Works. However, if the Fire Marshal requires a public or private

hydrant to serve the property, such requirement will necessitate the extension of the existing 8" water main in Harlow Place to the property.

SANITARY SEWER

11. This development does not require sanitary sewer service. There are no proposed conditions related to sanitary sewer infrastructure.

EROSION CONTROL

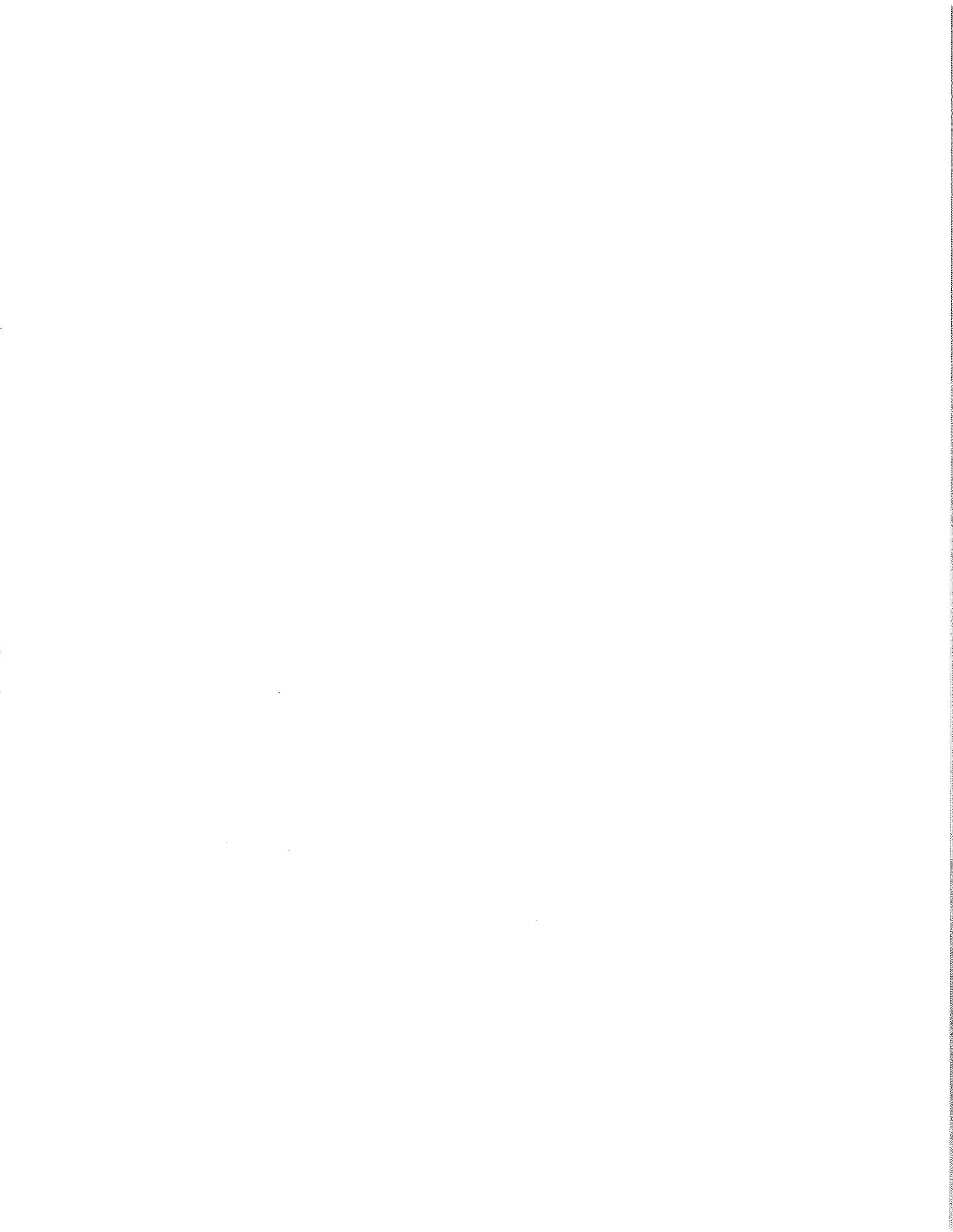
12. The proposed area of disturbance is within the VECCO and is subject to Site and Design Review. Therefore, an erosion control plan and erosion control permit will be required.

PARKS/TRAILS

13. Harlow Place is a link in the "40-mile loop" (aka "Intertwine") trail system. This is a primary regional trail, described above. The applicant is strongly encouraged to use landscaping and tree planting to screen the billboard from the trail to maintain the trail's aesthetic to the extent practicable. The applicant's submitted materials appear to indicate attention this consideration, with tree planting proposed between the billboard and the future trail.

Proposed Conditions

1. Applicant shall dedicate 5' (or as require to achieve 30' half-width) of public right-of-way to the City on the property's Harlow Place frontage to meet the minimum commercial/industrial street right-of-way width standard.
2. Applicant shall dedicate an additional 5' (or as required to achieve a total of 35' half-width in conjunction with proposed condition 1) of public right-of-way to the City on the property's Harlow Place frontage to accommodate the multi-use path/trail called for in the adopted Transportation System Plan.
3. Applicant shall construct pavement widening on the Harlow Place frontage to achieve a minimum 18' half-width in accordance with the City's Commercial/Industrial street standard.
4. Applicant shall provide a waiver of remonstrations obligating the property owner to contribute proportional cost to future integrated improvements along Harlow Place, including curb/gutter, multi-use path/trail and related drainage improvements.
5. Applicant shall provide storm water quality treatment for runoff from onsite impervious area in accordance with the requirements of the Portland Stormwater Management Manual.
6. Applicant shall construct provisions for drainage along the half-street improvements as deemed sufficient by the Chief Engineer to ensure the street drains in the interim period until complete street improvements are constructed in the future.
7. Applicant will be required to submit civil construction plans for the required public infrastructure improvements for review and approval by Public Works, prior to issuance of building permits. All construction of public improvements shall be in accordance with the City's Construction Standards, except as modified herein.
8. At the conclusion of public improvement construction, the applicant will be required to provide a financial guarantee for warranty of the work in accordance with the Troutdale Development Code.



RESOLUTION NO.

A RESOLUTION DECLARING THE PUBLIC NECESSITY TO CONSTRUCT SEGMENTS OF THE 40-MILE LOOP TRAIL AND NEED TO ACQUIRE REAL PROPERTY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The city has identified the need to construct a section of the 40-mile loop trail facility in the City of Troutdale.
2. The city needs to acquire real property upon which to construct a public trail segment.
3. Oregon law authorizes such acquisition under ORS 223.105 and ORS 35.235.
4. Under Section 31 of the Troutdale Charter, the City Council may determine the necessity for acquiring property by eminent domain, describe the property, and state the use to which the property will be devoted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Acquisition of the following parcels, which are described by map and tax lot number, is necessary to build a segment of the 40-mile loop:

- a. 1N-3E-25B, TL 100
- b. 1N-3E-25B, TL 200
- c. 1N-3E-25B, TL 300.

Section 2. The City Council approves the purchase or condemnation of these parcels, and authorizes the City Manager or designee to take all action necessary, including execution of all necessary documents, to complete said purchases or condemnation.

Section 3. Upon the trial of any suit or action, or the raising of any claim or defense, instituted or needed to carry out the property acquisitions embodied in this resolution, the city's legal counsel, after consultation with city staff, is authorized to make any stipulation, agreement, argument, or admission that in the legal counsel's judgment may be for the best interests of the trail construction project or the City of Troutdale.

Section 4. The City Manager and legal counsel may apply to the circuit court for immediate possession of the property identified in Section 1 of this resolution.

Section 5. This Resolution is effective upon adoption.

**YEAS:
NAYS:
ABSTAINED:**

Doug Daoust, Mayor

Date

Sarah Skroch, City Recorder

Adopted:

BACKGROUND:

By resolution 1909, Council approved an exclusive Franchise Agreement with Waste Management of Oregon (Waste Management) on November 13, 2007. Effective January 1, 2008, this exclusive Franchise Agreement has an eight year term, expiring December 31, 2015. At the April 7, 2015 Council work session, Council discussed the option of conducting a competitive process for the solid waste franchise and recycling services franchise. After lengthy discussion, Council determined that it was satisfied with the current level of service provided by Waste Management, including its customer relations, employee relations, community involvement, safety records and cleanliness of operation. Council directed staff to move forward with renegotiating an exclusive franchise agreement for solid waste and recycling services with Waste Management.

Major deficiencies were not identified in the existing Franchise Agreement. As such, staff moved forward with updating the Franchise Agreement to align better with current industry standards and meet the needs of the community, with the professional assistance of Bell & Associates.

Exhibit A includes a red-lined copy of the proposed Franchise Agreement with Waste Management, to be effective January 1, 2016. The following summarizes the major changes proposed:

- Definitions were updated based upon current industry standards (Section 1). If the definition was not used elsewhere in the document, it was proposed to be removed.
- Revises the franchise term to allow for a “rolling” eight-year term as proposed in the municipal code update (Section 5).
- The bulky waste Spring Cleanup event is proposed to be a one-day curbside event instead of an event held at the Troutdale Transfer Station (Section 6).
- Rates are proposed to be set based upon the previous year’s annual report and costs, not projected values (Section 7).
- A requirement was added to report all vehicle accidents and/or infractions that occur within the City (Section 12).
- More details were added about the annual reporting and records retention requirements to aid in the review of the annual report when rate adjustments are requested (Section 14).
- A requirement was added to general customer preparation of materials to reduce the issue of wind-blown materials (Section 17).
- A new section (Section 29) was added to clarify compliance with applicable laws.
- Expands and clarifies the level of insurance coverage necessary (Section 30).
- The requirement for a performance guarantee was added (Section 31).

Staff met with Waste Management staff and resolved most issues identified with the proposed changes. Waste Management prefers that rates are set based upon a three year average for the recycling material value, not the previous year’s annual review report as proposed in the franchise agreement. The recycling market in recent years has become very unpredictable and variable making it difficult to try to project values. Based on consultation with Bell & Associates, staff recommends that the prior year’s values be used in rate setting to avoid setting rates that are higher than necessary. This may result in more frequent rate reviews than using a three year average.

Some Council members have expressed an interest in exploring a food waste recycling program. It was unclear from the discussions whether the interest was related to commercial, residential or both. Nothing in the proposed Franchise Agreement prevents the City from working with Waste Management to develop a food waste recycling program. Waste Management currently offers a voluntary food waste recycling option for commercial customers at the existing solid waste rates. Council direction will be required to explore options for initiating a food waste recycling program before such a program can be incorporated into the rate setting process.

PROS & CONS:

Pros:

- Assures there is no lapse in solid waste and recycling services at the end of the current franchise agreement term.
- Makes the Spring Cleanup event a curbside event allowing for more participation from residents that may not have had the ability to participate in the past.

Cons

- None.

Current Year Budget Impacts Yes (*describe*) N/A

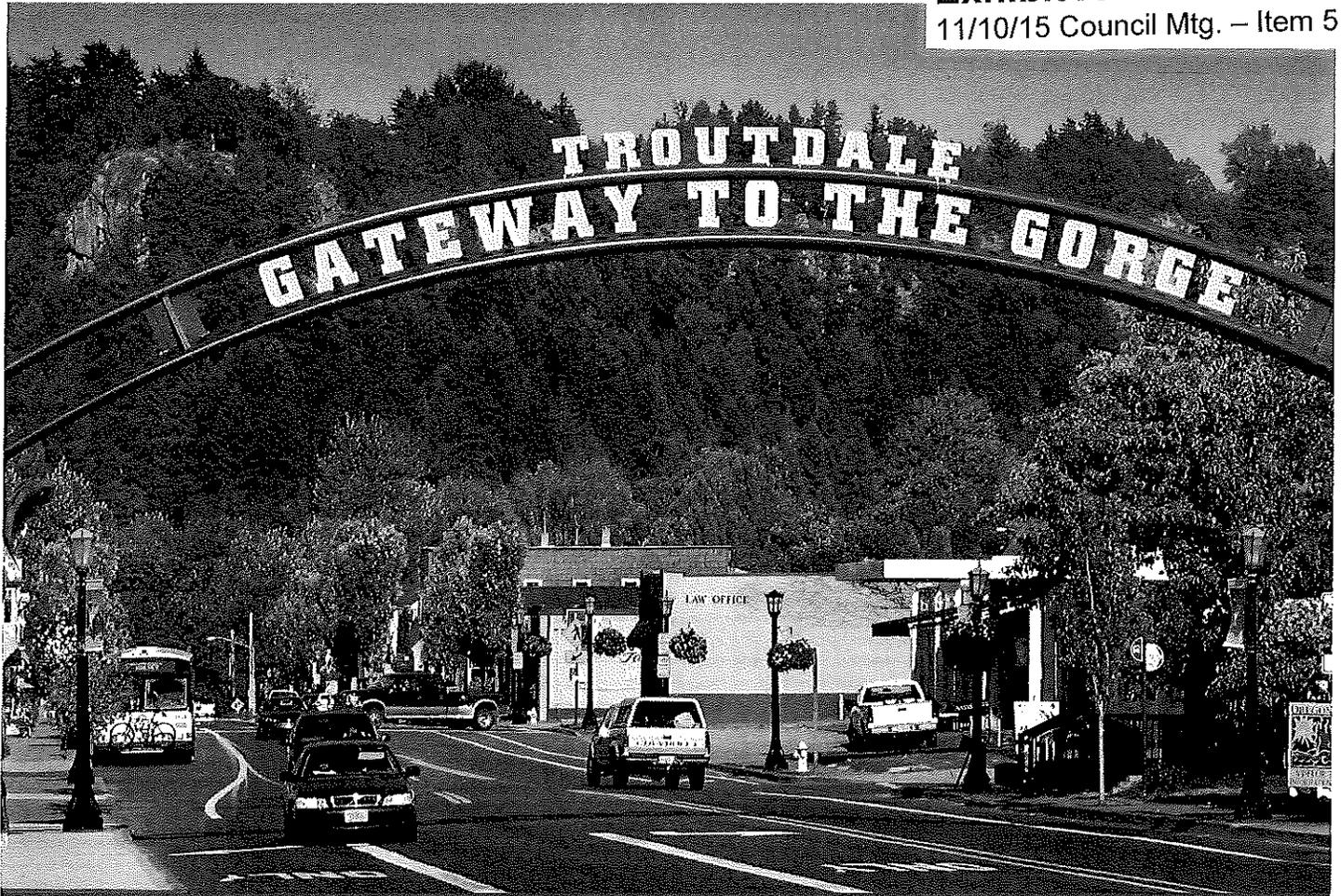
The City estimates the 5% franchise fee from Waste Management for FY 2015-16 to be \$129,275.

Future Fiscal Impacts: Yes (*describe*) N/A

The City will continue to collect a 5% franchise fee from Waste Management.

City Attorney Approved Resolution Yes

Community Involvement Process: Yes (*describe*) N/A



**Exclusive Franchise Agreement
with Waste Management of
Oregon to Provide Solid and
Recycling Collection Services
within the City of Troutdale**

Draft Agreement

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SECTION 1. Short Title.

This franchise agreement shall be known and may be cited as the "Solid Waste Management Franchise Agreement" and referred to herein as the "Franchise".

SECTION 2. Purpose.

The purpose of this franchise shall be to:

1. Ensure safe, economical, and comprehensive Solid Waste and Recycling service;
2. Ensure that rates are just, reasonable, and adequate to provide necessary public service;
3. Prohibit rate preferences and any other practice that might be discriminatory; and
4. Provide for technologically and economically feasible recycling and resource recovery by and through the Franchisee.

SECTION 3. Definitions.

Agreement. Refers to the body of this Franchise Agreement contained in Sections 1 – 35.

Allowable Expenses. Those expenses incurred by the Franchisee in the performance of this Agreement that are allowed by the City as reimbursable by the ratepayer as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis and when applicable, prorated or allocated to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable expenses shall include, but not be limited to the following:

1. The costs of complying with all laws, regulations or orders applicable to the Franchisee's obligations ~~of the Franchisee's~~ under federal, state or local law, including this ordinance, as now or hereafter amended;
2. Disposal costs;
3. Labor costs, including operational and supervisory labor, payroll taxes workers' compensation, and benefits;
4. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
5. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;
6. Performance bonds and insurance in ~~at least~~ the amounts and coverages required by the City;

7. Administrative expenses related to data processing, billing and supplies, finance and accounting, franchise administration, human resource and labor management, rate analysis, and regulatory compliance;
8. Compensation paid to officers;
9. Utilities;
10. Training and worker safety expenses;
11. Promotion and public education costs;
12. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and outgoing basis in the provision of services under this franchise over standardized economic useful lives of the various assets.
13. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
14. Interest expense, other than interest paid with respect to route or franchise acquisition that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
15. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
16. Direct write-off charges for bad debts; and
17. Franchise fees assessed by the City.

Bulky Waste. Large items of solid waste such as appliances, furniture, large auto parts, trees branches greater than 4 inches in diameter and 36 inches in length, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

City. City of Troutdale.

Collection or Collection Service. All or any part of the activities involved in collecting and transporting solid waste, recyclable materials or yard debris to an appropriate disposal or recycling facility.

Collection Franchise. A franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service and to use City streets.

Commercial. Stores, offices including manufacturing and industrial offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include other manufacturing activities or business manufacturing or processing activities in residential dwellings.

Compactor. Any self-contained, power-driven, mechanical equipment designed for the containment and compaction of Solid Waste or Recyclable Materials.

Compensation. Includes:

1. Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, and any other direct or indirect provision for the payment of money, goods) services or benefits by owners, tenants, lessees, occupants, members or similar persons; or
2. The exchange of service between persons; or
3. The flow of consideration from one person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning, possessing, or generating the solid waste.

Construction and Demolition Debris. Used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a city permit has been issued.

Container means a receptacle ranging in volume from 1, 1.5, 2, 3, 4, 5, 6 and 8 cubic yards for the storage and Collection of Solid Waste, Recyclable Materials, or Organic Waste provided by the Franchisee.

Council. The City Council of the City of Troutdale.

Commingled Recycling. The collection of various types of recyclable material in one commingled cart (excluding glass, which shall be collected separately).

~~**Composting.** A controlled biological decay of organic waste where moisture, heat, bacteria, earthworms and microorganisms found in nature transform the organic waste into compost in a manner which does not create offensive odors, a health or safety hazard, or a condition of unsightliness.~~

Curbside. A location within three (3) feet of the edge of a public street. The street may be a public alley if the Franchisee desires to pick up receptacles from the alley. This does not allow the receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three feet of said road or roads. For residences on a flag lot, or other private driveway, or any private street not meeting the standards, "curbside" shall be the point where the driveway or private street intersects the public street, or at such other location agreed upon between the Franchisee and customer or as determined by the City.

Customer. Those generators of solid waste, recyclable materials, or yard debris to whom a franchisee provides collection service.

Depot. A facility for transferring containerized solid waste, recyclable materials, or yard debris from one mode of transportation to another. The term also refers to a place for receiving source-separated recyclable materials.

~~**Director.** The Director of the City of Troutdale Community Development Department or his/her authorized representative).~~

Drop Box. A single container designed for the storage and collection of large volumes of solid waste recyclable materials or yard debris materials that is ten cubic yards or larger in size.

Force Majeure. Acts of God, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, embargoes, or acts of civil or military authority, breakage, explosions or accident to machines or other materials, pipelines or materials, governmental restraint, unavailability of a disposal site and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.

Franchisee. The Person granted the exclusive franchise by Section 4 of this franchise or a subcontractor to such person.

Generator. A person who last uses a material and makes it available for disposal or recycling.

Gross Revenue. The gross receipts derived by the franchisee from fees actually collected from customers for Solid Waste, Recyclable Materials, and Yard Debris collection services and other services provided in the City under this Agreement.

Hazardous Waste. A waste as defined in ORS 466.005 (or any successor thereto) and/or solid waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et Seq., and the Hazardous Waste Management Act, Chapter 466 ORS as amended, and the regulations promulgated thereunder. Hazardous waste shall not include incidental household hazardous waste or small quantity generator waste which is commingled with solid waste.

Household Hazardous Waste. Any discarded, useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, automotive, and paint products.

Infectious Waste. Biological waste, culture and stocks, pathological wastes, and sharps as defined in ORS 459.386.

Multifamily. Any multiple building or group of buildings that contains five or more dwelling units on a single tax lot.

Off Curb. An area more than three feet from the edge of a public street.

Net Income. Gross Revenues minus Allowable Expenses. This is also referred to as franchise income.

Operating Margin. ~~Gross revenues minus allowable expenses.~~ Is the ratio of Net Income to Gross Revenues.

Organic Waste. Materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, paper, and putrescible material which are generally a source of food for bacteria.

Oregon Administrative Rule (OAR) are Oregon State agency directives, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy.

Oregon Revised Statutes (ORS) are the codified body of statutory laws governing the State of Oregon.

Person. An individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.

Processing. An operation where collected, source-separated recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.

Putrescible Materials. Organic materials including, but not limited to bones, meat, grease, fat, food containers contaminated with food waste, prepared vegetable and fruit food waste, manure, feces, sewer sludge, dead animals or similar wastes which cause offensive odors or create a health hazard or which are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies and other vectors.

Rates. The amounts of compensation paid for various levels of solid waste and recycling service.

Receptacle. A can, Roll Cart, Container, ~~compactor~~, or Drop Box provided by the Franchisee used by the customer to contain Solid Waste, Recyclable Materials, or Yard Debris for Collection Service in accordance with the terms of this franchise.

Recyclable Materials. ~~Any material, or group of materials, that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material, or other materials as may be designated by the City. Recyclable materials consist of source separated and commingled recyclable materials from residential, commercial, and industrial generators that are taken to a facility for processing.~~

Recyclable Material, Recyclables. Any material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from Solid Waste by the Generator or at a Material Recovery Facility.

Recycling. The process of collecting, sorting, cleansing, treating or reconstituting recyclable materials which would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new, reused, or reconstituted products.

Residential. A single family dwelling or a multifamily dwelling with up to and including four dwelling units on a single tax lot.

Resource Recovery. The process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling and reuse.

Return on Revenues. The quotient of Net Income ~~the Operating Margin~~ divided by the Gross Revenues.

Roll Carts. Franchisee provided 20, 35, 60 or 90 gallon plastic carts equipped with wheels, handles, and a tight fitting cover, which are capable of being mechanically unloaded into the Franchisee's collection vehicles.

Service. Collection, transportation, storage or disposal of, or resource recovery from, solid waste, or recyclable material, or both.

Solid Waste. All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage; rubbish; refuse; ashes; wastepaper and cardboard; commercial, industrial, demolition and construction materials; sewage sludge; septic tank and cesspool pumping or other sludge; discarded or abandoned vehicles or parts thereof; discarded home appliances; manure, vegetable or animal solid or semisolid materials, dead animals, infectious waste as defined in ORS 459.386, special waste and other wastes; but the term does not include:

1. Materials defined as principal recyclable materials in OAR 340-90-070, and any others designated by the City, which have been correctly placed for collection or taken to a Depot by the generator;
2. Hazardous wastes as defined in ORS 466.005; and
3. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. (OAR 340-90-010(36))

Solid Waste Collection Service or Service. The collection, transportation, storage or disposal of or resource recovery of solid wastes, from residential, multifamily, commercial) and industrial generators, as required by City regulations, and administrative rules; and the collection, transportation and processing of recyclable materials and yard debris from residential and commercial generators.

Solid Waste Management. The prevention or reduction of solid waste; storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

Source Separated Recyclable Materials. Any recyclable material separated from the solid waste stream prior to collection.

Unallowable Expenses. Shall include the following:

1. All charitable and political contributions;
2. Fines and -penalties, including without limitation judgments for violation of applicable laws, incurred by a licenFranchisee;
3. Payments for services provided by individuals related by blood or marriage or by affiliated companies to a licensee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;
4. Accruals for future unknown regulatory changes;

5. Costs associated with purchase of other companies including, but not limited to, employee stock ownership plan payments, goodwill, amortization of goodwill and premiums on key- person life insurance policies;
6. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and/or facilities to the extent that the price includes goodwill or a premium in excess of fair market value at the time of acquisition;
7. State and federal income taxes;
8. Fees paid to a Franchisee's Board of Directors;
9. Advertising expenses beyond basic collection and recycling promotion and education, and minimal telephone listings under "Garbage Collection" or "Recycling Collection". Display advertisements and entertainment expenses are specifically excluded;
10. Attorney's fees and related expenses resulting from:
 - a. Any judicial proceeding in which the City and a licensee are adverse parties, unless the Franchisee is the prevailing party;
 - b. Any judicial proceeding in which a Franchisee is ruled to be liable due to, willful misconduct or gross negligence, or in violation of law or regulation;
11. Any other expenses defined as "unallowable" and approved by the Council.

Waste. Material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, "utilized" means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, rehabilitation of land.

Yard Debris. Compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

SECTION 4. Exclusive Franchise and Exemptions

1. There is hereby granted to Waste Management of Oregon Inc., the Franchisee, an exclusive franchise to provide solid waste collection service to any person within the corporate limits of the City of Troutdale or areas later annexed thereto. The Franchisee shall have the right to use the streets of the City for this purpose. No other Person shall provide Solid Waste Collection Service for compensation, offer to provide, or advertise for, the performance of such service to any owner, tenant, lessee, member, or occupant of any real property in the City.
2. Nothing in this franchise shall:
 - a. Prohibit any person from transporting Solid Waste, Recyclable Materials, or Yard Debris generated by said person to a disposal site or to a resource recovery facility;
 - b. Prohibit any person transporting Solid Waste, Recyclable Materials, or Yard Debris through the City that is not collected nor disposed of within the City;

- c. Prohibit federal or state agencies that collect, store, transport or dispose of Solid Waste, Recyclable Materials, and Yard Debris or any Person who contracts with such agencies from performing the service if the service is performed by or for such agencies under a written contract with such agencies;
 - d. Prohibit any Person from engaging in the collection of Source Separated Materials for Resource Recovery for the purpose of raising funds for a charitable, civic, or benevolent activity;
 - e. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or a structure, or in connection with land clearing and development, provided such material is being recycled;
 - f. Prohibit a Person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service, landscaping, gardening, construction and demolition, tree or rendering service, but a Person shall not provide collection service for any accumulated or stored waste generated by a customer;
 - g. Require Franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided however, that the Franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter;
 - h. Prevent the City from conducting an annual clean-up campaign for the collection of yard debris or other recyclable materials, or solid waste from residences in the City or in any other way providing for the beauty of the City and the safety and convenience of its citizens.
3. Solid Waste, Recyclable Materials and Yard Debris placed out for Collection, which meet the definitions of this franchise, belongs to the Franchisee when so placed.
 4. If, at the request of the Franchisee, the City takes administrative, enforcement, or other action against any Person who infringes on the Franchisee's exclusive rights, Franchisee must reimburse the City for its reasonable costs related to such action; however, nothing herein shall be construed to require the City to take such action. Franchisee may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to, seeking injunction relief.

SECTION 5. Franchise Term.

The rights, privileges, and franchise granted herein shall continue for the Franchisee for the period of eight (8) years starting January 1, 2016, unless extended per the provisions of the municipal code, sooner terminated, in accordance with the provisions herein (the "Base Term"). ~~Midway through the Base Term, the City Parties will perform a review of Franchisee's performance under the Agreement, to and will consider in good faith, an extension of an additional two (2) years to the Base Term, for a total franchise term not to exceed ten (10) years.~~

SECTION 6. Franchise Fee.

1. The Franchisee will pay to the City a franchise fee equal to five percent of gross revenues, net of franchise fees. The term gross revenues, for purposes of calculating the franchise fee, shall not include an federal, state, or local taxes or surcharges, or any revenues generated from the sale of recyclables or any recycling rebates resulting from the Solid Waste Services conducted under the franchise. Such fees shall be computed on a quarterly basis, which consist of the quarters ending March 31, June 30, September 30, and December 31. The fee shall be paid by the fFranchisee not later than 30 days following the end of each quarterly calendar year period.
2. In the event that the Franchisee shall pay a franchise fee of more than five percent to any city or municipal corporation within the Portland-Metro area during the duration of this Agreement, then the Franchisee shall inform the City of the same and the City shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review and adjustment process.
3. Deliberate or malicious misrepresentation of gross revenues and franchise fees by the Franchisee constitutes cause for revocation of the franchise.
4. In addition to the above, the Franchisee shall provide support for an annual curbside City clean-up to be held in the spring of each year. Support and assistance shall include, but is not limited to: one-time collection and disposal at the curb of bulky waste and of up to five extra bags of garbage from each residential customer at no additional charge; and providing staffing, equipment and/or services for special events; and assistance in promoting the event by direct mail to residents of the City of Troutdale. The costs of providing this service will be allowable costs used to establish appropriate rates.

SECTION 7. Rates

1. The Council, by resolution, shall establish rates for all service levels for Solid Waste, Recyclable Materials, and Yard Debris collection service which the Franchisee may charge for Solid Waste Services and may, from time to time, by resolution, change those rates. The City or the Franchisee may request a rate change whenever a significant change in revenue or expenses occurs or is anticipated. In the event the Franchisee requests a rate adjustment under this Agreement, the City shall consider such request in good faith and shall act upon the request without undue delay, but in no case later than 120 days from the date the request was made.
2. When a new or unusual Solid Waste Service, not included in the rate structure approved by the Council is requested, the Franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the Franchisee shall notify the ~~Community Development Director~~City Manager or his/her designee in writing of the service provided, the rate established, and the basis for the rate. If the City Manager or his/her designee finds the rate or basis to be unreasonable, the City Manager shall submit the rate to the Council for consideration.
3. The rates that may be charged by the Franchisee for collection service shall conform to the latest schedule on file with the City. Any rate not set by current resolution and

charged in the City of Troutdale must be approved by the Director/City Manager or his/her designee prior to implementation.

4. All books, records, accounts, and data relating to Collection Service operations conducted within the City by the Franchisee are subject to inspection and audit by the City or its agents.
5. In determining fair rates, Council will consider all relevant factors, and the Director/City Manager or his/her designee and the Franchisee Parties shall work in good faith to develop and adjust rates, as necessary to allow Franchisee to earn a reasonable rate of return. The City agrees that it shall not unreasonably withhold its consent or unreasonably delay a rate review request submitted by Franchisee.
6. Rates shall be adequate to provide an Operating Margin equal to ten percent (10%) of Franchise Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the projected-reviewed year falls between eight and twelve percent of Gross Revenues. The ten percent target return on Gross Revenues is considered sufficient to reflect the level of business risk assumed by the Franchisee, to allow investment in equipment, and to ensure quality collection service.

SECTION 8. General Franchisee Responsibility.

The Franchisee shall:

1. Provide collection service for properly prepared Solid Waste, Recyclable Materials, and Yard Debris for all customers within the City in accordance with such standards and specifications as set forth in this franchise and applicable federal, state, county, and local laws and regulations. The Franchisee shall make available for subscription all levels of Solid Waste, Recyclable Materials, and Yard Debris collection services for which the City sets a Rate rates.
2. Provide sufficient collection vehicles, containers, equipment, facilities, personnel, and finances to provide all types of necessary service.
3. Provide a Receptacle roll-carts to all customers of Solid Waste, Recyclable Materials and Yard Debris collection services, as set forth more fully in Section 15.
4. Dispose of collected Solid Wastes, Recyclable Materials and Yard Debris at a site approved by the governmental agency having jurisdiction of the disposal of Solid Waste; Recyclable Materials and Yard Debris or recover resources from the Solid Wastes both in compliance with ORS Chapter 459 and 459A, Oregon Revised Statutes, and regulations promulgated thereunder.
5. ~~Submit a certificate of public liability insurance with a 30-day notice of cancellation clause, acceptable to the City, which will cover its business operations including each vehicle operated by said Franchisee. The insurance coverage shall be in amounts not less than the minimum requirements of Oregon Tort Claims Act now enacted or hereafter amended. The insurance shall indemnify and save the City harmless against liability or damage, which may arise or occur from an injury to person or property as a result of said Franchisee's operation of the solid waste business under this franchise. The City shall be named as an additional insured.~~

6.5. Provide the opportunity to ~~for recycle recycling collection service as outlined in this franchise~~ for all persons within the City ~~and the opportunity to recycle in accordance with ORS 459A. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality, Metro rules applicable inadopted by the City, and the City ordinances,~~ and other governmental agencies having proper jurisdiction. The Franchisee shall collect Recyclable Materials as outlined in this franchise provided the materials comply with the preparation requirements and other requirements set forth in this franchise.

- a. Residential customers. The Franchisee will provide its Residential customers with weekly Curbside collection or Off Curb collection, if desired, of all properly prepared Recyclable Materials. All recyclables shall be collected commingled in the recycling Roll Cart, except for glass, which shall be collected separately in a glass recycling bin, and motor oil, which shall be collected separately in accordance with Franchisee's collection requirements. Customers that subscribe to Off Curb Collection Service shall pay an additional fee, as set forth in the adopted rate scheduled.
- b. Multifamily customers. The Franchisee will provide each of its Multifamily customers with adequate receptacles for the storage and collection of ~~four or more~~ Recyclable ~~m~~Materials. The Franchisee will provide at least weekly collection of ~~three~~ Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.
- c. Commercial customers. The Franchisee shall offer collection of Recyclable Materials to all existing and new Commercial customers. The Franchisee will provide each of their Commercial customers with receptacles of adequate number and size for the collection of ~~r~~Recyclables. The Franchisee will provide at least weekly collection of Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.
- d. The Franchisee must obtain approval from the City prior to providing collection of ~~additional properly prepared~~ Recyclable Materials not defined in this franchise as Recyclable Materials, as well as any proposed service standards for collecting such Recyclable Materials.
- e. The Franchisee shall deliver all properly prepared and collected Recyclable Materials to a processor or broker of Recyclable Materials, or to an end-use market and shall collect and transport Recyclable Materials in the same sortation in which that the materials are collected from the Generator. The Franchisee shall not deliver, or cause to be delivered, any collected Recyclable Materials for disposal, unless the Recyclable Materials are improperly prepared and rejected by a commonly used processor, broker or end-market. The Franchisee should not collect Recyclable Materials that are visibly improperly prepared at the time of collection.

7.6. Provide, at ~~Rates approved by the City~~ regular cost, Collection and disposal of Solid Waste and Recyclable Materials from Troutdale City Hall, the Troutdale Police Station, the City Conference Building, the City Facilities Maintenance building, the Troutdale Water Pollution Control Facility, and the City Public Works Shop. Provide, at

no cost, Collection and disposal of 12 containers, four yards or less that are open to public use in the Central Business District, and collection of dumpsters within Glenn Otto Park and Columbia Park.

- 8-7. _____ Participate in City directed promotion and education efforts.
- 9-8. _____ Permit inspection by the City of the Franchisee's facilities, equipment, records, and personnel at reasonable times.
9. Collect medical and Infectious Wastes, as defined by ORS 459.386, and comply with all state regulations. The Franchisee is not required to collect medical and Infectious Waste that is not properly prepared and separated. The Franchisee may subcontract with other entities for the collection of medical and Infectious Waste with the approval of the Director/City Manager or his/her designee.
 - a. The Franchisee and /or subcontractor(s) shall conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transportation, storage, treatment, and disposal of medical and Infectious Wastes.
10. Not be responsible for collecting unacceptable Solid Waste materials, such as liquid fats, non-petroleum oils, semi-solid wastes, flammable materials, sewage sludge, septic tank and cesspool pumping or other sludge; manure, dead animals, and vehicles.
11. Participate in studies or evaluations for programs and service needs, as proposed by the City.
12. Maintain passage on public streets. To the greatest extent practicable; the Franchisee shall avoid stopping of collection vehicles while collecting Solid Waste, Recyclable Materials, or Yard Debris so as to block the passage of other vehicles and pedestrians on public streets and sidewalks. Franchisee shall work with City to alter routes to the extent necessary to accommodate special events and/or paving work.
13. Submit required rate-reporting forms and other reports as required by the City.
14. Limit the hours of Collection activity of Solid Waste, Recyclable Materials or Yard Debris in predominantly Residential and Multifamily neighborhoods to between the hours of 6:00 a.m. and 6:00 p.m., unless weather or holiday schedules require extended hours of collection. There shall be no limit on the hours of collection activity for any Solid Waste, Recyclable Materials, and Yard Debris materials in predominantly Commercial and industrial areas.
15. Collect Yard Debris materials provided the materials have been prepared in accordance with the requirements in this franchise.
 - a. Yard Debris materials placed in a solid waste receptacle by a customer who has qualified for a yard debris exemption service described in Section 20 of this Franchise shall be collected by the Franchisee notwithstanding that such disposal contravenes the yard debris exemption program. When Franchisee collects the contents of a receptacle under these circumstances Franchisee will apply the procedures in Section 20 of this Franchise as applicable, and will also report the violation to the City Manager or his/her designee as part of the

~~Franchisee's quarterly report required under Section 14(1) of this Franchise, but the name and address of the customer will be reported to the Director City Manager or his/her designee.~~

- b. The Franchisee shall transport all properly prepared and collected Yard Debris materials to a state approved processor of Franchisees choosing. The Franchisee shall not deliver or cause the delivery of any collected Yard Debris materials for disposal as garbage Solid Waste unless the Yard Debris materials are improperly prepared and the Franchisee has received approval of the Director City Manager or his/her designee. The Franchisee should not collect Yard Debris that is visibly-improperly prepared at the time of Collection.

16. Provide the opportunity for Collection Service for other properly prepared Solid Waste materials as defined and provided for in this franchise for all persons within the City. ~~Other solid waste materials include white goods, bulky waste, tires, and medical and infectious waste.~~

- a. Tires. The Franchisee shall acquire all necessary permits from the Department of Environmental Quality for the storage and transportation of tires.

- ~~b. Medical and Infectious waste. The Franchisee may provide for collection of medical and infectious wastes or may subcontract with other companies for this service. In either case, the Franchisee and his/her subcontractors shall conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transportation, storage, treatment, and disposal of medical and infectious wastes.~~

- ~~c. b. Other solid waste materials shall be collected on a day as agreed upon between the customer and the Franchisee and within seven working days of their request.~~

17. Pick up all Solid Waste and Recyclable Material material blown, littered, broken, or leaked during the course of Collection.

18. Be responsible for scheduling all Solid Waste, Recyclable Materials, and Yard Debris Collection Services.

- a. The regular collection frequency for Residential Solid Waste, Recyclable Materials, and Yard Debris Collection Service shall be weekly and on the same day, except for materials defined as Bulky Wastes, unless a customer subscribes to monthly service.

- b. The collection frequency for Commercial and Multifamily Solid Waste Collection Service shall be at a frequency that is mutually agreed-upon between the Franchisee and the Customer. The collection frequency for Drop Box Compactors may reach but not exceed one collection be up to, but not exceeding, every 14 fourteen days. Collection of Recyclable Materials will occur weekly but may occur less frequently than weekly if agreed upon by the Franchisee and the customer. The Franchisee shall provide occasional or special collection of Solid Waste, Recyclable Materials, or Yard Debris on request by the Customer at a fee approved by the City for such collections.

19. Collect from Residential Customers occasional extra receptacles of Solid Waste or Yard Debris set at the curb as an "extra" beyond a Customer's subscribed service level. The Franchisee may charge the fee established by the City for such "extras", except in cases of missed collections that are the fault of the Franchisee. The Franchisee may require a customer to give 24 hours prior notification of an extra set out that would require extraordinary time, labor, or equipment, or if the Customer has a record of non-payment of charges for extras.

SECTION 9. Franchisee Customer Service Requirements

The Franchisee shall:

1. Respond within 24 hours or by the next business day to customer telephone calls and complaints unless prevented by Force Majeure. Both office and on-route staff shall be knowledgeable and courteous in answering customer information requests and resolving customer complaints regarding Collection Services for Solid Waste, Recyclable Materials, or Yard Debris services.
2. Maintain a written log and respond in writing to any written questions or complaints within three working days (weekends and holidays excluded).
3. Provide telephone service so that the Franchisee may be reached by Customers from 8:00 a.m. to 5:00 p.m. daily (weekends and holidays excluded). Franchisee will also provide a means for callers to leave telephone messages, and will return such calls within one working day.
4. Provide notification to new Residential Customers. At the time a new customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the Customer of the following:
 - a. Service level options and rates;
 - b. Billing procedures;
 - c. Issuance of Roll Carts and glass recycling bins;
 - d. The Yard Debris exemption program; and
 - e. Restrictions on the storage of putrescible materials for subscribers to monthly garbage collection.

Additionally, the Franchisee shall provide City-approved written informational materials to all new Customers within seven days of sign up. These materials will include information on Solid Waste, Recyclable Materials, and Yard Debris Collection Service options; rates for these services, including an explanation of extra charges; listing of the Recyclable Materials collected; the collection schedule of collection; the proper method of preparing materials for Collection; and the reasons that people should recycle. Customers shall also be given written notice of any changes in services.

5. Provide notification to new Multifamily Customers. At the time a new Multifamily Customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the customer of:

- a. Service level options and rates;
- b. Billing procedures;
- c. State of Oregon requirements that all tenants be provided the opportunity to recycle four or more materials; and
- d. The availability of Yard Debris collection service.

Additionally, ~~t~~The Franchisee shall provide City-approved written information on the proper preparation of Recyclable Materials to all new Multifamily Customers within seven days of sign up.

6. Provide notification to new Commercial Customers. At the time the new Commercial Customer contacts the Franchisee to request start-up of Collection Service the Franchisee will inform the customer of:
 - a. Service level options and rates;
 - b. Billing procedures;
 - c. The availability of Collection of Recyclable Materials;
 - d. The availability of Yard Debris Collection Service; and
 - e. The availability and benefits of waste evaluations. The Franchisee will also provide this information to each existing Commercial Customer when any change in level or type of service is made to that customer.

Additionally, the Franchisee shall provide City-approved written information on the proper preparation of recyclable material to all new commercial customers within seven days of sign up.

SECTION 10. Missed Collection.

1. The Franchisee shall respond promptly to reports of missed collections. A complaint of missed collection service received by the Franchisee from a customer or the City that is not due to the late or improper set-out by the customer shall be remedied by collecting the material at no extra charge:
 - a. By 5:00 p.m. of the same day if the report is received prior to 12:00 noon on the normal collection day; or
 - b. Within 24 hours (excluding Saturdays, Sundays, and holidays) if notification is received after 12:00 noon on the normal day of collection; or
 - c. At another time if mutually agreed upon by the Franchisee and the Customer.
2. When a missed collection occurs due to improper or late set out by the Customer, this must be documented by the Franchisee through a verifiable means such as maintaining a log book for set-outs or annotating the time and status on the route sheet, and in the case of improper set-out, by leaving a notice.
3. The Franchisee shall pick up collections missed due to hazardous weather conditions as weather and road conditions permit, or the customer may set out the missed collection;

at no additional charge provided it does not exceed double the subscribed service level, on the subsequent regular collection day. The Franchisee must notify the City immediately of missed collections due to hazardous weather conditions.

SECTION 11. Refusal of Collection Service.

1. The Franchisee may refuse Collection Service when there is a hazardous condition that creates undue hazard or risk to the person providing service, Franchisee's collection vehicles and equipment, private property, or the public. Hazardous conditions may include overhanging branches, steep slopes, unusual topography, wet or icy ground or pavement, vicious animals, low hanging wires or basketball nets, poor access to the point of collection, or locations where the weight of the collection vehicle or equipment would damage private roads, driveways, or bridges. The Franchisee must make a reasonable effort to notify the Customer of the reason for refusal on the same day such refusal occurs. If the Franchisee is unable to notify the Customer on the same day, the Franchisee shall send written notice of the reason for refusal of service to the Customer that same day. If hazardous conditions occur as identified above, and the Franchisee determines that Collection Service shall not occur that day, the Franchisee shall notify the City immediately, and provide a person to receive Customer inquiries on the day of canceled service or, at a minimum, leave a recorded message stating the revised collection schedule. If more than one collection day is affected, the above procedures will be repeated.
2. The Franchisee may refuse Collection Service when the preparation of Solid Waste, Recyclable Materials, or Yard Debris does not satisfy the requirements of this franchise.
3. The Franchisee may refuse Collection Service for a Receptacle that is over the weight limits listed in Sections 16, 19, and 22 of this Franchise. ~~in this for the franchise (Section 16 of this Agreement).~~ When a Receptacle is overweight, it is the Customer's responsibility to separate materials into additional Receptacles / containers to comply with weight requirements. If the Customer requests, the Franchisee must provide the actual weight of the overweight receptacle by 5:00 p.m. on the business day following the request.
4. The Franchisee may refuse Collection Service when a Receptacle is in a location that does not satisfy the requirements of this franchise.
5. The Franchisee shall leave a written notice at the time of non-collection when it refuses Collection Service as allowed in this franchise. The written notice shall describe the specific reason for refusing service, the actions needed to resume service, and the pick-up options for the materials not collected. The Franchisee shall leave the notice securely attached to the Customer's Receptacle or to the Customer's front door at the time of the refused service. The Franchisee shall document the date, time and reason for refusal of any Collection Service.
6. When there is a refusal to collect materials, the Franchisee will provide collection of double the customer's subscribed service level volume of properly prepared materials at no additional cost, on the subsequent regular collection day.

SECTION 12. System and Equipment Requirements

1. All Solid Waste, Recyclable Materials, and Yard Debris collection vehicles shall be constructed, loaded, operated, and maintained in a manner to reduce to the greatest extent practicable, the dropping, leaking, blowing, sifting, or escaping of Solid Waste, Recyclable Materials, or Yard Debris, vehicle fuel, hydraulic fluid or lubricants from the vehicle onto private property and public streets while stationary or in transit. ~~excepting a normal leakage of fuel, hydraulic fluid, or lubricants typically associated with a properly maintained vehicle.~~ The Franchisee shall make a reasonable effort to clean up all dropped, leaked, blown, or escaped Solid Waste, Recyclable Materials, or Yard Debris, spilled vehicle fuel, hydraulic fluid or lubricants as soon as practicable. The Franchisee will immediately notify the City of all significant vehicle fluid spills.
2. All open-body vehicles shall have a cover which may either be an integral part of the vehicle or a separate cover for the vehicle. This cover shall be used while in transit ~~except, except~~ when during the loading or transportation of Bulky Wastes prevents safe use of this cover.
3. The Franchisee shall ensure that all Solid Waste, Recyclable Materials, and Yard Debris collection vehicles bear a Metro identification tag ~~are and are~~ clearly identified with ~~by displaying~~ the Franchisee's name and telephone number prominently and conspicuously displayed on both sides of the vehicle.
4. The Franchisee shall ensure that all of its containers, drop boxes, and compactors are clearly identified by displaying the ~~f~~ Franchisee's name and telephone number prominently and conspicuously.
5. The Franchisee shall comply with all applicable federal, state and local laws and regulations relating to driving, transportation, collection, disposal and processing of solid waste, recyclable materials, and yard debris. Franchisee will report all vehicle accidents or infractions within the City to the Director City Manager or his/her designee within the 24 hours of occurrence.

SECTION 13. Billing Procedures.

1. The Franchisee may invoice bill customers either once per month or once every two months but shall not invoice bill more than sixty days in advance of the service. Customer payments shall not be due more than thirty-one days before the end of the service' period being billed, nor less than fourteen days after the date of the postmark on the invoice billing. The Franchisee may require payment at time of service for services requested by customers that are less frequent than monthly. The Franchisee may also require payment at time of service from customers whose accounts are overdue or who have demonstrated a pattern of late or non-payment.
2. The Franchisee shall give a partial vacation credit to customers who stop service for a minimum period of two consecutive weeks and up to three consecutive weeks, and a full vacation credit to customers who stop service for a minimum period of four consecutive weeks. The Franchisee will calculate and administer vacation credits according to a formula established by the Franchisee and approved by the City. The vacation credit formula must be reviewed and approved by the City prior to implementation.

3. The Franchisee shall provide new Customers with a copy of the billing procedures and shall give the procedures to any Customer upon request. If the Franchisee or Customer determines that there is an error on the invoice an error in billing has occurred, the Customer's account shall be debited or credited for the under billed or overbilled amount if the billing error occurred one year or less prior to the date the error was discovered.

SECTION 14. Reporting and Record Maintenance.

The Franchisee shall provide to the City:

1. A monthly report listing: the quantities of recyclable materials collected from Troutdale customers during the previous calendar month; the amount of locations to which these materials were delivered for processing or remanufacturing; and other information as requested. The report shall be submitted on a form approved by the City and shall be submitted within 30 days of the last day of the month.
2. ~~A quarterly report listing the names and addresses of Commercial Customers that were offered waste evaluations during the reported month and that received waste evaluations from the Franchisee during the reported months. The report shall be submitted on a form approved by the City and shall be submitted within 30 days following the end of the calendar quarter.~~
- 3.2. ~~A quarterly report providing Residential service and revenue information, Commercial service and revenue information, Drop Box service and revenue information, tonnage data, driver hour data, recycling data, and other relevant information for Collection Service within the City as requested by the Director City Manager or his/her designee. for Troutdale and all other operations within the Portland hauling district. The report shall be submitted in a format approved by the City Director City Manager or his/her designee and shall be submitted within 45 days following the end of the calendar quarter.~~
- 4.3. ~~The annual detailed cost report detailing for collection operations within the City or other location in the Portland hauling district for the calendar year. The report details the total revenues, total costs, driver hour and customer count information, disposal information, container counts, a recycling summary, the value received or cost paid per ton for the Recyclable Materials, and other relevant information necessary to determine if the collection rates provide the Franchisee and adequate Operating Margin (Section 7) as requested for Troutdale and all other operations within the Portland hauling district. This report shall be submitted in a format approved by the Director City Manager or his/her designee City and shall be submitted within 90 days following the end of the calendar year.~~
4. Other reports as required by the City.
5. The City has the authority to commission audits, reviews, or analysis of reports submitted by the Franchisee to validate the accuracy of the submissions.
6. Franchisee will prepare and maintain all records at Franchisee office during the Term and for an additional period of
 - a. Not less than 3 years following the expiration or termination of the Agreement; or

- b. The period of time necessary to allow the City to complete a review, audit or inspection in accordance with this Section, or
a.c. Any longer period required by Applicable Law- whichever is longer. Franchisee will prepare and maintain records in electronic format acceptable to City, such as Microsoft Excel files or PDF files. Franchisee will use Reasonable Business Efforts to promptly provide City with any additional records or other information relevant to this Agreement.

SECTION 15. Roll Carts and Other Receptacles.

1. Franchisee shall provide 20, 35, 60 or 90 gallon Roll Carts to all Customers of Solid Waste, 35 or 60 gallon Roll Carts for Recyclable Materials, and 60 gallon Roll Carts for Yard Debris Collection Services, which Customers shall be required to use as their primary Receptacles. The default roll cart size for Recyclable Materials and Yard Debris shall be 60 gallons; however, Customers may request and receive a smaller 35 gallon cart with no reduction to the base service rate. The Roll Carts shall be color coordinated by the type of service being provided (e.g., green body with yellow lid for recyclables, green body and green lid for solid waste, etc.) as mutually agreed upon by the Franchisee and the City. All Solid Waste and recycling Roll Carts shall be equipped with a bungee cord or other lid device, to help secure the cart lid and reduce litter potential. Franchisee may charge customers an additional fee for Roll Cart repair or replacement due to lost carts or damage beyond ordinary wear and tear attributable to the customer.
2. The Franchisee shall provide all Receptacles that are mechanically collected, except that a Commercial Customer may arrange with the Franchisee to provide a Compactor. A Commercial or Multifamily Customer may provide its own mechanically collected receptacles subject to compatibility with the Franchisee's equipment and the Receptacle requirements of this franchise. All Compactors shall comply with applicable federal and safety regulations and shall be compatible with the Franchisee's equipment.
3. The Franchisee shall provide a recycling Roll Cart (and a separate recycling bin for glass) to each Residential Customer and other Customers as agreed to between the City and the Franchisee.
4. In the event that a Customer damages a cart or requests more than one replacement cart more frequently than a time period allowing for reasonable wear and tear during the term of the Agreement, or due to negligence or intentional misuse, a rReplacement Roll Cart(s) or bins shall be provided to the Customer for an amount equal to the cost incurred by the Franchisee to purchase such carts or bins.
- 4.5. In the case of carts or bins missing when a customer has moved out of premises served by Franchisee, the Franchisee may bill suchthe-old customer for the replacement cost or require that the carts or bins be returned to the service address.
- 5.6. Receptacles provided by the Franchisee or customer shall be designed for safe handling, non-absorbent, vector resistant, durable, leak-proof, and, except for drop boxes and glass recycling bins, provided with tight fitting watertight lids or covers that can be readily removed or opened. Receptacles must remain watertight and free of holes throughout their period of use.

- 6-7. ~~Customers must~~ shall be required to use Franchisee provided Roll Carts as their primary Receptacle, but may use their own cans or bins as supplementary receptacles (subject to extra charges). The Franchisee shall take care not to damage receptacles.
- 7-8. The customer shall ensure that Household Hazardous Waste materials, chemicals, paint, corrosive materials, medical and Infectious Waste, or hot ashes are not put into a can, cart, container, or drop box. The Franchisee may invoice bill a customer for the cost to repair or replace a receptacle owned by the Franchisee when the customer does not take reasonable care to prevent abuse, fire damage, vandalism, excessive wear, or other damage to the receptacle.
- 8-9. The Franchisee shall leave emptied receptacles in a location that does not obstruct mailboxes, the sidewalk, fire hydrant, or impede traffic flow or on-street parking. The Franchisee is responsible for closing Receptacles as securely as possible to prevent lids from blowing away or rain from getting into the Receptacles. The Franchisee shall secure Receptacles in the same manner as the customer secured the Receptacle to prevent Receptacles from blowing away. All garbage and recyclables Roll Carts shall include a Franchisee provided bungee cord or other lid device to help secure such roll carts. When possible, the Franchisee shall place drop boxes on private property locations.
- 9-10. The Franchisee is not required to remove Customer owned receptacles from an in-ground or "sunken" location.
- 10-11. The Customer shall remove each emptied Receptacle from the set out location and return the Receptacles to the Customer's yard or storage area within 24 hours of collection.
- 11-12. Receptacles provided by the Franchisee are the property of the Franchisee. The Customer shall leave the Franchisee's receptacles at the service address when the Customer moves. Any receptacles for the collection of extras provided by the Customer are the property of the Customer.

SECTION 16. Public Responsibility.

1. The following requirements shall pertain to service under this franchise:
 - a. All Residential, Multifamily and Commercial properties in the City shall provide for collection of Solid Waste, Recyclable Materials, and Yard Debris in accordance with this franchise and may not utilize the services of a collector other than the Franchisee for the collection of Solid Waste, Recyclable Materials, or Yard Debris unless authorized under Section 4 of this Agreement.~~this franchise.~~
 - b. The owner of any Residential or Multifamily dwelling complex who rents, leases or lets dwelling units for human habitation shall subscribe to and pay for Collection Service with the Franchisee on behalf of his/her tenants or, if the dwelling complex has four or fewer units, self-haul Solid Waste from tenants to a Metro approved disposal facility; and provide a sufficient number of Receptacles of adequate size to prevent the overflow of Solid Waste,

Recyclable Materials, and Yard Debris from occurring; and provide for sufficiently frequent, but at least weekly, collection of Solid Waste and Recyclable Materials, except for Compactors, which shall be collected at least every 14 fourteen days; and if the dwelling has four or fewer units and the owner is self-hauling tenants' Solid Waste, provide for the same level and frequency of collection of ~~source-separated or commingled~~ Recyclable Materials and yard debris as is required of the Franchisee. The owner is responsible to provide proof of compliance with this requirement upon request of the City.

- c. No 35 gallon garbage Roll Cart shall weigh more than 60 pounds (gross) loaded weight and no 60 gallon garbage roll cart shall weigh more than 120 pounds (gross) loaded weight. No Customer provided can used for extra collections shall exceed 32 gallons in size and weigh more than 60 pounds. Cans for extras shall be tapered so that they are larger at the top and shall have handles at the top and a place for a handhold at the bottom as well as a lid.
 - d. Sunken refuse cans carts shall not be installed and will not be serviced by Franchisee unless they are placed above ground-by the Customer.
 - e. The Customer user shall provide safe access to the pick-up point which does not jeopardize the persons or equipment supplying service or the motoring public.
2. To protect the privacy, safety, pets, and security of Customers and to prevent unnecessary physical and legal risk to the collectors, a Residential Customer shall place the Roll Cart to be emptied outside any closed gate or outside any garage or other building. The Receptacle shall also be placed in a location that does not obstruct mailboxes, water meters, the sidewalk, fire hydrants, driveways, or impede traffic flow or on-street parking. The Customer shall provide for reasonable vertical clearance for Receptacles picked up away from the Curbside or roadside.
- a. Residential customers must place Receptacles at the Curbside unless the Customer subscribes to Off-Curb Collection Service. Special placement arrangements for mobility impaired Customers, or those whose lots are not physically configured to allow Curbside placement, may be made by agreement between a the Customer and the Franchisee.
 - b. Multifamily and Commercial Customers shall set Solid Waste, Recyclable Materials, and Yard Debris Receptacles at a location that is readily accessible and safe to empty or load, that does not require the Franchisee to go up and down stairs, and that is agreed-upon by the Franchisee and the Customer. The owner of any Multifamily complex with five or more dwelling units shall provide tenants with separate location(s) for receptacles or Depots for the collection of four or more types of Recyclable Materials and must provide a sufficient number of collection areas to accommodate the reasonable needs of the Generators for which the owner is responsible.

- c. The Customer shall place Roll Carts at the Curbside or roadside or at such other location agreed-upon by the Customer and their Franchisee.
 - d. When possible, the customer should arrange for Drop Boxes to be placed on private property locations.
 - e. The customer shall place Compactors at a location that protects the privacy, safety, and security of the Customers that provides access needed to prevent unnecessary physical and legal risk to the Franchisee and that is agreed-upon by the Customer and the Franchisee.
3. Any Person who receives service shall be responsible for payment for said services.
4. The Customer is responsible for proper placement of Solid Waste, Recyclable Materials, and Yard Debris receptacles by 6:00 a.m. on the Customer's designated collection day.
5. A Customer may not deduct the cost of past unreported missed collections from the Customer's ~~service bills~~invoices.
6. The Customer is responsible for requesting a vacation credit from the Franchisee. The Customer may request a vacation credit to stop service for a minimum period of two consecutive weeks and must give at least 48 hours advance notice to the Franchisee of the request for service suspension.
7. Putrescible solid waste shall be removed from the premises of a Customer at regular intervals not to exceed 7 days. An exemption may be made to this rule for the storage of putrescible materials in a Compactor that is totally sealed, non-leaking and non-odorous. Putrescible waste stored in such a Compactor may be stored for no more than 14 ~~fourteen~~ days.
8. Stationary Compactors for handling Solid Waste shall comply with applicable federal and state safety regulations. No such Compactor shall be loaded so as to exceed the safe loading design limit or operation limit or weight limit of the collection vehicles used by the Franchisee. A Person who wishes services for a Compactor shall acquire a Compactor approved by the Franchisee which is compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire and shall provide the Franchisee with a key to access and transport such Compactor.
9. When ~~materials or Customer abuse, fire,~~ the nature of discarded materials, or vandalism causes excessive wear or damage to a Roll Cart, Container or Drop Box, the cost of repair or replacement may be charged to the Customer. The Customer shall take appropriate actions to ensure that ~~the~~ Hazardous Waste materials, chemicals, paint, corrosive materials, Infectious Waste or hot ashes are not put into a roll cart, ~~or~~ container, or drop box.
10. The Customer shall promptly notify the Franchisee about a missed collection or billing error.

SECTION 17. General Customer Preparation of Materials.

1. The Customer shall place Solid Waste, Recyclable Materials and Yard Debris safely and securely in the Receptacles to prevent lightweight materials from blowing away prior to being collected.
2. All loose and lightweight waste items capable of becoming wind-blown debris shall be placed in a bag so as to prevent this occurrence. If waste materials are not secured in bags and the items become wind-blown debris prior to collection, the Customer may be charged the cost to clean up the preventable spill.
3. The Customer shall load the contents of a Receptacle in such a manner that the contents fall freely from the Receptacle when emptied by the Franchisee. The Franchisee shall not be responsible for digging the contents out of a Receptacle.
4. The Customer shall not overfill a Roll Cart or Container so that the lid cannot be securely closed. The Customer is responsible for closing and latching the Receptacle as securely as possible to prevent the lid or materials from blowing away or rain from getting into the Receptacle.
5. The eCustomer shall bag cold ashes, animal wastes, kitty litter and other fine materials separately from other Solid Waste. The Customer may dispose of these materials in the Solid Waste Receptacle.

SECTION 18. Customer Preparation of Recyclable Materials.

1. Recyclables from Commercial and Multifamily customers shall be prepared in accordance with City-approved instructions provided by the Franchisee.
2. ~~The Residential Customers~~ may include the following Recyclable Materials Commingled in recycling Roll Carts and shall prepare these materials as generally outlined below and in alignment with the proper sorting requirements as agreed upon between the City and the Franchisee per the current material list of local processors:

Aerosol Cans. Cans must be completely empty. Do not crush or flatten. Remove all paper labels and plastic lids. Leave the nozzle buttons in place.

Aluminum. Include aluminum cans, aluminum foil and food trays. Remove all organic material.

Plastic Bottles and Jugs. Include plastic bottles (type 1-7) with a neck smaller than the base. Remove lids, caps, and pumps, rinse out, and flatten. Do not include bags, motor oil, pesticides or other hazardous material bottles.

Scrap Metal. Limit any single piece of metal to 30 inches in any direction and 30 pounds.

Do not include appliances, car parts, bicycles, or lead batteries.

Fiber. Includes office paper, scrap paper (opened unwanted mail, envelopes, paper egg cartons, cereal and shoe boxes, post-its, wrapping paper, etc.), newspaper, magazines brown paper bags, and corrugated cardboard that is flattened and not larger than 36 inches in any direction. Do not include foil, waxy or plastic paper, or food contaminated paper.

Steel (tin) cans. Remove labels and rinse. May include steel can ends and jar/bottles lids.

Plastic tubs. Includes plastic tubs 6 oz. or larger, buckets (5 gallons or less), and rigid nursery pots (4 inches or larger).

In addition, the following materials shall be prepared and collected separately:

Glass bottles and jars. Remove lids and rinse containers. Do not include broken glass, drinking glasses, cooking ware, plate glass, safety glass, light bulbs, ceramics, and non-glass materials. Glass bottles and jars shall be source separated by the customer in glass recycling bins.

Motor oil. Place in a clear leak proof, unbreakable plastic container of not more than one gallon each with a screw on cap. Do not include other fluids.

SECTION 19. Customer Preparation of Yard Debris Materials.

1. The Customer may place Yard Debris in 60 gallon Roll Carts provided by Franchisee. Any excess Yard Debris that does not fit within the closed lid of the Yard Debris Roll Cart may be set alongside such cart in 32 gallon cans; in "kraft" type yard debris paper bags, or in bundles, and shall be assessed an extra charge, based on fees established by the City, and such excess Yard Debris shall only be collected if properly prepared. . The Customer must securely tie bundles with string or twine to support the bundle when lifted. Bundles may be no greater than 48 inches in length and 18 inches in diameter. The Customer shall not use plastic bags to contain Yard Debris for Collection.
2. The Customer is responsible for including only those materials that meet the definition of Yard Debris provided in Section 3 of this Agreementfranchise. "~~Yard Debris~~" means ~~materials that include clippings, leaves, prunings of no greater than 4 inches in diameter and 48 inches in length and other similar vegetative waste generated from landscaping activities, but does not include sod, stumps, or similar bulky wood materials, rock, or dirt.~~
3. The Customer shall limit the weight of a Receptacle and its contents to the maximum weights listed as follows:

Receptacle Type / Capacity	Maximum Weight
60 gallon roll cart	120 pounds
Bundled yard debris	60 pounds
"kraft" paper bag (30-gallon)	45 pounds
32-gallon can	60 pounds

4. The Customer is responsible to mark all rigid Yard Debris Receptacles for excess material with a "yard debris only" sticker provided by the Franchisee. The "yard debris only" sticker needs to be clearly visible from the street. Kraft bBags containing Yard Debris must be clearly identifiable as such from the street.

SECTION 20. Yard Debris Exemption Program

1. Residential Customers may request exemption from curbside Yard Debris Collection Service if they compost or use their Yard Debris for on-site land application, or retain a person that (a) hauls their Yard Debris to a state approved processor and (b) is licensed to conduct business within the City. Customers approved for this exemption will -have the monthly cost of providing Yard Debris Collection deducted from their invoices bills and must comply with all terms of the Yard Debris Collection exemption program agreement. A Residential Customer interested in receiving an exemption from Yard Debris Collection Service must request and submit a completed application to the Franchisee.
2. A Customer will remain exempt from Yard Debris Collection Service and the accompanying charges unless he/she receives a notice of disqualification, discontinues Collection Service or voluntarily reinstates curbside collection of Yard Debris.
3. If a Customer is found in violation of the Yard Debris Collection exemption agreement, the Franchisee will issue written warning and an explanation of the violation to the Customer. If a Customer is found in violation for a second time, the Franchisee will issue a notice of disqualification from the yard debris collection exemption program and reinstate curbside collection of yard debris and the associated charges.

SECTION 21. Other Solid Waste (Customer).

1. The Customer shall set other Solid Waste materials-out at the time and location agreed upon with the Franchisee.
2. The Customer shall place medical and Infectious Wastes in appropriate Receptacles. The Customer shall not place medical and Infectious Waste materials into a Receptacle for Collection with Solid Waste, Recyclable Materials, or Yard Debris-materials. The Customer should contact the Franchisee for information on proper disposal options.
3. The Customer is responsible to prepare other wastes as agreed-upon with the Franchisee.

SECTION 22. Allowed Weight of Receptacles.

1. The Customer shall limit the weight of a Solid Waste Receptacle and its contents to the maximum weights listed as follows:

Receptacle Type / Capacity	Maximum Weight
20 gallon roll cart	35 pounds
32 gallon can (for extras)	60 pounds
35 gallon roll cart	60 pounds
60 gallon roll cart	120 pounds
90 gallon roll cart	145 pounds

2. The weight of material put into a Container or Drop Box, whether compacted or not, shall not exceed the lifting capacity of the Franchisee's equipment nor shall the weight put the Franchisee over the weight limit for the loaded vehicle. The Franchisee shall furnish their customers with information concerning limitations on their equipment, upon request. A Franchisee is not required to collect Containers exceeding 300-350 pounds gross loaded contents per loose cubic yard; but if an overweight container is collected, the Franchisee may charge the compacted rate, as set forth in the adopted rate schedule. If Drop Boxes are overloaded to exceed the weight limit for a loaded vehicle, the Customer shall be charged for any fine resulting from overweight ticket.

SECTION 23. Transfer, Suspension, Modification, or Termination of Franchise

1. The Franchisee shall not transfer this franchise or any portion thereof without the prior written approval of the City Council, but such consent shall not be unreasonably withheld. The City Council in reaching its decision may consider, among other factors, whether the transferee meets all applicable requirements met by the original Franchisee. Any transfer without the prior written consent shall be void and shall be grounds for termination of this franchise.
2. The Franchisee shall not discontinue or terminate service to the City without approval of the Council. Council approval is contingent upon arrangements being made to ensure that there is no interruption of service between the time of the Franchisee's scheduled service termination date and the date of service start-up by a replacement Franchisee. Council approval must be received not less than 90 days before termination of service. Upon approval of the Council, the Franchisee must give at least 60 days notice of the service discontinuation to the affected Customers along with information of the new service provider.
3. If the Franchisee fails to comply with the terms of this Franchise; ORS Chapter 459 and 459A or the rules and regulations promulgated thereunder; other applicable ordinances of the City; or is unable to provide adequate service, the City shall provide the Franchisee with written notice of such noncompliance. After receiving the aforementioned written notice from the City, the Franchisee shall have 30 days from the date of mailing of the notice in which to comply. The Franchisee may request a public hearing before the City Council if the Franchisee makes such a request within ten days from the mailing date of written notice from the City. In the event of a public hearing the Franchisee and other interested Persons shall have an opportunity to present information and testimony subject to procedures established by the City Council. Failure to comply with written notice from the City to provide necessary service or otherwise comply with the provisions of this franchise after written notice and a 30 day opportunity to comply shall be grounds for modification, termination, or suspension of the franchise.

SECTION 24. Preventing Interruption of Service

In the event the City Council finds an immediate and serious danger to the public, creating a health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to the Franchisee, authorize another person to temporarily provide service under this

Franchise, or the City may provide such service. In either event, the Franchisee agrees as a condition to the franchise that any of his/her real property, facilities, or equipment may be used without additional consideration to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of the service.

SECTION 25. Interruption or Termination of Service

The Franchisee shall not terminate Solid Waste, Recyclable Material, ~~ing~~ or Yard Debris Collection Service to ~~a all or a portion of its~~ Customer unless:

1. The street or road access is unavoidably blocked through no fault of the Franchisee, and if there is no reasonable alternate route or routes to serve all or a portion of the affected Customers; or
2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service, or if such interruption or termination is caused by a Force Majeure; or
3. An undisputed bill has not been paid by a Customer for services rendered within ~~30~~ 60 days of the billing due date. In such case, the Franchisee may terminate service after notifying the customer in writing of the intention to terminate service, postmarked not less than seven (7) days prior to the date of intended termination of service. The Franchisee shall not take any action to collect any portion of an unpaid bill subject to a dispute or terminate service for an unpaid bill subject to a dispute until there is resolution of the dispute. The Franchisee shall have a City-approved written policy for resolving disputed billings. The Franchisee must provide a copy of the disputed billing policy to the City for review and approval prior to implementation; or
4. If the provisions of Section 11 are met.

SECTION 26. Subcontracts.

The Franchisee may subcontract with others to provide only a specialized service under this franchise. Such subcontracts shall not relieve the Franchisee of any responsibility for compliance with this franchise. ~~All~~ No such subcontracts is enforceable without prior ~~are~~ subject to the written approval by the City.

SECTION 27. Specialized Services.

The City reserves the right to contract with others to supply specialized service to recycle materials if the Franchisee chooses not to recycle such materials or supply services for such materials to be recycled.

SECTION 28. Amendments Clause.

This franchise may only be amended by written agreement between City Council and the Franchisee.

SECTION 29. Compliance with Applicable Law

1. Compliance. Franchisee will comply with all applicable laws. No obligation in this Agreement will be construed to relieve the Franchisee of any obligations imposed by applicable law.
2. Franchisee is solely liable for all fines and penalties that may be imposed on Franchisee or may be due to Franchisee's actions, including fines and penalties that are the result of Franchisee's violation of applicable law (including permits). Franchisee will not seek direct or indirect reimbursement from City or Customers for any fines or penalties.
3. Provisions of applicable law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to City.
- 4.4. Franchisee acknowledges that City is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Management services to protect the public's health, safety, and welfare. No provision in this Agreement may be deemed to limit the power of City to regulate the Franchisee or to take any action as City deems appropriate or necessary in City's sole and absolute discretion, under City's police power, including to protect the public's safety, health and welfare.

SECTION 30. Insurance

Franchisee must provide the following insurance coverages's Indemnities, including any necessary endorsement, schedule or other documentation, and maintain them at all times during the Term.:

1. General Liability Insurance. Written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with limits of not less than the following:

<u>General Aggregate:</u>	<u>\$4 million</u>
<u>Products/Completion Operations Aggregate:</u>	<u>\$4 million</u>
<u>Personal and Advertising Injury:</u>	<u>\$1 million</u>
<u>Each Occurrence:</u>	<u>\$2 million</u>
2. Liability coverage for pollution conditions resulting from transported cargo. With a limit of not less than \$2 million per occurrence covering loss (including cleanup costs) that the Franchisee becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, City or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. Franchisee's general liability policy may be endorsed to provide for this pollution liability coverage.
3. Automobile Liability Coverage. Insurance meeting the following requirements:

- a. Written on ISO policy forms CA 00 12 or CA 00 20 (or their equivalent) with a limit of liability not less than \$2 million for each accident.
- b. Endorsed to delete the pollution and/or the asbestos exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and
- c. Covering all collection vehicles that drive on public roads.
4. If Franchisee is subject to federal regulations, Franchisee also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.
5. Workers' Compensation and Employers' Liability. Insurance providing the following:
 - a. Workers' compensation benefits required by Applicable Law (including the State Labor Code or by any other state labor law), and for which Franchisee is responsible, and
 - b. Employers' Liability coverage with limits of not less than the following:
 - (1) Each accident: \$2 million
6. Insurer qualifications. Franchisee will secure insurance provided by an insurer meeting the following qualifications:
 - (1) is acceptable to City,
 - (2) is an admitted company in Oregon State,
 - (3) has a size category of VII or larger by A.M. Best Company, Inc., and
 - (4) has a rating of A or better by A.M. Best Company, Inc.
7. Evidence of Coverage. Franchisee will provide the certificate of insurance and required endorsements, requested by and acceptable to at City at the following times:
 - (1) on or before the Contract Commencement Date,
 - (2) promptly upon renewal of policies, and
 - (3) within 10 days of City's request.
8. If any Person makes a claim against Franchisee exceeding the amount of any deductibles or self-insured retentions, Franchisee will promptly notify City of the claim.
9. Franchisee will comply with all requirements of its insurance policies and insurers.
10. If any required policy lapses or is cancelled by its carrier, Franchisee must notify City Manager no later than 5:00 pm on the date of such cancellation or lapse, or by 5:00 pm on the date a reasonably careful person would have learned of such cancellation or lapse.
 - a. Lapse of any required coverage is grounds for termination of this Franchise.
 - a.b. Notwithstanding the right to terminate this Franchise, City reserves the right to purchase any coverage required by this Franchise and collect the cost of such coverage from Franchisee as additional franchise fee. Such additional franchise fee will not be recognized as an Allowable Expense.

SECTION 31. Performance

The Franchisee shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument acceptable to and approved in writing by the City in the amount of one hundred thousand dollars (\$100,000). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one (1) year, and the Franchisee shall provide a new bond, letter of credit or similar instrument, and

evidence satisfactory to the City of its renewability, no less than sixty (60) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The City shall have the right to call the bond, letter of credit or other similar instrument in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration.

The security shall guarantee faithful performance of all the obligations contained with this Agreement. The premium for the bond or cost for the letter or similar instrument shall be paid by the Franchisee.

SECTION 32. Indemnity and Hold Harmless.

The Franchisee shall indemnify the City, its officers, employees, and agents, and shall hold them harmless from all loss, damage, claim, expenses, or^l liability arising out of the operation by the Franchisee under its franchise, except to the extent such claims arise from the sole negligence of the City. In the event that any notice of claim, suit, or action is brought for injury or damage to persons or the property against any of the foregoing based upon, or alleged to be based upon, any loss, damage, claim, expense, or liability arising out of the operations of the Franchisee under its franchise, the Franchisee shall defend the same at its own costs and expense; provided, however, that the City reserves their right to retain counsel of its own choosing and join in the defense of any such suit or action with the reasonable cost of such additional counsel to be borne by the Franchisee.

SECTION 33. Franchisee's Service Requirements.

The Franchisee may, subject to review and approval by the City, establish reasonable rules on matters directly affecting the safety of the Franchisee's employees and its ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the Franchisee can comply with disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon or Metro.

SECTION 33. Protection of Containers.

The City agrees that it shall use good faith efforts ~~when~~when adopting an administrative rule or a new provision of the City code which makes it unlawful for any person, other than the Franchisee or the person producing the materials, to interfere with any solid waste container, take recyclable material or any other solid waste set out to be collected from such container, or to remove any such container or its contents without first obtaining written consent from the Franchisee or the person producing the materials. The Franchisee shall have a private right of action to independently enforce the terms of such administrative rule or code provision should it be enacted, against a third party, including a claim for injunctive relief.

SECTION 34. Severability Clause.

Any finding by a court of competent jurisdiction that any portion of this Agreement franchise is unconstitutional or invalid shall not invalidate any other provisions of this franchiseAgreement.

However, in the event of such finding, the City Council may, at its discretion, modify or terminate this franchise Agreement if it determines such act is in the public interest.

SECTION 35. Effective Date.

The terms and provisions of this franchise shall become effective on January 1, 2016.

RESOLUTION NO.

A RESOLUTION APPROVING AN EXCLUSIVE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT OF OREGON TO PROVIDE SOLID WASTE COLLECTION SERVICES WITHIN THE CITY OF TROUTDALE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The current solid waste franchise was authorized on January 1, 2008 and expires on December 31, 2015.
2. Section 8.40.050 of the Troutdale Municipal Code provides that the franchise agreement for solid waste shall be authorized by a resolution of the Council and may, from time to time, be changed by resolution of the Council.
3. The City Council held a work session on April 7, 2015 to discuss the option of conducting a competitive process for the solid waste and recycles services franchise.
4. The City Council found the service level, customer relations, employee relations, community involvement, safety record, and cleanliness of operation of Waste Management of Oregon acceptable and directed staff to renew the franchise agreement with Waste Management of Oregon.
4. The new franchise agreement includes revisions to bring the agreement up to date with changes in the solid waste industry and to meet the needs of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The mayor is authorized to sign the attached exclusive franchise agreement with Waste Management of Oregon for collection services within the City of Troutdale.

Section 2. This resolution is effective immediately upon adoption.

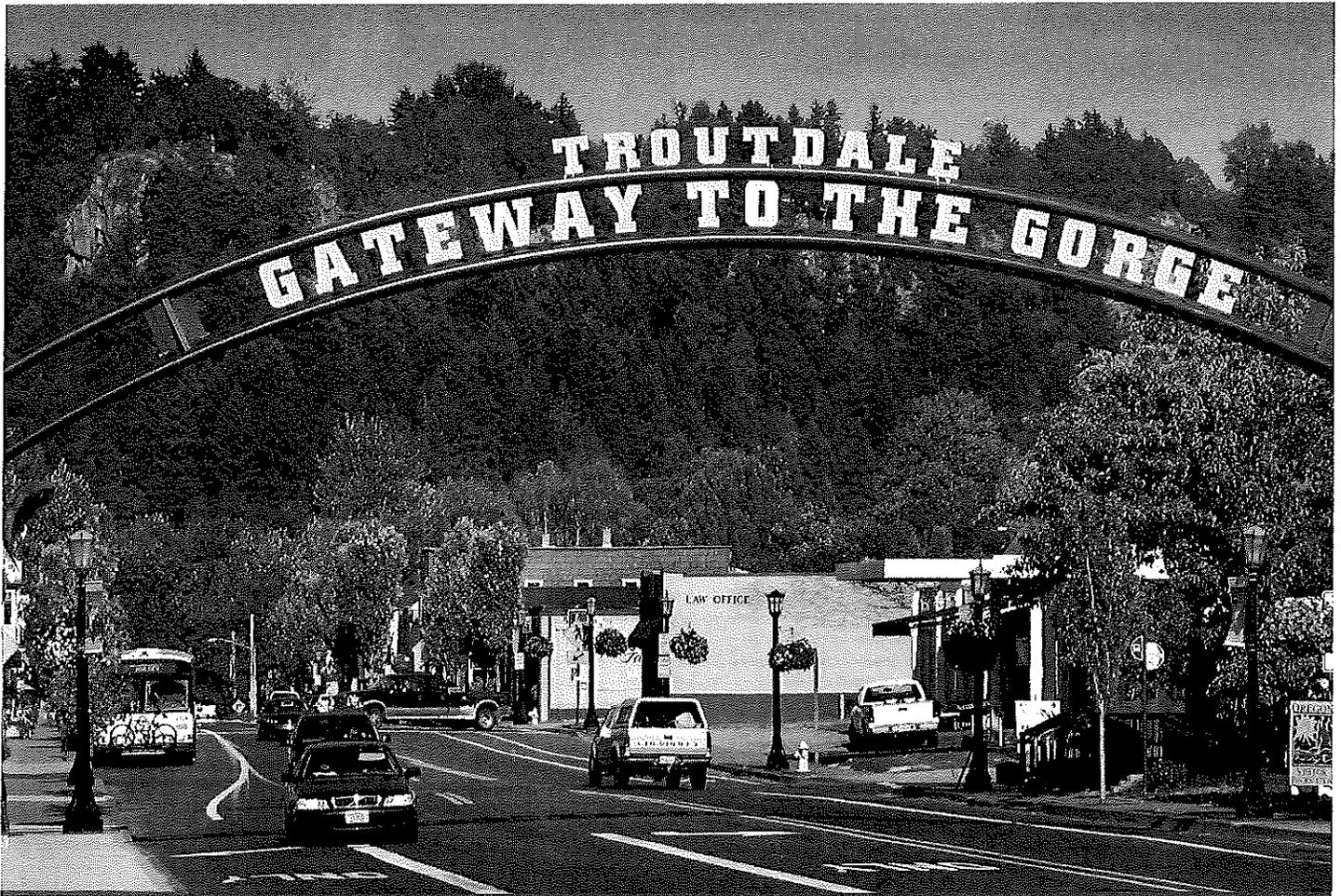
YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date

Sarah Skroch, City Recorder

Adopted:



Exclusive Franchise Agreement
with Waste Management of
Oregon to Provide Solid and
Recycling Collection Services
within the City of Troutdale

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SECTION 1. Short Title.

This franchise agreement shall be known and may be cited as the "Solid Waste Management Franchise Agreement" and referred to herein as the "Franchise".

SECTION 2. Purpose.

The purpose of this franchise shall be to:

1. Ensure safe, economical, and comprehensive Solid Waste and Recycling service;
2. Ensure that rates are just, reasonable, and adequate to provide necessary public service;
3. Prohibit rate preferences and any other practice that might be discriminatory; and
4. Provide for technologically and economically feasible recycling and resource recovery by and through the Franchisee.

SECTION 3. Definitions.

Agreement. Refers to the body of this Franchise Agreement contained in Sections 1 – 35.

Allowable Expenses. Those expenses incurred by the Franchisee in the performance of this Agreement that are allowed by the City as reimbursable by the ratepayer as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis and when applicable, prorated or allocated to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable expenses shall include, but not be limited to the following:

1. The costs of complying with all laws, regulations or orders applicable to the Franchisee's obligations under federal, state or local law, including this ordinance, as now or hereafter amended;
2. Disposal costs;
3. Labor costs, including operational and supervisory labor, payroll taxes workers' compensation, and benefits;
4. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
5. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;
6. Performance bonds and insurance in the amounts and coverages required by the City;
7. Administrative expenses related to data processing, billing and supplies, finance and accounting, franchise administration, human resource and labor management, rate analysis, and regulatory compliance;

8. Compensation paid to officers;
9. Utilities;
10. Training and worker safety expenses;
11. Promotion and public education costs;
12. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and outgoing basis in the provision of services under this franchise over standardized economic useful lives of the various assets.
13. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
14. Interest expense, other than interest paid with respect to route or franchise acquisition that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
15. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
16. Direct write-off charges for bad debts; and
17. Franchise fees assessed by the City.

Bulky Waste. Large items of solid waste such as appliances, furniture, tree branches greater than 4 inches in diameter and 36 inches in length, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

City. City of Troutdale.

Collection or Collection Service. All or any part of the activities involved in collecting and transporting solid waste, recyclable materials or yard debris to an appropriate disposal or recycling facility.

Collection Franchise. A franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service and to use City streets.

Commercial. Stores, offices including manufacturing and industrial offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include business manufacturing or processing activities in residential dwellings.

Compactor. Any self-contained, power-driven, mechanical equipment designed for the containment and compaction of Solid Waste or Recyclable Materials.

Compensation. Includes:

1. Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, and any other direct or indirect provision for the payment of (money, goods) services or benefits by owners, tenants, lessees, occupants, members or similar persons; or
2. The exchange of service between persons; or
3. The flow of consideration from one person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning, possessing, or generating the solid waste.

Construction and Demolition Debris. Used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a city permit has been issued.

Container means a receptacle ranging in volume from 1, 1.5, 2, 3, 4, 5, 6 and 8 cubic yards for the storage and Collection of Solid Waste, Recyclable Materials, or Organic Waste provided by the Franchisee.

Council. The City Council of the City of Troutdale.

Commingled Recycling. The collection of various types of recyclable material in one commingled cart (excluding glass, which shall be collected separately).

Curbside. A location within three (3) feet of the edge of a public street. The street may be a public alley if the Franchisee desires to pick up receptacles from the alley. This does not allow the receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three feet of said road or roads. For residences on a flag lot, or other private driveway, or any private street not meeting the standards, "curbside" shall be the point where the driveway or private street intersects the public street, or at such other location agreed upon between the Franchisee and customer or as determined by the City.

Customer. Those generators of solid waste, recyclable materials, or yard debris to whom a franchisee provides collection service.

Depot. A facility for transferring containerized solid waste, recyclable materials, or yard debris from one mode of transportation to another. The term also refers to a place for receiving source-separated recyclable materials.

Drop Box. A single container designed for the storage and collection of large volumes of solid waste recyclable materials or yard debris materials that is ten cubic yards or larger in size.

Force Majeure. Acts of God, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, embargoes, or acts of civil or military authority, breakage, explosions or accident to machines or other materials, pipelines or materials, governmental restraint, unavailability of a disposal site and any other event which

could not with reasonable diligence be controlled or prevented by the party affected by the event.

Franchisee. The Person granted the exclusive franchise by Section 4 of this franchise or a subcontractor to such person.

Generator. A person who last uses a material and makes it available for disposal or recycling.

Gross Revenue. The gross receipts derived by the franchisee from fees actually collected from customers for Solid Waste, Recyclable Materials, and Yard Debris collection services and other services provided in the City under this Agreement.

Hazardous Waste. A waste as defined in ORS 466.005 (or any successor thereto) and/or solid waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et Seq., and the Hazardous Waste Management Act, Chapter 466 ORS as amended, and the regulations promulgated thereunder. Hazardous waste shall not include incidental household hazardous waste or small quantity generator waste which is commingled with solid waste.

Household Hazardous Waste. Any discarded, useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, automotive, and paint products.

Infectious Waste. Biological waste, culture and stocks, pathological wastes, and sharps as defined in ORS 459.386.

Multifamily. Any multiple building or group of buildings that contains five or more dwelling units on a single tax lot.

Off Curb. An area more than three feet from the edge of a public street.

Net Income. Gross Revenues minus Allowable Expenses. This is also referred to as franchise income.

Operating Margin. Is the ratio of Net Income to Gross Revenues.

Organic Waste. Materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, paper, and putrescible material which are generally a source of food for bacteria.

Oregon Administrative Rule (OAR) are Oregon State agency directives, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy.

Oregon Revised Statutes (ORS) are the codified body of statutory laws governing the State of Oregon.

Person. An individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.

Processing. An operation where collected, source-separated recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.

Putrescible Materials. Organic materials including, but not limited to bones, meat, grease, fat, food containers contaminated with food waste, prepared vegetable and fruit food waste, manure, feces, sewer sludge, dead animals or similar wastes which cause offensive odors or create a health hazard or which are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies and other vectors.

Rates. The amounts of compensation paid for various levels of solid waste and recycling service.

Receptacle. A Roll Cart, Container, or Drop Box provided by the Franchisee used by the customer to contain Solid Waste, Recyclable Materials, or Yard Debris for Collection Service in accordance with the terms of this franchise.

Recyclable Material, Recyclables. Any material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from Solid Waste by the Generator or at a Material Recovery Facility.

Recycling. The process of collecting, sorting, cleansing, treating or reconstituting recyclable materials which would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new; reused, or reconstituted products.

Residential. A single family dwelling or a multifamily dwelling with up to and including four dwelling units on a single tax lot.

Resource Recovery. The process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling and reuse.

Return on Revenues. The quotient of Net Income divided by the Gross Revenues.

Roll Carts. Franchisee provided 20, 35, 60 or 90 gallon plastic carts equipped with wheels, handles, and a tight fitting cover, which are capable of being mechanically unloaded into the Franchisee's collection vehicles.

Service. Collection, transportation, storage or disposal of, or resource recovery from, solid waste, or recyclable material, or both.

Solid Waste. All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage; rubbish; refuse; ashes; wastepaper and cardboard; commercial, industrial, demolition and construction materials; sewage sludge; septic tank and cesspool pumping or other sludge; discarded or abandoned vehicles or parts thereof; discarded home appliances; manure, vegetable or animal solid or semisolid materials, dead animals, infectious waste as defined in ORS 459.386, special waste and other wastes; but the term does not include:

1. Materials defined as principal recyclable materials in OAR 340-90-070, and any others designated by the City, which have been correctly placed for collection or taken to a Depot by the generator;
2. Hazardous wastes as defined in ORS 466.005; and
3. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. (OAR 340-90-010(36))

Solid Waste Collection Service or Service. The collection, transportation, storage or disposal of or resource recovery of solid wastes, from residential, multifamily, commercial) and industrial generators, as required by City regulations, and administrative rules; and the collection, transportation and processing of recyclable materials and yard debris from residential and commercial generators.

Solid Waste Management. The prevention or reduction of solid waste; storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

Source Separated Recyclable Materials. Any recyclable material separated from the solid waste stream prior to collection.

Unallowable Expenses. Shall include the following:

1. All charitable and political contributions;
2. Fines and penalties, including without limitation judgments for violation of applicable laws, incurred by a Franchisee;
3. Payments for services provided by individuals related by blood or marriage or by affiliated companies to a licensee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;
4. Accruals for future unknown regulatory changes;
5. Costs associated with purchase of other companies including, but not limited to, employee stock ownership plan payments, goodwill, amortization of goodwill and premiums on key- person life insurance policies;
6. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and/or facilities to the extent that the price includes goodwill or a premium in excess of fair market value at the time of acquisition;
7. State and federal income taxes;
8. Fees paid to a Franchisee's Board of Directors;
9. Advertising expenses beyond basic collection and recycling promotion and education, and minimal telephone listings under "Garbage Collection" or "Recycling Collection". Display advertisements and entertainment expenses are specifically excluded;

10. Attorney's fees and related expenses resulting from:
 - a. Any judicial proceeding in which the City and a licensee are adverse parties, unless the Franchisee is the prevailing party;
 - b. Any judicial proceeding in which a Franchisee is ruled to be liable due to willful misconduct or gross negligence, or in violation of law or regulation;
11. Any other expenses defined as "unallowable" and approved by the Council.

Waste. Material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, "utilized" means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, rehabilitation of land.

Yard Debris. Compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

SECTION 4. Exclusive Franchise and Exemptions

1. There is hereby granted to Waste Management of Oregon Inc., the Franchisee, an exclusive franchise to provide solid waste collection service to any person within the corporate limits of the City of Troutdale or areas later annexed thereto. The Franchisee shall have the right to use the streets of the City for this purpose. No other Person shall provide Solid Waste Collection Service for compensation, offer to provide, or advertise for, the performance of such service to any owner, tenant, lessee, member, or occupant of any real property in the City.
2. Nothing in this franchise shall:
 - a. Prohibit any person from transporting Solid Waste, Recyclable Materials, or Yard Debris generated by said person to a disposal site or to a resource recovery facility;
 - b. Prohibit any person transporting Solid Waste, Recyclable Materials, or Yard Debris through the City that is not collected nor disposed of within the City;
 - c. Prohibit federal or state agencies that collect, store, transport or dispose of Solid Waste, Recyclable Materials, and Yard Debris or any Person who contracts with such agencies from performing the service if the service is performed by or for such agencies under a written contract with such agencies;
 - d. Prohibit any Person from engaging in the collection of Source Separated Materials for Resource Recovery for the purpose of raising funds for a charitable, civic, or benevolent activity;
 - e. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or a structure, or in connection with land clearing and development, provided such material is being recycled;

- f. Prohibit a Person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service, landscaping, gardening, construction and demolition, tree or rendering service, but a Person shall not provide collection service for any accumulated or stored waste generated by a customer;
 - g. Require Franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided however, that the Franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter;
 - h. Prevent the City from conducting an annual clean-up campaign for the collection of yard debris or other recyclable materials, or solid waste from residences in the City or in any other way providing for the beauty of the City and the safety and convenience of its citizens.
3. Solid Waste, Recyclable Materials and Yard Debris placed out for Collection, which meet the definitions of this franchise, belongs to the Franchisee when so placed.
4. If, at the request of the Franchisee, the City takes administrative, enforcement, or other action against any Person who infringes on the Franchisee's exclusive rights, Franchisee must reimburse the City for its reasonable costs related to such action; however, nothing herein shall be construed to require the City to take such action. Franchisee may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to, seeking injunction relief.

SECTION 5. Franchise Term.

The rights, privileges, and franchise granted herein shall continue for the Franchisee for the period of eight (8) years starting January 1, 2016, unless extended per the provisions of the municipal code.

SECTION 6. Franchise Fee.

1. The Franchisee will pay to the City a franchise fee equal to five percent of gross revenues, net of franchise fees. The term gross revenues, for purposes of calculating the franchise fee, shall not include federal, state, or local taxes or surcharges, or any revenues generated from the sale of recyclables or any recycling rebates resulting from the Solid Waste Services conducted under the franchise. Such fees shall be computed on a quarterly basis, which consist of the quarters ending March 31, June 30, September 30, and December 31. The fee shall be paid by the Franchisee not later than 30 days following the end of each quarterly calendar year period.
2. In the event that the Franchisee shall pay a franchise fee of more than five percent to any city or municipal corporation within the Portland-Metro area during the duration of this Agreement, the Franchisee shall inform the City of the same and the City shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review and adjustment process.

3. Deliberate or malicious misrepresentation of gross revenues and franchise fees by the Franchisee constitutes cause for revocation of the franchise.
4. In addition to the above, the Franchisee shall provide support for an annual curbside City clean-up to be held in the spring of each year. Support and assistance shall include, but is not limited to: one-time collection and disposal at the curb of bulky waste and of up to five extra bags of garbage from each residential customer at no additional charge; and providing staffing, equipment and/or services for special events. The costs of providing this service will be allowable costs used to establish appropriate rates.

SECTION 7. Rates

1. The Council, by resolution, shall establish rates for all service levels for Solid Waste, Recyclable Materials, and Yard Debris collection service which the Franchisee may charge for Solid Waste Services and may, from time to time, by resolution, change those rates. The City or the Franchisee may request a rate change whenever a significant change in revenue or expenses occurs or is anticipated. In the event the Franchisee requests a rate adjustment under this Agreement, the City shall consider such request in good faith and shall act upon the request without undue delay, but in no case later than 120 days from the date the request was made.
2. When a new or unusual Solid Waste Service, not included in the rate structure approved by the Council is requested, the Franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the Franchisee shall notify the City Manager or his/her designee in writing of the service provided, the rate established, and the basis for the rate. If the City Manager or his/her designee finds the rate or basis to be unreasonable, the City Manager shall submit the rate to the Council for consideration.
3. The rates that may be charged by the Franchisee for collection service shall conform to the latest schedule on file with the City. Any rate not set by current resolution and charged in the City of Troutdale must be approved by the City Manager or his/her designee prior to implementation.
4. All books, records, accounts, and data relating to Collection Service operations conducted within the City by the Franchisee are subject to inspection and audit by the City or its agents.
5. In determining fair rates, Council will consider all relevant factors, and the City Manager or his/her designee and the Franchisee shall work in good faith to develop and adjust rates, as necessary to allow Franchisee to earn a reasonable rate of return. The City agrees that it shall not unreasonably withhold its consent or unreasonably delay a rate review request submitted by Franchisee.
6. Rates shall be adequate to provide an Operating Margin equal to ten percent (10%) of Franchise Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the reviewed year falls between eight and twelve percent of Gross Revenues. The ten percent target return on Gross Revenues is considered sufficient to reflect the level of business risk assumed by the Franchisee, to allow investment in equipment, and to ensure quality collection service.

SECTION 8. General Franchisee Responsibility.

The Franchisee shall:

1. Provide collection service for properly prepared Solid Waste, Recyclable Materials, and Yard Debris for all customers within the City in accordance with such standards and specifications as set forth in this franchise and applicable federal, state, county, and local laws and regulations. The Franchisee shall make available for subscription all levels of Solid Waste, Recyclable Materials, and Yard Debris collection services for which the City sets a Rate.
2. Provide sufficient collection vehicles, containers, equipment, facilities, personnel, and finances to provide all types of necessary service.
3. Provide a Receptacle to all customers of Solid Waste, Recyclable Materials and Yard Debris collection services, as set forth more fully in Section 15.
4. Dispose of collected Solid Wastes, Recyclable Materials and Yard Debris at a site approved by the governmental agency having jurisdiction of the disposal of Solid Waste; Recyclable Materials and Yard Debris or recover resources from the Solid Wastes both in compliance with ORS Chapter 459 and 459A, and regulations promulgated thereunder.
5. Provide the opportunity to recycle for all persons within the City in accordance with ORS 459A. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality, Metro rules applicable in the City, and City ordinances, and other governmental agencies having proper jurisdiction. The Franchisee shall collect Recyclable Materials as outlined in this franchise provided the materials comply with the preparation requirements and other requirements set forth in this franchise.
 - a. Residential customers. The Franchisee will provide its Residential customers with weekly Curbside collection or Off Curb collection, if desired, of all properly prepared Recyclable Materials. All recyclables shall be collected commingled in the recycling Roll Cart, except for glass, which shall be collected separately in a glass recycling bin, and motor oil, which shall be collected separately in accordance with Franchisee's collection requirements. Customers that subscribe to Off Curb Collection Service shall pay an additional fee, as set forth in the adopted rate scheduled.
 - b. Multifamily customers. The Franchisee will provide each of its multifamily customers with adequate receptacles for the storage and collection of Recyclable Materials. The Franchisee will provide at least weekly collection of Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.
 - c. Commercial customers. The Franchisee shall offer collection of Recyclable Materials to all existing and new Commercial customers. The Franchisee will provide each of their Commercial customers with receptacles of adequate number and size for the collection of Recyclables. The Franchisee will provide at

least weekly collection of Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.

- d. The Franchisee must obtain approval from the City prior to providing collection of additional Recyclable Materials not defined in this franchise as Recyclable Materials, as well as any proposed service standards for collecting such Recyclable Materials.
 - e. The Franchisee shall deliver all properly prepared and collected Recyclable Materials to a processor or broker of Recyclable Materials, or to an end-use market and shall collect and transport Recyclable Materials in the same sortation in which the materials are collected from the Generator. The Franchisee shall not deliver, or cause to be delivered, any collected Recyclable Materials for disposal, unless the Recyclable Materials are improperly prepared and rejected by a commonly used processor, broker or end-market. The Franchisee should not collect Recyclable Materials that are improperly prepared at the time of collection.
6. Provide, at no cost, Collection and disposal of 12 containers, four yards or less that are open to public use in the Central Business District, and collection of dumpsters within Glenn Otto Park and Columbia Park.
 7. Participate in City directed promotion and education efforts.
 8. Permit inspection by the City of the Franchisee's facilities, equipment, records, and personnel at reasonable times.
 9. Collect medical and Infectious Wastes, as defined by ORS 459.386, and comply with all state regulations. The Franchisee is not required to collect medical and Infectious Waste that is not properly prepared and separated. The Franchisee may subcontract with other entities for the collection of medical and Infectious Waste with the approval of the City Manager or his/her designee.
 - a. The Franchisee and /or subcontractor(s) shall conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transportation, storage, treatment, and disposal of medical and Infectious Wastes.
 10. Not be responsible for collecting unacceptable Solid Waste materials, such as liquid fats, non-petroleum oils, semi-solid wastes, flammable materials, sewage sludge, septic tank and cesspool pumping or other sludge; manure, dead animals, and vehicles.
 11. Participate in studies or evaluations for programs and service needs, as proposed by the City.
 12. Maintain passage on public streets. To the greatest extent practicable; the Franchisee shall avoid stopping of collection vehicles while collecting Solid Waste, Recyclable Materials, or Yard Debris so as to block the passage of other vehicles and pedestrians on public streets and sidewalks. Franchisee shall work with City to alter routes to the extent necessary to accommodate special events and/or paving work.
 13. Submit required rate-reporting forms and other reports as required by the City.

14. Limit the hours of Collection of Solid Waste, Recyclable Materials or Yard Debris in predominantly Residential and Multifamily neighborhoods to between the hours of 6:00 a.m. and 6:00 p.m., unless weather or holiday schedules require extended hours of collection. There shall be no limit on the hours of collection activity for any Solid Waste, Recyclable Materials, and Yard Debris in predominantly Commercial and industrial areas.
15. Collect Yard Debris materials provided the materials have been prepared in accordance with the requirements in this franchise.
 - a. Yard Debris materials placed in a solid waste receptacle by a customer who has qualified for yard debris exemption service described in Section 20 of this Franchise shall be collected by the Franchisee notwithstanding that such disposal contravenes the yard debris exemption program. When Franchisee collects the contents of a receptacle under these circumstances Franchisee will apply the procedures in Section 20 of this Franchise as applicable, and will also report the violation to the City Manager or his/her designee as part of the Franchisee's quarterly report required under Section 14(1) of this Franchise.
 - b. The Franchisee shall transport all properly prepared and collected Yard Debris materials to a state approved processor of Franchisees choosing. The Franchisee shall not deliver or cause the delivery of any collected Yard Debris materials for disposal as Solid Waste unless the Yard Debris materials are improperly prepared and the Franchisee has received approval of the City Manager or his/her designee. The Franchisee should not collect Yard Debris that is improperly prepared at the time of Collection.
16. Provide the opportunity for Collection Service for other properly prepared Solid Waste as defined and provided for in this franchise for all persons within the City.
 - a. Tires. The Franchisee shall acquire all necessary permits from the Department of Environmental Quality for the storage and transportation of tires.
 - b. Other solid waste materials shall be collected on a day as agreed upon between the customer and the Franchisee and within seven working days of their request.
17. Pick up all Solid Waste and Recyclable Material I blown, littered, broken, or leaked during the course of Collection.
18. Be responsible for scheduling all Solid Waste, Recyclable Materials, and Yard Debris Collection Services.
 - a. The regular collection frequency for Residential Solid Waste, Recyclable Materials, and Yard Debris Collection Service shall be weekly and on the same day, except for materials defined as Bulky Wastes, unless a customer subscribes to monthly service.
 - b. The collection frequency for Commercial and Multifamily Solid Waste Collection Service shall be at a frequency that is mutually agreed-upon between the Franchisee and the Customer. The collection frequency for Drop Box Compactors may reach but not exceed one collection every 14 days. Collection of Recyclable Materials will occur weekly but may occur less frequently if agreed

upon by the Franchisee and the customer. The Franchisee shall provide occasional or special collection of Solid Waste, Recyclable Materials, or Yard Debris on request by the Customer at a fee approved by the City for such collections.

19. Collect from Residential Customers occasional extra receptacles of Solid Waste or Yard Debris set at the curb as an "extra" beyond a Customer's subscribed service level. The Franchisee may charge the fee established by the City for such "extras", except in cases of missed collections that are the fault of the Franchisee. The Franchisee may require a customer to give 24 hours prior notification of an extra set out that would require extraordinary time, labor, or equipment, or if the Customer has a record of non-payment of charges for extras.

SECTION 9. Franchisee Customer Service Requirements

The Franchisee shall:

1. Respond within 24 hours or by the next business day to customer telephone calls and complaints unless prevented by Force Majeure. Both office and on-route staff shall be knowledgeable and courteous in answering customer information requests and resolving customer complaints regarding Collection Services for Solid Waste, Recyclable Materials, or Yard Debris.
2. Maintain a written log and respond in writing to any written questions or complaints within three working days (weekends and holidays excluded).
3. Provide telephone service so that the Franchisee may be reached by Customers from 8:00 a.m. to 5:00 p.m. daily (weekends and holidays excluded). Franchisee will also provide a means for callers to leave telephone messages, and will return such calls within one working day.
4. Provide notification to new Residential Customers. At the time a new customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the Customer of the following:
 - a. Service level options and rates;
 - b. Billing procedures;
 - c. Issuance of Roll Carts and glass recycling bins;
 - d. The Yard Debris exemption program; and
 - e. Restrictions on the storage of putrescible materials for subscribers to monthly garbage collection.

Additionally, the Franchisee shall provide City-approved written informational materials to all new Customers within seven days of sign up. These materials will include information on Solid Waste, Recyclable Materials, and Yard Debris Collection Service options; rates for these services, including an explanation of extra charges; listing of the Recyclable Materials collected; the collection schedule; the proper method of preparing materials for Collection; and

the reasons that people should recycle. Customers shall also be given written notice of any changes in services.

5. Provide notification to new Multifamily Customers. At the time a new Multifamily Customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the customer of:
 - a. Service level options and rates;
 - b. Billing procedures;
 - c. State of Oregon requirements that all tenants be provided the opportunity to recycle; and
 - d. The availability of Yard Debris collection service.

The Franchisee shall provide City-approved written information on the proper preparation of Recyclable Materials to all new Multifamily Customers within seven days of sign up.

6. Provide notification to new Commercial Customers. At the time the new Commercial Customer contacts the Franchisee to request start-up of Collection Service the Franchisee will inform the customer of:
 - a. Service level options and rates;
 - b. Billing procedures;
 - c. The availability of Collection of Recyclable Materials;
 - d. The availability of Yard Debris Collection Service; and
 - e. The availability and benefits of waste evaluations. The Franchisee will also provide this information to each existing Commercial Customer when any change in level or type of service is made to that customer.

Additionally, the Franchisee shall provide City-approved written information on the proper preparation of recyclable material to all new commercial customers within seven days of sign up.

SECTION 10. Missed Collection.

1. The Franchisee shall respond promptly to reports of missed collections. A complaint of missed collection service received by the Franchisee from a customer or the City that is not due to the late or improper set-out by the customer shall be remedied by collecting the material at no extra charge:
 - a. By 5:00 p.m. of the same day if the report is received prior to 12:00 noon on the normal collection day; or
 - b. Within 24 hours (excluding Saturdays, Sundays, and holidays) if notification is received after 12:00 noon on the normal day of collection; or
 - c. At another time if mutually agreed upon by the Franchisee and the Customer.
2. When a missed collection occurs due to improper or late set out by the Customer, this must be documented by the Franchisee through a verifiable means such as maintaining

a log book for set-outs or annotating the time and status on the route sheet, and in the case of improper set-out, by leaving a notice.

3. The Franchisee shall pick up collections missed due to hazardous weather conditions as weather and road conditions permit, or the customer may set out the missed collection; at no additional charge provided it does not exceed double the subscribed service level, on the subsequent regular collection day. The Franchisee must notify the City immediately of missed collections due to hazardous weather conditions.

SECTION 11. Refusal of Collection Service.

1. The Franchisee may refuse Collection Service when there is a hazardous condition that creates undue hazard or risk to the person providing service, Franchisee's collection vehicles and equipment, private property, or the public. Hazardous conditions may include overhanging branches, steep slopes, unusual topography, wet or icy ground or pavement, vicious animals, low hanging wires or basketball nets, poor access to the point of collection, or locations where the weight of the collection vehicle or equipment would damage private roads, driveways, or bridges. The Franchisee must make a reasonable effort to notify the Customer of the reason for refusal on the same day such refusal occurs. If the Franchisee is unable to notify the Customer on the same day, the Franchisee shall send written notice of the reason for refusal of service to the Customer that same day. If hazardous conditions occur as identified above, and the Franchisee determines that Collection Service shall not occur that day, the Franchisee shall notify the City immediately, and provide a person to receive Customer inquiries on the day of canceled service or, at a minimum, leave a recorded message stating the revised collection schedule. If more than one collection day is affected, the above procedures will be repeated.
2. The Franchisee may refuse Collection Service when the preparation of Solid Waste, Recyclable Materials, or Yard Debris does not satisfy the requirements of this franchise.
3. The Franchisee may refuse Collection Service for a Receptacle that is over the weight limits listed in Sections 16, 19, and 22 of this Franchise. When a Receptacle is overweight, it is the Customer's responsibility to separate materials into additional Receptacles / containers to comply with weight requirements. If the Customer requests, the Franchisee must provide the actual weight of the overweight receptacle by 5:00 p.m. on the business day following the request.
4. The Franchisee may refuse Collection Service when a Receptacle is in a location that does not satisfy the requirements of this franchise.
5. The Franchisee shall leave a written notice at the time of non-collection when it refuses Collection Service as allowed in this franchise. The written notice shall describe the specific reason for refusing service, the actions needed to resume service, and the pick-up options for the materials not collected. The Franchisee shall leave the notice securely attached to the Customer's Receptacle or to the Customer's front door at the time of the refused service. The Franchisee shall document the date, time and reason for refusal of any Collection Service.

6. When there is a refusal to collect materials, the Franchisee will provide collection of double the customer's subscribed service level volume of properly prepared materials at no additional cost, on the subsequent regular collection day.

SECTION 12. System and Equipment Requirements

1. All Solid Waste, Recyclable Materials, and Yard Debris collection vehicles shall be constructed, loaded, operated, and maintained in a manner to reduce to the greatest extent practicable, the dropping, leaking, blowing, sifting, or escaping of Solid Waste, Recyclable Materials, or Yard Debris, vehicle fuel, hydraulic fluid or lubricants from the vehicle onto private property and public streets while stationary or in transit. The Franchisee shall clean up all dropped, leaked, blown, or escaped Solid Waste, Recyclable Materials, or Yard Debris, spilled vehicle fuel, hydraulic fluid or lubricants as soon as practicable. The Franchisee will immediately notify the City of all significant vehicle fluid spills.
2. All open-body vehicles shall have a cover which may either be an integral part of the vehicle or a separate cover for the vehicle. This cover shall be used while in transit except, except when the loading or transportation of Bulky Wastes prevents safe use of this cover.
3. The Franchisee shall ensure that all Solid Waste, Recyclable Materials, and Yard Debris collection vehicles bear a Metro identification tag and are clearly identified with the Franchisee's name and telephone number prominently and conspicuously displayed on both sides of the vehicle.
4. The Franchisee shall ensure that all of its containers, drop boxes, and compactors are clearly identified by displaying the Franchisee's name and telephone number prominently and conspicuously.
5. The Franchisee shall comply with all applicable federal, state and local laws and regulations relating to driving, transportation, collection, disposal and processing of solid waste, recyclable materials, and yard debris. Franchisee will report all vehicle accidents or infractions within the City to the City Manager or his/her designee within the 24 hours of occurrence.

SECTION 13. Billing Procedures.

1. The Franchisee may invoice customers either once per month or once every two months but shall not invoice more than sixty days in advance of the service. Customer payments shall not be due more than thirty-one days before the end of the service period being billed, nor less than fourteen days after the date of the postmark on the invoice. The Franchisee may require payment at time of service for services requested by customers that are less frequent than monthly. The Franchisee may also require payment at time of service from customers whose accounts are overdue or who have demonstrated a pattern of late or non-payment.
2. The Franchisee shall give a partial vacation credit to customers who stop service for a minimum period of two consecutive weeks and up to three consecutive weeks, and a full vacation credit to customers who stop service for a minimum period of four consecutive

weeks. The Franchisee will calculate and administer vacation credits according to a formula established by the Franchisee and approved by the City. The vacation credit formula must be reviewed and approved by the City prior to implementation.

3. The Franchisee shall provide new Customers with a copy of the billing procedures and shall give the procedures to any Customer upon request. If the Franchisee or Customer determines that there is an error on the invoice, the Customer's account shall be debited or credited for the under billed or overbilled amount if the billing error occurred one year or less prior to the date the error was discovered.

SECTION 14. Reporting and Record Maintenance.

The Franchisee shall provide to the City:

1. A monthly report listing: the quantities of recyclable materials collected from Troutdale customers during the previous calendar month; the amount of locations to which these materials were delivered for processing or remanufacturing; and other information as requested. The report shall be submitted on a form approved by the City and shall be submitted within 30 days of the last day of the month.
2. A quarterly report listing the names and addresses of Commercial Customers that were offered waste evaluations during the reported month and that received waste evaluations from the Franchisee during the reported months. The report shall be submitted on a form approved by the City and shall be submitted within 30 days following the end of the calendar quarter. A quarterly report providing Residential service and revenue information, Commercial service and revenue information, Drop Box service and revenue information, tonnage data, driver hour data, recycling data, and other relevant information for Collection Service within the City as requested by the City Manager or his/her designee. The report shall be submitted in a format approved by the City Manager or his/her designee and shall be submitted within 45 days following the end of the calendar quarter.
3. The annual detailed cost report for collection operations within the City or other location in the Portland hauling district for the calendar year. The report details the total revenues, total costs, driver hour and customer count information, disposal information, container counts, a recycling summary, the value received or cost paid per ton for the Recyclable Materials, and other relevant information necessary to determine if the collection rates provide the Franchisee and adequate Operating Margin (Section 7). This report shall be submitted in a format approved by the City Manager or his/her designee and shall be submitted within 90 days following the end of the calendar year.
4. Other reports as required by the City.
5. The City has the authority to commission audits, reviews, or analysis of reports submitted by the Franchisee to validate the accuracy of the submissions.
6. Franchisee will prepare and maintain all records at Franchisee office during the Term and for an additional period of
 - a. Not less than 3 years following the expiration or termination of the Agreement; or

- b. The period of time necessary to allow the City to complete a review, audit or inspection in accordance with this Section, or
- c. Any longer period required by Applicable Law. Franchisee will prepare and maintain records in electronic format acceptable to City, such as Microsoft Excel files or PDF files. Franchisee will use Reasonable Business Efforts to promptly provide City with any additional records or other information relevant to this Agreement.

SECTION 15. Roll Carts and Other Receptacles.

1. Franchisee shall provide 20, 35, 60 or 90 gallon Roll Carts to all Customers of Solid Waste, 35 or 60 gallon Roll Carts for Recyclable Materials, and 60 gallon Roll Carts for Yard Debris Collection Services, which Customers shall be required to use as their primary Receptacles. The default roll cart size for Recyclable Materials and Yard Debris shall be 60 gallons; however, Customers may request and receive a smaller 35 gallon cart with no reduction to the base service rate. The Roll Carts shall be color coordinated by the type of service being provided (e.g., green body with yellow lid for recyclables, green body and green lid for solid waste, etc.) as mutually agreed upon by the Franchisee and the City. All Solid Waste and recycling Roll Carts shall be equipped with a bungee cord or other lid device, to help secure the cart lid and reduce litter potential. Franchisee may charge customers an additional fee for Roll Cart repair or replacement due to lost carts or damage beyond ordinary wear and tear attributable to the customer.
2. The Franchisee shall provide all Receptacles that are mechanically collected, except that a Commercial Customer may arrange with the Franchisee to provide a Compactor. A Commercial or Multifamily Customer may provide its own mechanically collected receptacles subject to compatibility with the Franchisee's equipment and the Receptacle requirements of this franchise. All Compactors shall comply with applicable federal and safety regulations and shall be compatible with the Franchisee's equipment.
3. The Franchisee shall provide a recycling Roll Cart (and a separate recycling bin for glass) to each Residential Customer and other Customers as agreed to between the City and the Franchisee.
4. In the event that a Customer damages a cart or requests more than one replacement cart more frequently than a time period allowing for reasonable wear and tear during the term of the Agreement, or due to negligence or intentional misuse, a replacement Roll Cart(s) or bins shall be provided to the Customer for an amount equal to the cost incurred by the Franchisee to purchase such carts or bins.
5. In the case of carts or bins missing when a customer has moved out of premises served by Franchisee, the Franchisee may bill such customer for the replacement cost or require that the carts or bins be returned to the service address.
6. Receptacles provided by the Franchisee or customer shall be designed for safe handling, non-absorbent, vector resistant, durable, leak-proof, and, except for drop boxes and glass recycling bins, provided with tight fitting watertight lids or covers that can be readily removed or opened. Receptacles must remain watertight and free of holes throughout their period of use.

7. Customers must use Franchisee provided Roll Carts as their primary Receptacle, but may use their own cans or bins as supplementary receptacles (subject to extra charges). The Franchisee shall take care not to damage receptacles.
8. The customer shall ensure that Household Hazardous Waste, chemicals, paint, corrosive materials, medical and Infectious Waste, or hot ashes are not put into a can, cart, container, or drop box. The Franchisee may invoice a customer for the cost to repair or replace a receptacle owned by the Franchisee when the customer does not take reasonable care to prevent abuse, fire damage, vandalism, excessive wear, or other damage to the receptacle.
9. The Franchisee shall leave emptied receptacles in a location that does not obstruct mailboxes, the sidewalk, fire hydrant, or impede traffic flow or on-street parking. The Franchisee is responsible for closing Receptacles as securely as possible to prevent lids from blowing away or rain from getting into the Receptacles. The Franchisee shall secure Receptacles in the same manner as the customer secured the Receptacle to prevent Receptacles from blowing away. All garbage and recyclables Roll Carts shall include a Franchisee provided bungee cord or other lid device to help secure such roll carts. When possible, the Franchisee shall place drop boxes on private property locations.
10. The Franchisee is not required to remove Customer owned receptacles from an in-ground or "sunken" location.
11. The Customer shall remove each emptied Receptacle from the set out location and return the Receptacles to the Customer's yard or storage area within 24 hours of collection.
12. Receptacles provided by the Franchisee are the property of the Franchisee. The Customer shall leave the Franchisee's receptacles at the service address when the Customer moves. Any receptacles for the collection of extras provided by the Customer are the property of the Customer.

SECTION 16. Public Responsibility.

1. The following requirements shall pertain to service under this franchise:
 - a. All Residential, Multifamily and Commercial properties in the City shall provide for collection of Solid Waste, Recyclable Materials, and Yard Debris in accordance with this franchise and may not utilize the services of a collector other than the Franchisee for the collection of Solid Waste, Recyclable Materials, or Yard Debris unless authorized under Section 4 of this Agreement.
 - b. The owner of any Residential or Multifamily dwelling complex who rents, leases or lets dwelling units for human habitation shall subscribe to and pay for Collection Service with the Franchisee on behalf of his/her tenants or, if the dwelling complex has four or fewer units, self-haul Solid Waste from tenants to a Metro approved disposal facility; and provide a sufficient number of Receptacles of adequate size to prevent the overflow of Solid Waste,

Recyclable Materials, and Yard Debris from occurring; and provide for sufficiently frequent, but at least weekly, collection of Solid Waste and Recyclable Materials, except for Compactors, which shall be collected at least every 14 days; and if the dwelling has four or fewer units and the owner is self-hauling tenants' Solid Waste, provide for the same level and frequency of collection of Recyclable Materials and yard debris as is required of the Franchisee. The owner is responsible to provide proof of compliance with this requirement upon request of the City.

- c. No 35 gallon garbage Roll Cart shall weigh more than 60 pounds (gross) loaded weight and no 60 gallon garbage roll cart shall weigh more than 120 pounds (gross) loaded weight. No Customer provided can used for extra collections shall exceed 32 gallons in size and weigh more than 60 pounds. Cans for extras shall be tapered so that they are larger at the top and shall have handles at the top and a place for a handhold at the bottom as well as a lid.
 - d. Sunken refuse cans shall not be installed and will not be serviced by Franchisee unless they are placed above ground-by the Customer.
 - e. The Customer shall provide safe access to the pick-up point which does not jeopardize the persons or equipment supplying service or the motoring public.
2. To protect the privacy, safety, pets, and security of Customers and to prevent unnecessary physical and legal risk to the collectors, a Residential Customer shall place the Roll Cart to be emptied outside any closed gate or outside any garage or other building. The Receptacle shall also be placed in a location that does not obstruct mailboxes, water meters, the sidewalk, fire hydrants, driveways, or impede traffic flow or on-street parking. The Customer shall provide for reasonable vertical clearance for Receptacles picked up away from the Curbside or roadside.
- a. Residential customers must place Receptacles at the Curbside unless the Customer subscribes to Off-Curb Collection Service. Special placement arrangements for mobility impaired Customers, or those whose lots are not physically configured to allow Curbside placement, may be made by agreement between the Customer and the Franchisee.
 - b. Multifamily and Commercial Customers shall set Solid Waste, Recyclable Materials, and Yard Debris Receptacles at a location that is readily accessible and safe to empty or load that does not require the Franchisee to go up and down stairs, and that is agreed-upon by the Franchisee and the Customer. The owner of any Multifamily complex with five or more dwelling units shall provide tenants with separate location(s) for receptacles or Depots for the collection of four or more types of Recyclable Materials and must provide a sufficient number of collection areas to accommodate the reasonable needs of the Generators for which the owner is responsible.
 - c. The Customer shall place Roll Carts at the Curbside or roadside or at such other location agreed-upon by the Customer and their Franchisee.

- d. When possible, the customer should arrange for Drop Boxes to be placed on private property locations.
 - e. The customer shall place Compactors at a location that protects the privacy, safety, and security of the Customers that provides access needed to prevent unnecessary physical and legal risk to the Franchisee and that is agreed-upon by the Customer and the Franchisee.
3. Any Person who receives service shall be responsible for payment for said services.
 4. The Customer is responsible for proper placement of Solid Waste, Recyclable Materials, and Yard Debris receptacles by 6:00 a.m. on the Customer's designated collection day.
 5. A Customer may not deduct the cost of past unreported missed collections from the Customer's invoices.
 6. The Customer is responsible for requesting a vacation credit from the Franchisee. The Customer may request a vacation credit to stop service for a minimum period of two consecutive weeks and must give at least 48 hours advance notice to the Franchisee of the request for service suspension.
 7. Putrescible solid waste shall be removed from the premises of a Customer at regular intervals not to exceed 7 days. An exemption may be made to this rule for the storage of putrescible materials in a Compactor that is totally sealed, non-leaking and non-odorous. Putrescible waste stored in such a Compactor may be stored for no more than 14 days.
 8. Stationary Compactors for handling Solid Waste shall comply with applicable federal and state safety regulations. No such Compactor shall be loaded so as to exceed the safe loading design limit or operation limit or weight limit of the collection vehicles used by the Franchisee. A Person who wishes services for a Compactor shall acquire a Compactor approved by the Franchisee which is compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire and shall provide the Franchisee with a key to access and transport such Compactor.
 9. When Customer abuse, fire, the nature of discarded materials, or vandalism causes excessive wear or damage to a Roll Cart, Container or Drop Box, the cost of repair or replacement may be charged to the Customer. The Customer shall take appropriate actions to ensure that Hazardous Waste, chemicals, paint, corrosive materials, Infectious Waste or hot ashes are not put into a roll cart, container, or drop box.
 10. The Customer shall promptly notify the Franchisee about a missed collection or billing error.

SECTION 17. General Customer Preparation of Materials.

1. The Customer shall place Solid Waste, Recyclable Materials and Yard Debris safely and securely in the Receptacles to prevent lightweight materials from blowing away prior to being collected.
2. All loose and lightweight waste items capable of becoming wind-blown debris shall be placed in a bag so as to prevent this occurrence. If waste materials are not secured in bags and

the items become wind-blown debris prior to collection, the Customer may be charged the cost to clean up the preventable spill.

3. The Customer shall load the contents of a Receptacle in such a manner that the contents fall freely from the Receptacle when emptied by the Franchisee. The Franchisee shall not be responsible for digging the contents out of a Receptacle.

4. The Customer shall not overfill a Roll Cart or Container so that the lid cannot be securely closed. The Customer is responsible for closing and latching the Receptacle as securely as possible to prevent the lid or materials from blowing away or rain from getting into the Receptacle.

5. The Customer shall bag cold ashes, animal wastes, kitty litter and other fine materials separately from other Solid Waste. The Customer may dispose of these materials in the Solid Waste Receptacle.

SECTION 18. Customer Preparation of Recyclable Materials.

1. Recyclables from Commercial and Multifamily customers shall be prepared in accordance with City-approved instructions provided by the Franchisee.
2. Residential Customers may include the following Recyclable Materials Commingled in recycling Roll Carts and shall prepare these materials generally outlined below and in alignment with the proper sorting requirements as agreed upon between the City and the Franchisee per the current material list of local processors:

Aerosol Cans. Cans must be completely empty. Do not crush or flatten. Remove all paper labels and plastic lids. Leave the nozzle buttons in place.

Aluminum. Include aluminum cans, aluminum foil and food trays. Remove all organic material.

Plastic Bottles and Jugs. Include plastic bottles (type 1-7) with a neck smaller than the base. Remove lids, caps, and pumps, rinse out, and flatten. Do not include bags, motor oil, pesticides or other hazardous material bottles.

Scrap Metal. Limit any single piece of metal to 30 inches in any direction and 30 pounds.

Do not include appliances, car parts, bicycles, or lead batteries.

Fiber. Includes office paper, scrap paper (opened unwanted mail, envelopes, paper egg cartons, cereal and shoe boxes, post-its, wrapping paper, etc.), newspaper, magazines brown paper bags, and corrugated cardboard that is flattened and not larger than 36 inches in any direction. Do not include foil, waxy or plastic paper, or food contaminated paper.

Steel (tin) cans. Remove labels and rinse. May include steel can ends and jar/bottles lids.

Plastic tubs. Includes plastic tubs 6 oz. or larger, buckets (5 gallons or less), and rigid nursery pots (4 inches or larger).

In addition, the following materials shall be prepared and collected separately:

Glass bottles and jars. Remove lids and rinse containers. Do not include broken glass, drinking glasses, cooking ware, plate glass, safety glass, light bulbs, ceramics, and non-glass

materials. Glass bottles and jars shall be source separated by the customer in glass recycling bins.

Motor oil. Place in a clear leak proof, unbreakable plastic container of not more than one gallon each with a screw on cap. Do not include other fluids.

SECTION 19. Customer Preparation of Yard Debris Materials.

1. The Customer may place Yard Debris in 60 gallon Roll Carts provided by Franchisee. Any excess Yard Debris that does not fit within the closed lid of the Yard Debris Roll Cart may be set alongside such cart in 32 gallon cans; in "kraft" type yard debris paper bags, or in bundles, and shall be assessed an extra charge, based on fees established by the City, and such excess Yard Debris shall only be collected if properly prepared. . The Customer must securely tie bundles with string or twine to support the bundle when lifted. Bundles may be no greater than 48 inches in length and 18 inches in diameter. The Customer shall not use plastic bags to contain Yard Debris for Collection.
2. The Customer is responsible for including only those materials that meet the definition of Yard Debris provided in Section 3 of this Agreement. "
3. The Customer shall limit the weight of a Receptacle and its contents to the maximum weights listed as follows:

Receptacle Type / Capacity	Maximum Weight
60 gallon roll cart	120 pounds
Bundled yard debris	60 pounds
"kraft" paper bag (30-gallon)	45 pounds
32-gallon can	60 pounds

4. The Customer is responsible to mark all rigid Yard Debris Receptacles for excess material with a "yard debris only" sticker provided by the Franchisee. The "yard debris only" sticker needs to be clearly visible from the street. Kraft bags containing Yard Debris must be clearly identifiable as such from the street.

SECTION 20. Yard Debris Exemption Program

1. Residential Customers may request exemption from curbside Yard Debris Collection Service if they compost or use their Yard Debris for on-site land application, or retain a person that (a) hauls their Yard Debris to a state approved processor and (b) is licensed to conduct business within the City. Customers approved for this exemption will -have the monthly cost of providing Yard Debris Collection deducted from their invoices and must comply with all terms of the Yard Debris Collection exemption program agreement. A Residential Customer interested in receiving an exemption from Yard Debris Collection Service must request and submit a completed application to the Franchisee.

2. A Customer will remain exempt from Yard Debris Collection Service and the accompanying charges unless he/she receives a notice of disqualification, discontinues Collection Service or voluntarily reinstates curbside collection of Yard Debris.
3. If a Customer is found in violation of the Yard Debris Collection exemption agreement, the Franchisee will issue written warning and an explanation of the violation to the Customer. If a Customer is found in violation for a second time, the Franchisee will issue a notice of disqualification from the yard debris collection exemption program and reinstate curbside collection of yard debris and the associated charges.

SECTION 21. Other Solid Waste (Customer).

1. The Customer shall set other Solid Waste out at the time and location agreed upon with the Franchisee.
2. The Customer shall place medical and Infectious Wastes in appropriate Receptacles. The Customer shall not place medical and Infectious Waste materials into a Receptacle for Collection with Solid Waste, Recyclable Materials, or Yard Debris. The Customer should contact the Franchisee for information on proper disposal options.
3. The Customer is responsible to prepare other wastes as agreed upon with the Franchisee.

SECTION 22. Allowed Weight of Receptacles.

1. The Customer shall limit the weight of a Solid Waste Receptacle and its contents to the maximum weights listed as follows:

Receptacle Type / Capacity	Maximum Weight
20 gallon roll cart	35 pounds
32 gallon can (for extras)	60 pounds
35 gallon roll cart	60 pounds
60 gallon roll cart	120 pounds
90 gallon roll cart	145 pounds

2. The weight of material put into a Container or Drop Box, whether compacted or not, shall not exceed the lifting capacity of the Franchisee's equipment nor shall the weight put the Franchisee over the weight limit for the loaded vehicle. The Franchisee shall furnish their customers with information concerning limitations on their equipment, upon request. A Franchisee is not required to collect Containers exceeding 350 pounds gross loaded contents per loose cubic yard; but if an overweight container is collected, the Franchisee may charge the compacted rate, as set forth in the adopted rate schedule. If Drop Boxes are overloaded to exceed the weight limit for a loaded vehicle, the Customer shall be charged for any fine resulting from overweight ticket.

SECTION 23. Transfer, Suspension, Modification, or Termination of Franchise

1. The Franchisee shall not transfer this franchise or any portion thereof without the prior written approval of the City Council, but such consent shall not be unreasonably withheld. The City Council in reaching its decision may consider, among other factors, whether the transferee meets all applicable requirements met by the original Franchisee. Any transfer without the prior written consent shall be void and shall be grounds for termination of this franchise.
2. The Franchisee shall not discontinue or terminate service to the City without approval of the Council. Council approval is contingent upon arrangements being made to ensure that there is no interruption of service between the time of the Franchisee's scheduled service termination date and the date of service start-up by a replacement Franchisee. Council approval must be received not less than 90 days before termination of service. Upon approval of the Council, the Franchisee must give at least 60 days notice of the service discontinuation to the affected Customers along with information of the new service provider.
3. If the Franchisee fails to comply with the terms of this Franchise; ORS Chapter 459 and 459A or the rules and regulations promulgated thereunder; other applicable ordinances of the City; or is unable to provide adequate service, the City shall provide the Franchisee with written notice of such noncompliance. After receiving the aforementioned written notice from the City, the Franchisee shall have 30 days from the date of mailing of the notice in which to comply. The Franchisee may request a public hearing before the City Council if the Franchisee makes such a request within ten days from the mailing date of written notice from the City. In the event of a public hearing the Franchisee and other interested Persons shall have an opportunity to present information and testimony subject to procedures established by the City Council. Failure to comply with written notice from the City to provide necessary service or otherwise comply with the provisions of this franchise after written notice and a 30 day opportunity to comply shall be grounds for modification, termination, or suspension of the Franchise.

SECTION 24. Preventing Interruption of Service

In the event the City Council finds an immediate and serious danger to the public, creating a health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to the Franchisee, authorize another person to temporarily provide service under this Franchise, or the City may provide such service. In either event, the Franchisee agrees as a condition to the Franchise that any of his/her real property, facilities, or equipment may be used without additional consideration to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of the service.

SECTION 25. Interruption or Termination of Service

The Franchisee shall not terminate Solid Waste, Recyclable Material, or Yard Debris Collection Service to a Customer unless:

1. The street or road access is unavoidably blocked through no fault of the Franchisee, and there is no reasonable alternate route or routes to serve all or a portion of the affected Customers; or
2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service, or if such interruption or termination is caused by a Force Majeure; or
3. An undisputed bill has not been paid by a Customer for services rendered within 60 days of the billing due date. In such case, the Franchisee may terminate service after notifying the customer in writing of the intention to terminate service, postmarked not less than seven (7) days prior to the date of intended termination of service. The Franchisee shall not take any action to collect any portion of an unpaid bill subject to a dispute or terminate service for an unpaid bill subject to a dispute until there is resolution of the dispute. The Franchisee shall have a City-approved written policy for resolving disputed billings. The Franchisee must provide a copy of the disputed billing policy to the City for review and approval prior to implementation; or
4. If the provisions of Section 11 are met.

SECTION 26. Subcontracts.

The Franchisee may subcontract with others to provide only a specialized service under this franchise. Such subcontracts shall not relieve the Franchisee of any responsibility for compliance with this franchise. No such subcontract is enforceable without prior written approval by the City.

SECTION 27. Specialized Services.

The City reserves the right to contract with others to supply specialized service to recycle materials if the Franchisee chooses not to recycle such materials or supply services for such materials to be recycled.

SECTION 28. Amendments Clause.

This franchise may only be amended by written agreement between City Council and the Franchisee.

SECTION 29. Compliance with Applicable Law

1. Compliance. Franchisee will comply with all applicable laws. No obligation in this Agreement will be construed to relieve the Franchisee of any obligations imposed by applicable law.
2. Franchisee is solely liable for all fines and penalties that may be imposed on Franchisee or may be due to Franchisee's actions, including fines and penalties that are the result of Franchisee's violation of applicable law (including permits). Franchisee will not seek direct or indirect reimbursement from City or Customers for any fines or penalties.
3. Provisions of applicable law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to City.

4. Franchisee acknowledges that City is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Management services to protect the public's health, safety, and welfare. No provision in this Agreement may be deemed to limit the power of City to regulate the Franchisee or to take any action as City deems appropriate or necessary in City's sole and absolute discretion, under City's police power, including to protect the public's safety, health and welfare.

SECTION 30. Insurance

Franchisee must provide the following insurance coverages including any necessary endorsement, schedule or other documentation, and maintain them at all times during the Term:

1. General Liability Insurance. Written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with limits of not less than the following:

General Aggregate:	\$4 million
Products/Completion Operations Aggregate:	\$4 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$2 million
2. Liability coverage for pollution conditions resulting from transported cargo. With a limit of not less than \$2 million per occurrence covering loss (including cleanup costs) that the Franchisee becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, City or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. Franchisee's general liability policy may be endorsed to provide for this pollution liability coverage.
3. Automobile Liability Coverage. Insurance meeting the following requirements:
 - a. Written on ISO policy forms CA 00 12 or CA 00 20 (or their equivalent) with a limit of liability not less than \$2 million for each accident,
 - b. Endorsed to delete the pollution and/or the asbestos exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and
 - c. Covering all collection vehicles that drive on public roads.
4. If Franchisee is subject to federal regulations, Franchisee also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.
5. Workers' Compensation and Employers' Liability. Insurance providing the following:
 - a. Workers' compensation benefits required by Applicable Law (including the State Labor Code or by any other state labor law), and for which Franchisee is responsible, and
 - b. Employers' Liability coverage with limits of not less than the following:
 - (1) Each accident: \$2 million

6. Insurer qualifications. Franchisee will secure insurance provided by an insurer meeting the following qualifications:
 - (1) is acceptable to City,
 - (2) is an admitted company in Oregon,
 - (3) has a size category of VII or larger by A.M. Best Company, Inc., and
 - (4) has a rating of A or better by A.M. Best Company, Inc.
7. Evidence of Coverage. Franchisee will provide the certificate of insurance and required endorsements, requested by and acceptable to at City at the following times:
 - (1) on or before the Contract Commencement Date,
 - (2) promptly upon renewal of policies, and
 - (3) within 10 days of City's request.
8. If any Person makes a claim against Franchisee exceeding the amount of any deductibles or self-insured retentions, Franchisee will promptly notify City of the claim.
9. Franchisee will comply with all requirements of its insurance policies and insurers.
10. If any required policy lapses or is cancelled by its carrier, Franchisee must notify City Manager no later than 5:00 pm on the date of such cancellation or lapse, or by 5:00 pm on the date a reasonably careful person would have learned of such cancellation or lapse.
 - a. Lapse of any required coverage is grounds for termination of this Franchise.
 - b. Notwithstanding the right to terminate this Franchise, City reserves the right to purchase any coverage required by this Franchise and collect the cost of such coverage from Franchisee as additional franchise fee. Such additional franchise fee will not be recognized as an Allowable Expense.

SECTION 31. Performance

The Franchisee shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument acceptable to and approved in writing by the City in the amount of one hundred thousand dollars (\$100,000). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one (1) year, and the Franchisee shall provide a new bond, letter of credit or similar instrument, and evidence satisfactory to the City of its renewability, no less than sixty (60) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The City shall have the right to call the bond, letter of credit or other similar instrument in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration.

The security shall guarantee faithful performance of all the obligations contained with this Agreement. The premium for the bond or cost for the letter or similar instrument shall be paid by the Franchisee.

SECTION 32. Indemnity and Hold Harmless.

The Franchisee shall indemnify the City, its officers, employees, and agents, and shall hold them harmless from all loss, damage, claim, expenses, or liability arising out of the operation by the Franchisee under its franchise, except to the extent such claims arise from the sole negligence of the City. In the event that any notice of claim, suit, or action is brought for injury or damage to persons or the property against any of the foregoing based upon, or alleged to be

based upon, any loss, damage, claim, expense, or liability arising out of the operations of the Franchisee under its franchise, the Franchisee shall defend the same at its own costs and expense; provided, however, that the City reserves their right to retain counsel of its own choosing and join in the defense of any such suit or action with the reasonable cost of such additional counsel to be borne by the Franchisee.

SECTION 33. Franchisee's Service Requirements.

The Franchisee may, subject to review and approval by the City, establish reasonable rules on matters directly affecting the safety of the Franchisee's employees and its ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the Franchisee can comply with disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon or Metro.

SECTION 33. Protection of Containers.

The City agrees that it shall use good faith efforts when adopting an administrative rule or a new provision of the City code which makes it unlawful for any person, other than the Franchisee or the person producing the materials, to interfere with any solid waste container, take recyclable material or any other solid waste set out to be collected from such container, or to remove any such container or its contents without first obtaining written consent from the Franchisee or the person producing the materials. The Franchisee shall have a private right of action to independently enforce the terms of such administrative rule or code provision should it be enacted, against a third party, including a claim for injunctive relief.

SECTION 34. Severability Clause.

Any finding by a court of competent jurisdiction that any portion of this Agreement is unconstitutional or invalid shall not invalidate any other provisions of this Agreement. However, in the event of such finding, the City Council may, at its discretion, modify or terminate this Agreement if it determines such act is in the public interest.

SECTION 35. Effective Date.

The terms and provisions of this franchise shall become effective on January 1, 2016.



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: An ordinance amending chapter 8.40 of the Troutdale municipal code and reassigning staff responsibility for solid waste.

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: November 10, 2015

STAFF MEMBER: Amy Pepper
DEPARTMENT: Public Works

ACTION REQUIRED
Ordinance - Introduction

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

Comments:

STAFF RECOMMENDATION: N/A Ordinance introduction

EXHIBITS:

A. Red-lined copy of the proposed TMC 8.40

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)
Solid Waste/Recycling

Issue / Council Decision & Discussion Points:

- ◆ Changes to the ordinance are mostly housekeeping related issues.
- ◆ The proposed ordinance adds language required by the franchise agreement with Waste Management related to the protection of containers.
- ◆ The proposed ordinance revises the allowable term of the franchise to allow for periodic extension without need to renegotiate the entire agreement.

Reviewed and Approved by City Manager:

Sarah Swach for Craig Ward

BACKGROUND:

By Ordinance number 763 in 2005, the City renumbered Chapter 8.40 of the Troutdale Municipal Code, thereby removing it from Title 12, which relates to Public Works. At the same time, staff responsibility for solid waste administration was reassigned from the Public Works Director to the Community Development Director to acknowledge the shifting of responsibilities between the two departments.

Attached to this staff report as Exhibit "A" is a copy of the proposed changes to Chapter 8.40, "Solid Waste".

The proposed ordinance changes are mostly housekeeping in nature. At the time the solid waste section of the code was renumbered, definitions associated with that section were not removed from Title 12 and added to Chapter 8.40. Those definitions are proposed to be added to Chapter 8.40 at this time.

When the current franchise agreement was approved by Council, it included a provision for the City to update its code to include language related to protection of containers. That language is proposed to be included in Section 8.40.020(D).

Additionally, more than once in the past, some on the Council have questioned the 10-year limit to the term of the franchise agreement and the seeming inflexibility in it. Staff has proposed new language in Section 8.40.030 that would allow, following review of the franchise agreement at the mid-year point in the franchise term, to extend the franchise agreement, allowing for more of a "rolling" franchise term.

PROS & CONS:

Pros:

- The housekeeping changes brings the franchise and the ordinance into alignment and makes implementing and enforcing Chapter 8.40 easier.
- Changing the franchise term as proposed allows for more flexibility in extending the agreement and provides both the City and the franchisee ample foreknowledge if the franchise will not be extended.

Cons

- None.

Current Year Budget Impacts	<input type="checkbox"/> Yes (describe)	<input checked="" type="checkbox"/> N/A
Future Fiscal Impacts:	<input checked="" type="checkbox"/> Yes (describe)	<input checked="" type="checkbox"/> N/A
City Attorney Approved Ordinance	<input checked="" type="checkbox"/> Yes	
Community Involvement Process:	<input type="checkbox"/> Yes (describe)	<input checked="" type="checkbox"/> N/A

Chapter 8.40 - SOLID WASTE*

Sections:

8.40.010	Title.
<u>8.40.015</u>	<u>Definitions.</u>
8.40.020	Intent and scope.
8.40.030	Franchise term.
8.40.040	Franchise fee.
8.40.050	Franchise agreement.
8.40.060	Solid waste rates.
8.40.070	Compliance and enforcement.
8.40.080	Private right of action.
8.40.090	Administration.

8.40.010 - Title.

This chapter of the code shall be entitled "Solid Waste."

8.40.015 - Definitions

"City" means City of Troutdale.

"Collection or collection service" means all or any part of the activities involved in collecting and transporting solid waste, recyclable materials or yard debris to an appropriate disposal or recycling facility.

"Collection franchise" means a franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service and to use City streets.

"Construction and demolition debris" means used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a city permit has been issued.

"Council" means the City Council of the City of Troutdale.

"Customer" means those generators of solid waste, recyclable materials, or yard debris to whom a franchisee provides collection service.

"Franchisee" means the Person granted the exclusive franchise by Section 4 of this franchise or a subcontractor to such person.

"Generator" means a person who last uses a material and makes it available for disposal or recycling.

"Hazardous waste" means a waste as defined in ORS 466.005 (or any successor thereto) and/or solid waste that is required to be accompanied by a written manifest or shipping document describing the

waste as "hazardous waste" or 'dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et Seq., and the Hazardous Waste Management Act, Chapter 466 ORS as amended, and the regulations promulgated thereunder. Hazardous waste shall not include incidental household hazardous waste or small quantity generator waste which is commingled with solid waste.

"Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, automotive, and paint products.

"Infectious waste" means biological waste, culture and stocks, pathological wastes, and sharps as defined in ORS 459.386.

"Oregon Revised Statutes (ORS)" are the codified body of statutory laws governing the State of Oregon.

"Person" means an individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.

"Processing" means an operation where collected, source-separated recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.

"Rates" means the amounts of compensation paid for various levels of solid waste and recycling service.

"Recyclable material, recyclables" means any material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from Solid Waste by the Generator or at a Material Recovery Facility.

"Recycling" means the process of collecting, sorting, cleansing, treating or reconstituting recyclable materials which would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new; reused, or reconstituted products.

"Resource Recovery" means the process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling and reuse.

"Service" means the collection, transportation, storage or disposal of, or resource recovery from, solid waste, or recyclable material, or both.

"Solid waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage; rubbish; refuse; ashes; wastepaper and cardboard; commercial, industrial, demolition and construction materials; sewage sludge; septic tank and cesspool pumping or other sludge; discarded or abandoned vehicles or parts thereof; discarded home appliances; manure, vegetable or animal solid or semisolid materials, dead animals, infectious waste as defined in ORS 459.386, special waste and other wastes; but the term does not include:

1. Materials defined as principal recyclable materials in OAR 340-90-070, and any others designated by the City, which have been correctly placed for collection or taken to a Depot by the generator;
2. Hazardous wastes as defined in ORS 466.005; and
3. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. (OAR 340-90-010(36))

“Solid waste collection service or service” means the collection, transportation, storage or disposal of or resource recovery of solid wastes, from residential, multifamily, commercial) and industrial generators, as required by City regulations, and administrative rules; and the collection, transportation and processing of recyclable materials and yard debris from residential and commercial generators.

“Solid waste management” means the prevention or reduction of solid waste; storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

“Source separated recyclable materials” means any recyclable material separated from the solid waste stream prior to collection.

“Waste” means material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, rehabilitation of land.

“Yard Debris” means compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

8.40.020 - Intent and scope.

- A. Pursuant to the statutes of the state of Oregon and the powers granted in the charter of the city, the council declares its intent to insure the safe accumulation, storage, collection, transportation, and disposal or recovery of solid waste and recyclable material in the city.
- B. The council finds, determines and declares the necessity of providing for the city's solid waste and recycling needs by the establishment of an exclusive franchise for solid waste and recycling collection and transportation services for compensation within a delineated service area.
- C. It is unlawful for any person to provide, ~~or~~ offer to provide, or advertise for services for the collection and/or transportation of solid waste and recycling for compensation without obtaining a franchise from the city, except for the following wastes:
 1. Sewage sludge, septic tank pumpings, cesspool pumpings and the like;
 2. Motor vehicles and motor vehicle parts;
 3. Construction and demolition debris;
 4. Redeemable beverage containers;

- 5. ~~Wastes that may be repairable or cleanable and are~~ Source Separated Materials for Resource Recovery collected by ~~private charitable, civic or benevolent organizations regularly engaged in such activity;~~
 - 6. Wastes produced as an incidental part of other business activity such as janitorial services, landscaping services and the like;
 - 7. Wastes that are exempt under ORS 459A.075.
- D. It is unlawful for any person, other than one with a franchise or the person producing the materials, to interfere with any solid waste container, take recyclable material or any other solid waste set out to be collected from such container, or to remove any such container or its contents without first obtaining consent from said persons.

8.40.030 - Franchise term.

A. The exclusive franchise agreement provided for by this chapter shall be for a period specified in the franchise agreement but not to exceed ten ~~eight~~ years.

B. Every four years, Council will review the franchise agreement and may elect to extend the franchise for an additional four years, thereby returning the remainder of the franchise term to eight years.

C. Council has the authority to choose not to extend the franchise for any reason. If the Council decides not to extend the franchise, it shall, prior to the expiration of the franchise select a hauler through an alternative selection process.

8.40.040 - Franchise fee.

- A. As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to five percent of gross revenues resulting from the solid waste services conducted under this franchise.
- B. In the event that the franchisee shall pay a franchise fee of more than five percent to any city or municipal corporation within the Portland-Metro area during the duration of the franchise agreement, then the franchisee shall inform the city of the same and the city shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review process.

8.40.050 - Franchise agreement.

The city and the franchisee shall enter into a written franchise agreement describing the duties and responsibilities of each party. This agreement shall be authorized by a resolution of the council and may, from time to time, be changed by resolution of the council.

8.40.060 - Solid waste rates.

- A. The council, by resolution, shall establish rates which the franchisee may charge for solid waste services and may, from time to time, by resolution change those rates.
- B. When a new or unusual solid waste service not included in the rate structure approved by the council is requested, the franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the franchisee shall notify the ~~community development director~~ city manager or his/her designee in writing of the service provided, the rate ~~established~~ proposed and the basis for the rate. If the city manager or his/her designee finds the rate for providing such service unreasonable, rates shall be approved by the council.

8.40.070 - Compliance and enforcement.

If there is a violation of this chapter, the city may, in addition to other remedies provided by law, file an action in a court of appropriate jurisdiction seeking a civil penalty, recovery of unpaid fees owed, an injunction for abatement and court costs.

8.40.080 - Private right of action.

A private enforcement cause of action is hereby created for any person to bring a civil action alleging violation of this chapter in a state court of appropriate jurisdiction, seeking appropriate judicial remedies, including injunctive relief and damages. A copy of any such suit that is filed shall be mailed or delivered to the city manager's office when it is filed. Any person who prevails in an action under this section, pertaining to private right of action, shall be entitled to his, her or its reasonable costs and attorney's fees, including those on appeal.

8.40.090 - Administration.

The ~~community development director~~city manager or his/her designee shall be responsible for the administration of this chapter.

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 8.40 OF THE TROUTDALE MUNICIPAL CODE AND REASSIGNING STAFF RESPONSIBILITY FOR SOLID WASTE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. In 2005, the Solid Waste section of the municipal code was renumbered from Chapter 12.10 to Chapter 8.40 and staff responsibility was reassigned.
2. Responsibility for administration of the solid waste program is being transferred from the Community Development Department to the City Manager, or his/her designee.
3. The proposed ordinance adds definitions pertinent to this chapter that were not moved when this chapter was renumbered.
4. The proposed ordinance adds language required by the franchise agreement with Waste Management related to the protection of containers.
5. The proposed ordinance revises the franchise term to allow for periodic extension to be approved by the Council without need to renegotiate the entire franchise agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Chapter 8.40 of the Troutdale Municipal Code, Solid Waste, is hereby amended to read as follows:

Chapter 8.40

SOLID WASTE

Sections:

- 8.40.010 Title.**
- 8.40.015 Definitions.**
- 8.40.020 Intent and scope.**
- 8.40.030 Franchise term.**
- 8.40.040 Franchise fee.**

- 8.40.050 Franchise agreement.**
- 8.40.060 Solid waste rates.**
- 8.40.070 Compliance and enforcement.**
- 8.40.080 Private right of action.**
- 8.40.090 Administration**

8.40.010 Title.

This chapter of the code shall be entitled "Solid Waste".

8.40.015 Definitions.

"City" means City of Troutdale.

"Collection or collection service" means all or any part of the activities involved in collecting and transporting solid waste, recyclable materials or yard debris to an appropriate disposal or recycling facility.

"Collection franchise" means a franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service and to use City streets.

"Construction and demolition debris" means used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a city permit has been issued.

"Council" means the City of Council of the City of Troutdale.

"Customer" means those generators of solid waste, recyclable materials, or yard debris to whom a franchisee provides collection service.

"Franchisee" means the person granted the franchise under this ordinance, or a subcontractor to such person.

"Generator" means a person who last uses a material and makes it available for disposal or recycling.

"Hazardous waste" means a waste as defined in ORS 466.05 (or any successor thereto) and/or solid waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et Seq., and the Hazardous Waste Management Act, Chapter 466 ORS as amended, and the regulations promulgated thereunder. Hazardous waste shall not include incidental hazardous waste or small quantity generator waste which is commingled with solid waste.

“Household hazardous waste” means any discarded, useless or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, automotive, and paint products.

“Infectious waste” means biological waste, culture and stocks, pathological wastes, and sharps as defined in ORS 459.386.

“Oregon Revised Statutes (ORS)” are the codified body of statutory laws governing the State of Oregon.

“Person” means an individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.

“Processing” means an operations where collected, source-separated recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.

“Rates” means the amounts of compensation paid for various levels of solid waste and recycling service.

“Recyclable material, recyclables” means any material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from Solid Waste by the Generator or at a Material Recovery Facility.

“Recycling” means the process of collecting, sorting, cleansing, treating, or reconstituting recyclable materials which would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new, reused, or reconstituted products.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling, and reuse.

“Service” means collection, transportation, storage or disposal of, or resource recovery from, solid waste, or recyclable material, or both.

“Solid waste” means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage; rubbish; refuse; ashes; wastepaper and cardboard; commercial, industrial, demolition and construction materials; sewage sludge; septic tank and cesspool pumping or other sludge; discarded or abandoned vehicles or parts thereof; discarded home appliances; manure, vegetable or animal solid or semisolid materials, dead animals, infectious waste as defined in ORS 459.386, special waste and other wastes; but the terms does not include:

1. Materials defined as principal recyclable materials in OAR 340-90-070, and any others designated by the City, which have been correctly placed for collection or taken to a Depot by the generator;
2. Hazardous wastes as defined in ORS 466.005; and
3. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals (OAR 340-90-010(36)).

“Solid waste collection service or service” means the collection, transportation, storage or disposal of or resource recovery of solid wastes, from residential, multifamily, commercial, and industrial generators, as required by City regulations, and administrative rules; and the collection, transportation and processing of recyclable materials and yard debris from residential and commercial generators.

“Solid waste management” means the prevention or reduction of solid waste; storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

“Source separated recyclable materials” means any recyclable materials separated from the solid waste stream prior to collection.

“Waste” means material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, rehabilitation of land.

“Yard debris” means compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

8.40.020 Intent and scope.

- A. Pursuant to the statues of the state of Oregon and the powers granted in the charter of the city, the council declares is intent to insure the safe accumulation, storage, collection, transportation, and disposal or recovery of solid waste and recyclable material in the city.
- B. The council finds, determines and declares the necessity of providing for the city’s solid waste and recycling needs by the establishment of an exclusive franchise for solid waste and recycling collection and transportation services for compensation within a delineated service area.

C. It is unlawful for any person to provide, offer to provide, or advertise for services for the collection and/or transportation of solid waste and recycling for compensation without obtaining a franchise from the city, except for the following wastes:

1. Sewage sludge, septic tank pumpings, cesspool pumping and the like;
2. Motor vehicles and motor vehicle parts;
3. Construction and demolition debris;
4. Source Separated Materials for Resource Recovery collected by charitable, civic or benevolent organizations;
5. Wastes produced as an incidental part of other business activity such as janitorial services, landscaping services and the like;
6. Wastes that are exempt under ORS 459A.075.

D. It is unlawful for any person, other than a franchisee or generator, to interfere with any solid waste container, take recyclable material or any other solid waste set out to be collected from such container, or to remove any such container or its contents, without first obtaining consent from the franchisee or the generator.

8.40.030 Franchise term.

- A. The exclusive franchise agreement provided for by this chapter shall be for a period specified in the franchise agreement but not to exceed eight years.
- B. Every four years, Council will review the franchise agreement and may elect to extend the franchise for an additional four years, thereby returning the remainder of the franchise term to eight years.
- C. Council has the authority to choose not to extend the franchise for any reason. If the Council decides not to extend the franchise, it shall, prior to the expiration of the franchise select a hauler through an alternative selection process.

8.40.040 Franchise fee.

- A. As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to five percent of gross revenues resulting from the solid waste services conducted this franchise.
- B. In the event that the franchisee shall pay a franchise fee of more than five percent to any city or municipal corporation within the Portland-Metro area during the duration of the franchise agreement, then the franchisee shall inform the city of the same and the city shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review process.

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The city and the franchisee shall enter into a written franchise agreement describing the duties and responsibilities of each party. This agreement shall be authorized by a resolution of the council and may, from time to time, by resolution of the council.

8.40.060 Solid waste rates.

- A. The council, by resolution, shall establish rates which the franchisee may charge for solid waste services and may, from time to time, by resolution change those rates.
- B. When a new or unusual solid waste service not included in the rate structure approved by the council is requested, the franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the franchisee shall notify the city manager or his/her designee in writing of the service provided, the rate proposed and the basis for the rate. If the city manager or his/her designee finds the rate for providing such service unreasonable, rates shall be approved by the council.

8.40.070 Compliance and enforcement.

If there is a violation of this chapter, the city may in addition to other remedies provided by law, file an action in a court of appropriate jurisdiction seeking a civil penalty, recovery of unpaid fees owed, an injunction for abatement and court costs.

8.40.080 Private right of action.

A private enforcement cause of action is hereby created for any person to bring a civil action alleging violation of this chapter in a state court of appropriate jurisdiction, seeking appropriate judicial remedies, including injunctive relief and damages. A copy of any suit that is filed shall be mailed or delivered to the city manager's office when it is filed. Any person who prevails in an action under this section pertaining to private right of action, shall be entitled to his, her or its reasonable costs and attorney's fees; including those on appeal.

8.40.090 Administration.

The city manager or his/her designee shall be responsible for the administration of this chapter.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date

Sarah Skroch, City Recorder

Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A Resolution Authorizing Execution of Intergovernmental Agreements for:
 1) Levee Cost Sharing with Multnomah County and the Port of Portland; 2) Levee Analysis Cost-Sharing Phase II (MCDD and SDIC); and 3) Cost Sharing of Levee Ready Columbia Expenses not Covered by IFA Loans

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: November 10, 2015 STAFF MEMBER: Craig Ward DEPARTMENT: Executive</p>
<p>ACTION REQUIRED Resolution</p> <p>PUBLIC HEARING No</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable</p> <p><u>Comments:</u></p>
<p>STAFF RECOMMENDATION: Adopt resolution</p>	

EXHIBIT:
 A) Declaration of Cooperation
 B) Three intergovernmental agreements

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)

The three IGA's commit Troutdale to support the multijurisdictional partnerships necessary to finance Phase II of Levee Ready Columbia that is necessary to recertify the Columbia River levees operated and maintained by Multnomah County Drainage District No. 1 (MCDD) in order to identify the needs for the levees to remain accredited by the Federal Emergency Management Agency (FEMA). The IGA with Multnomah County makes available financial support for the remaining IGA's, by assuming a portion of Troutdale's debt and cash cost obligations, lessening Troutdale's financial contributions that would otherwise be as stated in each of the following IGA's. The Levee Analysis Cost-Sharing Phase II IGA establishes Troutdale as a partner to a multijurisdictional Infrastructure Finance Authority (IFA) loan to conduct engineering assessments for the levee systems whose certifications will expire before or during 2017. The IFA loan will also support completing physical inventories for each levee that will set the stage for evaluating alternative solutions to the issues and shortcomings identified throughout the project. The third

Reviewed and Approved by City Manager: *Sarah Snook for Craig Ward*

IGA allocates the costs for the partner agencies to administrative costs of conducting Phase II that are otherwise not eligible for the IFA loan.

Issue / Council Decision & Discussion Points:

- ◆ The certification of the Columbia River levee in Troutdale, which is operated and maintained by the Sandy Drainage Improvement Company (SDIC), will expire in 2017. It is therefore vital that engineering assessments and other tasks necessary to prove that the levee system qualifies for recertification be promptly conducted, which is the primary purpose of the proposed Intergovernmental Agreements (IGA's).
- ◆ Certification is necessary to demonstrate to FEMA that the levee system protects against the 1-percent-annual-chance flood event. This accreditation will then allow the location to be mapped as a non-floodplain area in the protected area behind the levee system. Without FEMA accreditation the land behind the levee would be shown as a floodplain which would require landowners with federally backed loans to purchase costly flood insurance and would also trigger floodplain development restrictions. This would have an economic impact on the potential development within the Columbia Corridor. For the City of Troutdale, this impact would be economic viability of the protected properties, which are the majority of the city's industrial properties.
- ◆ The levee engineering assessment and investigation phase (Phase II) affecting the five levee systems in the Columbia Corridor, including the segment in Troutdale operated and maintained by SDIC, will be financed by both cash contributions and a loan to Multnomah County from the Business Oregon (IFA).
- ◆ Multiple parties are participating in both contributing cash and backing the loan. In the summer of 2016, a Levee Ready Columbia finance subcommittee developed an allocation methodology to distribute Phase II project costs across partners, which include regional partners, drainage districts, and jurisdictions. The City of Troutdale's shares are based on relative acres of area protected by the levee system.
- ◆ The Declaration of Cooperation (Exhibit A) was endorsed by the City of Troutdale on August 25, 2015 that anticipated subsequent IGAs in partnership with several other jurisdictions. Due to the multiplicity of other agencies that have negotiated and adopted the IGA's, the documents are not amendable to editing.
- ◆ Phase II requires IGA's in order for Multnomah County to borrow the funds, and for the partnership to collect and allocate funds not covered by the IFA loan required to conduct the levee assessment and define the repairs and improvements that will likely be necessary to recertify the levees.
- ◆ Until Phase II is completed, it is unknown what improvements and repairs, or their costs, will be necessary in order to qualify the SDIC levees for recertification. The proposed IGA's do not bind Troutdale to financial plans that may subsequently emerge from the levee engineering assessments.
- ◆ Multnomah County and the Port of Portland have collaborated to reduce the proposed financial obligations to Fairview and Troutdale to the amounts shown in the IGA with Multnomah County for Levee Cost-Sharing.
- ◆ The three proposed IGA's are binding only within the scope of Phase II of this project.

BACKGROUND:

In 2013, the Governor asked Multnomah County and Portland to convene an Oregon Solutions Team (now known as the "Levee Ready Columbia" team), a cross-sector regional partnership of agencies working together to address FEMA accreditation and US Army Corps of Engineers' (USACE) Rehabilitation and Inspection Program (RIP) on the Columbia Corridor levee system. For the past year, Levee Ready Columbia has been co-convened by Portland Mayor Charlie Hales and Multnomah County Commissioner Jules Bailey.

The first phase of the project (Phase I), which began in December of 2013, focused on completing levee engineering assessments that identified what issues or shortcomings in the levee system need to be addressed in Peninsula Drainage District No. 1 (PEN 1) and Peninsula Drainage District No. 2 (PEN 2) in order to renew the levees certification by a professional engineer in order to ascertain the levees' flood-control capacity. Levee Ready Columbia partners also engaged in a learning process, about both the FEMA accreditation requirements and USACE RIP.

The second phase expands the project's geographic scope to complete similar engineering assessments for the levee systems that are operated and maintained by MCDD and SDIC. Certification for both MCDD and SDIC expires in 2017. The funding will also be used to complete physical inventories that will set the stage for evaluating alternative solutions to the issues and shortcomings identified throughout the project. All levee systems being assessed under Levee Ready Columbia are likely to be re-mapped simultaneously as a unit by FEMA.

The Declaration of Cooperation (Exhibit A) established the overall process and governance for the full effort encompassing the five drainage districts Project Goals.

Phase II will occur over the next 12-18 months and will focus on the following objectives:

- Complete levee engineering assessments necessary to document the repairs and improvements pursuant to re-certifying the MCDD and SDIC levees.
- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Maintain active status in USACE's RIP.
- Begin a review of potential climate change impacts on Columbia River elevations.
- Implement a communications strategy about the project with the general public and targeted audiences, such as neighborhood groups.
- Develop a process and criteria for evaluation and selection of preferred solutions.

The interim Levee Ready Columbia governance structure includes:

- a. The Levee Ready Columbia Team will be the main forum for regional collaborative recommendations to the appropriate jurisdictions on levee repair alternatives and related policies.
- b. Individual jurisdictions and drainage districts shall retain their current authorities and responsibilities and will retain the primary responsibility to maintain their levee systems and continue in the USACE's RIP and FEMA's National Flood Insurance Program (NFIP).
- c. A Technical Advisory Subcommittee shall provide review and advice on technical matters to the Levee Ready Columbia Team, but will not make decisions.
- d. A Communications and Outreach Subcommittee shall be charged with designing and implementing strategies for communicating with the general public and specific stakeholder groups, as necessary.

- e. An Administrative Subcommittee deliberates on administrative matters (meeting agendas, budgets, contracts, etc.) and at times make recommendations to frame policy issues for decision-making by the larger Levee Ready Columbia Team.

Work Products: Major additional budget expenses anticipated for the next phase of the project include:

- Inventorying the specific economic, community, and environmental resources protected by the PEN 1, PEN 2, MCDD, and SDIC levee systems.
- Engineering assessments in SDIC and the other levee segments.
- Development and evaluation of solutions throughout the levee system to meet FEMA and USACE requirements.
- Maintaining active status in USACE's RIP.
- Reviewing potential climate change impacts on Columbia River elevations.
- Implementing a communications strategy with the general public and targeted audiences.
- Process management and facilitation through Oregon Solutions.
- Studying the economic impact on PEN 1, PEN 2, MCDD, and SDIC of losing accreditation.

While the Declaration did not commit Troutdale financial resources for the activities listed above, the proposed IGA's do obligate the City and other partners to fund the necessary activities to produce the listed work products and administer the partnership. Most of the budget (\$3.6 million) will be supported by an IFA loan from Business Oregon to Multnomah County with a small portion (\$0.4 million) of project costs not covered by the IFA loan to be funded through cash contributions in the third IGA listed.

Troutdale's initial proposed financial obligation to the IFA loan was \$224,278, and Fairview's allocation was \$123,908, plus FY16 cash expenses of \$13,426 and \$7,099, respectively, assuming that the State will provide an additional \$50K each to MCDD and SDIC. Multnomah County has entered into the loan agreement with the IFA, and the County and the Port of Portland have proposed to prepay 50% of Troutdale and Fairview's allocated IFA loan commitments and all of both cities shares of FY16 cash expenses. Once the preconditions noted above are satisfied, Troutdale will be obligated to repay the IFA loan for \$112,139 plus interest over a seven (7) year period beginning in FY18 (roughly \$17,000/yr.), and Troutdale would have no initial cash match obligation.

Adoption of this resolution will authorize the City Manager to enter into IGA's for Multnomah County for Levee Cost-Sharing, the Levee Analysis Cost-Sharing Phase II (MCDD and SDIC), and Cost Sharing of Levee Ready Columbia Expenses not Covered by IFA loans. The "Multnomah County for Levee Cost-Sharing" IGA obligates Multnomah County and the Port of Portland to assume \$237,704 of the financial responsibility for what the other two IGA's would otherwise assign to Troutdale. Specifically, approval and compliance with the terms of the "Multnomah County for Levee Cost-Sharing" IGA reduces Troutdale's \$224,278 obligation by 50 percent. Troutdale's subsequently identified in the Levee Analysis Cost-Sharing Phase II (MCDD and SDIC), as well as the \$13,426 obligation for the Cost Sharing of Levee Ready Columbia Expenses not Covered by IFA loans.

The result of the adoption of this resolution will obligate Troutdale to repay the IFA loan for \$112,139 plus interest over a seven (7) year period beginning in FY18 (roughly \$17,000/yr.). Troutdale will not have a cash match obligation.

Re-certifying the levee system that within Troutdale is maintained and operated by the Sandy Drainage Improvement Company will ensure it can remain accredited by FEMA and aims to remain in active status in the USACE RIP. Certification is necessary to demonstrate to FEMA that the levee system protects against the 1-percent-annual-chance flood event. This accreditation will allow the location to be mapped as a non-floodplain area in the protected area behind the levee system. Without FEMA accreditation, the land behind the levee would be shown as a floodplain which would require landowners with federally backed loans to purchase costly flood insurance and would also trigger floodplain development restrictions. This would have serious economic repercussions on potential development within the Columbia Corridor and on Troutdale's industrial base.

SUMMARY:

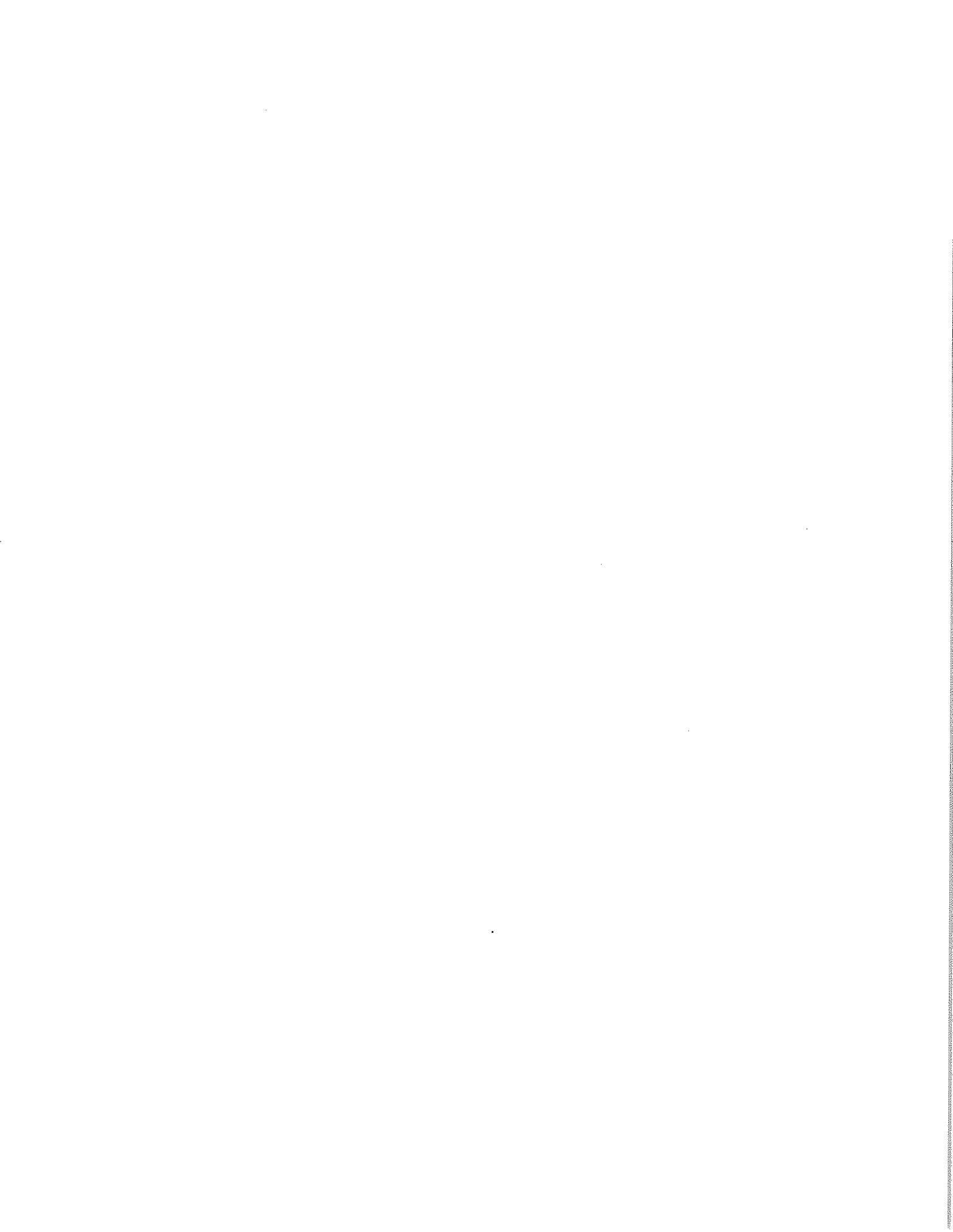
The three IGA's are binding obligations that commit Troutdale to support the multijurisdictional IGA's necessary to utilize the IFA loan that will finance Phase II of Levee Ready Columbia, which aims to ensure the Columbia Corridor levee system remains active in USACE's RIP and is re-certified and remains accredited by FEMA.

These IGAs are intended to strictly establish the distribution of costs for Phase II and is done in the spirit of cooperation and the agreed upon need to get further information for planning and decision-making. These IGAs do not in any way imply any similar responsibility to fund or share in the funding of the repair or capital improvement costs expected for the actual levee rehabilitation.

PROS & CONS:

- A. Approve the proposed resolution to partner with SDIC, Multnomah County, the Port of Portland and various other public entities to fund Phase II of Levee Ready Columbia, which aims to ensure the Columbia Corridor levee system remains active in USACE's RIP and is re-certified and remains accredited by FEMA.
- B. Not approve the proposed resolution, with the expectation that either the SDIC or others will assume the financial obligation, or the funding of the levee engineering assessment would not be completed, certification is not acquired, accreditation of the system is lost.

<p>Current Year Budget Impacts: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A</p> <p>Future Fiscal Impacts: <input checked="" type="checkbox"/> Yes (describe) <input type="checkbox"/> N/A Staff currently estimates that Troutdale would owe about \$17,000/yr. beginning in FY18 for 7 years IF we sign the subsequent IGAs.</p> <p>Community Involvement Process: <input type="checkbox"/> Yes (describe) <input checked="" type="checkbox"/> N/A A public involvement process is being planned, but has not yet occurred.</p>
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COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION

Phase I to Phase II

DECLARATION OF COOPERATION

Introduction and Purpose of this Declaration

The Columbia River Levee Repair and Accreditation Oregon Solutions Project Team (Oregon Solutions Team) is a cross-sector regional team working together to address the Federal Emergency Management Agency (FEMA) accreditation, U.S. Army Corps of Engineers (USACE) approval, and safety of the Columbia River levees.

The first phase of the Oregon Solutions process (Phase I), which began in December of 2013, focused on identifying what issues or shortcomings in the levee system need to be addressed in Peninsula Drainage District No. 1 (PEN 1) and Peninsula Drainage District No. 2 (PEN 2). The Oregon Solutions Team participants also engaged in a learning process, about both the FEMA accreditation requirements and USACE Rehabilitation and Inspection Program (RIP).

Over the next 12-18 months our next phase of work (Phase II) will expand our geographic scope to complete similar assessments for the Multnomah County Drainage District No. 1 (MCDD) and the Sandy Drainage Improvement Company (SDIC), and also to complete physical inventories that will set the stage for evaluating alternative solutions to the issues and shortcomings identified in all four districts. We will also incorporate similar work in the Sauvie Island Drainage Improvement Company (SIDIC), as all five districts are likely to be re-mapped as a unit by FEMA.

This is an appropriate time for the Oregon Solutions Team to ratify its goals for the next phase and how it wants to work together. A Declaration of Cooperation that all parties sign will help clarify expectations for this next phase, including the following:

- Overall goals, principles, and commitments for how we will work together
- Geographic scope
- Interim governance structure -- how decisions will be made
- Public outreach and involvement
- Funding issues and tasks

While this document is *not* a legally-binding agreement, it is intended as a good-faith representation of the intent and commitments of the signing parties at this time, to help facilitate the regional collaboration on this important project. However, in *no* event may this document be used as the basis for any claim by one party against another.

More importantly, it is intended to serve as a guidance document as the parties move forward to collaboratively make decisions related to levee repair and accreditation.

Phase I Accomplishments

1. The Columbia River Levee Repair and Accreditation Project was designated as an Oregon Solutions project by the Governor. While the primary focus of this project in the first phase has been the levee systems in the PEN 1 and PEN 2, the initial intent was to utilize lessons learned from this process for subsequent flood safety efforts for others statewide.
2. A primary focus of Phase I was to identify the minimum requirements for certification pursuant to FEMA accreditation of the levee systems in PEN 1 and PEN 2. Cornforth Consultants were retained to conduct levee engineering assessments, and identified four areas requiring attention in order to meet the minimum acceptable standards for accreditation by FEMA:
 - The Burlington Northern Santa Fe (BNSF) and Union Pacific (UP) railroad embankments form the west side of PEN 1. Although limited access to the railroad embankments prevented thorough analysis of soil stability, historical data shows that soil removed from the St. Johns cut covers the original trestle system supporting the

railroad. While the USACE has recognized the embankment as serving a levee function and has improved or reinforced the embankment over the years, both railroad companies have stated it is against their national policy to sign the required operation and maintenance agreement to achieve accreditation.

- Two low spots near the Interstate 5 interchange at North Marine Drive. These do not meet the required height at the northeast corner of the cross-levee for PEN 1 / PEN 2.
 - A low spot at the northeast corner of PEN 2. This spot fails to meet the required height. This low spot is located on vacant Port of Portland property.
 - The Peninsula Drainage Canal cross-Levee for PEN 2/MCDD. Instability due to narrow, steep embankments on this levee could cause the levee to fail during certain high water events. The cross-levee is narrow in width and has steep walls.
3. Cornforth Consultants subsequently completed an additional modeling analysis of the levee systems using the (USACE) “authorized design water surface elevation” analyses. (i.e. a more protective, higher flood level standard)

In general, the new analyses using the USACE "authorized design" water surface elevations did not find any significant problems beyond those identified in the earlier FEMA 1-percent-annual-chance flood event analyses. For many of the levee sections in PEN 1 and PEN 2, the authorized design water surface elevation approaches a 0.2-percent-annual-chance flood event elevation (500-year flood). The bottom line: Addressing the issues identified under the earlier analyses in PEN 1 and PEN 2 could result in those levees being protective at the higher level, exceeding the minimum FEMA accreditation standards.

The only notable exception was in PEN 1, Reach 1-11, along the Columbia Slough, which protects the Portland International Raceway. In this reach, the levee has a calculated Factor of Safety (FS) of 1.3, slightly below the USACE's minimum FS of 1.4. However, because the FS is still significantly above a value of 1, USACE representatives stated that a reasonable approach to Reach 1-11 would be to note it as a 'focus area' during a high water event in the District's operation and maintenance manual in order to

provide extra inspection and reconnaissance to this section of levee. Additionally, the analysis found that the PEN 1 floodwall met USACE stability standards under the USACE authorized design water surface elevation.

4. The Oregon Solutions Team brought in a representative from NOAA to begin discussion of the potential impact on levee repair options that the NOAA Biological Opinion may have.
5. The USACE has indicated the key levee repairs or actions needed to keep PEN 1 and PEN 2 active in the Corps' Rehabilitation and Inspection Program (RIP).
6. In June of 2014, the Oregon Infrastructure Finance Authority (IFA) provided a 7-year low-interest loan for \$1.4 million, to complete the Cornforth engineering evaluation of the flood control systems in PEN 1 and PEN 2. Commitments were received from PEN 1, PEN 2, City of Portland, the Port of Portland, and Metro to pay off the loan. The City of Portland acted as the recipient of the loan and provided the administrative support.
7. The USACE and MCDD initiated a Planning Assistance to States (PAS) study for \$249,080 to develop alternatives and initial design of a solution to the railroad levee issues.
8. The Oregon Solutions Team has sponsored several opportunities to learn from other communities that have been through this. A panel discussion was held on May 20, 2014 and Scott Shapiro from Sacramento spoke to a statewide audience in November 2014. Both sessions were videotaped and are posted on the project's Oregon Solutions website.

Next Phase Principles and Commitments for how we will Work Together

We agree to the following principles and commitments to guide our efforts during the next phase of this project (in addition to the attached Oregon Solutions Team Ground Rules, attached, adopted in December 2013):

- a. Commitment to move forward. We commit to work together to keep the accreditation process moving forward in a way that is expeditious and timely yet sensitive to the impacts that levee repair and accreditation decisions will have on many and varied stakeholders.

- b. Recognize the area's regional economic importance. We will work as regional partners to achieve a level of flood protection that recognizes the economic importance of the area protected by the levees to the metro region, while also being economically prudent.
- c. Importance of public outreach. We understand the critical need to inform and frequently update and hear from the public and community groups about repairs and the accreditation process, and the impacts they may have (both positive and negative).
- d. Ecological valuation. We will identify and explore levee system solutions that recognize and either enhance or minimize negative impacts to the ecological potential for the area.
- e. Historical Significance. We will also engage communities with historical ties to the system in a collaborative discussion through public outreach and communication.
- f. Early collaboration with regulatory agencies. We will work proactively with federal, state and local agencies to identify and address regulatory concerns.

Next Phase Project Goals

In Phase I, the Oregon Solutions Team investigated the issues and deficiencies in meeting minimum FEMA accreditation standards for PEN 1 and PEN 2 through the levee engineering assessments. Additional modeling was conducted to assess the USACE authorized design and existing levels of protection.

In the next phase, our work will focus on the following objectives:

- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Complete engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2.
- Maintain active status in the USACE's Rehabilitation and Inspection Program (RIP).
- Initiate work to develop longer term governance options
- Initiate discussion on longer term funding and financing of levee and drainage system options.
- Review potential impacts of climate change on Columbia River elevation levels and the safety of the levee system, including the evaluation of potential solutions.

- Implement a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Develop a process and criteria for evaluation and selection of preferred solutions. That process will include at least the following considerations for how best to meet the goals:
 - i. Impacts to surrounding public and private property owners including recognition of historical community impacts of the levee system
 - ii. Ecosystem function including environmental, wildlife and habitat values
 - iii. Consistency with existing neighborhood and community plans
 - iv. Current and future economic stability
 - v. Broader community benefits such as recreation, transportation and access
 - vi. Protection of key public (and other) infrastructure

By the end of this phase we will be ready to outline solution alternatives in each of the districts.

Expanding the Geographic Scope.

We will begin during the next phase to incorporate other districts or drainage companies in Multnomah County into a larger regional effort, as Multnomah County Drainage District, Sandy Drainage Improvement Company, and Sauvie Island Drainage Improvement Company will soon be facing similar needs for re-certification and accreditation.

A major consideration in taking this step is the indication by FEMA that accreditation and mapping is likely to be done for all five Multnomah County drainage areas at the same time. In addition, there are potential cost savings through coordinating remediation alternatives including consideration of certifying and accrediting the perimeter levee of a single system and not include the cross-levees between the separate districts.

We are expanding the geographic scope of the project to also benefit from potential administrative savings, cross-district learning, and relationships with federal agencies. At the same time, we will be sensitive and make every effort to not have the expansion result in unnecessary delays to action for specific districts or alternative solutions.

Next Phase Governance

We recognize that longer-term and more formal governance-structure changes may be required for governance on future levee issues and that revisions to *this* interim governance structure may even be required as we learn more. Nevertheless, for purposes of being able to move forward without costly delays, we believe agreement on the interim governance structure is critical.

- a. **The Columbia River Levee Oregon Solutions Team**, designated by the Governor and which has been co-convened by Multnomah County Commissioner Jules Bailey and Portland Mayor Charlie Hales, will continue to be the main forum for regional collaborative recommendations to the appropriate jurisdictions on levee repair alternatives and related policies. All sub-committees of the Oregon Solutions Team ultimately report to this group.
- b. **Individual jurisdictions** have, and will retain, current authorities and responsibilities (e.g. the City of Portland is the jurisdiction officially recognized by FEMA to request re-accreditation for levees within the Portland City limits; and the drainage districts and improvement companies will retain the primary responsibility to maintain their levee systems and continue in the USACE's RIP program).
- c. A **Technical Advisory Subcommittee** shall provide review and advice on technical matters to the Oregon Solutions Team. It will not make decisions, but may be asked to provide technical information and recommendations. This Technical Advisory Subcommittee may in turn charge sub-committees with membership that will be designed to provide the needed technical expertise and perspectives. Among the specific tasks for the Technical Advisory Subcommittee in Phase II will be:
 - Providing technical review and vetting of consultant work (including development or review of scopes of work for consultants)
 - Helping frame technical issues or technical aspects of programmatic/policy decisions that will be considered by the Oregon Solutions Team
 - Developing and reviewing alternatives for levee improvements
- d. A **Communications and Outreach Subcommittee** shall be charged with designing and implementing strategies for communicating with the general public and specific stakeholder groups, as necessary. This team will include communications staff from each of the government agencies on the Oregon Solutions Team and will be open to equal

participation from members of any other Oregon Solutions Team partner. The team will coordinate communications across agencies and direct the communications and engagement work of the Oregon Solutions Team.

- e. An **Administrative Subcommittee** will be formed to deliberate on administrative matters (meeting agendas, budgets, contracts, etc.) and at times make recommendations to the larger Oregon Solutions Team. Meetings of the Administrative Subcommittee are open to members of the Oregon Solutions team and the public. Among the tasks for the Administrative Subcommittee will be:

- Framing questions for the Technical Advisory Subcommittee
- Framing policy issues for decision-making by the larger Oregon Solutions Team
- Convening a Subcommittee of legal advisors from various jurisdictions as needed.
- Recommending purely administrative decisions to move the project forward
- Recommending, for purposes of administrative efficiency, certain tasks such as review of contractor change orders, to one of the participating jurisdictions.
- Note: Any policy decisions or recommendations affecting multiple stakeholders will be reserved for the full Oregon Solutions Team.

The list of participants in the Administrative Subcommittee can be revised by the Oregon Solutions Team, but will initially include:

1. Bridgeton Neighborhood Association
2. City of Fairview
3. City of Gresham
4. City of Portland
5. City of Troutdale
6. East Columbia Neighborhood Association
7. Metro
8. Multnomah County
9. Multnomah County Drainage District No.1

10. Peninsula Drainage District No. 1
11. Peninsula Drainage District No. 2
12. Port of Portland
13. Sandy Drainage Improvement Company
14. Sauvie Island Drainage Improvement Company
15. State of Oregon Regional Solutions Center

Public Outreach and Involvement

Effective public outreach and public involvement will be critical to the success of next phases of this project. Property owners, residents, business owners, employees, recreationalists, environmentalists, and tax payers are some of the stakeholders that may be interested in, and affected by, the Columbia River Levee Repair and Accreditation Project. The Oregon Solutions Team intentionally includes representatives from many of these groups but will need to also make a collective effort to communicate with and provide opportunities to hear from both the general public and affected groups. This effort will include communication and public involvement tasks such as:

- Identifying community values to be used in evaluating levee repair or improvement alternatives
- Creating and maintaining partnerships with neighborhood associations, community groups, community leaders, business groups, conservation and environmental groups,
- Ensuring communication and engagement efforts are inclusive of historically underrepresented groups
- Developing and implementing communication strategies including installation of signage, earned media strategies, social media strategies, and public events
- Partnering with non-partisan, academic, or otherwise independent policy and research organizations
- Implementing public involvement strategies such as surveys, design charrettes, and/or focus groups
- Managing communications and outreach contractors to assist with media relations, design, and branding

Funding for Phase II

Major additional budget expenses anticipated for the next phase of the project include:

- Developing inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Completing engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2.
- Beginning development and evaluation of solutions throughout the levee system to meet FEMA and USACE requirements.
- Maintaining active status in the USACE's Rehabilitation and Inspection Program (RIP).
- Identifying specific anticipated effects of climate change that will impact the safety of the levee system and identify which effects should be considered in evaluating specific levee system solutions.
- Implementing a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Oregon Solutions process management and facilitation
- Comprehensive economic study of the drainage areas and the impact of losing accreditation

Signing of this document does not constitute commitment of financial resources for the activities listed above or any future cost-sharing related to this project. For the next phase we will develop separate Intergovernmental agreements or memoranda of understanding between the major jurisdictions for how to fund the necessary activities. We anticipate applying for State IFA assistance.

Legal authorities, constraints, and responsibilities

This interim governance approach has been informed by the current legal context, summarized in the attached Legal Subcommittee report: *Background on Flood Protection* (Attachment A). The Legal Subcommittee Report has been reviewed by the affected jurisdictions and, while not inclusive of *all* legal authorities and responsibilities related to levee accreditation or maintenance, it is generally accepted as providing an appropriate context for the interim governance approach outlined in this Declaration of Cooperation.

City of Portland

Multnomah County

Peninsula Drainage District No. 1

Peninsula Drainage District No. 2

Bridgeton Neighborhood Association

East Columbia Neighborhood Assn.

Metro

Port of Portland

Audubon Society of Portland

Columbia Slough Watershed Council

Oregon Governor's Office

Mult. County Drainage District No. 1

Oregon Dept. of Environmental Quality

Oregon DLCD

Columbia Corridor Association

Jubitz

Federal Emergency Management Agency

U.S. Army Corps of Engineers

City of Gresham

City of Troutdale

City of Fairview

Sauvie I. Drainage Improvement. Co.

Sandy Drainage Improvement Co.

ATTACHMENT A

OREGON SOLUTIONS COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION PROJECT

LEGAL SUBCOMMITTEE REPORT: BACKGROUND ON FLOOD PROTECTION

PURPOSE

The Portland metropolitan area that borders the Columbia River, commonly known as the Columbia Corridor, is currently protected from flooding through an extensive system that includes a 27-mile levee running along the Columbia River, Sandy River, and the Columbia Slough, interior drainage components, and pump stations ("Flood Protection System"). The primary purpose of the system is to ensure the continued safety of the people, businesses, and other assets of the region.

The purpose of this document is to provide background on flood protection in the Columbia Corridor. It is an informational tool on flood protection authorities, standards, and tasks upon which decision-makers may rely as part of their policy analysis. Also, it can provide a framework within which decision-makers may agree to work cooperatively and collaboratively to address flood protection issues in the Columbia Corridor.

This document does not constitute a legally-binding commitment by any entity—nothing in this document is intended, and may not be construed as intending, to commit any entity to any tasks specified herein ,or otherwise, concerning flood protection.

The governmental jurisdictions are:

- a. Multnomah County Drainage District No. 1
- b. Peninsula Drainage District No. 1
- c. Peninsula Drainage District No. 2
- d. Sandy Drainage Improvement Company
- e. City of Fairview
- f. City of Gresham

- g. City of Portland
- h. City of Troutdale
- i. Metro
- j. Multnomah County
- k. Port of Portland
- l. State of Oregon—Oregon Water Resources Commission

FLOOD PROTECTION AUTHORITY

1. Peninsula Drainage District No. 1 ("PEN 1"), Peninsula Drainage District No. 2 ("PEN 2"), Multnomah County Drainage District No. 1 ("MCDD"), and Sandy Drainage Improvement Company ("SDIC") (collectively, "Drainage Entities").

1.1 PEN 1, PEN 2, and MCDD are drainage districts formed under ORS Chapter 547 and are subject to ORS 548, "for the purpose of having such lands reclaimed and protected by drainage or otherwise from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience and welfare or of public utility or benefit." (ORS 547.005)

1.2 SDIC is a drainage improvement corporation ("DIC") organized under ORS 554 and is directed by its articles of incorporation to construct, operate, and maintain flood control facilities and a system of sloughs, canals, ditches, and waterways to drain benefited properties and make water available for irrigation of benefited properties, for both sanitary and agricultural purposes. ORS 554.080; ORS 554.110.

1.3 The Drainage Entities are special purpose entities under ORS 198, are creatures of statute, and have only those powers enumerated in the statutes.

1.4 PEN 1, PEN 2, and MCDD lack the authority to expand upon or enhance their statutorily-enumerated powers through police-power regulations with the force and effect of law.

1.5 SDIC is a public corporation, but has it been held to be more akin to private non-profit corporations and to have no police powers in the usual sense, although a DIC can enact regulations applicable to its members. ORS 554.080(6).

1.6 The sole funding method available to the drainage districts for operations and debt is via assessment of property owners with the districts. ORS 547.455-.510. Such assessments are levied and collected in the same manner as property taxes. This is also the primary method available for funding DICs. ORS 554.080(8); ORS 554.130. DICs are also authorized to enact and enforce "rates, tolls, fees, fines, and chargers" for the maintenance and operation of the corporation (although SDIC has never done so). See ORS 554.080(7).

1.7 PEN 1, PEN 2, and MCDD are authorized the issuance of general obligation bonds payable from assessments for not more than 40 years. ORS 547.555-580. Such bonds are "subject to approval by the electors of the district." ORS 547.555(1). There is some question as

to whether a property owner is an "elector" within the meaning of the Ballot Measure 5 exception applicable to bonded indebtedness approved by the electors.

1.8 DICs may also issue bonds backed by assessments. ORS 554.160, 554.220. DIC assessments are not subject to compression under Measure 5.

2. City of Fairview, City of Gresham, City of Portland, and City of Troutdale (singularly, "City" and collectively, the "Cities").

2.1 Each City is a municipal corporation operating under a home rule charter pursuant to Or. Const. Art. IV, section 1(5); Article XI, Sec. 2. Each City has broad authority over all matters that it determines to be of municipal concern, except as expressly preempted by state statute and as limited in their home rule charters.

2.2 In addition to its broad home rule authority, each City has authority over land use planning, zoning, and development review within its jurisdictional boundaries, subject to compliance with state and regional requirements. See ORS Chapter 227. Cities also have express authority to assume the assets and responsibilities of any drainage district through annexation or partial annexation. ORS 222.510 to 222.580, as applied by ORS 547.755. (Before a City may withdraw territory from a drainage district, however, it must obtain approval from three-quarters of the district voters in the area to be annexed to the City.)

2.3 Each City has multiple funding sources and capabilities, subject to state preemption and regulation and the specific restrictions in their home rule charters.

2.4 The City of Portland owns Portland International Raceway and Heron Lakes Golf Club in PEN 1.

3. Metro.

3.1 Metro is a metropolitan service district operating under a home rule charter pursuant to Or. Const. Art. XI, Section 14. Metro has broad authority over all matters that it determines to be of metropolitan concern, except as expressly preempted by state statute or as limited by its Charter.

3.2 In addition to its broad home rule authority, Metro has authority over the Metropolitan Urban Growth Boundary ("UGB") and certain functional planning matters of regional concern.

3.3 Metro has broad funding authority under its Charter, but the Charter also contains certain limitations on that authority.

3.4 Metro owns the Portland Expo Center in PEN 1.

4. Multnomah County.

4.1 Multnomah County is a political subdivision of the State of Oregon established pursuant to ORS 201.260 and operating under a home rule charter pursuant to Or. Const. Art. VI, sec. 10. Multnomah County has broad authority over all matters that it determines to be of County concern, except as expressly preempted by state statute or as limited by its Charter.

4.2 In addition to its broad home rule authority, the County has authority over land use planning, zoning and development review within its jurisdiction boundaries outside of city boundaries, subject to compliance with state and regional requirements. See ORS Chapter 215. By intergovernmental agreement, the County has delegated that authority to cities for unincorporated areas within the Metropolitan Urban Growth Boundary ("UGB"). (All of the Drainage District entities are within the UGB.) In addition, the County has express statutory authority to exercise the powers of a diking district (ORS 551.160) and to exercise authority over drainage and flood control under ORS Chapter 549.

4.3 Multnomah County has broad funding authority under its Charter, subject to state preemption and regulation and the specific restrictions in their home rule charters.

4.4 Multnomah County owns roads and structures within MCDD and SDIC.

5. Port of Portland (the "Port").

5.1 The Port is a port district operating under its own enabling act, ORS Chapter 778. In addition, it may exercise most of the powers of port districts generally under ORS Chapter 777. See ORS 778.008. The purpose of the Port is to "promote the maritime, shipping, aviation, commercial, and industrial interests of the port" and is granted the power to "do any other acts and things which are requisite, necessary or convenient in accomplishing the purpose described or in carrying out the powers granted to it by law." ORS 778.015.

5.2 The Port may levy taxes and issue general obligation bonds pursuant to ORS 778.030 to 070 and revenue bonds per ORS 778.145 to 778.175. The Port also receives significant revenues from its commercial port operations. See ORS 778.025.

5.3 The Port owns real property in PEN 1, the Portland International in MCDD, and the Troutdale airport in and SDIC, which impacts the nature of the authority that it may have exercise with respect to these districts.

6. Oregon Water Resources Commission

6.1 The Water Resources Commission has general authority over state water resources pursuant to the authorities of ORS Chapter 537.

6.2 The Water Resources Commission has authority to participate in federal flood control projects pursuant to ORS 549.605 through ORS 549.645.

7. Intergovernmental Authority.

7.1 Intergovernmental Agreements. Pursuant to ORS 190.010 to 190.030, any unit of government may enter into an intergovernmental agreement ("IGA") with one or more other units of government for the performance of any functions or activities that the units of government has the authority to perform. A unit of government performing the functions or activities of another is "vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement." MCDD, for example, administers all of the Drainage Entities pursuant to IGAs with PEN 1, PEN 2, and SDIC.

7.2 Intergovernmental Entities. Units of government can create an independent entity by IGA to perform certain functions and services. ORS 190.080. Such an entity can issue revenue bonds and enter into financing agreements, but may not levy taxes or issue G.O. bonds. ORS 190.080(2).

FLOOD PROTECTION STANDARDS

1. U.S. Army Corps of Engineers ("USACE").

1.1 Under the federal Flood Control Acts of 1936 and 1950, the Drainage Entities are obligated to operate and maintain the levee system in accordance with USACE's flood control regulations. In addition, PEN 1 is contractually obligated to USACE to do the same.

2. Federal Emergency Management Agency ("FEMA").

2.1 FEMA implements the National Flood Insurance Program ("NFIP"), which designates flood-prone areas as Special Flood Hazard Areas and requires flood insurance for properties in those areas as a condition of receiving any federal funding and assistance.

2.2 The NFIP applies to a "Community," which is defined as a state or a political subdivision that has "zoning and building code jurisdiction over a particular area having special flood hazards" and, specifically, "authority to adopt and enforce floodplain-management regulations in the areas within its jurisdiction." 42 USC § 4003(a) (1); 44 CFR § 59.1. Accordingly, the Cities and Multnomah County are Communities under the NFIP. The Drainage Entities, Metro, and the Port of Portland are not Communities under the NFIP.

2.3 If a Community relies on a levee system to avoid the Special Flood Hazard Area designation, then such a levee system must be accredited by FEMA as providing the appropriate level of flood-protection. The accreditation can be sought by a Community or "other party seeking recognition of such a levee system." 44 CFR § 65.10(a). As part of this accreditation process, either the Community or the Drainage Entities (as the levee system operator) could provide levee data that has been certified by a qualified engineer or by USACE. Under the NFIP, and to the extent an accreditation is sought, the only affirmative duty of the Drainage Entities is to provide a maintenance plan to FEMA. 44 CFR § 65.10(b).

MAJOR FLOOD PROTECTION TASKS

Flood protection in the Columbia Corridor faces a complex and changing regulatory landscape at local, state, and federal levels. This section describes aspects and tasks that are essential to an effective and efficient operation of the Flood Protection System in order to ensure the continued integrity of the system and the safety of the public and in light of the changing regulations. It is an informational tool that decision-makers can rely on in their policy analysis and evaluation of participation in a cooperative and collaborative process to address flood protection issues in the Columbia Corridor.

Nothing in this section or the document is intended, and may not be construed as intending, to commit any entity to any tasks or operational aspects specified herein.

1. Regulatory Tasks.

1.1 Adopt zoning and building code jurisdiction over a particular area having special flood hazards.

1.2 Adopt zoning and building codes to control development affecting the operation and maintenance of the Flood Protection System.

1.3 Adopt authority to enforce floodplain-management regulations in areas that the Flood Protection System serves.

1.4 Secure additional property rights, including easements and rights-of-way, necessary to operate, maintain, and protect the Flood Protection System.

1.5 Monitor and enforce against violations of the Drainage Entities' property rights, including easements and rights-of-way.

2. Operation and Maintenance Tasks.

2.1 Routinely inspect and investigate the adequacy (informally and formally) of the Flood Protection System by staff, USACE, and FEMA to comply with the standards of USACE and FEMA.

2.2 Dredge interior drainage ways.

2.3 Manage and pump influent stormwater from the interior drainage system.

2.4 Comply with other applicable laws in the operation and maintenance of the Flood Protection System, including but not limited to the Endangered Species Act, the Clean Water Act, the National Environmental Policy Act, and the Rivers and Harbors Act. This may include administrative consultation with the regulating agency, as well as capital improvements to the Flood Protection System.

2.5 Provide adequate administrative staffing for operation and maintenance.

3. Funding Tasks.

3.1 Provide adequate funding to adopt and enforce zoning and building codes, floodplain management regulations, and property rights.

3.2 Provide adequate funding to carry out operation and maintenance.

3.3 Provide adequate funding to investigate and make capital improvements to the Flood Protection System to comply with the standards of USACE and FEMA.

4. **FEMA Accreditation**

The following is a list of general steps to involve in a FEMA accreditation of a levee should a Community, or any other entity, chooses to pursue it.

4.1 Certification of the levee system by a professional engineer or by USACE.

(a) Investigate and evaluate the current condition and identify deficiencies

(b) Design and collaborate on best approaches to address deficiencies

(c) Implement repairs to address deficiencies

(d) Professional engineer or USACE "certifies" that levee meets accreditation

standards and submits certified documentation to FEMA

(e) FEMA accredits the system

4.2 Evaluate the cost and benefit of accreditation status

4.3 Evaluate financial options to fund accreditation

4.4 Evaluate governance options to seek and manage the accreditation process

Five Models on Governance from Other Jurisdictions

Many communities across the country rely on levees for flood protection. A number of these communities have dealt with issues concerning accreditation of their levee systems through various governance structures. The following is a list of a few models for illustrative purposes to inform decision-makers in their policy analysis and consideration. It is not an exhaustive list and does not seek to establish any preferred model.

1. Type I— Existing Structure.

1.1 This is the current structure in which the Drainage Entities are merely "maintenance entities" with limited and narrow statutory and funding authorities.

1.2 There are inadequate statutory and funding authorities to deal with the larger accreditation problem.

2. Type 2 —Joint Powers Authority ("JPA") or Intergovernmental Agreements (IGAs)

2.1 This was the approach taken in the Sacramento area. Pursuant to California's Joint Exercise of Powers Act, entities can agree to form a third party agency that makes use of their overlapping powers. There is lots of flexibility in California about the formation of JPAs, so they are common. This is similar to Oregon, allowing for local government agencies to entered into an IGA to perform "* * * any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform." ORS 190.010.

2.2 In California, and like the Drainage Entities, local maintenance districts were created without adequate funding or authorities to deal with the larger accreditation problem. JPAs were formed to deal with the issue.

2.3 Example: Sacramento Area Flood Control Agency ("SAFCA") is represented by five entities that include Reclamation Districts, a city, and two counties with representatives on the board of directors.

2.4 The advantage of a JPA is the reduction in distraction by other organizational issues. For example, a focused attention in SAFCA led to \$1 billion in flood control improvements including legislative appropriations, local funds, and bonds passed.

2.5 Authorities of JPA.

(a) Powers are limited to those powers held in common by the agencies, including things like funding mechanisms and eminent domain power.

(b) Authorities are not delegated from the participating entities to the JPA, but it is governed by participant entities.

(i) Actions by the JPA do not necessarily require approval from participant boards

(ii) Alternatively, veto power or approval requirements can be designated in the agreement which creates the entity.

(c) Regarding minority veto power:

(i) In the SAFCA example, 4 out of 7 city council members and all of the County Supervisors serve on the board of directors, giving them effective veto power in the JPA.

(ii) Depends on political considerations and how the various entities relate to one another.

3. Type III—JPA With Delegated Powers to a Member Agency

3.1 The legal structure is the same as above, but the JPA entity contracts with one of its members for all staffing.

3.2 By example, the West Sacramento Area Flood Control Agency ("WSAFCA") contracts with the City to provide the staffing to carry out the JPA functions.

3.3 This type of entity can lose focus because it is restricted by the limitations of the contracting entity—e.g. people's time and resources.

4. Type IV –Legislative Repurposing of an Existing Special District

4.1 An example is Southwest Illinois Flood Protection District in the Chicago area, where three to four cities are involved.

4.2 This district was formed when USACE had revoked certification and FEMA began to talk about accreditation.

4.3 They pursued a legislative fix that gave an old existing district new authority to manage the problem.

5. Type V—Land Use Authority Takes Over

5.1 An example is at the Trinity River Project, which is a flood control project and redevelopment along the river. The City took it over as a redevelopment project and managed in the flood control project.

5.2 The advantage of this model is that it avoided distraction by creating a dedicated department within the City.

6. Type VI – New Legislatively-Created District

6.1 Southeast Louisiana Flood Protection Authority is an example of such a newly created entity.

6.2 The legislature created a third party entity with representation from other existing flood protection entities.

6.3 The original entities still exist but the new entity overlays with new responsibilities.

6.4 The legislature hoped that the other entities would eventually be subsumed by the new one.

ATTACHMENT B - Team Member Ground Rules

The Project partners in the Oregon Solutions process are committed to the following “ground rules” for how they conduct their business with one another:

General Principles

- We agree to approach problems with creativity and with open minds.
- We each have a unique perspective and contribution to make.

Ground Rules

1. We recognize that the best outcome depends upon cooperation and collaboration by all entities at the table.
2. We commit to openly communicate ideas, potential contributions, and concerns, and also to engage in respectful, active listening to each other.
3. We will focus on the future we would like to create rather than past problems and past history of issues.
4. We will work toward an agreement that is fair and constructive for everyone. When consensus is not possible, we will acknowledge and accept our differences and work toward the best possible outcome.
5. We agree to commit to the agreed-upon solution, in whatever way we can. If we, individually, are unable to make a commitment for our organization, we will work to identify what will make that commitment possible.
6. We commit to building trust by doing what we say we will do.
7. We agree to notify each other before taking outside actions that might impact the process.
8. We agree to attend all meetings or designate an alternate and we will be responsible for keeping the alternate updated. We are responsible for keeping any group entity that we are affiliated with “up to speed.” If we have suggestions for an agenda, we will contact one of the Co-Conveners or project manager well in advance of the meeting.

Note: **Public participation** will be allowed with the consent of the Co-Conveners. Generally, the Project Team will be given priority in all discussion, and in some situations it will be limited to just the Project Team. All meetings are open to the public. Communications with the press and other media are most representative when they come on behalf of the whole Project Team.

INTERGOVERNMENTAL AGREEMENT
Contract Number [Enter Contract Number]

This Intergovernmental Agreement (this "Agreement") is authorized by ORS 190.010 and is made and entered into as of _____ (the "Effective Date") by and among Multnomah County (the "County"), a home rule county of the State of Oregon; the City of Fairview ("Fairview"), an Oregon municipal corporation; the City of Troutdale ("Troutdale" and with Fairview, the "Cities"), an Oregon municipal corporation; and the Port of Portland (the "Port"), a port district of the state of Oregon (collectively, the "Parties," and each individually a "Party").

RECITALS

- A. The Parties, together with others, have entered into that certain Intergovernmental Agreement for Levee Analysis Cost-Sharing Phase II (the "IFA IGA") and that certain Intergovernmental Agreement for Cost-Sharing of Levee Ready Columbia Expenses Not Covered by IFA Loans (the "FY16 IGA"), which are attached as Exhibit A and Exhibit B, respectively, and pertain to the Levee Ready Columbia project, and are incorporated herein by reference.
- B. As set forth in further detail in Exhibits A and B to this Agreement, the Levee Ready Columbia project has been commenced to ensure continuing certification and accreditation of the Columbia River levee and drainage facilities operated by Multnomah County Drainage District No. 1, Peninsula No. 1 Drainage District, Peninsula No. 2 Drainage District, Sandy Drainage Improvement Company, and Sauvie Island Drainage Improvement Company (the "System").
- C. Properties located within a flood zone that is protected by a non-accredited levee system lose access to the lower flood insurance rates offered through FEMA's NFIP. Without adequate flood insurance, those properties cannot access loans issued by federal agencies (e.g., Federal Housing Administration and Small Business Administration) and loans backed by the federal government (e.g., Veterans Administration, Fannie Mae, and Freddie Mac).
- D. The parties to the agreements in Exhibits A and B to this Agreement have joined together to ensure the continuance of the required certification and accreditation by engaging in preliminary and limited agreements with respect to the sharing of workload and financial burden. As indicated by these agreements, the Levee Ready Columbia project has been proceeding in a collaborative manner and it behooves all parties to the project to further engage the Cities in the project to an extent that is fair and within their capacities.
- E. It is in the interest of County and its constituents, and the other parties to the project, for the County and the Port to further engage the Cities in the project by assisting the Cities in performing certain of their obligations under the agreements in Exhibits A and B to this Agreement in a manner commensurate with the Cities' capacities.

TERMS

The Parties agree as follows:

- 1. **CONDITION PRECEDENT.** No term of agreement herein is enforceable against any Party until after such time as the County receives a fully and duly-executed copy of the IFA IGA and the FY16 IGA. The condition precedent set forth in this paragraph may be referred to as the "Execution Contingency".
- 2. **RECITALS.** The Recitals to this Agreement are incorporated into and constitute a part of the terms of this Agreement.
- 3. **IFA IGA OBLIGATIONS.** Subject to the terms and conditions of this Agreement:

- a. With respect to that certain Principal Responsibility of Fairview set forth in the IFA IGA in the amount of \$123,908.00, County hereby assumes a portion of such Principal Responsibility in the amount of \$61,954.00 (the "Fairview IFA Amount") under the same terms assigned to Fairview under the IFA IGA for such Fairview IFA Amount.
 - b. With respect to that certain Principal Responsibility of Troutdale set forth in the IFA IGA in the amount of \$224,278.00, County hereby assumes a portion of such Principal Responsibility in the amount of \$112,139.00 (the "Troutdale IFA Amount") under the same terms assigned to Troutdale under the IFA IGA for such Troutdale IFA Amount.
4. **FY16 IGA OBLIGATIONS.** Subject to the terms and conditions of this Agreement:
- a. With respect to that certain Cash Expenses Responsibility of Fairview set forth in the FY16 IGA in the amount of \$7,098.00, County hereby assumes a portion of such Cash Expenses Responsibility in the amount of \$3,549.00 under the same terms assigned to Fairview under the FY16 IGA for such amount.
 - b. With respect to that certain Cash Expenses Responsibility of Fairview set forth in the FY16 IGA in the amount of \$7,098.00, Port hereby assumes that portion of such Cash Expenses Responsibility not assumed by the County in the amount of \$3,549.00 under the same terms assigned to Fairview under the FY16 IGA for such amount.
 - c. With respect to that certain Cash Expenses Responsibility of Troutdale set forth in the FY16 IGA in the amount of \$13,426.00, County hereby assumes a portion of such Cash Expenses Responsibility in the amount of \$6,713.00 under the same terms assigned to Troutdale under the FY16 IGA for such amount.
 - d. With respect to that certain Cash Expenses Responsibility of Troutdale set forth in the FY16 IGA in the amount of \$13,426.00, Port hereby assumes that portion of such Cash Expenses Responsibility not assumed by the County in the amount of \$6,713.00 under the same terms assigned to Troutdale under the FY16 IGA for such amount.
5. **EFFECTUATION.** No later than fifteen (15) days following the satisfaction of the Execution Contingency and the County's receipt of this Agreement signed by duly authorized representatives of the Parties hereto:
- a. County shall effectuate the partial relief set forth in Section 2 of this Agreement by treating the Fairview IFA Amount and the Troutdale IFA Amount as Prepayments received by the County from Fairview and Troutdale, respectively, under the IFA IGA as of the Effective Date or the date when the Execution Contingency has been satisfied, whichever is later.
 - b. County shall provide notice to Multnomah County Drainage District #1, pursuant to the FY16 IGA, of the assignment and assumption of the obligations set forth in Section 3 of this Agreement.
6. **EARLY TERMINATION.** In the event the Execution Contingency has not been satisfied within sixty (60) days of the Effective Date, County or Port may terminate this Agreement by providing thirty (30) days written notice to the Parties to this Agreement. Upon termination of this Agreement, the Parties shall have no further rights or obligations under this Agreement, provided that Section 6 shall survive termination of this Agreement.
7. **TERMINATION.** This Agreement may be terminated only by the County, only after (a) the Parties have paid the County their proportional shares of the principal and interest assigned to each of them in the IFA IGA; and (b) the Loan Portion set forth in the IFA IGA has been fully repaid.

8. **INDEMNIFICATION.** Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, each Party shall indemnify, defend and hold harmless the other Parties from and against all liability, loss and costs arising out of or resulting from the acts of such party, its officers, employees and agents in the performance of this Agreement.
9. **INSURANCE.** Each Party shall be responsible for providing worker's compensation insurance as required by law. No Party shall be required to provide or show proof to any other Party of any other insurance coverage.
10. **ADHERENCE TO LAW.** Each Party shall comply with all federal, state and local laws and ordinances applicable to this Agreement. The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon.
11. **NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil prights and rehabilitation statutes and local non-discrimination ordinances.
12. **SUBCONTRACTS AND ASSIGNMENT.** NO Party will subcontract or assign any part of this Agreement without the prior written consent of all other Parties to this Agreement.
13. **MERGER.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the matters discussed herein. No waiver, consent, modification, or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.
14. **AMENDMENT.** This Agreement may be amended at any time upon the written consent of all Parties.

[The remainder of this page is left intentionally blank.]

15. **NOTICES.** Any notice provided for under this Agreement shall be in writing and deemed delivered five days after mailing, postage prepaid and properly addressed to the party to be notified. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be addressed as follows

If to Fairview:
City of Fairview
1300 NE Village Street
Fairview, OR 97024
Attn: City Manager

If to Troutdale:
City of Troutdale
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060
Attn: City Manager

If to Port:
The Port of Portland
P.O. Box 3529
Portland, OR 97208
Attn: Director, Environmental
Operations and Policy

If to County:
Multnomah County
501 SE Hawthorne Blvd., Suite 531
Portland, OR 97214
Attn: Economic Development Director

CITY OF FAIRVIEW, OREGON:

CITY OF TROUTDALE, OREGON:

Signature: _____
Print Name: _____
Title: _____
Date: _____
Approved as to form by: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____
Approved as to form by: _____
Date: _____

THE PORT OF PORTLAND:

MULTNOMAH COUNTY, OREGON:

Signature: _____
Print Name: _____
Title: _____
Date: _____
Approved as to form by: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____
Approved as to form by: _____
Date: _____

Exhibit A

Intergovernmental Agreement
for
Levee Analysis Cost-Sharing
Phase II

NOTE: This exhibit is an accompanying IGA

Exhibit B

Intergovernmental Agreement
for
Cost-Sharing of Levee Ready Columbia Expenses
Not Covered by IFA Loans

NOTE: This exhibit is an accompanying IGA

INTERGOVERNMENTAL AGREEMENT

For

Levee Analysis Cost-Sharing Phase II (MCDD and SDIC)

This Intergovernmental Agreement (this "Agreement") is authorized by ORS 190.010 and is made and entered into as of _____ (the "Effective Date") by and among Multnomah County (the "County"), a home rule county of the State of Oregon, the City of Portland ("Portland"), an Oregon municipal corporation; the City of Gresham ("Gresham"), an Oregon municipal corporation; the City of Fairview ("Fairview"), an Oregon municipal corporation; the City of Troutdale ("Troutdale"), an Oregon municipal corporation; the Port of Portland (the "Port"), a port district of the state of Oregon; Metro, an Oregon municipal corporation; Multnomah County Drainage District No. 1 ("MCDD"), a special purpose local government organized under ORS Chapter 547; and Sandy Drainage Improvement Company ("SDIC") a nonprofit drainage improvement corporation organized under ORS Chapter 554 (collectively, the "Parties," and each individually a "Party").

RECITALS

- A. MCDD and SDIC (collectively, the "Districts") operate and maintain levees and drainage facilities along and in the vicinity of the Columbia River that lie within their respective jurisdictional boundaries, among other duties. The levees were originally constructed around 1916 and have been periodically upgraded by the U.S. Army Corps of Engineers (the "Corps") since then. Through intergovernmental agreements, MCDD has general management authority of SDIC (see the "District IGA," attached hereto as Exhibit A). All references to MCDD in this Agreement will mean MCDD acting on its behalf and on behalf of SDIC pursuant to the District IGAs.
- B. The Districts, along with Peninsula Drainage District No. 1 ("PEN 1") and Peninsula Drainage District No. 2 ("PEN 2"), have formed an intergovernmental entity entitled the "Columbia Corridor Drainage Districts Joint Contracting Authority" ("CCDDJCA" or "JCA") that has been delegated contracting authority and financial management for the four districts for this and other multi-district projects. The JCA will assume MCDD's duties and responsibilities under this Agreement upon notice to the Parties once the JCA is set up and functioning.
- C. The Federal Emergency Management Agency ("FEMA") provides federal assistance in the form of flood insurance to property owners located within areas at risk of flooding, provided the communities in which those properties are located participate in the National Flood Insurance Program (the "NFIP"). FEMA recognizes levees as providing flood protection to a particular area only if they are "certified" by a qualified private engineer or an eligible federal agency (including the Corps), and then "accredited" by FEMA.

- D. The Corps evaluated and certified the levees in the Districts, which run along the Columbia Corridor (the “Columbia Corridor” encompasses 12,000 acres on the south shore of the Columbia River in the Portland, Oregon Metropolitan area), in 2007, which led to their accreditation by FEMA. The certification is valid until 2017. Expiration of the certification in 2017 could lead to de-accreditation by FEMA. MCDD and SDIC certifications must be renewed to remain accredited by FEMA.
- E. There are severe economic consequences if FEMA accreditation of a levee system is not maintained. Properties located within a flood zone that is protected by a nonaccredited levee system lose access to the lower insurance rates offered through FEMA’s NFIP. Without adequate flood insurance, those properties cannot access loans issued by federal agencies (e.g., Federal Housing Administration and Small Business Administration) and loans backed by the federal government (e.g., Veterans Administration, Fannie Mae, and Freddie Mac). In addition, properties within a flood zone that is protected by a nonaccredited levee system also face floodplain development ordinances by jurisdictions that could severely restrict development in such areas.
- F. Lands protected by the levees along the Columbia Corridor are within the jurisdictional boundaries of one or more of the Parties. In addition, one or more of the Parties own lands, public facilities, or both, within the territory protected by the levees. Each Party would therefore be negatively affected by losing the federal assistance offered by the NFIP.
- G. To avoid the economic consequences of losing the federal assistance offered by the NFIP and the potential impact of local floodplain development standards, the MCDD and SDIC levees must remain certified and accredited. In order to renew the levees certification, an engineering analysis must be performed to ascertain the levees’ flood-control capacity (the “Analysis”). MCDD and SDIC have or will enter into contracts with a consultant to complete a portion of this analysis (the “Project”). A detailed description of the Project is attached as Exhibit B. MCDD and/or SDIC will enter into contracts with additional consultants as needed to complete the Analysis.
- H. Business Oregon’s Infrastructure Finance Authority (the “IFA”) has approved a grant of \$50,000 for a portion of the Analysis to be conducted in MCDD, a grant of \$50,000 for a portion of the Analysis to be conducted in SDIC (collectively, the “Grant Portion”), a 0%-interest loan in the amount of \$1,499,880 (the “0% Portion”), and a 1.84% loan in the amount of \$1,967,832 (the “2% Portion”, and with the 0% Portion, the “Loan Portion”), all to be awarded to the County to finance much of the cost of the Analysis (collectively, such award to the County, the “Loan”). The Parties anticipate that Loan disbursements will be made first from the Grant Portion, then from the 0% Portion, and last from the 2% Portion.
- I. The County has offered to contract for, receive, and manage the Loan and its repayment on MCDD’s behalf. A copy of the draft Special Public Works Fund Planning Project Financing Contract is attached as Exhibit C. The other Parties have offered to reimburse the County for

some portion of the Loan Portion principal and interest. The Parties wish to enter into this Agreement to effectuate these financial arrangements.

- J. MCDD, PEN 1, PEN 2, Portland, Metro, and the Port successfully completed an earlier Analysis of the related levee system in PEN 1 and PEN 2 pursuant to an earlier IGA, entered into as of June 1, 2014, where Portland received and managed a \$1.4 million IFA Loan (“Phase I Levee Analysis”). The Analysis under this Agreement, together with similar work to be performed on Sauvie Island pursuant to a separate IGA, will be Phase II.
- K. Pursuant to a separate agreement with the State of Oregon’s Business Oregon, the County will receive \$300,000 to be used to support Phase II (the “Regional Solutions Support”). The Parties understand that \$166,085 of the Regional Solutions Support will be used to reduce the amount of the analysis that will be financed with the Loan; \$33,915 will be used to reduce the amount of the analysis to be done on Sauvie Island that will be financed with debt, and the remaining \$100,000 will be used to reimburse MCDD for expenses related to Phase II that are not eligible to be financed with the Loan.

TERMS

The Parties agree as follows:

- 1. The County will apply for and negotiate the Loan terms substantially similar to those in Exhibit C for a maximum of \$3,567,712. The Parties acknowledge and understand that the County and the IFA will be the sole parties to the Loan, that no other Party or entity will participate in the negotiations thereof, and that no Party except the County and MCDD has any rights or obligations under the Loan or to the IFA.
- 2. Notwithstanding the definition of “Recipient” as a reference to the County in the Loan terms, MCDD will fulfill all of the following obligations, as they may appear in the Loan terms and as interpreted by the County:
 - a. Apply the Loan proceeds and any funds received from the County pursuant to this Agreement (collectively, the “Project Proceeds”) only to the costs of the Analysis; comply with deadlines relevant to the Analysis; complete the Analysis with funds other than the Project Proceeds once MCDD has received \$3,567,712 of Project Proceeds; and undergo required audits.
 - b. MCDD represents and warrants to the County that a reasonable estimate of the cost of the Analysis is \$3,567,712 and that MCDD will have adequate funds available to pay for the Analysis to the extent the cost thereof exceeds \$3,567,712.
 - c. To the best of its knowledge, MCDD has disclosed in writing to the County all facts that materially adversely affect the Analysis, MCDD’s ability to perform all

obligations required by this Agreement, or the ability of the County to make all payments and perform all obligations required by its Financing Contract with the IFA. MCDD shall promptly notify the County of any adverse change in the activities, prospects, or condition (financial or otherwise) of (i) MCDD or the Analysis related to the ability of MCDD to perform all obligations required by this Agreement or (ii) of the Districts' ability to pay their proportional shares of the Loan Portion repayment.

- d. MCDD will comply with all applicable law, including but not limited to obtaining all applicable permits and approvals that may be necessary for performing the Analysis.
- e. MCDD will ensure all service providers performing the Analysis who are retained for their professional expertise are certified, licensed, or registered, as appropriate, in the State of Oregon for their professional specialties.
- f. MCDD will comply with all obligations to comply with the policies of the IFA, including but not limited to contracting requirements, and with state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C; and, if applicable, with state labor standards and wage rates found in ORS chapter 279C.
- g. MCDD is encouraged to make good faith efforts as described in ORS 200.045 (available at <http://www.leg.state.or.us/ors/200.html>) in any contracting activity. Additional resources are provided by the Director of Economic & Business Equity at <http://www.oregon.gov/gov/MWESB/Pages/index.aspx>. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <http://imd10.cbs.state.or.us/ex/dir/omwesb/>.
- h. MCDD will prominently place the following statement on all plans, reports, and contract solicitations relating to the Analysis: "This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the Oregon Infrastructure Finance Authority."
- i. MCDD will permit the Parties and IFA and any party designated by them to inspect the property that is the subject of the Analysis and to make copies, at any reasonable time, of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, and contracts. MCDD shall supply any related reports and information as the County or the IFA may reasonably require.
- j. MCDD will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement or the Analysis for a minimum of three years following the completion of the Analysis. If there are unresolved issues at the end of

such period, MCDD will retain the books, documents, papers, and records until the issues are resolved.

3. Beginning on or soon after the date the County executes the Loan, MCDD will forward to the County copies of invoices MCDD receives from consultants retained by MCDD or SDIC for work performed as part of the Analysis up to a maximum of \$3,567,712, excluding general administration, community outreach, and legal costs. The County will submit the invoices to the IFA for loan disbursements, provided, however, to the extent the County has sufficient funds immediately available from the Regional Solutions Portion or any Prepayment, as defined below in Section 4.b, the County may elect not to submit all or a portion of such invoices to the IFA (the "Unsubmitted Amounts"). Upon receipt of loan disbursements, the County will arrange to send the loan disbursements, together with funds equal to any Unsubmitted Amounts, to MCDD or SDIC, as appropriate, as soon thereafter as reasonably possible. If the County elects not to submit any invoices received from MCDD to IFA in order to treat such amounts as Unsubmitted Amounts, the County will arrange to send funds equal to the Unsubmitted Amounts to MCDD or SDIC, as appropriate, as soon as reasonably possible. MCDD and SDIC will use the County's payments solely for payment of invoices for work performed as part of the Analysis. As manager of SDIC pursuant to the District IGAs, MCDD will be responsible for administering these requirements as more fully described in Section 2 of this Agreement.

4. Loan Portion Repayment:

- a. At least 30 days prior to any payment date on the Loan Portion (or upon request if a Party elects to prepay its share as set forth in Section 4.b below), the County will notify the Parties of their proportional shares of the Loan Portion repayment due and the total prepayment amount, based upon each Party's Reimbursement Percentage. As used in this Agreement, a Party's "Reimbursement Percentage" is the percentage calculated by dividing the amount of such Party's Principal Responsibility by the Current Outstanding amount, both as set forth in the below table (the "Allocation Schedule"). A detailed description of the calculation used to generate the Allocation Schedule is attached as Exhibit D. Within sixty days following each annual scheduled Loan Portion payment, the County will send to the Parties an updated Allocation Schedule, revised to reflect any reductions in principal attributable to such payments. The notice shall include the County's Local Government Investment Pool (LGIP) transfer account information to facilitate payment by LGIP transfer. Those Parties will pay the County no less than their proportional shares of the Loan repayment due within thirty days of such notification. The County's first payment date on the Loan Portion is expected to be December 1, 2017, and the final payment date is expected to be no later than December 1, 2024.

	Principal Responsibility	Reimbursement Percentage
Fairview	\$123,908	3.75%
Gresham	\$49,116	1.49%
Metro	\$300,000	9.09%
MCDD	\$1,149,744	34.82%
Port	\$166,085	5.03%
Portland	\$999,183	30.26%
SDIC	\$268,027	8.12%
Troutdale	\$224,278	6.79%
County	\$21,286	0.64%
Current Outstanding	\$3,301,627¹	100.00%

- b. A Party may prepay all or any portion of its obligation under this Agreement at any time without penalty. Upon receipt of such amount (a "Prepayment"), the County will reduce such Party's Principal Responsibility and the Current Outstanding amount in the most recent Allocation Schedule by the Prepayment, less the amount of accrued interest attributable to such Prepayment. If the Prepayment is received after the County has submitted any invoice to the IFA for disbursement from the 2% Portion of the Loan, the County will promptly forward such amount to be applied as a prepayment of the Loan Portion and instruct the IFA to reamortize the loan over the remaining term of the loan. Within sixty days following the County's receipt of a Prepayment, the County will send to the Parties an updated Allocation Schedule, revised to reflect the reduction in principal and each Party's new Reimbursement Percentage.
5. If any Party fails to pay the County within sixty days of the mailing date of a notification under Section 4.a above, the County may declare the Party or Parties to be in default of this Agreement and will so notify MCDD and the defaulting Party or Parties. The defaulting Party or Parties will have thirty days to cure the default following the mailing date of the County's notification of default. If a defaulting Party's nonpayment results in any penalties or increases in the amounts due under the Loan, then such default shall not affect the amounts that the nondefaulting Parties are responsible for under this Agreement.
6. MCDD and SDIC pledge to include repayment of their obligations under this Agreement in their annual budgets. Each year, MCDD and SDIC shall appropriate sufficient funds to (a) make the loan repayment due the following fiscal year; and (b) maintain a reserve fund equal to one annual repayment. MCDD and SDIC agree to levy assessments and/or make other reductions in their annual budgets in order to fund this commitment.

¹ This amount reflects a reduction of \$166,085 to the \$3,467,712 Loan Portion to account for the Regional Solutions Support.

7. IGA Entity. MCDD, PEN 1, PEN 2, and SDIC have entered into an intergovernmental agreement pursuant to ORS 190.085 to create an intergovernmental entity to act as a joint contracting agency for the purposes of receipt and expenditure of funds and contracting for goods, services, and construction services for the Project. The entity is titled the Columbia Corridor Drainage Districts Joint Contracting Authority (“CCDDJCA” or “JCA”). Upon 30 days’ written notice to the Parties that the JCA has been created and is ready to conduct business, the JCA will assume the duties and responsibilities of MCDD with regard to receipt and distribution of funding and entering into and administering contracts under this Agreement. MCDD and SDIC remain jointly responsible for ensuring that they and the JCA make payments and carry out their obligations under this IGA.
8. By mutual agreement, the Parties may agree to pay the entirety of the Loan from any lawfully-available funding source subsequently obtained to complete the requirements for renewed certification.
9. This Agreement may be terminated only by the County, only after (a) the Parties have paid the County their proportional shares of the principal and interest; and (b) the Loan Portion has been fully repaid.
10. The Parties acknowledge and agree that, notwithstanding the fact that the County will be using the Parties’ contribution amounts to repay the Loan Portion, the County is the sole guarantor of the Loan Portion. In addition, except to the extent that a Party has agreed herein to provide funds to the County so that the County can make payments on the Loan Portion, and except for MCDD’s obligations in Section 2 above, no Party is responsible for the County’s performance of its obligations under the Loan. No Party is a guarantor of the performance of any other Party’s obligations under this Agreement.
11. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, each Party will defend, indemnify, and hold harmless the other Parties and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys’ fees and expenses at trial and on appeal, relating to or resulting from the Party’s performance of its responsibilities under this Agreement.
12. The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon.
13. This Agreement may be amended at any time with the written consent of all Parties.
14. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the County.

15. All notices, communications, invoices, and payments required or permitted under this Agreement must be addressed as follows:

To the County: Multnomah County
Chief Financial Officer
501 SE Hawthorne Blvd, Suite 531
Portland, OR 97214

To Portland: City Debt Manager
Office of Management and Finance
1120 S.W. Fifth Avenue, Room 1250
Portland, Oregon 97204-1988
(503) 823-4222

To Gresham: The City of Gresham
Environmental Services Director
1333 N.W. Eastman Parkway
Gresham, Oregon 97030
(503) 618-3000

To Gresham for
Invoices and
Payments: The City of Gresham
City Debt Management Analyst
1333 N.W. Eastman Parkway
Gresham, Oregon 97030
(503) 618-3000

To Fairview: The City of Fairview
City Manager
1300 NE Village Street
Fairview, OR 97024

To Troutdale: The City of Troutdale
City Manager
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060

To the Port for
notices and
communications: The Port of Portland
P.O. Box 3529
Portland, Oregon 97208
Attention: Director, Environmental Operations and
Policy
(503) 415-6331

To the Port for invoices and payments: The Port of Portland
P.O. Box 5095
Portland, Oregon 97208-5095
(503) 415-6000

To Metro: Metro Debt Manager
Finance & Regulatory Services
600 N.E. Grand Avenue
Portland, Oregon 97214
(503) 797-1913

To the Districts: Multnomah County Drainage District No. 1
Levee Ready Columbia Program Manager
1880 N.E. Elrod Drive
Portland, Oregon 97211
(503) 281-5675

16. If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
17. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the matters discussed herein. No waiver, consent, modification, or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.
18. This Agreement is not intended, and may not be construed as intending, to establish a precedent for any future cost-sharing agreements among any of the Parties pertaining to the Columbia Corridor levees. A Party's contribution under this Agreement creates no expectation that the Party is responsible for the maintenance or repair of the Columbia Corridor levees.
19. This Agreement may be executed in counterparts. Delivery of this executed Agreement by facsimile or e-mail will be sufficient to form a binding agreement.

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

MULTNOMAH COUNTY

Approved as to form:

By: _____

Title: _____

Date: _____

County Attorney

CITY OF PORTLAND

Approved as to form:

By: _____

Title: _____

Date: _____

Deputy City Attorney

CITY OF GRESHAM

Approved as to form:

By: _____

Title: _____

Date: _____

City Attorney

CITY OF FAIRVIEW

Approved as to form:

By: _____

Title: _____

Date: _____

City Attorney

CITY OF TROUTDALE

Approved as to form:

By: _____

Title: _____

City Attorney

Date: _____

PORT OF PORTLAND

Approved as to form:

By: _____

Title: _____

Assistant General Counsel

Date: _____

METRO

Approved as to form:

By: _____

Title: _____

Assistant Metro Attorney

Date: _____

MULTNOMAH COUNTY DRAINAGE
DISTRICT NO. 1

By: _____

Title: _____

Date: _____

SANDY DRAINAGE IMPROVEMENT
COMPANY

By: _____

Title: _____

Date: _____

- Exhibit A Intergovernmental Agreement between MCDD and SDIC
- Exhibit B Detailed Project Description
- Exhibit C Draft Special Public Works Fund Planning Project Financing Contract
- Exhibit D Allocation Methodology

Exhibit A

RESOLUTION # 1462

**SANDY DRAINAGE IMPROVEMENT COMPANY
A RESOLUTION ADOPTING AN IGA AMENDMENT**

RECITALS

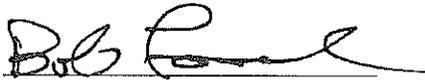
The Intergovernmental Agreement dated 1 July 2009 between the Multnomah County Drainage District #1 and Sandy Drainage Improvement Company is in need of revision to update the personnel and equipment rates in Appendix B of the Agreement.

NOW THEREFORE BE IT RESOLVED

1. Amendment No. 5 to the above referenced Agreement, revising Appendix B of the Agreement, is approved. The approved Amendment No. 5 is attached.
2. The President of the Board of Directors is authorized to sign the Amendment.

Adopted by the Sandy Drainage Improvement Company Board of Directors on June 5, 2014.

Signed: _____



Bob Fowler, President

Attest: _____



Reed Wagner, Executive Director

AMENDMENT NO. 5

Intergovernmental Agreement

Parties: Multnomah County Drainage District No. 1
 Sandy Drainage Improvement District

RECITALS

- A. The parties entered into an intergovernmental agreement for services listed in an Appendix A and payment for services in Appendix B ("Agreement"), effective as of July 1, 2009.
- B. The parties hereby amend Appendix B of the Agreement as follows to update actual cost of services being provided.

APPENDIX B. AMENDMENT – RATE SCHEDULE

Revised May 12, 2014
Rates have a 17% Overhead included

Description	2014-2015
	Hourly Labor Rate
Deputy & Executive Director	74.00 – 152.00
Managers	66.00 – 114.00
Equipment Mechanic	33.00 – 71.00
Equipment Operator	33.00 – 71.00
Utility Worker	30.00 – 65.00
Crew Foreman	35.00 – 97.00
Project Manager	40.00 – 97.00
Office Specialist	27.00 – 71.00
Engineer	40.00 – 97.00
Bookkeeper	40.00 – 81.00
Summer Labor & Intern	11.00 – 30.00

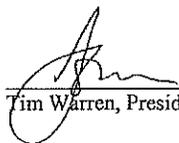
Note: equipment rates do not include operator	2013-2014	2014-2015
Description	Hourly Equipment Rate	Hourly Equipment Rate
Pickup	\$28.00	\$28.00
Dump Trk	\$98.00	\$98.00
Dump Trk & Transport Trailer	\$127.00	\$127.00
Case Excavator	\$160.00	\$160.00
JD 310 Backhoe	\$45.00	\$45.00
JD 650 Dozer	\$85.00	\$85.00
Menzi A91 Spyder	\$276.00	\$276.00
Tractor Arm TS 100	\$77.00	\$89.00
Tractor Wing TS 110	\$85.00	\$85.00
Slope Mower	\$48.00	\$48.00
Spyder/Barge	\$306.00	\$306.00
Chipper	\$44.00	\$44.00
1 ton Dump Trk	\$40.00	\$42.00
Spray Trk & Herbicide Sprayer	\$50.00	\$50.00
Case Excavator & Mower	\$170.00	\$170.00
21' TJ Work Boat	\$0.00	\$65.00
Tools (see list)	\$12.00	\$12.00
Equipment (see list)	\$20.00	\$20.00
Survey Equipment	\$22.00	\$22.00

Tools List Chain Saw String Trimmer Backpack Blower Power Drills & Saws Honda Generator 2"-3" Pumps Wildlife Management Tools Traffic Control Tools	Equipment List Portable Welder 6" Pump Ridding Mower Landa steam cleaner Plate Compactor Rodinator Herbicide Sprayer	Hydro Seeder 16' Work Boat 16' Flatbed Trailer Work Barge
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Authority of Signers

The individuals signing below represent that they are authorized by the party for which they sign to contractually bind that party to the provisions of this Amendment No. 5.

Multaomah County Drainage District # 1



Tim Warren, President

6/26/14
Date

Sandy Drainage Improvement Company



Bob Fowler, President

6-5-14
Date

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is made and entered into between **Sandy Drainage Improvement Company**, hereinafter called SDIC, and **Multnomah County Drainage District #1**, hereinafter called MCDD.

WHEREAS, SDIC desires to delegate the management of the District operations under its authority to MCDD, and;

WHEREAS, MCDD desires to perform, and is capable of performing, said services;

NOW THEREFORE, PURSUANT TO THE AUTHORITY OF ORS 190.010, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SERVICES

MCDD agrees to perform the services listed in the attached Appendix A – Service Provided, all billed on a time and materials basis. MCDD agrees that the materials, analysis, data, programs and services provided hereunder will be of the kind and quality designated and will be performed by qualified MCDD employees, or other qualified agents or contractors. All work performed under this contract will be in full compliance with the standards found in all applicable codes, ordinances, statutes, regulations and laws.

CONTRACT PERFORMANCE/FORCE MAJORE

Neither party will be in breach of this Agreement for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of god, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If MCDD's services are delayed by these or other contingencies, MCDD will immediately notify the SDIC Board of Supervisors of such delay.

EQUIPMENT, MATERIALS, SUPPLIES AND FACILITIES

MCDD shall furnish the staff labor, facilities, office equipment and routine office supplies necessary to perform the services in Appendix A. All materials and supplies necessary to perform the services in Appendix A will be invoiced directly to SDIC by the vendor or

supplier. If MCDD purchases the supplies and/or materials, MCDD will invoice SDIC for its portion of the invoice as invoiced by the vendor or supplier.

PAYMENT FOR WORK PERFORMED

In consideration for the performance of this IGA, SDIC agrees to pay MCDD fees as outlined in Appendix B - Fee Schedule and Appendix B-1 – Distribution Schedule. The services completed pursuant to this IGA, including materials and labor, will be billed on a time and material basis in accordance with the SDIC Fiscal Year approved budget. Billings done at intervals determined to be the most efficient will reflect actual, documented personnel time and material cost, which may differ slightly from the averaged estimates found in the Schedule B rates.

All costs will be invoiced to SDIC by MCDD. Invoices will be due and payable within 30 days of the date of invoice. Any past due bill owed MCDD by SDIC shall have applied to it interest based on the prime interest rate in force on the day the bill becomes past due, and shall be applied to the balance until the bill is paid in full. All services outlined in Appendix A, and the materials, professional services and sub-contracts necessary to fulfill them, will be billed subject to the approved SDIC budget as follows:

Materials - Any materials purchased through MCDD for SDIC use will be billed at vendor or supplier invoice costs. Materials will be secured using accepted public purchasing procedures and processes.

Construction or professional services contracts – These contracted services will be invoiced directly to SDIC by the contractor or consultant. Services will be secured in accordance with accepted public bidding and contracting procedures and processes.

MCDD Labor – All labor provided by MCDD field staff shall be billed based on the rate schedule attached as Appendix B. The labor rates in Appendix B will have a 2.5% multiplier applied January of each year until Appendix B is revised.

MCDD Equipment – Equipment use shall be billed based on the rate schedule attached as Appendix B.

Rental Equipment – Rentals required to perform the project will be invoiced directly to SDIC by the vendor or contractor.

CONTRACT PERIOD

The delivery of services described herein will begin on July 1, 2009 and continue until the IGA is terminated. Either party may terminate this IGA only at the end of a fiscal year by providing a minimum of six (6) months advance written notice. The need for periodic adjustments to IGA provisions are anticipated and shall be addressed, using the amendment process prescribed herein, at the same board meeting where the annual budget is adopted.

REPRESENTATION OF AUTHORITY

SDIC delegates all administrative and executive duties and authorities to MCDD and its Executive Director. While it is acknowledged that the Executive Director of MCDD is not an employee of SDIC, he/she is hereby authorized to represent him/her self as the Executive Director of SDIC. Similarly, while not an employee of SDIC, the MCDD District Engineer is authorized to represent him/her self as District Engineer for SDIC.

LEGAL PROTECTION

Each party agrees to defend, indemnify and hold the other harmless from and against any and all liability, claims, demands, penalties, suits and the associated costs and expenses (including reasonable attorneys' fees) which it may hereafter incur, become responsible for, or pay out as a result of the death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment and any clean-up costs in connection therewith, or any violation of law, governmental regulation or orders, caused in whole or in part by the indemnitor's breach of any term or provision of this IGA, or by any negligent acts, errors, or omissions by the indemnitor's, its employees, officers, agents, representatives, or subcontractors in the performance of this IGA. This indemnity obligation will survive termination of this IGA.

INSURANCE

MCDD will maintain throughout the period of this Agreement, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.

- (b) Employer's liability with limits of not less than \$1 million per occurrence.
- (c) Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$1 million per occurrence.
- (d) Comprehensive automobile liability insurance for at least \$1 million per occurrence.

MCDD's insurance will be primary and any insurance carried by SDIC will be excess and non-contributing. The general liability coverage will name SDIC as additional insured and will contain a severability of interest clause. SDIC will maintain in full force all other insurances including, but not limited to, general liability, directors and officers, boiler and fire.

WAIVER OF SUBROGATION

MCDD and SDIC each waive all rights of recovery against the other, or against the employees, agents and representatives of the other, for loss or damage to the waiving party or its property or the property of others under its control to the extent that the loss or damage is insured under any insurance policy in force at the time of the loss or damage.

APPLICABLE LAW, JURISDICTION AND VENUE

This IGA shall be interpreted and administered under the laws of the State of Oregon. Jurisdiction and venue of any dispute hereunder shall be in Multnomah County, State of Oregon.

ATTORNEY FEES

In the event of suit or action commenced to enforce the terms of this IGA, the prevailing party shall be entitled to recover from the losing party reasonable attorney fees and costs, including any appeal therefrom.

LIMITATION OF LIABILITY

With respect to all obligations assumed by either party pursuant to this IGA (whether by contractual provision or imposed otherwise by law), the parties agree that in all cases redress for satisfaction of any such obligation shall be limited to the parties and to its assets. No party named

herein shall seek satisfaction of any such obligation from any trustee, director, officer, employee, beneficiary, stockholder or agent of either party.

SEVERABILITY

If any term, condition or provision of this IGA or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this IGA will not be affected but will instead remain valid and fully enforceable.

DISPUTE RESOLUTION

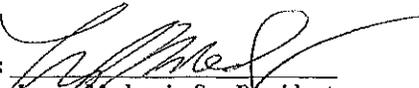
Should any dispute arise between the parties of this IGA, it is agreed that, prior to commencement of litigation, the dispute shall be submitted to a neutral mediator mutually agreed to and paid equally by both parties.

AMENDMENTS

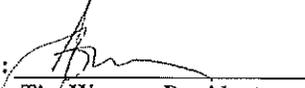
This IGA may be amended by mutual agreement of both parties. Any amendments shall be in writing and signed by representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this 23rd day of April, 2009.

**SANDY DRAINAGE IMPROVEMENT
COMPANY**

By: 
Larry Medearis, Sr., President

**MULTNOMAH COUNTY DRAINAGE
DISTRICT #1**

By: 
Tim Warren, President

APPENDIX A – SERVICES PROVIDED

Services provided through an Intergovernmental Agreement between the Sandy Drainage Improvement Company (SDIC) and Multnomah County Drainage District #1 (MCDD).

In relation to the service provided, MCDD agrees to provide SDIC copies of the inspection reports and logs as requested by the Supervisors.

MCDD agrees to call to the immediate attention of the Board of Supervisors any malfunction or condition likely to cause damage to the pumps, equipment or flood control facilities, or which might jeopardize the protection of the properties and facilities within SDIC.

ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED

- 1) Plan the Annual Meeting and Supervisors' meetings including agendas, public notices, stakeholder contacts, reports and minutes.
- 2) Prepare and submit the annual assessment role to Multnomah County Assessors office.
- 3) Prepare the annual budget, maintain all financial records and systems collect funds and pay bills, issue reports as necessary and oversee an annual audit or accountant review.
- 4) Maintain all records including hard copy and electronic. Plan and organize their storage and archiving consistent with public statutes.
- 5) Prepare operational work plans for maintenance to be performed including ditch cleaning, obstruction removal, herbicide applications, mowing, pump and pump station maintenance, etc.
- 6) Develop and maintain a 3 to 5 year capital improvement project planning program.
- 7) Plan and manage capital improvement projects consistent with the approved budget.
- 8) Review all development proposals and plans that may impact the functional integrity and/or operations.
- 9) Attend agency, business and community meeting as may be required on behalf of the district. Meeting may include but not be limited to: land use and building permit application proposals, neighborhood meeting, regulatory coordination and special interest groups.
- 10) Maintain the Emergency Flood Control Plan as a unified district plan.

- 11) Assist the Corps of Engineers on their annual inspection and evaluation of the flood control facilities, operations and maintenance.

Appendix A

ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued

FIELD INSPECTIONS

Stormwater Pumping and Conveyance Facilities

- 1) Inspect and provide general lubrication and cleaning service to the pumps, pump motors, electrical equipment and pump station buildings twice weekly and more frequently during and/or following a rainfall event if required.
- 2) Inspect and clear debris from the stormwater culvert grating system twice a week and more frequently during and/or following a rainfall event if required
- 3) Inspect and document any deficiencies identified to the overall stormwater conveyance system once a month and more frequently during and/or following a rainfall event if required.
- 4) Service telemetry system to District's design standards.
- 5) Load and dispose of debris accumulated at pump station, culvert grating and stormwater conveyance system locations as required.
- 6) Remove and dispose of trees blocking the stormwater conveyance systems.
- 7) Perform any required maintenance and repairs to the pumps, pump motors, electrical equipment and pump station buildings in excess of the general lubricating and cleaning service.
- 8) Repair and/or replacement of stormwater culvert grating.
- 9) Stabilize and/or repair conveyance system slopes.
- 10) Remove and dispose of aquatic weed and/or garbage in or around critical sections of the stormwater conveyance system.
- 11) Remove tall grasses, invasive plant and sediment accumulation to maintain a minimum hydraulic cross section and to minimize hydraulic head loss through mechanical and chemical applications.
- 12) Perform any required emergency repairs on stormwater and flood control facilities.

Appendix A
ADMINISTRATIVE AND SUPPORT SERVICES PROVIDED – continued

Levees and Control Structures

- 1) Inspect and document levee slope and roadway surface conditions twice a year.
- 2) Inspect levee in high water condition as defined in the District's Emergency Flood Control Plan.
- 3) Inspect document and service levee slide and flap gates twice a year.
- 4) Maintain the critical levee section to USACOE standards as outlined in the 33 Code of Federal Regulations (CFR).
- 5) Manage the levee slope vegetation to promote a heavy growth of grasses through mowing and chemical applications.
- 6) Replace riprap and soils eroding away from the levee slopes.
- 7) Maintain the access roadway on top of the levee.
- 8) Repair levee access gates and fencing.
- 9) Clean out levee slide gate wet wells and repair slide mechanism.

APPENDIX B – RATE SCHEDULE

Services provided through an Intergovernmental Agreement between the Sandy Drainage improvement Company (SDIC) and Multnomah County Drainage District #1 (MCDD)

**MULTNOMAH COUNTY DRAINAGE DISTRICT # 1
EQUIPMENT AND EMPLOYEE RATES**

Revised April 2009	2008 - 2009		2009 - 2010
Description	Total		Total
	Hourly Rate		Hourly Rate
Executive Director	76.54		76.67
Deputy Director	76.54		78.65
Engineer	51.91		54.87
Accounting	38.31		40.46
Crew Leader	41.96		45.38
Mechanic III	45.37		45.51
Mechanic II	31.78		36.94
Equipment Operators III	38.81 - 40.10		40.43 - 41.46
Tractor Operators	36.95 - 37.34		38.32 - 38.73
Administrative	30.22		22.43 - 31.87
Summer Laborer	12.00 - 15.50		12.00 - 15.50
(Note: Equipment rates do not include operator)			
320 Case Excavator	62.50		64.00
JD 650 Dozer	47.00		48.00
HS 41 Spyder	195.00		200.00
TS 100 Tractor/Mower	46.00		47.00
TS 110 Tractor/Mower	51.00		52.25
Transport & Trailer	46.00		47.00
Dump Trucks	49.00		50.25
JD 310 Backhoe	31.00		32.00
Pickups	12.00		13.00
Spray Truck	36.00		37.00
Spyder on Barge	262.00		268.50
Material Barges (ea.)	11.00		12.00
Chipper	16.00		17.00
Hydro Seeder	16.00		17.00
Boats	11.00		12.00
Herbicide Sprayer	11.00		12.00
Misc. Tools	6.00		7.00

APPENDIX B-1 DISTRIBUTION SCHEDULE

Services provided through an Intergovernmental Agreement between the Peninsula Drainage District #1 (PEN 1) and Multnomah County Drainage District No. 1 (MCDD)

OPTIONS FOR DISTRIBUTING SHARED COSTS

Some work done by MCDD staff benefits more than one district. For instance, working with the City of Portland on a code revision may benefit PEN 1, PEN 2 and MCDD. Likewise, tracking proposed land use issues through METRO could benefit the three aforementioned Districts and SDIC. In answer to this, a series of options for sharing costs among the Districts has been approved by each Board and included here as another rate schedule option.

Table 1 - Environmental All Cities
Levee and Ditch Lengths (miles)
Including the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	26.1	60	52.5
Pen 1	4.9	18	3.3	8	13.0
Pen 2	5.9	22	6.2	14	18.0
SDIC	4.2	15	7.6	17	16.5
Total	27.2 miles		43.2 miles		100

Table 2 -- Environmental All Cities
Levee and Ditch Lengths (miles)
Excluding the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	12.2	45	10.5	38	41.5
Pen 1	4.9	18	3.3	12	14.5
Pen 2	5.9	22	6.2	22	22.5
SDIC	4.2	15	7.6	28	21.5

Total	27.2 miles	27.6 miles	100
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Table 3 – Environmental Within COP
 Levee and Ditch lengths (miles)
Including the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	10.3	49	25.8	73	61.0
Pen 1	4.9	23	3.3	9	16.0
Pen 2	5.9	28	6.2	18	23.0
Total	21.1 miles		35.3 miles		100

Table 4 – Environmental Within COP
 Levee and Ditch lengths (miles)
Excluding the Upper Columbia Slough

	Levees	%	Ditches	%	Average %
MCDD	10.3	49	9.7	51	50.0
Pen 1	4.9	23	3.1	16	19.5
Pen 2	5.9	28	6.2	33	30.5
Total	21.1 miles		19 miles		100

Table 5 - All Cities
Acreege and Impervious Area (acres)

	Acreege	%	Impervious	%	Average %
MCDD	8,832	69	3,433	80	74.5
Pen 1	901	7	202	5	6.0
Pen 2	1,475	11	528	12	11.5
SDIC	1,556	13	140	3	8.
Total	12,764		4,303		100

Table 6 - Within COP
Acreage and Impervious Area (acres)

	Acreage	%	Impervious	%	Average %
MCDD	5,912	71	2,934	80	75.5
Pen 1	901	11	202	6	8.5
Pen 2	1,475	18	528	14	16.0
Total	8,288		3,664		100

Table 7 – MCDD & SDIC
Stormwater Issues Based on Acreage

	Acreage	%
MCDD	2,920	65
SDIC	1,556	35

Exhibit B

Multnomah County Levee Accreditation Evaluation

I. ONE PAGE PROJECT DESCRIPTION

The purpose of this project is to build on the results of the levee engineering assessments in Peninsula Drainage District No. 1 and Peninsula Drainage District No. 2 and to further evaluate the condition of the levee systems in Multnomah County Drainage District No. 1 (MCDD) and Sandy Drainage Improvement Company (SDIC). The work is being managed through Levee Ready Columbia, a Governor designated Oregon Solutions program that includes local, state, and federal agencies, and business, environmental, and community-based organizations that are working together to evaluate the levees and ensure that the levees remain accredited by the Federal Emergency Management Agency (FEMA) and maintain in good standing the U.S. Army Corps of Engineers' (USACE) Rehabilitation and Inspection Program (RIP).

The Recipient will complete an engineering evaluation of the current condition of the MCDD and the SDIC levee systems as well as the interior drainage systems operating behind them, in compliance with National Flood Insurance Program levee accreditation standards documented in 44 CFR 65.10 through FEMA. Additionally, the project team will conduct mandatory inspections on levee infrastructure to ensure MCDD and SDIC remain active in USACE's RIP by receiving a rating of Minimally Acceptable or better.

The desired level of protection of each levee system will need to be decided by the community and will directly lead into the alternative development necessary to repair deficiencies identified by the levee engineering assessments. Thus, the Recipient will conduct inventories and studies, including a climate change study, provide a more comprehensive and clear understanding of the resources the levee system is protecting and identify areas that could be improved. The investment in the system is expected to protect future generations so it is important to understand how the system will operate over the next 30 to 50 years before a level of protection is selected.

The Project will also include engineering review and project management activities conducted through MCDD. Specific project tasks include, but are not limited to:

- Engineering Assessments (Phase I – III)
 - Phase I: Background Research and Gap Analysis
 - Phase II: Work Plan, Data Collection, and Analyses
 - Geotechnical evaluation including drilling and soil analysis
 - Embankment Erosion and Scour Protection Analyses
 - Embankment and Foundation Stability and Seepage Analyses
 - Analyses of Potential Settlement and Loss of Levee Freeboard
 - Encroachment Evaluation of Structures within Levee Right-of-Way
 - Development of conceptual design for potential repair alternatives
 - Review of Operation and Maintenance Plans and Emergency Operations Plans
 - Compilation of Final Certification Package for all four districts to submit to Federal Emergency Management Agency (FEMA) for Accreditation
 - Phase III: Additional Seepage and Stability Analyses for other river events
- Survey, Cross-Sections, and Encroachment Evaluations
- Interior Drainage Modeling Reports
- Rehabilitation and Inspection Program Compliance
- Environmental, Economic, and Community Asset Inventories and a Climate Change Study

II. PROJECT SPECIAL CONDITION

Engineering, project management, and inventories / study expenses incurred between July 1, 2015 and the date of award are eligible for reimbursement.

Multnomah County Levee Accreditation Evaluation

Complete Project Description

The purpose of this project is to build on the results of the levee engineering assessments in Peninsula Drainage District No. 1 and Peninsula Drainage District No. 2 and to further evaluate the condition of the levee system in Multnomah County Drainage District No. 1 (MCDD) and Sandy Drainage Improvement Company (SDIC). The work is being in a collaborative, cross-sector regional team, to address Federal Emergency Management Agency (FEMA) accreditation, stay active in the U.S. Army Corps of Engineers' (USACE) Rehabilitation and Inspection Program (RIP), and safety of the Columbia River levees.

The general steps in the project include:

- Conduct engineering assessments of both the MCDD and SDIC levee system to determine whether the levee system as it exists today meets Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) standards, which are documented in 44 CFR 65.10.
- Develop geotechnical models that allow for evaluation of the system at varying river stages (1-percent-annual-chance flood event, US Army Corps of Engineers (USACE) authorized design water surface elevation, and maximum flood elevation).
- Conduct mandatory inspections on levee infrastructure to ensure MCDD and SDIC receive at least a rating of Minimally Acceptable and remain active in the USACE Rehabilitation and Inspection Program.
- Survey, cross-sections, and encroachment evaluations will provide additional information and material to submit with FEMA's accreditation package as well as to the USACE in order to remain active in the RIP.
- MCDD engineers will develop a FEMA Internal Drainage Report for both MCDD and SDIC required for accreditation.
- Conduct inventories and studies to provide baseline information to inform future development of design alternatives to address deficiencies and meet accreditation standards.
- MCDD engineers will review project consultants' deliverables to ensure compliance with FEMA and USACE standards.
- Provide project management services to ensure the project proceeds on schedule, within scope, and within budget.

Project work falls into the categories described below.

Category 1: Engineering Assessments of the Levee Systems Relative to 44 CFR 65.10 and USACE Rehabilitation and Inspection Program

The first step in the accreditation process is an engineering evaluation to determine whether the levee system as it exists today meets Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) standards, which are documented in 44 CFR 65.10. Levee engineering assessments require detailed information on the subsurface conditions and engineering parameters for both the levee and foundation soils. The subsurface information is generally collected by performing exploratory borings and collecting soil samples for laboratory testing. This information is then analyzed and used to build a model of the current levee structure, which is subsequently used to model performance during the 1-percent-annual-chance flood event per FEMA requirements. In addition, FEMA requires

evaluation of other components of the flood control system, including available freeboard, the interior drainage system, and operation and maintenance plans. FEMA also requires other documentation that demonstrates the current condition, including a topographic survey of the current levee area that includes all above and underground structures, and vegetation.

To be accredited the levee system must also stay active in an inspection program. In MCDD and SDIC the current inspection program is the Rehabilitation and Inspection Program (RIP) that is led by USACE. The RIP is within USACE's Levee Safety Program and is in place to monitor levee system's overall conditions, identify deficiencies, verify that needed maintenance is taking place, determine eligibility for federal rehabilitation assistance, and provide information about the levees on which the local operating agency and public relies. Each levee segment receives an overall segment inspection rating of Acceptable, Minimally Acceptable, or Unacceptable. This program aims to ensure MCDD and SDIC receive at a minimum, an inspection rating of Minimally Acceptable, to remain active in the RIP.

Remaining active in the RIP ensures that USACE will provide technical and flood fighting support during a high water event. Additionally, in the event that the high water event causes damage on the system, the USACE will partner with the Drainage District to repair the levee system to its original state and provide a 65-35 cost share. Inspection information also contributes to risk assessments and supports levee accreditation decisions for the NFIP.

If deficiencies are found during the Engineering Assessments, they must be completely remediated before a professional engineer can *certify* the levee system meets the standards of accreditation (a key requirement for the accreditation application).

The Engineering Assessments will be completed for both MCDD and SDIC. Below is a list of the tasks associated with this phase of the project, including the cost and timeline for each:

Task 1: Engineering Assessments (Phase I – III)

Phase I – Background Research and Gap Analysis:

The strategy for achieving levee certification is proposed in a three phase approach. Phase I will consist of a review of existing documentation that is available for both MCDD and SDIC levee systems and to assess whether available information is sufficient to satisfy the requirements of 44 CFR 65.10. This allows for the selected consultant to become familiar with the levee system and collect historical documentation on the system to access the scope and scale of Levee Accreditation needs based on preliminary assessments of available data and details of federal requirements.

This phase will include but is not limited to the following:

- Site visit / archive review
- USACE Portland District archive review
- Data review and memorandum
- Develop memo to identify the existing documentation, adequacy of this information, and identify missing information necessary to complete data set required to complete certification
- Meeting with regulators and project partners

Phase II – Work Plan, Data Collection, and Analyses:

Based on the findings from Phase I, project consultants will develop work plan to collect the missing information. This may include, but is not limited to the following:

- Scour protection and embankment erosion analyses
- Stability and seepage analyses

- Potential levee settlement and freeboard analyses
- Additional site investigations, subsurface explorations, and laboratory testing to support the stability, seepage, and settlement analyses
- Review of the following documents: interior drainage reports, operation and maintenance plans, emergency operations plan, as-built maps of the levee system
- Development of summary report to capture analyses
- Levee certification
- Regulatory review and coordination with project partners
- Compilation of information for FEMA accreditation submission package

Phase III: Additional Water Elevation Analyses:

This work is focused on an evaluation against the USACE authorized design water surface elevation and maximum flood elevation. MCDD and SDIC are both authorized for the Levee Design Flood (LDF) which is a modeled elevation that depicts the 1894 flood but accounts for storage provided by dam construction. In general, USACE's authorized water surface elevations are higher than the 1-percent-annual-chance flood event elevations used in the analyses for FEMA accreditation. These analyses will be used towards remaining active in the USACE's Rehabilitation and Inspection Program. These analyses will also include an evaluation of the maximum event the system can currently withstand, without any remediation to the identified areas of concern. The additional analyses will fully capture the current levee system's performance and will provide the necessary framework to guide the discussion of the community's flood risk tolerance and future financial investment in the infrastructure.

Estimated Cost: \$2,487,757

Estimated Timeline: October 2015 – December 2016

Primary Contractor: TBD (solicitation required)

Task 2: Survey, Cross-Sections, and Encroachment Evaluations

Surveys:

This task includes topographic surveys of the levee right of way, generally considered the area between 30 feet out from the riverside levee toe and 30 feet out from the landward levee toe, including all structures within it. Survey information may be augmented with plans of the levee systems, LIDAR data and details of properties abutting the levee.

Additional work in this task may also include:

- Survey and property deed research
- Field surveys
- Reclamation survey work (original district boundary)
- Preparation of survey plans

Cross-Sections:

A project consultant will provide the survey plans as well as as-built (cross-section) drawings necessary for certification. The cross-sections will include the levee design section, overbuild, structure and utility line locations, and multiple water elevations depending on the analyses conducted. The lead project consultant will coordinate with the survey team to customize and review the drawings to meet accreditation standards. These cross-sections will also be used in the encroachment evaluation work.

Encroachment Evaluations:

Encroachments are defined as any structure or feature that is within the levee boundary. USACE defines that boundary as 15-20 feet from either levee toe, and generally speaking discourages the placement of any encroachments within that area. FEMA's accreditation criteria, however, is silent on encroachments specifically. Given this, the certifying engineer in a levee accreditation effort must consider whether any given encroachment is specifically impeding the performance of the levee system. Generally, this requires evaluation of where the lowest point of the structure or vegetation falls relative to the section of the levee embankment that is critical to protecting against the 1-percent-annual-chance flood event or authorized design water surface elevation. In the case of structures, evaluation of the construction of the facility is also required. For vegetation, evaluation of species, root growth, and life span may also be required.

The exact scope of work for this task will depend upon encroachments identified as within or close to the section of the levee identified as critical to protecting against the 1-percent-annual-chance flood and USACE authorized design water surface elevation.

Estimated Cost: \$150,000

Estimated Timeline: October 2015 – October 2016

Primary Contractor: TBD (solicitation required)

Task 3: Interior Drainage Modeling Reports

MCDD staff will conduct the interior drainage studies and will compile the FEMA Internal Drainage Report for both MCDD and SDIC required for accreditation. The work will include an XPSWMM stormwater model for MCDD and SDIC, a report summarizing the process and results, and corresponding floodplain maps. Additionally, the models will be available for review by FEMA if required.

MCDD may contract with an outside consultant for technical advice, quality assurance, and review services to check for conformance with the accreditation requirements.

Estimated Cost: \$65,500

Estimated Timeline: August 2015 – September 2016

Primary Contractor: MCDD Engineering and TBD (solicitation required)

Task 4: USACE Rehabilitation and Inspection Program Compliance

The RIP is within USACE's Levee Safety Program and is in place to monitor levee system's overall conditions, identify deficiencies, verify that needed maintenance is taking place, determine eligibility for federal rehabilitation assistance, and provide information about the levees on which the local operating agency and public relies. The RIP is implemented through Routine and Periodic inspections that result in a final inspection rating for operation and maintenance of the levee system. The rating is based on the levee inspection checklist, which includes 125 specific items dealing with operation and maintenance of levee embankments, floodwalls, interior drainage, pump stations, and channels. Each levee segment receives an overall segment inspection rating of Acceptable, Minimally Acceptable, or Unacceptable. Levee Ready Columbia wants to ensure MCDD and SDIC receive at a minimum, an inspection rating of Minimally Acceptable, to remain active in the RIP.

USACE requires that certain inspections be conducted prior to the RIP routine or periodic inspection to ensure system infrastructure is in compliance with the USACE standards. Funding will be applied towards conducting required inspections on infrastructure located within the levee right-of-way. The

inspections can include videotaped outfall and culvert inspections, inspection and testing of relief wells and other levee infrastructure and pump station performance evaluations.

Estimated Cost: \$150,000

Estimated Timeline: August 2015 – March 2016

Primary Contractor: TBD (solicitation required)

Task 5: Environmental, Economic, and Community Asset Inventory, and Climate Change

The desired level of protection, as well associated risk tolerance, will need to be decided by the community and will directly lead into the alternative development necessary to repair deficiencies identified by the levee engineering assessments. Inventories and studies, including a climate change study, will ensure the level of protection is discussed using the best available science and future projected water elevations. The investment in the system is expected to protect future generations so it is important to understand how the system will operate over the next 30 to 50 years before a level of protection is selected. Additionally, the inventories will provide a more comprehensive and clear understanding of the resources the levee system is protecting and identify areas that could be improved. All of these findings will feed into the risk based decision model to inform the alternatives necessary to repair the deficiencies identified in the levee engineering assessments.

PEN 1 and PEN 2 will pay for their portion of each inventory and study through their existing IFA loan.

Environmental Inventory:

The Environmental Resources Inventory (ERI) will be developed to identify and document the existing natural resource values in each of the districts to help inform future levee improvement alternatives. The intent is to create a summary report of the existing status of natural areas, open space and fish and wildlife habitat locations within or adjacent to the districts in order to document baseline conditions in preparation of development design alternatives to repair deficiencies and meet accreditation standards.

Economic Inventory:

Northwest Economic Research Center (NERC), in collaboration with Metro, will conduct a study of the impact that the economic resources protected by the Columbia Corridor levee system have on the local, regional, and state economy. The study will quantify the current residential characteristics (households, incomes, property value), business value (property, sales, employment), transportation infrastructure (I-5, I-205, Columbia-Sandy Corridor, Union Pacific and BNSF Railways and rail volumes, truck trips, airports, etc.), and the expected impact of canceling current development plans and increasing household insurance payments. The study will provide baseline information to inform future development of design alternatives to repair deficiencies and meet accreditation standards.

Community Asset Inventory:

The central purpose of the community asset inventory is to identify existing or planned features in the districts, either natural or built, that are of high value to stakeholders. The inventory will focus only on those community assets that are either on or directly adjacent to levees or other flood management infrastructure (pump stations, ditches, flood wall) or those that would otherwise be likely to impact levees, the flood management system as currently built or have a major impact on the flood management system. This inventory will capture the impact of resources that may not have a high monetary value but have a high societal value with community members. This information

will be used to inform future development of design alternatives to repair deficiencies and meet accreditation standards.

Climate Change Study

The project team has opted for a pro-active approach to the accreditation process for the levee system and is commissioning a climate change study to inform the future development of design alternatives to address deficiencies and meet accreditation standards. This pro-active approach includes the incorporation of the effects of a changing climate on the river hydrographs upstream of Portland and on sea level downstream at the mouth of the Columbia River (MCR). The US Geological Survey (USGS) and US Army Corps of Engineers (USACE) propose to provide this assistance in the form of hydrologic and hydraulic model simulations of the lower Columbia River (LCR) that incorporate the best available knowledge regarding peak flows in the Columbia and Willamette Rivers in a future climate, and projected sea level change (SLC) at the MCR, both of which affect river stage at Portland. The investment in the system is expected to protect future generations so it is important to understand how the system will operate over the next 30 to 50 years before a level of protection is selected when developing design alternatives to repair deficiencies and meet accreditation standards.

Estimated Cost: \$193,370

Estimated Timeline: August 2015 – September 2016

Primary Contractor: Varies by study

Category 2: Project Management

Summary of Work:

Note: This section refers to management of the full project scope.

Effective project management is required to ensure the project proceeds on schedule, within scope, and within budget. In addition, the cross-jurisdictional nature of the work requires elevated communication and coordination with public partners and key stakeholders.

The project management budget will be used to fund the work required to ensure effective management of the project scope, including but not limited to:

- Developing project plan, budgets, and timeline and ensuring on-time implementation;
- Soliciting contractors and overseeing contract work, including contracted engineers, studies and field explorations;
- Assuring compliance with federal, state and local laws and regulations, zoning codes, area plans, and district policies and procedures;
- Implementing all non-technical components of the project scope (including permit applications, negotiating maintenance agreements with levee embankment owners, conducting a cost-benefit analysis, etc.);
- Identifying best practices in other levee accreditation efforts and incorporating into project strategy;
- Coordinating stakeholder participation with partner agencies, community organizations, and property owners directly impacted by the work; and
- Facilitating decision-making at key project milestones.

This work will be completed by limited-duration staff person(s) hired by MCDD. MCDD serves as the administrative manager of SDIC via separate intergovernmental agreements. Thus the staffer(s) is a contractor of SDIC. Per the terms of those agreements, IFA financing will pay for actual time spent on this task based on hourly billing. Additional project costs associated with

general management, communications, legal, and project administration will be paid by SDIC assessments.

Estimated Cost: \$166,078

Estimated Timeline: July 2015 – December 2016

Primary Contractor: Multnomah County Drainage District No. 1

Category 3: MCDD Engineering Review

Summary of Work:

MCDD and SDIC are local sponsors for federally constructed levee systems within their district boundaries. Local sponsors are required to maintain levee systems to standards established by USACE, which includes requesting from USACE pre-authorization of all new activity within the levee boundary, from digging a trench to constructing a new building. At multiple phases of this project, USACE authorization or coordination is required to complete Category 1 (levee engineering assessments). In these cases, MCDD engineering staff will work with project consultants to prepare USACE authorization request packages, and will coordinate preliminary review from USACE on any proposed levee system changes.

In addition, the certified accreditation package provided by project consultants will include professional engineering stamps from multiple specialists, including geotechnical engineers, hydrologists, and civil engineers. MCDD engineer staff will provide a final review and certification of the overall application for MCDD and SDIC accreditation to FEMA.

This work will be completed by engineering staff hired by the Multnomah County Drainage District (MCDD). MCDD serves as the administrative manager of SDIC via separate intergovernmental agreements. Thus the staffer(s) is a contractor of SDIC. Per the terms of those agreements, IFA financing will pay for actual time spent on this task based on hourly billing.

Estimated Cost: \$30,670

Estimated Timeline: July 2015 – December 2016

Primary Contractor: Multnomah County Drainage District No. 1

Category 4: Project Contingency

This project description represents an estimate of the tasks required to achieve project goals, and the costs associated with that work. Where a contract is already in place to complete a task, the actual contract value was used for the cost estimates in this project description. For tasks where contracts have not yet been executed, estimates have been made based on the best available information gathered from similar projects completed in the western United States and opinions of experts in appropriate fields. However, the nature of this work is largely contingent upon local conditions which can vary dramatically from levee to levee, and even within a single levee system. Given this situation, a project contingency has been created to cover uncertainties or unforeseeable elements of time and cost within the normal execution of this project. The contingency represents approximately 10% of total project costs.

Estimated Cost: \$324,337

Estimated Timeline: N/A

Primary Contractor: N/A

Exhibit C

SPECIAL PUBLIC WORKS FUND DEVELOPMENT PROJECT FINANCING CONTRACT

Project Name: Multnomah County Levee Accreditation Evaluation for "Levee Ready Columbia"
(Multnomah County Drainage District No. 1 and Sandy Drainage Improvement Company)

Project Number: X16001

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and Multnomah County ("Recipient") for financing of the project referred to above and described in Exhibit D ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C-1	Form of Promissory Note MCDD-A
Exhibit C-2	Form of Promissory Note MCDD-B
Exhibit C-3	Form of Promissory Note SDIC-A
Exhibit C-4	Form of Promissory Note SDIC-B
Exhibit D	Project Description; Project Special Condition
Exhibit E	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$3,567,712.

"MCDD Grant Amount" means \$50,000.

"MCDD-A Loan Amount" means \$1,000,000.

"MCDD-B Loan Amount" means \$1,517,952.

"Maturity Date" means the 6th anniversary of the Repayment Commencement Date.

"Note Interest Rate" means, individually without distinction, the interest rate accruing on a Loan.

"Note MCDD-A Interest Rate" means 0%.

"Note MCDD-B Interest Rate" means 1.84% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

"Note SDIC-A Interest Rate" means 0%.

"Note SDIC-B Interest Rate" means 1.84% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

"Payment Date" means 1 December.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 24 months after the date of this Contract.

“Repayment Commencement Date” means the first Payment Date to occur after the Project Closeout Deadline.

“SDIC Grant Amount” means \$50,000.

“SDIC-A Loan Amount” means \$499,880.

“SDIC-B Loan Amount” means \$449,880.

SECTION 2 - FINANCIAL ASSISTANCE

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project specified below:

- A. A grant in an aggregate amount not to exceed the MCDD Grant Amount (“MCDD Grant”).
- B. A grant in an aggregate amount not to exceed the SDIC Grant Amount (“SDIC Grant”).
- C. A non-revolving loan in an aggregate principal amount not to exceed the MCDD-A Loan Amount (“MCDD-A Loan”).
- D. A non-revolving loan in an aggregate principal amount not to exceed the MCDD-B Loan Amount (“MCDD-B Loan”).
- E. A non-revolving loan in an aggregate principal amount not to exceed the SDIC-A Loan Amount (“SDIC-A Loan”).
- F. A non-revolving loan in an aggregate principal amount not to exceed the SDIC-B Loan Amount (“SDIC-B Loan”).

“Loan” means collectively and individually without distinction, as the context requires, the MCDD-A Loan, the MCDD-B Loan, the SDIC-A Loan, and the SDIC-B Loan. “Grant” means collectively and individually without distinction, as the context requires, the MCDD Grant and the SDIC Grant.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. The IFA’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. The IFA, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.
- D. Order of Disbursement. The Recipient authorizes IFA to determine whether disbursements will be drawn from the Loan or the Grant, and record the date and amount of each such disbursement. Absent manifest error, such notations will be conclusive evidence for determining accrual of interest on the principal balance of the Loan and the remaining Loan or Grant amount available for disbursement.

SECTION 4 - LOAN PAYMENT; PREPAYMENT

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract and the Note in accordance with their terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Note Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal, and interest as applicable, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract or the Note.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.
- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

SECTION 5 - CONDITIONS PRECEDENT

A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient.
- (2) The Note duly signed by an authorized officer of Recipient.
- (3) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract, the Note and the other Financing Documents.
- (4) A copy of a duly executed agreement (and any amendments thereto) among Recipient, Multnomah County Drainage District No.1 ("MCDD") and the Sandy Drainage Improvement Company ("SDIC"); SDIC and MCDD referred to collectively and individually without distinction as "District," that contains provisions substantially in the following form:

"For the purposes of the covenants below, "levee" means the levee of ("District") which benefited from the proceeds of the loan ("Loan") made by the State of Oregon acting by and through the Infrastructure Finance Authority ("IFA") to Multnomah County pursuant to Contract X16001 (defined below):

Compliance with Laws. District shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this intergovernmental agreement, and the operation of District's levee system, as it may be modified or expanded from time to time.

Property Interests in Levees. During the term of financing contract X16001 between IFA and Multnomah County ("Contract X16001"), the District shall take all actions necessary to maintain its easements or other legal rights and interests in the real property constituting the District's levee system, unless Multnomah County and IFA have received 90 days' prior written notice and agree otherwise in writing.

Insurance, Damage. District shall maintain, or cause to be maintained, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of its owned assets, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes District from exerting a defense against any party other than IFA or Multnomah County, including a defense of immunity. If the District's assets or any portion is destroyed, any insurance proceeds will be paid to Multnomah County and applied to prepay the outstanding balance on the Loan, unless IFA agrees otherwise in writing.

Sales, Leases and Encumbrances. District shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in its owned assets unless worn out, obsolete, or, in the reasonable business judgment of District, no longer useful to the operation of the levees, nor agree to any transfer, diminution, or abrogation of rights and powers related to its ability to generate revenues for payment for the Loan. Nevertheless, Multnomah County and IFA may consent to such disposition if they have received 90 days' prior written notice. Such consent may require assumption by transferee of all of District's obligations under this agreement. In the case of sale, exchange, transfer or other similar disposition, District shall, within 30 days of receipt of any proceeds from such disposition, transfer such proceeds to Multnomah County to be applied by Multnomah County as a

mandatory prepayment on the Loan in accordance with section 4.D.(1) of Contract X16001, unless IFA agrees otherwise in writing.

Procurement Standards. When procuring goods or services (including professional consulting services) paid with Loan proceeds, District shall follow state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.”

- (5) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit D and according to the budget in Exhibit E. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit D.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

In reviewing and executing this Contract, the Recipient has been represented and advised by its general counsel, the Multnomah County Attorney, and, on the advice of such counsel as well as the Recipient's own knowledge and expertise, the Recipient hereby represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
- (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract, the Note and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents.
- E. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
 - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note and the other Financing Documents.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to

which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract, the Note and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract, the Note or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the operation of the levee systems to which the Project is related, as it may be modified or expanded from time to time. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
 - (2) State labor standards and wage rates found in ORS chapter 279C.
 - (3) OAR 123-042-0165 (5) requirements for signs and notifications.
- These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.
- C. Project Completion Obligations. The Recipient shall:
- (1) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
 - (2) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
 - (3) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.
- D. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

- E. Inspections; Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- F. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- G. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- H. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Director of Economic & Business Equity in the Office of the Governor. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- I. Professional Responsibility. All service providers on the Project retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- L. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

SECTION 9 - DEFAULTS

Any of the following constitutes an "Event of Default":

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project.
- D.
 - (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
 - (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
 - (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
 - (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
 - (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract, the Note or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
 - (1) Terminating IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Note and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.

- (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449; however, this provision is not to be construed in a way that Recipient's obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
 - (6) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; then, to repay any Grant proceeds owed; then, to pay interest due on the Loan; then, to pay principal due on the Loan; and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
 - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.

Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through the
Oregon Infrastructure Finance Authority



MULTNOMAH COUNTY

By: _____
Paulina Layton, Manager
Program Services Division

By: _____
Deborah Kafoury, Chair
County Commission

Date: _____

Date: _____

**APPROVED AS TO LEGAL SUFFICIENCY IN
ACCORDANCE WITH ORS 291.047:**

Reviewed By:
Jenny M. Madkour, County Attorney

By: /s/ Keith L. Kutler as per email
Keith Kutler, Assistant Attorney General

Jed Tomkins, Assistant County Attorney

Date: 28 August 2015

Date: _____

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 14 Aug 2015.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates (including but not limited to all promissory notes) executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan and Grant collectively or Loan or Grant individually without distinction.

“Municipality” means any entity described in ORS 285B.410(8).

“MCDD-A Note” means that certain promissory note evidencing MCDD-A Loan, substantially in the form of Exhibit C-1, as amended, extended or renewed from time to time.

“MCDD-B Note” means that certain promissory note evidencing MCDD-B Loan, substantially in the form of Exhibit C-2, as amended, extended or renewed from time to time.

“Note” means collectively and individually without distinction, the MCDD-A Note, MCDD-B Note, SDIC-A Note and SDIC-B Note.

“SDIC-A Note” means that certain promissory note evidencing SDIC-A Loan, substantially in the form of Exhibit C-3, as amended, extended or renewed from time to time.

“SDIC-B Note” means that certain promissory note evidencing SDIC-B Loan, substantially in the form of Exhibit C-4, as amended, extended or renewed from time to time.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - SECURITY

General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract and the Note. This Contract and the Note are payable from all legally available funds of Recipient.

EXHIBIT C-1 - FORM OF PROMISSORY NOTE MCDD-A

Multnomah County

MCDD-A PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of One Million Dollars (\$1,000,000) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of Zero percent (0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount as will fully amortize the Loan by the Maturity Date. On the Maturity Date, the entire outstanding principal balance will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement and the date and amount of each payment and prepayment by Recipient. Absent manifest error, such notations will be conclusive evidence of borrowing and payments under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys’ fees and costs at trial and on appeal. Reasonable attorneys’ fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT C-2 - FORM OF PROMISSORY NOTE MCDD-B

Multnomah County

MCDD-B PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 (“Recipient”), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY (“IFA”), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of One Million, Five Hundred and Seventeen Thousand, Nine Hundred and Fifty-Two Dollars (\$1,517,952) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 84/100 percent (1.84%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the “Contract”). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date. All unpaid interest that accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

EXHIBIT C-3 - FORM OF PROMISSORY NOTE SDIC-A

Multnomah County

SDIC-A PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred and Ninety-Nine Thousand, Eight Hundred and Eighty Dollars (\$499,880) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of Zero percent (0%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount as will fully amortize the Loan by the Maturity Date. On the Maturity Date, the entire outstanding principal balance will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement and the date and amount of each payment and prepayment by Recipient. Absent manifest error, such notations will be conclusive evidence of borrowing and payments under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Note, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Notice to Recipient: Do not sign this Note before you read it.

MULTNOMAH COUNTY

By: _____XXXXXXXXXXXXXXXXXXXXXX

Title: _____XXXXXXXXXXXXXXXXXXXXXX

Sample

EXHIBIT C-4 - FORM OF PROMISSORY NOTE SDIC-B

Multnomah County

SDIC-B PROMISSORY NOTE

Dated XXXXXXXXXXXXXXXXXX, XXXX
XXXXXXXXXXXXXXXXXX, Oregon

FOR VALUE RECEIVED, Multnomah County, 501 SE Hawthorne, Suite 531, Portland, OR 97214 ("Recipient"), unconditionally promises to pay in lawful money of the United States of America to the order of the STATE OF OREGON, ACTING BY AND THROUGH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY ("IFA"), at its principal office at 775 Summer Street NE, Suite 200, Salem, OR 97301-1280, or such other place as IFA or other holder of this Note may designate, the principal sum of Four Hundred and Forty-Nine Thousand, Eight Hundred and Eighty Dollars (\$449,880) or so much as is disbursed under the Contract (as defined below), plus interest on each disbursement at the Note Interest Rate of One and 84/100 percent (1.84%) per annum, from the disbursement date until paid. Interest will be computed on the basis of a 360-day year, consisting of twelve 30-day months.

This Note is subject to and secured by that certain contract, number X16001, between IFA and Recipient (as amended from time to time, the "Contract"). Capitalized terms not otherwise defined in this Note will have the meanings assigned to them by the Contract.

The Recipient shall make level installment payments of principal and interest, commencing on the Repayment Commencement Date and thereafter on each Payment Date. Each such installment will be in an amount sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date. All unpaid interest that accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. On the Maturity Date, the entire outstanding principal balance and all accrued unpaid interest will be due and payable in full.

This Note is subject to mandatory prepayment and is payable prior to its maturity, and each payment made by Recipient will be applied as provided in section 4 (Loan Payment; Prepayment) of the Contract.

This Note is given to avoid the execution by Recipient of an individual note for each disbursement of Loan proceeds by IFA to Recipient in accordance with section 3 (Disbursements) of the Contract. The Recipient authorizes IFA to record the date and amount of each such disbursement, the date and amount of each payment and prepayment by Recipient, and the amount of interest accrued and paid. Absent manifest error, such notations will be conclusive evidence of borrowing, payments and interest under this Note; provided, however, that failure to make any such notations will not affect the obligations of Recipient under this Note or the Contract.

If any Event of Default occurs, the outstanding balance of the Note (including principal, interest and other charges, if any), at the option of IFA, becomes immediately due and payable in accordance with section 10 (Remedies) of the Contract. Failure or delay of the holder of this Note to exercise any option available under the terms of this Note, the Contract or any of the Financing Documents will not constitute a waiver of the right to exercise the option in the event of any continuing or subsequent default of the same or of any other provision. Presentment, dishonor, notice of dishonor, and protest are hereby waived.

EXHIBIT D - PROJECT DESCRIPTION; PROJECT SPECIAL CONDITION

I. PROJECT DESCRIPTION

The Recipient shall complete, or shall cause to be completed, engineering assessments of the current condition of the Multnomah County Drainage District No. 1 (MCDD) and Sandy Drainage Improvement Company (SDIC) levee systems as well as the interior drainage systems operating behind them, in compliance with National Flood Insurance Program levee accreditation standards documented in 44 CFR 65.10, through the Federal Emergency Management Agency (FEMA). In addition, Recipient will conduct mandatory inspections on levee infrastructure as a necessary step for MCDD and SDIC to remain active in the U.S. Army Corps of Engineers' Rehabilitation and Inspection Program (RIP) by receiving a rating of Minimally Acceptable or better.

Inventories and studies must be sufficient to allow the community to assess the resources protected and areas that could be improved for the desired level of protection, which will inform the development of alternatives to repair deficiencies identified by the levee engineering assessments. The Project will also include engineering review and project management activities delivered by MCDD.

Specific project tasks include, but are not limited to:

- Engineering Assessments (Phases 1-3)
 - Phase 1 - Background Research and Gap Analysis
 - Phase 2 - Work Plan, Data Collection, and Analysis
 - Embankment Erosion and Scour Protection Analyses
 - Embankment and Foundation Stability and Potential Seepage Analyses
 - Analyses of Potential Settlement and Loss of Levee Freeboard
 - Review of operation and maintenance plans and emergency operations plans
 - Compilation of final certification package to submit to FEMA for accreditation
 - Phase 3 - Additional Water Elevation Analyses
- Survey, Cross-Sections, and Encroachment Evaluations
- Interior Drainage Modeling Reports
- Rehabilitation and Inspection Program Compliance
- Environmental, Economic and Community Asset Inventories and Climate Change Study

II. PROJECT SPECIAL CONDITION

Engineering expenses incurred between 1 July 2015 and the date of award are eligible for reimbursement.

Exhibit D
ALLOCATION METHODOLOGY

Step 1: Allocate Regional Partner repayment responsibility between Phase II loans

Phase II is comprised of work being performed on the levees managed and operated by Sauvie Island Drainage Improvement Company (SIDIC), MCDD and SDIC. The Regional Partners (Metro, Port of Portland, and State of Oregon Regional Solutions Office) are either contributing cash or assuming a portion of the repayment obligations for the IFA loans (such contribution and assumption, the "RP Amount"). The RP Amount is allocated between SIDIC, MCDD and SDIC according to the size of the IFA award packages approved for each in Phase II. Thus, SIDIC will receive an allocation of 9.69% (\$382,800/\$3,950,512), and MCDD and SDIC will receive a total allocation of 90.31% (\$3,567,712/\$3,950,512) of the total Regional Partner contributions. Below is the RP Amount for each Regional Partner and the total dollar amount of the RP Amount to be allocated between MCDD and SDIC and Sauvie Island:

Metro	\$300,000
Port of Portland	\$200,000
State of Oregon Regional Solutions Office	\$200,000
Total RP Amount	\$700,000
RP Amount for SIDIC (9.69% X \$700,000)	\$67,830
RP Amount for MCDD & SDIC (90.31% X \$700,000)	\$632,170

Because SIDIC is outside of Metro's jurisdictional boundary, the entire RP Amount for SIDIC is allocated between the Port and the State. Below are the allocations of each Regional Partner's RP Amount to SIDIC, MCDD and SDIC:

	SIDIC	MCDD & SDIC
Metro	\$0	\$300,000
Port of Portland	\$33,915	\$166,085
State of Oregon Regional Solutions Office	\$33,915	\$166,085
Total RP Amount	\$67,830	\$632,170

Step 2: Determine the amount remaining after reducing the total amount of the MCDD & SDIC IFA Loan by the total RP Amount

MCDD & SDIC IFA Loan	\$3,567,712
MCDD & SDIC Total RP Amount	-\$632,170
Remaining MCDD and SDIC IFA Loan Amount	\$2,935,542

Step 3: Determine the loan obligations for each of MCDD and SDIC by allocating the remaining IFA Loan Amount using levee miles and applying the two \$50,000 IFA grants

Levee miles in MCDD: 13.4 (80.04%)
 Levee miles in SDIC: 3.3 (19.96%)

	MCDD	SDIC
Allocated IFA Loan Amount	\$2,349,488	\$586,054
IFA grant	-\$50,000	-\$50,000
Allocated IFA Loan Obligation	\$2,299,488	\$536,054

Step 4: Allocate obligation for each levee systems 50/50 between drainage districts (which assess owners of protected property) and “map-holder” jurisdictions

	MCDD	SDIC
Drainage districts	\$1,149,744	\$268,027
Jurisdictions	\$1,149,744	\$268,027

Step 5: Allocate jurisdiction obligations using jurisdictional acreage protected by levee system

	Protected Acres (%)	Obligation
MCDD		
Fairview	608 (7.1%)	\$81,369
Gresham	367 (4.3%)	\$49,116
Multnomah County	150 (1.7%)	\$20,075
Portland	7,466 (86.9%)	\$999,183
	8,591 (100%)	\$1,149,744
SDIC		
Fairview	246 (15.9%)	\$42,538
Multnomah County	7 (0.5%)	\$1,210
Troutdale	1,297 (83.7%)	\$224,278
	1,550 (100%)	\$268,027

Step 6: Aggregate jurisdiction obligations into list with drainage districts and Regional Partners

Fairview (\$81,369 + \$42,538)	\$123,908
Gresham	\$49,116
Metro	\$300,000
MCDD	\$1,149,744
Port of Portland	\$166,085
Portland	\$999,183
SDIC	\$268,027
Troutdale	\$224,278
Multnomah County (\$20,075 + \$1,210)	\$21,286
	\$3,301,627

INTERGOVERNMENTAL AGREEMENT
for
Cost-Sharing of Levee Ready Columbia Expenses Not Covered by IFA Loans

This Intergovernmental Agreement (this "Agreement") is authorized by ORS 190.010 and is made and entered into as of _____ (the "Effective Date") by and among Multnomah County (the "County"), a home rule county of the State of Oregon, the City of Portland ("Portland"), an Oregon municipal corporation; the City of Gresham ("Gresham"), an Oregon municipal corporation; the City of Fairview ("Fairview"), an Oregon municipal corporation; the City of Troutdale ("Troutdale"), an Oregon municipal corporation; the Port of Portland (the "Port"), a port district of the state of Oregon; Multnomah County Drainage District No. 1 ("MCDD"), a special purpose local government organized under ORS Chapter 547; Peninsula Drainage District No. 1 ("PEN 1") a special purpose local government organized under ORS Chapter 547; Peninsula Drainage District No. 2 ("PEN 2") a special purpose local government organized under ORS Chapter 547; Sandy Drainage Improvement Company ("SDIC"), a nonprofit drainage improvement corporation organized under ORS Chapter 554, and the Sauvie Island Drainage Improvement Company ("SIDIC"), a nonprofit drainage improvement corporation organized under ORS Chapter 554 (collectively, the "Parties," and each individually a "Party").

RECITALS

- A. MCDD, PEN 1, PEN 2, SDIC, and SIDIC (collectively, the "Districts") operate and maintain levees and drainage facilities along and in the vicinity of the Columbia River that lie within their respective jurisdictional boundaries, among other duties. The levees were originally constructed starting around 1916 and have been periodically upgraded by the U.S. Army Corps of Engineers (the "Corps") since then. Through intergovernmental agreements ("District IGAs"), MCDD has general management authority of over all of the Districts except SIDIC. All references to MCDD in this Agreement will mean MCDD acting on its behalf and on behalf of PEN 1, PEN 2, and SDIC pursuant to the District IGAs.
- B. The Districts, except SIDIC, have formed an intergovernmental entity, the Columbia Corridor Drainage Districts Joint Contracting Authority ("CCDDJCA" or "JCA"), that has been delegated contracting authority and financial management for the four non-SIDIC districts for this and other multi-district projects. The JCA will assume MCDD's duties and responsibilities under this Agreement upon notice to the Parties once the JCA is set up and functioning.
- C. The Federal Emergency Management Agency ("FEMA") provides federal assistance in the form of flood insurance to property owners located within areas at risk of flooding, provided the communities in which those properties are located participate in the National Flood Insurance Program (the "NFIP"). FEMA recognizes levees as providing flood protection to a particular area only if they are "certified" by a qualified private engineer or an eligible federal agency (including the Corps), and then "accredited" by FEMA.

- D. The Corps has evaluated and certified the levees in the Districts, which run along the Columbia Corridor (the "Columbia Corridor" encompasses 12,000 acres on the south shore of the Columbia River in the Portland, Oregon Metropolitan area) and Sauvie Island, which are now subject to recertification under differing timelines. Expiration of the certifications could lead to de-accreditation by FEMA. The certifications must be renewed to remain accredited by FEMA.
- E. There are severe economic consequences if FEMA accreditation of a levee system is not maintained. Properties located within a flood zone that is protected by a non-accredited levee system lose access to the lower flood insurance rates offered through FEMA's NFIP. Without adequate flood insurance, those properties cannot access loans issued by federal agencies (e.g., Federal Housing Administration and Small Business Administration) and loans backed by the federal government (e.g., Veterans Administration, Fannie Mae, and Freddie Mac). In addition, properties within a flood zone that is protected by a non-accredited levee system also face floodplain development ordinances by jurisdictions that could severely restrict development in such areas.
- F. Lands protected by the levees along the Columbia Corridor and Sauvie Island are within the jurisdictional boundaries of one or more of the Parties. In addition, one or more of the Parties own lands, public facilities, or both, within the territory protected by the levees. Each Party would therefore be negatively affected by losing the federal assistance offered by the NFIP. Consequently, the Parties, in conjunction with the Oregon Solutions Program of the State of Oregon ("Oregon Solutions"), have formed a partnership entitled "Levee Ready Columbia" to work together collaboratively to obtain the necessary certifications and accreditations to ensure that the territories protected by the levees continue to qualify for the NFIP and are protected from flooding (the "Project").
- G. Business Oregon's Infrastructure Finance Authority (the "IFA") has approved three loans, one administered by the City and two administered by the County that will pay for the majority of the costs of conducting the necessary analyses to maintain certification. The Parties are parties to one or more of three intergovernmental agreements that provide for payment of the IFA loans.
- H. Pursuant to a separate agreement with the State of Oregon's Business Oregon, the County will receive \$300,000 to be used to support the Project (the "Regional Solutions Support"). The Parties understand that \$200,000 of the Regional Solutions Support will be used to reduce the amount of the Project that will be financed with the IFA loans.
- I. The remaining \$100,000 of the Regional Solutions Support will be used to pay for certain Project costs that are not fundable through the IFA loans, and the purpose of this Agreement is to provide for payment of the remaining amount of such project costs that are not fundable through the IFA loans.

TERMS

The Parties agree as follows:

1. Cash Expenses. The IFA loans will fund the engineering analyses necessary to ascertain the levees' flood-control capacity. The Parties have determined that successful implementation of the Project requires funding outreach, public involvement, and coordination activities and expenditures that are not eligible for funding under the IFA loan (the "Cash Expenses"). The Cash Expenses generally fall within the following categories:
 - a. Communications / Stakeholder Engagement. In light of the magnitude of the work being performed as well as the breadth of stakeholders that are impacted, meaningful engagement with a large representation of diverse community members is required in order for the project to be a success. The stakeholder outreach and engagement budget will be used to fund the work required to increase community involvement, ensure jurisdictional stakeholders remain engaged in the process, and maximize the effectiveness of highly technical advisory committees. These activities will include, without limitation:
 - Developing a "brand" or identity for the project and building a website to keep community members and stakeholders updated on progress and opportunities for engagement;
 - Designing and printing signage, brochures, banners, and other materials to be used at meetings and events;
 - Implementing an earned media strategy through the hosting of events;
 - Development and implementation of online or print survey or similar instrument(s) to measure public involvement and effectiveness of outreach campaigns;
 - Advertising events;
 - Utilization of respected conveners, facilitators, and necessary staff support to ensure continued participation by the Districts, impacted jurisdictions, regional partners and other stakeholders; and
 - Utilization of a technical expert to manage and facilitate meetings of technical experts and engineers representing the full range of stakeholders in the project.

- b. Project Management. MCDD will provide overall project management and communications / outreach staffing and will solicit and manage any necessary communications or facilitation consultant contracts and other consultant contracts necessary to implement the Cash Expenses.
2. The total Cash Expenses for fiscal year 2015/2016 amount to \$441,050 ("Reimbursement Expenses"), and the County will pay the first \$100,000 of the Reimbursement Expenses using the Regional Solutions Support received by the County. Each Party's proportionate share of the remaining \$341,050 Reimbursement Expenses are set forth in the following Allocation Schedule. A detailed description of the calculation used to generate the Allocation Schedule is attached as Exhibit A.

	Cash Expenses Responsibility
Fairview	\$7,098
Gresham	\$2,748
MCDD	\$64,322
PEN 1	\$15,151
PEN 2	\$16,385
Port	\$100,000
Portland	\$87,435
SDIC	\$16,044
SIDIC	\$8,623
Troutdale	\$13,426
County	\$9,818
Total	\$341,050

3. The work described in Section 1 will be conducted by consultants and staff hired by MCDD. After MCDD has invoiced the County for \$100,000, to be paid with the Regional Solutions Support received by the County, each party shall pay their portion of the Cash Expenses ("Cash Expenses Responsibility") to MCDD not later than 30 days following the date of invoice by MCDD to each Party for its Cash Expenses Responsibility under this Agreement. MCDD shall keep an accounting of expenses paid from the Cash Expenses Responsibility and shall report on such expenses quarterly to the Parties.
4. IGA Entity. MCDD, PEN 1, PEN 2, and SDIC have entered into an intergovernmental agreement pursuant to ORS 190.085 to create an intergovernmental entity to act as a joint contracting agency for the purposes of receipt and expenditure of funds and contracting for goods, services, and construction services for the Project. The entity is entitled the "Columbia Corridor Drainage Districts Joint Contracting Authority" ("CCDDJCA" or "JCA"). Upon 30 days' written notice to the Parties that the JCA has been created and is ready to conduct business, the JCA will assume the duties and responsibilities of MCDD with regard to receipt and distribution of funding and entering into and administering

contracts under this Agreement. MCDD, PEN 1, PEN 2 and SDIC remain jointly responsible for ensuring that they and JCA make payments and carry out their obligations under this IGA.

5. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, each Party will defend, indemnify, and hold harmless the other Parties and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the Party's performance of its responsibilities under this Agreement.
6. The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon.
7. This Agreement may be amended at any time with the written consent of all Parties.
8. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from MCDD.
9. All notices, communications, invoices, and payments required or permitted under this Agreement must be addressed as follows:

To County: Multnomah County
 Chief Financial Officer
 501 SE Hawthorne Blvd, Suite 531
 Portland, OR 97214

To Portland: City Debt Manager
 Office of Management and Finance
 1120 S.W. Fifth Avenue, Room 1250
 Portland, Oregon 97204-1988
 (503) 823-4222

To Gresham: The City of Gresham
 Environmental Services Director
 1333 N.W. Eastman Parkway
 Gresham, Oregon 97030
 (503) 618-3000

To Gresham for
Invoices and
Payments: The City of Gresham
 City Debt Management Analyst
 1333 N.W. Eastman Parkway

Gresham, Oregon 97030
(503) 618-3000

To Fairview: The City of Fairview
City Manager
1300 NE Village Street
Fairview, OR 97024

To Troutdale: The City of Troutdale
City Manager
219 E. Historic Columbia River Hwy.
Troutdale, OR 97060

To the Port for notices and communications: The Port of Portland
P.O. Box 3529
Portland, Oregon 97208
Attention: Director, Environmental Operations and Policy
(503) 415-6331

To the Port for invoices and payments: The Port of Portland
P.O. Box 5095
Portland, Oregon 97208-5095
(503) 415-6000

To the Districts Except SIDIC: Multnomah County Drainage District No. 1
Levee Ready Columbia Program Manager
1880 N.E. Elrod Drive
Portland, Oregon 97211
(503) 281-5675

To SIDIC: Sauvie Island Drainage Improvement Company
Executive Director
29264 NW Sauvie Island Rd
Portland, OR 97231

10. If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
11. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the matters discussed herein.

No waiver, consent, modification, or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.

12. This Agreement is not intended, and may not be construed as intending, to establish a precedent for any future cost-sharing agreements among any of the Parties pertaining to the Columbia Corridor and Sauvie Island levees. A Party's contribution under this Agreement creates no expectation that the Party is responsible for the maintenance or repair of the Columbia Corridor and Sauvie Island levees.
13. This Agreement may be executed in counterparts. Delivery of this executed Agreement by facsimile or e-mail will be sufficient to form a binding agreement.
14. This Agreement will terminate at such time as MCDD expends the last of the Reimbursement Expenses funds on the services described in Section 1 of this Agreement. At such time, MCDD will send notice of termination to the Parties.

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

MULTNOMAH COUNTY

Approved as to form:

By: _____

Title: _____

Date: _____

County Attorney

CITY OF PORTLAND

Approved as to form:

By: _____

Title: _____

Date: _____

Deputy City Attorney

CITY OF GRESHAM

Approved as to form:

By: _____

Title: _____

Date: _____

City Attorney

CITY OF FAIRVIEW

Approved as to form:

By: _____

Title: _____

Date: _____

City Attorney

CITY OF TROUTDALE

Approved as to form:

By: _____

Title: _____

Date: _____

City Attorney

PORT OF PORTLAND

Approved as to form:

By: _____

Title: _____

Date: _____

Assistant General Counsel

MULTNOMAH COUNTY DRAINAGE
DISTRICT NO. 1

By: _____

Title: _____

Date: _____

SANDY DRAINAGE IMPROVEMENT
COMPANY

By: _____

Title: _____

Date: _____

SAUVIE ISLAND DRAINAGE IMPROVEMENT
COMPANY

By: _____

Title: _____

Date: _____

Acknowledged by Metro as a party to two of the intergovernmental agreements that provide for payment of the IFA loans, as described in Recital G, above:

METRO

By: _____

Title: _____

Date: _____

Exhibit A Allocation Methodology

Exhibit A

ALLOCATION METHODOLOGY

The Allocation Methodology for the Phase II loan can be found as exhibit D in the Intergovernmental Agreement for Levee Analysis Cost-Sharing Phase II (MCDD and SDIC). The documentation below describes the allocation methodology for the Cash Expenses. The total Cash Expense totals \$441,051.

Step 1: Reduce total cash expenses by the Regional Partner contributions

Phase II cash expenses cover the costs of communications and stakeholder engagement, Oregon Solutions, project facilitation, and staffing. The State of Oregon Regional Solutions Office, via the Regional Solutions Support, and the Port of Portland each have agreed to contribute a fixed dollar amount of \$100,000 towards the cash expenses.

Cash Expenses	\$441,051
Regional Solutions Support	-\$100,000
Port of Portland	-\$100,000
Remaining Cash Expenses	\$241,051

Step 2: Determine the cash expense amounts for each drainage district by allocating the remaining costs as a percentage of the overall project size and cost. Project size was determined by the gross Infrastructure Finance Authority loan amount.

	PEN 1	PEN 2	MCDD	SDIC	SIDIC
Levee System Project Cost	\$672,617	\$727,383	\$2,855,451	\$712,261	\$382,800
% of Overall Project	13%	14%	53%	13%	7%
Levee System Amount	\$30,303	\$32,770	\$128,644	\$32,089	\$17,246

Step 3: Allocate obligation for each levee systems 50/50 between drainage districts (which assess owners of protected property) and “map-holder” jurisdictions

	PEN 1	PEN 2	MCDD	SDIC	SIDIC
Drainage Districts	\$15,151	\$16,385	\$64,322	\$16,044	\$8,623
Jurisdictions	\$15,151	\$16,385	\$64,322	\$16,044	\$8,623

Step 4: Allocate jurisdiction obligations using jurisdictional acreage protected by levee system

	Protected Acres (%)	Obligation
PEN 1		
Portland	986 (100%)	\$15,151
PEN 2		
Portland	1,612 (100%)	\$16,385
MCDD		
Portland	7,466 (86.9%)	\$55,899
Gresham	367 (4.3%)	\$2,748
Fairview	608 (7.1%)	\$4,552
Multnomah County	150 (1.7%)	\$1,123
	8,591 (100%)	\$64,322
SDIC		
Fairview	246 (15.9%)	\$2,546
Troutdale	1,297 (83.7%)	\$13,426
Multnomah County	7 (0.5%)	\$72
	1,550 (100%)	\$16,044
SIDIC		
Multnomah County	15,400 (100%)	\$8,623

Step 5: Aggregate jurisdiction obligations into list with drainage districts and Regional Partners*

Port of Portland	\$100,000
PEN 1	\$15,151
PEN 2	\$16,385
MCDD	\$64,322
SDIC	\$16,044
SIDIC	\$8,623
Portland (\$15,151 + \$16,385 + \$55,899)	\$87,435
Gresham	\$2,748
Fairview (\$4,552 + \$2,546)	\$7,098
Troutdale	\$13,426
Multnomah County (\$1,123 + \$72 + \$8,623)	\$9,818
	<u>\$341,050</u>

*There is a rounding error which results in a \$1.00 discrepancy.

RESOLUTION NO.

A RESOLUTION AUTHORIZING EXECUTION OF INTERGOVERNMENTAL AGREEMENTS FOR: 1) LEVEE COST SHARING WITH MULTNOMAH COUNTY AND THE PORT OF PORTLAND; 2) LEVEE ANALYSIS COST-SHARING PHASE II (MCDD AND SDIC); AND 3) COST SHARING OF LEVEE READY COLUMBIA EXPENSES NOT COVERED BY IFA LOANS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. On August 25, 2015, the City Council approved a resolution under which Troutdale entered into a Declaration of Cooperation (the "Declaration") with other jurisdictions to seek agreement on how to fund repairs and recertification of the Columbia River levees that affect Troutdale.
2. Under the Declaration, Troutdale and other jurisdictions have collaborated over measures to fund this work, which is Phase 2 of the project, and have agreed to embody their proposals in three intergovernmental agreements, which are attached to this resolution.
3. The project team estimates Phase II work will cost a total of \$4 million. Of that, \$3.568 million will be funded with a loan from Business Oregon's Infrastructure Finance Authority (the "IFA") to Multnomah County. Troutdale's share of that obligation has been proposed at approximately \$237,704.00.
4. With offsets (in the form of loan and cash expense assumptions) negotiated with Multnomah County, the Port of Portland, and Business Oregon, Troutdale's actual loan repayment obligation will total approximately \$112,139 plus interest over a 7 year period beginning in fiscal year 2018. This amounts to roughly \$17,000.00 per year. This obligation is embodied in the IGA for "Levee Analysis Cost-Sharing Phase II (MCDD and SDIC).
5. Around \$0.4 million of the project costs will not be covered by the IFA loan. Troutdale's share of these costs is \$13,426. This obligation is embodied in the IGA for "Cost Sharing of Levee Ready Columbia Expenses Not Covered by IFA Loans."

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The City Manager is authorized to sign IGAs in substantially the form of the three IGAs embodied in this resolution.

Section 2. This resolution takes effect upon adoption.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date

Sarah Skroch, City Recorder

Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: The Letter of Intent for the USPS Relocation Project Payment from the Portland Development Commission (PDC).

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: November 10, 2015

STAFF MEMBER: Craig Ward
DEPARTMENT: Executive

ACTION REQUIRED
Information/Discussion

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

Comments:

STAFF RECOMMENDATION: Evaluate and provide direction on November 24, 2015

Exhibits: A. PDC Letter of Intent for the USPS Relocation Project Payment

Subject / Issue Relates To:

- Council Goals Legislative Other (describe)

Goal: Continue to support desirable development in the Enterprise Zone (EZ), and consider the extension of the EZ prior to the June 2018 expiration.

Issue / Council Decision & Discussion Points:

- ◆ PDC desires to acquire and redevelop the 14-acre USPS complex on Northwest Hoyt
- ◆ PDC and USPS are considering Lots 7 and 8 of the Troutdale Reynolds Industrial Park (TRIP) as one of the potential relocation sites for the USPS facility.
- ◆ The USPS facility located in TRIP would result in a significant loss of potential property tax revenue for the City.
- ◆ PDC has proposed to provide a one-time relocation payment to the City of \$6,465,000

Reviewed and Approved by City Manager: *Sarah Skoek for Craig Ward*

BACKGROUND:

The PDC approached the City regarding locating the USPS facility into TRIP. Several information gathering meetings were held with the PDC and City staff. Council discussed the information available in their October 20, 2015 work session. Council directed staff to request additional information and a written proposal from the PDC.

As requested, the attached Exhibit A is the October 30, 2015 Letter of Intent for the USPS Relocation Project Payment from the Portland Development Commission.

SUMMARY:

For your policy decision consideration both the Exhibit A, and the privileged legal advice from the City Attorney to be provided in Executive Session.

RECOMMENDATION:

Staff recommends deferring any staff negotiation direction until after the Executive Session, and to schedule a further discussion and direction for the November 24, 2015 Council meeting.

Tom Kelly
Chair

October 30, 2015

Gustavo J. Cruz, Jr.
Commissioner

Honorable Doug Daoust, Mayor
City of Troutdale

Aneshka Dickson
Commissioner

219 E. Historic Columbia River Hwy.
Troutdale, OR 97060

Mark Edlen
Commissioner

Re: Letter of Intent for USPS Relocation Project Payment to City of Troutdale

William Myers
Commissioner

Dear Mayor Daoust:

Charlie Hales
Mayor

Thank you for engaging in discussions with the Portland Development Commission (PDC) regarding the potential relocation of United States Postal Service (USPS) facilities to a site at the Troutdale Reynolds Industrial Park (TRIP) owned by the Port of Portland. As we have discussed, PDC and USPS are in negotiations for PDC to purchase the downtown Portland USPS Processing and Distribution Center (P&DC). As part of that acquisition, the USPS would need to relocate and possibly consolidate its facilities in the Portland area. PDC is assisting in that effort and currently evaluating multiple sites for this regionally significant acquisition and relocation.

Patrick Quinton
Executive Director

This relocation offers significant economic benefits to our region, and to the local community in which the new facility is located in particular. The construction of the new facility alone will generate one-time benefits in excess of \$140 million, of which a disproportionate amount will flow to the community in which the new facility is located.

In addition, USPS, with annual employment of about 1,300 employees in Portland, generates an estimated annual contribution of more than \$220 million to the local economy. The relocation of the USPS P&DC facility will shift the center of influence of these benefits to the new home for that facility, and bring new revenues and jobs to local businesses and new residents to nearby neighborhoods.

Despite these significant benefits, both USPS and PDC recognize that the City of Troutdale must forego potential tax and fee revenue in the event a site at TRIP is sold to a federal agency rather than a private company or developer. Although USPS is not by law required to pay property taxes or use and permit charges to local jurisdictions, USPS and PDC acknowledge this opportunity cost to Troutdale and, moreover, value the assistance that Troutdale will provide in the event USPS moves to Troutdale.

222 NW Fifth Avenue
Portland, OR
97209-3859

503-823-3200 Main
503-823-3368 Fax
503-823-3366 TTY

To arrive at a fair estimate of this opportunity cost, we have worked with your staff over the past few weeks to estimate the present value of foregone property taxes, system development charges (SDCs), and building permit fees in the event USPS locates its new facility at TRIP. After considering a range of assumptions and running various development scenarios for the site, we believe a fair estimate is \$6,465,000. As such, on behalf of the USPS, I am proposing that USPS make a one-time payment of \$6,465,000 to the City of Troutdale as part of total project costs upon occupancy of the new facility by the USPS.

Honorable Doug Daoust, Mayor
City of Troutdale
October 30, 2015
Page 2 of 2

We arrived at the \$6,465,000 figure using the following assumptions:

- The estimated foregone property tax revenue to the City of Troutdale is \$138,150 per year.
- The estimated foregone property tax calculation is based on an improvement value consistent with a typical private sector industrial or warehousing building, and not based on the unique and costly specifications of a USPS distribution facility.
- The new facility has an estimated 50-year life, given the type of construction and the likely changes in the USPS business model over the next 50 years.
- The calculation of the present value of the foregone property tax revenues assumes no lost revenue during the first 10 years due to the availability of additional land for development at TRIP and the likelihood that any new development would be offered a three-year Enterprise Zone property tax abatement. Because TRIP currently has sufficient available land to respond to multiple large lot requests before turning away any opportunities, the lost opportunity to Troutdale begins not when the USPS facility is built but when the 183-acre TRIP can no longer offer available land to a similar opportunity.
- Given the impact of the project on local infrastructure, the payment should include forgone SDCs of \$938,284. The calculation does not, however, include permit fees given that the City of Troutdale will not incur the work involved in reviewing plans and inspecting the facility.

We are, of course, happy to share our detailed assumptions with you.

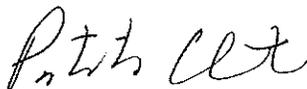
Obviously, any calculation of lost opportunity cost involves subjective assumptions about the future. One of the overriding benefits of this project, however, is that it reduces Troutdale's downside risks associated with the timing of absorption and development of the TRIP property and provides immediate funds that can be used today. Even under optimistic development assumptions, the alternative would require the City to wait years to generate a similar sum of money through incremental revenue growth.

Please note this Letter of Intent is non-binding and contingent upon subsequent approvals. As noted above, PDC and USPS are still evaluating site alternatives and determining which site meets both USPS criteria and financial resources available for the relocation. The satisfactory resolution of this matter will partially affect the parties' ultimate site selection decision.

Please let me know if this payment amount is acceptable to the City of Troutdale so that we can continue with our feasibility, budgeting, and site evaluation process. Should this be acceptable to all parties, this project payment would be documented in a subsequent binding agreement.

Please contact me at (503) 823-3355 if you have any questions.

Sincerely,



Patrick Quinton
Executive Director

Cc: Craig Ward, City Manager, City of Troutdale