

**FINANCIAL IMPACT STATEMENT****For Council Action Items****(Use this form for Ordinances and Resolutions)**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Paul Gribbon	2. Telephone Number 503-823-7747	3. Bureau/Office/Dept. Environmental Services
4a. To be filed (date) June 1, 2011	4b. Calendar (Check One) Regular Consent 4/5ths [X] [ ] [ ]	5. Date Submitted to FPD Budget Analyst: May 16, 2011

1) **Legislation Title:** Authorize the Bureau of Environmental Services to execute a Sublease Agreement and Permit of Entry with TriMet for property leased from the Oregon Museum of Science and Industry, including an indemnification from the City to TriMet. (Ordinance)

2) **Purpose of the Proposed Legislation:** Allow Environmental Services to sublease a portion of property leased from the Oregon Museum of Science and Industry to TriMet as part of the ESCSO Tunnel Project.

3) **Revenue:**

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated identify the source. No new revenue is generated. Rent received reduces the cost originally paid for the ground lease agreement.

4) **Expense:**

What are the costs to the City as a result of this legislation? Include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract include the local contribution or match required. None.


5) **Staffing Requirements:**

a) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? If new positions are created include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term, indicate the end of the term. No.

b) Will positions be created or eliminated in future years as a result of this legislation? No

6) **Change in Appropriations:** Budget changes for the current year must go through the BMP Process. This section may only be use with prior permission of your OMF analyst for exceptions. Reflect the dollar amount to be appropriated by this legislation. Include the appropriate center codes and accounts to be used by Central Accounting. Indicate "new" in Center Code column if new center needs to be created. Use additional space if needed.

Fund	Center Code	Account	Amount	Project Fund	Project No.

  
Dean Marriott, Director, Bureau of Environmental Services



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Dan Saltzman, Commissioner ■ Dean Marriott, Director

City Council  
Agenda Item  
Staff Supplemental Report

TO: Commissioner Dan Saltzman  
THROUGH: Matt Grumm or Amy Trieu

FROM: Dean Marriott

DATE: May 16, 2011

RE: Authorize the Bureau of Environmental Services to execute a Sublease Agreement and Permit of Entry with TriMet for property leased from the Oregon Museum of Science and Industry, including an indemnification from the City to TriMet. (Ordinance)

Requested Council Hearing Date: June 1, 2011

## I. RECOMMENDATION

Authorize a sublease agreement with TriMet.

## II. BACKGROUND

In 1991, the City engaged in a program to control combined sewer overflows to the Columbia Slough and Willamette River. As part of this program, it commenced construction work on the East Side CSO Tunnel Project (ESCSO Project) in March 2006.

The ESCSO Project identified undeveloped land south of the Oregon Museum of Science and Industry (OMSI) as a critical location for construction of the main mining shaft, and as an overall project staging area (the "Property"). The City and OMSI entered into a Ground Lease Agreement dated October 19, 2005, and the First Amendment to Ground Lease dated March 2, 2010 (collectively, the "Lease"). The Lease term expires on September 30, 2012. The City intends to occupy the Property until December 31, 2011.

TriMet is planning to construct the Portland-Milwaukie Light Rail Project (TriMet Project), a 7.3-mile alignment that will connect Portland State University in downtown Portland, inner Southeast Portland, Milwaukie, and north Clackamas County, which includes a new transit bridge (Bridge) over the Willamette River across part of the Property. TriMet plans to begin construction staging of the east Bridge span and abutment in May 2011.

TriMet needs to use a portion of the Property for the TriMet Project during the term of the Lease (Subleased Property), which is shown on the attached Exhibit B, and incorporated by this reference herein. The City has agreed, and OMSI has consented, to allow TriMet to use the Subleased Property for the TriMet Project for the period of June 1, 2011- December 31, 2011. The City and TriMet hereby desire to enter into this

Sublease to allow TriMet to occupy the Subleased Property until December 31, 2011, or until the termination of the Lease, whichever occurs later.

III FINANCIAL IMPACT

Rent paid to the City by TriMet for the Sublease Agreement will reduce the cost paid to OMSI for the original Lease.

IV LEGAL ISSUES

The Office of the City Attorney has reviewed this matter and recommends that the City approve the Sublease Agreement.

V CONTROVERSIAL ISSUES

None

VI LINK TO CURRENT CITY POLICIES

Work performed by TriMet is unrelated to City Policies

VII CITIZEN PARTICIPATION

N/A

VIII OTHER GOVERNMENT PARTICIPATION

N/A

IX. FINANCIAL IMPACT ON LOCAL ECONOMY

IF APPLICABLE, PROVIDE INFORMATION ON ESTIMATED NUMBER OF JOBS CREATED BY THIS ACTION

IF THIS ACTION IS CONTRACT-RELATED, PROVIDE INFORMATION ON M/W/ESB PARTICIPATION (NUMBER AND PERCENTAGE)

- X. IF THIS IS A CONTRACT, DOES CONTRACTOR HAVE A CURRENT BUSINESS LICENSE? \_\_\_\_ WHAT IS THEIR BUSINESS LICENSE NUMBER? \_\_\_\_ IS THEIR ACCOUNT WITH THE CITY CURRENT? \_\_\_\_ IF NOT, HOW MUCH IS OWING? \_\_\_\_

184657

SIGNATURE  
ORIGINAL

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**GROUND LEASE AGREEMENT**

**Between**

**OREGON MUSEUM OF SCIENCE AND INDUSTRY,  
an Oregon not-for-profit corporation**

**as Landlord**

**And**

**CITY OF PORTLAND,  
acting by and through its  
Bureau of Environmental Services,**

**as Tenant**

**Dated: December 29, 2005**

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## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1    DEFINED TERMS .....	1
SECTION 2    AGREEMENT TO LEASE .....	4
SECTION 3    LANDLORD REPRESENTATIONS.....	4
3.1    Ownership; Authority.....	4
3.2    No Other Representations .....	4
SECTION 4    TERM; EXTENSION .....	4
4.1    Term .....	4
4.2    Progress Reports.....	4
4.3    Extension of Term.....	5
SECTION 5    RENT .....	5
5.1    Rent During Term .....	5
5.2    Rent During Extended Term .....	5
SECTION 6    POSSESSION; PERMITTED USE .....	5
6.1    Possession.....	5
6.2    Landlord's Right of Access.....	6
6.3    Permitted Use .....	6
6.4    Limitations of Tenant's Use of the Property .....	6
6.5    Project Improvements .....	6
6.6    Permanent Easement .....	7
6.7    No Other Improvements.....	7
6.8    Compliance with Laws.....	7
SECTION 7    HAZARDOUS SUBSTANCES.....	7
7.1    Landlord's Responsibility .....	7
7.2    Tenant's Responsibility .....	7
7.3    Tenant's Indemnity Obligation .....	8
7.4    Landlord's Indemnity Obligation.....	8
SECTION 8    TENANT'S RESPONSIBILITY FOR ALL OPERATING EXPENSES;	
LIENS 8	
8.1    Utilities .....	8
8.2    Payment and Contest of Impositions.....	8
8.3    Assessments .....	9
8.4    Proration.....	9
8.5    Liens .....	9
SECTION 9    MAINTENANCE.....	10

SECTION 10	INSURANCE, DAMAGE OR DESTRUCTION .....	10
10.1	Required Insurance.....	10
10.2	Waiver of Subrogation .....	10
10.3	Damage or Dysfunction .....	10
SECTION 11	CONDEMNATION .....	10
11.1	Total Taking .....	10
11.2	Substantial Taking.....	11
11.3	Partial Taking .....	11
11.4	Degree of Taking.....	11
11.5	Temporary Taking.....	11
SECTION 12	INDEMNITY .....	11
12.1	Tenant's Obligation.....	11
12.2	Landlord's Obligation .....	12
12.3	Conflict with Hazardous Substances Indemnity .....	12
SECTION 13	QUIET ENJOYMENT .....	12
SECTION 14	SUBLETTING AND ASSIGNMENT.....	12
14.1	Subletting .....	12
14.2	Assignment.....	12
14.3	Tenant Liability .....	12
14.4	Covenants Binding on Successors and Assigns .....	13
SECTION 15	DEFAULT.....	13
15.1	Event of Default .....	13
15.2	No Termination of Lease.....	13
15.3	Damages and Remedies .....	13
15.4	No Waivers.....	14
15.5	Performance by Landlord of Tenant's Defaulted Obligations .....	14
SECTION 16	SURRENDER UPON TERMINATION .....	14
SECTION 17	DISPUTE RESOLUTION .....	15
17.1	Mediation .....	15
17.2	Arbitration.....	15
17.3	Discovery .....	15
17.4	Procedural Matters .....	16
17.5	Venue .....	16
17.6	Limitations of Actions.....	16
17.7	Expenses.....	16
17.8	Attorneys' Fees .....	16
17.9	Confidentiality.....	16
SECTION 18	GENERAL PROVISIONS.....	16
18.1	Estoppel Certificates .....	16
18.2	No Partnership.....	17

18.3	Time of the Essence .....	17
18.4	Captions.....	17
18.5	Meaning of Terms .....	17
18.6	Lease Construed as a Whole .....	17
18.7	Severability.....	17
18.8	Survival .....	17
18.9	Memorandum of Lease.....	18
18.10	Amendment .....	18
18.11	Commissions .....	18
18.12	Notices.....	18
18.13	References to Documents.....	19
18.14	Force Majeure .....	19
18.15	No Personal Liability .....	19
18.16	Exhibits.....	19
18.17	No Third Party Beneficiaries.....	19
18.18	Reference Date of Lease .....	19
18.19	Entire Agreement .....	20

#### EXHIBITS

- A Property Description
- B Exceptions
- C Permanent Easements
- D Required Insurance
- E Memorandum of Lease

**GROUND LEASE AGREEMENT**

EFFECTIVE DATE: December 29, 2005

BETWEEN: OREGON MUSEUM OF SCIENCE AND INDUSTRY  
an Oregon not-for-profit corporation  
1945 SE Water Avenue  
Portland, Oregon 97214-3354 ("Landlord")

AND: CITY OF PORTLAND,  
acting by and through its  
Bureau of Environmental Services  
1120 SW Fifth Avenue, Room 1000  
Portland, Oregon 97204 ("Tenant")

Landlord owns the partially improved real estate described on attached Exhibit A (the "Property"). A public street (SE Water Avenue) traverses the Property, which includes a surface parking lot (the "Auxiliary Parking Lot"), all as generally shown on attached Exhibit A. The Property consists of approximately 7.5 acres of land.

Tenant desires to lease the Property from Landlord, and Landlord is willing to lease the Property to Tenant, all on the terms and conditions of this Ground Lease Agreement (the "Lease").

NOW, THEREFORE, in consideration of the mutual promises of Landlord and Tenant set forth in this Lease, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

**SECTION 1 DEFINED TERMS**

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Lease. Some defined terms are first defined in the text of this Lease and some are first defined in this Section 1. If there is any difference between the definition of a defined term in the text of this Lease and the definition of that term in this Section 1, the definition in the text controls. Defined terms may be used in the singular or in the plural. Subject to the foregoing, the following terms, when capitalized, shall have the following meanings when used in this Lease:

1.1 "*Affiliate*" is defined as, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term "control" (including the terms "controlled by" and "under common control with") shall mean the ownership, directly or indirectly, of, or other legal right to direct the voting of, twenty-five percent (25%) or more of the voting interests in a Person or the governing body of such Person.

1.2 "*Arbitration Service*" is defined in Section 17.1 of this Lease.



1.3 "Assessments" is defined as assessments levied against the Property by any Governmental Authority, assessments levied against the Property pursuant to LIDs, and system development charges imposed on the Property by Governmental Authorities.

1.4 "Commencement Date" is defined in Section 4 of this Lease.

1.5 "Event of Default" is defined in Section 15.1 of this Lease.

1.6 "Governmental Authority" is defined as any local, regional, state, or federal government and its respective agencies, departments, divisions, bureaus, or other subdivisions.

1.7 "Hazardous Substances" is defined as (i) petroleum and its constituents; (ii) radon gas, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid level of polychlorinated biphenyl in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may during the Term of this Lease be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes" or words of similar import under any applicable Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is regulated by any Governmental Authority having jurisdiction over the Property or the operations thereon.

1.8 "Imposition" is defined as any tax, the non-payment of which could result in a lien upon Landlord's interest in the Property, including, but not limited to, ad valorem real property taxes and personal property taxes.

1.9 "Improvement" is defined as any building, structure, or other improvement above or below grade.

1.10 "Interest Rate" is defined in Section 15.5 of this Lease.

1.11 "Landlord" is defined on page 1 of this Lease.

1.12 "Landlord Related Person" is defined as any officer, director, member, stockholder, owner, or employee of Landlord.

1.13 "Law" is defined as any applicable statute, ordinance, regulation, rule, order, requirement or legal restriction of the any Governmental Authority.

1.14 "Lease" is defined on page 1 of this Ground Lease.

1.15 "Parties" is defined as Landlord and Tenant.

1.16 "Party" is defined as Landlord or Tenant.

1.17 "*Permitted Exceptions*" is defined as the exceptions to title set forth on the attached Exhibit B.

1.18 "*Person*" is defined as any natural person or any legal entity.

1.19 "*Project*" is defined as Tenant's East Side CSO Tunnel Project.

1.20 "*Property*" is defined on page 1 of this Lease.

1.21 "*Rent*" is defined in Section 5.1 of this Lease.

1.22 "*Sublease*" is defined as a sublease, license, occupancy agreement, or any other written agreement under which a Person has the right to occupy a part of the Property.

1.23 "*Sublessee*" is defined as a Person who is the sublessee under a Sublease.

1.24 "*Substantial Taking*" is defined in Section 11.2 of this Lease.

1.25 "*Taking*" is defined in Section 11.1 of this Lease.

1.26 "*Temporary Taking*" is defined in Section 11.5 of this Lease.

1.27 "*Tenant*" is defined on page 1 of this Lease.

1.28 "*Tenant Related Person*" is defined as any officer, elected official, or employee of Tenant.

1.29 "*Term*" is defined in Section 4 of this Lease.

1.30 "*Transfer*" is defined as the assignment, conveyance, sale, or other disposition by Tenant of all of its rights under this Lease, as described in Section 14.2 of this Lease.

1.31 "*Transferee*" is defined in Section 14.2 of this Lease.

1.32 "*Unavoidable Delays*" is defined as any of the following which in fact interferes with the ability of a Party to discharge its obligations under this Lease for the actual duration of such delay: strikes, bid protests, work stoppages or slowdowns; lockouts, civil disorder; inability to procure materials; failure of utilities; restrictive Law; government action (other than the City of Portland) or unusual delay in acting (including, without limitation, the failure to issue permits or approvals within ordinary and usual time periods); inclement weather or floods; unforeseen conditions; riot; insurrection; war; fuel shortage; casualty; act of God; or similar events or conditions beyond the reasonable control of the Party affected; provided, however, in no event shall insufficiency or unavailability of funds constitute an Unavoidable Delay.

1.33 "*Utilities*" is defined as all utilities supplied to the Property, including, but not limited to: electricity, water, natural gas, telephone service, cable service, garbage collection, and recycling services.

**SECTION 2 AGREEMENT TO LEASE**

Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Term in accordance with, and subject to, the terms and conditions of this Lease.

**SECTION 3 LANDLORD REPRESENTATIONS****3.1 Ownership; Authority**

Landlord represents and warrants that Landlord owns the Property free and clear of any liens, encumbrances or exceptions except for those set forth on attached Exhibit B, which are the "Permitted Exceptions." Landlord represents and warrants that Landlord has full power and authority to enter into this Lease and to perform all of its obligations under this Lease. Landlord represents and warrants that this Lease has been duly authorized by Landlord and that the person(s) executing this Lease on behalf of Landlord have the power and authority to do so. Landlord represents and warrants that this Lease is binding on Landlord and enforceable according to its terms.

**3.2 No Other Representations**

Landlord has given Tenant an opportunity to review the Property and the documentary information regarding the Property which is within Landlord's possession. Tenant has conducted whatever due diligence Tenant has determined to be appropriate with respect to its decision to lease the Property. Landlord is making no representation or warranty regarding the Property, except as set forth in Section 3.1 above. Tenant acknowledges that it is accepting the Property in its AS IS condition and is not relying on any representation or warranty from Landlord, except as set forth in Section 3.1.

**SECTION 4 TERM; EXTENSION****4.1 Term**

The term of this Lease shall commence on December 30, 2005 (the "Commencement Date") and shall continue thereafter until September 30, 2012 (the "Term"). Tenant acknowledges that pursuant to the terms of an Option Agreement dated October 10, 2003, pursuant to which Landlord acquired the Property, Landlord is required to allow Portland General Electric Company (PGE) a period of time to remove its stored equipment and material from that portion of the Property where such equipment and material is stored on Parcel A (as shown on Exhibit A), with the exception of the perimeter fence, for a period of time until February 1, 2006. Tenant agrees to coordinate the sharing of possession of the Property with PGE during this period.

**4.2 Progress Notices**

**4.2.1** During the period of 2010 through 2012, Tenant will provide Landlord with written notice regarding the then-projected completion date of Tenant's Project. These notices are due within the last 30 days of each calendar quarter. The purpose of these notices is to advise Landlord of when Landlord may recover possession of the Property so as to commence its own development activities.

4.2.2 In the event that Landlord commences pre-development activities after 2009, Landlord will provide Tenant with written reports of its pre-development activities, so that Tenant is aware of the potential economic consequences to Tenant, pursuant to Section 5.2 below, in the event Tenant fails to vacate the Property when and as required by this Lease. Pre-development activities do not include any on-site activities other than surveys or walk-overs, soil testing and soil compaction studies, which shall be arranged in advance with Tenant as provided in Section 6.2.

#### 4.3 Extension of Term

Tenant may extend the Term of this Lease for a period of time to be designated by Tenant of up to 90 days (the "Extension Term") by written notice to Landlord, which notice must be given by Tenant no later than September 1, 2012. Tenant may only extend the Term for the Extension Term if such extension is necessary to complete Tenant's Project. The Term shall include any Extension Term.

### SECTION 5 RENT

#### 5.1 Rent During Term

Tenant agrees to pay the rent for the Term at one time, in an amount which constitutes the present value of the rent for the Term, which is the sum of \$ 3,710,000 (the "Rent"). Tenant agrees to pay the Rent by wire transfer to Landlord on the Commencement Date. Tenant shall have the right to terminate this Lease effective not earlier than September 30, 2011, by giving Landlord written notice of early termination at least 90 days in advance, and if Tenant does so, then Landlord shall reimburse Tenant in the amount of \$1,452.05 per calendar day for the number of days between the date Tenant returns possession of the Property to Landlord in the condition required by Section 16 and delivers a recordable quitclaim deed to the Property to Landlord, and September 30, 2012, up to a maximum period of one year.

#### 5.2 Rent During Extended Term

Rent for the Extended Term shall be equal to: the greater of \$1,452.05 per calendar day (payable at the end of each calendar month) or Landlord's provable damages based upon the economic damage or loss to Landlord on account of being delayed in its intended use of the Property from and after September 30, 2012. In the event that Landlord and Tenant are unable to agree on the economic damage or loss to Landlord on account of the Extension Term, then the issue will be resolved through mediation or arbitration pursuant to Section 17 below.

### SECTION 6 POSSESSION; PERMITTED USE

#### 6.1 Possession

Landlord agrees to give Tenant exclusive possession of the Property as of the Commencement Date, and Tenant shall be entitled to exclusive possession of the Property, subject to the right of P G E referred to in Section 4.1 and subject to Landlord's limited rights of access set forth in this Lease, throughout the Term and the Extended Term, if any, even if Tenant is in default of this Lease.

## **6.2 Landlord's Right of Access**

In addition to any other access right given to Landlord under this Lease, Landlord shall be entitled to come upon the Property to conduct its pre-development activities, so long as Landlord gives Tenant at least seven (7) days advance written notice of its planned activities on the Property and so long as Landlord complies with all applicable health and safety requirements, and so long as Landlord's activities do not in any material way interfere with Tenant's Project.

## **6.3 Permitted Use**

Tenant shall be entitled to use the Property for only the following activities: all activities which are part of or associated with Tenant's Project, including, but not limited to, construction of a vertical shaft, construction of north/south tunnel and shaft, excavation, boring, storage and transportation of excavated materials, construction staging, fabrication and storage of tunnel liner, temporary detours, temporary roadway construction, field offices, parking and all other reasonably related uses for construction of the Project..

## **6.4 Limitations of Tenant's Use of the Property**

Throughout the Term, Tenant agrees as follows:

6.4.1 In the event that Tenant closes that segment of Water Avenue that traverses the Property, Tenant agrees, at its cost and expense, to reconstruct Water Avenue near the eastern edge of the Property, at a location and manner reasonably acceptable to Landlord, to be in place prior to the closure of the existing Water Avenue segment that currently traverses the Property.

6.4.2 Tenant shall use its best efforts to prevent its employees, contractors, its contractor's employees, subcontractors, its subcontractor's employees, and Tenant's agents and invitees from parking on Landlord's property adjacent to the Property.

6.4.3 Tenant will use its best efforts to prevent dust and construction debris from migrating to or from being placed on Landlord's property adjacent to the Property and will clean up any such material dust or construction debris.

6.4.4 Tenant will maintain a pathway along the Willamette River which can be safely used by pedestrians and bicyclists.

6.4.5 The Property contains an existing dirt pile on Parcel B (easterly parcel) shown on Exhibit A. Landlord believes that the dirt contains no Hazardous Substances requiring remediation. Tenant agrees to remove the quantity of this dirt that is necessary to allow construction of the Project before the end of the Term.

## **6.5 Project Improvements**

Recognizing that the Project and the location of the below-grade Project improvements must be considered in Landlord's development of the Property after the Term,

Tenant agrees to construct the Project in accordance with the easement documents attached hereto as Exhibit C.

#### **6.6 Permanent Easements**

Landlord and Tenant agree to enter into the form of Permanent Tunnel Easements and Permanent Shaft Easement attached as Exhibit C (the "Permanent Easements"). The Permanent Easements will allow the Project Improvements to remain at and below the surface of the Property indefinitely.

#### **6.7 No Other Improvements**

Except for the Improvements described in the attached Exhibit C, Tenant may make no other permanent alterations or Improvements to the Property without Landlord's prior written consent which may or may not be given by Landlord in Landlord's sole discretion; provided that Tenant shall demolish and remove the cinderblock building on Parcel A, as shown on Exhibit A.

#### **6.8 Compliance with Laws**

Throughout the Term, Tenant shall, in its occupancy and use of the Property, comply with all applicable laws.

### **SECTION 7. HAZARDOUS SUBSTANCES**

#### **7.1 Landlord's Responsibility**

Landlord shall be responsible for any Hazardous Substances present in the Property as of the Commencement Date which require remediation pursuant to the requirements of a Governmental Authority with jurisdiction over the Property. If during the Term a Governmental Authority requires that Landlord remediate Hazardous Substances present in the Property as of the Commencement Date, Tenant will give Landlord access to the Property and will cooperate with Landlord, so that Landlord may perform its required remediation work. Landlord shall not be liable to Tenant for impacts on Tenant's Project from the presence of Hazardous Substances.

#### **7.2 Tenant's Responsibility**

Tenant shall not generate, release, store, or deposit on the Property any Hazardous Substances, except that Tenant may use and store Hazardous Substances in compliance with Laws in connection with the lawful operation of the Property. Tenant shall remove from the Property or otherwise remediate any Hazardous Substances that are deposited on, in or under the Property by Tenant or by any agent, contractor, employee, licensee or guest of Tenant, during the Term to the extent required by applicable Governmental Authorities, and shall restore the Property to the condition the Property was in immediately prior to commencement of such removal and remediation work. In the event that a third party, which is not an agent, contractor, employee or licensee of Tenant, deposits Hazardous Substances on the surface of the Property during the Term, then: (i) if Tenant has provided reasonable security for the Property designed to

keep people off the Property, then Landlord shall be responsible for any remediation of such Hazardous Substances required by Governmental Authorities, and (ii) if Tenant has not so secured the Property, then Tenant shall be responsible for any remediation of such Hazardous Substances required by Governmental Authorities. Landlord shall be responsible for any subsurface migration of Hazardous Substances from adjacent properties not caused by Tenant. At Landlord's option, Landlord may perform Tenant's obligations under this Section 7.2 if Tenant fails to commence performance of its obligations under this Section 7.2 within thirty (30) days after Landlord's notice to Tenant or if Tenant fails to diligently prosecute such performance to completion. Tenant shall reimburse all reasonable costs, fees, and expenses (including reasonable attorneys', engineering, and other consultants' fees) incurred by Landlord in connection with such performance within 30 days after Landlord's billing therefor.

### **7.3 Tenant's Indemnity Obligation**

To the extent allowed under Oregon law, Tenant shall defend, indemnify and hold harmless Landlord and Landlord Related Persons from and against any and all claims, losses, liabilities, damages, response costs and expenses of any nature whatsoever arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Property resulting from the acts or omissions of: Tenant, any Tenant-Related Persons, or any agent, contractor, employee, licensee or guest of Tenant.

### **7.4 Landlord's Indemnity Obligation**

Landlord shall defend, indemnify and hold harmless Tenant and Tenant Related Persons from and against any and all claims, losses, liabilities, damages, response costs and expenses of any nature whatsoever arising out of or in any way related to the generation, release, storage, or deposit of Hazardous Substances on the Property resulting from the acts or omissions of: Landlord, any Landlord-Related Persons, or any agent, contractor, employee, licensee or guest of Landlord.

## **SECTION 8 TENANT'S RESPONSIBILITY FOR ALL OPERATING EXPENSES; LIENS**

### **8.1 Utilities**

Throughout the Term, Tenant shall pay or cause to be paid when due, all charges for Utilities provided to or used in connection with the Property.

### **8.2 Payment and Contest of Impositions**

**8.2.1** Tenant shall be responsible for applying for and maintaining an exemption for the Property from ad valorem real property taxes. Landlord shall cooperate in all reasonable respects with such application and maintenance of the exemption. If Tenant's use of the Property or if any Sublessee's use of the Property causes all or any part of the Property to lose its exemption from ad valorem real property taxes (except in the case where Landlord is a Sublessee and Landlord is the cause of the loss of the exemption), Tenant shall be responsible for payment of such taxes. Throughout the Term, Tenant shall pay when due all other Impositions levied or assessed against the Property.

8.2.2 If any Imposition may, under applicable Law, at the option of Tenant be paid in installments, Tenant may exercise that option, and shall pay all such installments (and interest, if any) becoming due during the Term as they become due.

8.2.3 Tenant will furnish to Landlord upon Landlord's request (unless being contested in conformance with Section 8.2.4), official receipts of the appropriate taxing authority or other proof satisfactory to Landlord evidencing the payment of the Imposition.

8.2.4 Tenant at its sole cost and expense may, by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, if:

(i) The proceedings suspend the collection of the Imposition from Landlord, Tenant and the Property as applicable;

(ii) Tenant shall have furnished security as may be required in the proceedings; and

(iii) Tenant shall have given Landlord reasonable notice of, information pertaining to, and regular progress reports about the contest.

### 8.3 Assessments

Landlord shall pay, when due, all Assessments during the Term.

### 8.4 Proration

Any Imposition relating to a fiscal period, a part of which period is included within the Term and a part of which is included in a period of time after the termination of the Term, or prior to the Commencement Date, shall be proportionally adjusted as between Landlord and Tenant as of the termination of the Term of this Lease, or as of the Commencement Date, as applicable, so that Landlord shall pay that proportion of such Imposition which relates to that part of such fiscal period after the termination of the Term, or prior to the Commencement Date, as applicable, and Tenant shall pay the remainder thereof. With respect to any Imposition for public improvements or benefits which by Law is payable, or at the option of the taxpayer may be paid, in installments, Landlord shall pay the installments thereof which may be paid (without penalty, interest or other charge or cost) prior to the Commencement Date or after the end of the Term and Tenant shall pay all installments which are due or payable during the Term.

### 8.5 Liens

Tenant shall not allow any lien to be filed against the Property or Landlord's interest in the Property on account of Tenant's activities on the Property. In the event such a lien is filed against the Property, it shall not be a Tenant default, so long as Tenant causes the lien to be bonded off within thirty (30) days of its filing. Tenant shall defend and indemnify Landlord from any such lien filed against the Property.



## **SECTION 9 MAINTENANCE**

Tenant shall be responsible for all maintenance and repair of the Improvements that constitute the Project. Tenant shall be responsible for any actions necessary to stabilize the Property or its riverbank area in the event of flood.

## **SECTION 10 INSURANCE, DAMAGE OR DESTRUCTION**

### **10.1 Required Insurance**

Tenant will provide and maintain throughout the Term and keep in full force and effect the policies of insurance described in attached Exhibit D with the terms in substantially the form set forth therein.. Such coverage shall be primary and noncontributing with any insurance carried by Landlord. Each insurance policy shall contain an endorsement requiring thirty (30) days' notice to Landlord prior to a cancellation or any reduction in amount of coverage. Tenant shall deliver certificates of such insurance to Landlord on or before the Commencement Date and thereafter not less than fifteen (15) days prior to the expiration of such policy. Tenant may satisfy the requirements of this paragraph with its existing self-insured status in the period between December \_\_, 2005, and the commencement of its Project insurance coverage. Tenant will notify Landlord when Project insurance coverage is in place.

### **10.2 Waiver of Subrogation**

Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to real or personal property in or on the Property caused by any peril to the extent the same is covered by insurance maintained by either Party, even if such fire or other casualty shall have been caused by the fault or negligence of the other Party or anyone for whom such Party may be responsible. Landlord and Tenant shall, with respect to any insurance policy obtained by it, procure insurance policies with such a waiver of subrogation and with a clause or endorsement to the effect that any such release shall not adversely affect or impair the policies or prejudice the right of the releasor to recover.

### **10.3 Damage or Dysfunction**

Tenant shall be responsible for and shall restore any damage caused to the Property by a casualty event.

## **SECTION 11 CONDEMNATION**

### **11.1 Total Taking**

In the event of the taking or condemnation by any Governmental Authority for any public use or purpose (a "Taking") of the whole of the Property at any time during the Term:

**11.1.1** The Term shall end as of the date of possession by the condemning Governmental Authority, all Rent shall be retained by Landlord, and no Rent shall be prorated.

11.1.2 The condemnation award shall be allocated between Landlord and Tenant based on their respective interests in the Property. For purposes of this Section 11.1.2, the Tenant's interest shall be valued at \$3,710,000 multiplied by a fraction, the numerator of which is the number of months remaining in the Term, and the denominator of which is the total number of months in the Term.

## **11.2 Substantial Taking**

As used in this Section, a Substantial Taking means a Taking of a portion of the Property that materially and adversely affects the operation or value of the Project Improvements, as reasonably determined by Tenant. A Substantial Taking shall be treated as a Total Taking under Section 11.1 of this Lease.

## **11.3 Partial Taking**

In the event of a Taking which is not a Total Taking or a Substantial Taking (a "Partial Taking"):

11.3.1 The Term shall continue. Rent shall not be prorated or reduced and shall be retained by Landlord.

11.3.2 The award from a Partial Taking shall be distributed to Landlord and Tenant pursuant to Section 11.1.2.

## **11.4 Degree of Taking**

If the parties cannot agree on whether the Taking is a Partial Taking or a Substantial Taking, the degree of the Taking shall be determined by dispute resolution pursuant to Section 20.

## **11.5 Temporary Taking**

If the whole or any part of the Property or of Tenant's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy ("Temporary Taking"), Tenant shall continue to pay the full amounts of Rent, and all Impositions and other sums payable by Tenant under this Lease. In the event of any Temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for the Taking, whether paid by way of damages, rent or otherwise, unless the period of temporary use or occupancy shall extend to or beyond the end of the Term, in which case the award shall be prorated between Landlord and the Tenant as of the last day of the Term.

# **SECTION 12 INDEMNITY**

## **12.1 Tenant's Obligation**

To the extent allowed under Oregon law, Tenant shall defend, indemnify and hold harmless Landlord and the Landlord Related Persons from and against any and all liabilities, losses, obligations, penalties, fines, damages, claims, suits, costs, remediation costs, attorneys'

fees and expenses resulting from the acts or omissions of: Tenant, any Tenant-Related Persons, or any agent, contractor, employee, licensee or guest of Tenant. The obligations of Tenant under this Section 12.1 shall not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Property.

#### **12.2 Landlord's Obligation**

Landlord shall defend, indemnify and hold harmless Tenant and the Tenant Related Persons from and against any and all liabilities, losses, obligations, penalties, fines, damages, claims, suits, costs, remediation costs, attorneys' fees and expenses resulting from the acts or omissions of: Landlord, any Landlord-Related Persons, or any agent, contractor, employee, licensee or guest of Landlord. The obligations of Landlord under this Section 12.2 shall not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Property.

#### **12.3 Conflict with Hazardous Substances Indemnity**

If there is a conflict between the provisions of this Section 12 and the provisions of Sections 7.3 and 7.4, the provisions of Sections 7.3 and 7.4 shall control.

### **SECTION 13 QUIET ENJOYMENT**

At all times during the Term, Tenant shall have the right to peacefully and quietly have, hold and enjoy the Property and the Improvements, subject to the terms of this Lease.

### **SECTION 14 SUBLETTING AND ASSIGNMENT**

#### **14.1 Subletting**

Tenant shall not have the right to sublease all or any part of the Property for any time or times during the Term without the consent of Landlord, which may or may not be given by Landlord in its sole discretion. All subleases shall be in writing and shall be expressly subject to the terms of this Lease.

#### **14.2 Assignment**

Tenant may Transfer this Lease to any Affiliate of Tenant without Landlord's consent. Tenant shall not otherwise Transfer this Lease without Landlord's prior written consent, which may or may not be given by Landlord in its sole discretion. Any assignee, purchaser or transferee of Tenant's interest in this Lease (each a "Transferee") must agree to assume Tenant's obligations under this Lease occurring after the date of the Transfer. Tenant shall give Landlord written notice of a proposed Transfer thirty (30) days prior to the effective date of the Transfer and Landlord shall give Tenant its decision whether to consent to the Transfer within thirty (30) days after Landlord's receipt of such written notice.

#### **14.3 Tenant Liability**

Upon any Transfer, Tenant shall continue to be liable under the terms of this Lease, as a guarantor of the Transferee's performance of its obligation under this Lease.

#### **14.4 Covenants Binding on Successors and Assigns**

All of the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors of the respective Parties.

### **SECTION 15 DEFAULT**

#### **15.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default:

**15.1.1** Failure of Tenant to pay when due any payment owed to Landlord, or to pay any Imposition or any other payment required under this Lease when due (except as and to the extent permitted under Section 8.2 of this Lease), and the occurrence or failure continues for a period of ten (10) days after written notice of such failure is given to Tenant by Landlord;

**15.1.2** Tenant being in breach of, or Tenant failing to perform, comply with, or observe any other term, covenant, warranty, condition, agreement or undertaking contained in or arising under this Lease and Tenant fails to cure the default within ten (10) days after written notice thereof is given by Landlord to Tenant. However, if the default cannot reasonably be cured within such ten (10) day period, and Tenant proceeds promptly and thereafter prosecutes with due diligence the curing of the default, then the time for curing of the default shall be extended for the period of time necessary to complete the cure;

**15.1.3** Tenant making an assignment for the benefit of creditors, filing a petition in bankruptcy, petitioning or applying to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or commencing any proceedings under any bankruptcy, reorganization, arrangement, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or Tenant by any act or omission indicating its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or suffering any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more; or

**15.1.4** Tenant being generally unable to pay its debts as such debts become due.

#### **15.2 No Termination of Lease**

Upon an Event of Default by Tenant, Landlord may not terminate this Lease.

#### **15.3 Damages and Remedies**

**15.3.1** Subject to Section 15.2 above, in the case of an Event of Default, the Landlord shall be entitled to all remedies at law or in equity. For a breach during the Term, the exercise by either Party of any remedy arising by virtue of an event of default shall not be

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considered exclusive, but either Party may exercise any and all other rights or remedies provided by this Lease or by law or equity.

#### **15.4 No Waivers**

No failure by any Party to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any breach shall constitute a waiver of any such breach or of any provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any Party hereto with respect to any other then existing or subsequent breach. A waiver must be in writing and signed by the Party to be bound by such waiver.

#### **15.5 Performance by Landlord of Tenant's Defaulted Obligations**

In case of failure on the part of Tenant to pay any money, or do any act to satisfy any of the obligations or covenants which it is required to pay, do, or satisfy under the provisions of this Lease, Landlord may, at its option, after thirty (30) days' prior written notice to Tenant, pay any or all of the sums, or do any or all such acts which require the payment of money, or incur any reasonable expense to remedy the failure of Tenant to perform any one or more of the covenants contained in this Lease. Tenant shall repay the sums advanced to Landlord on demand together with interest accruing from the date of demand at the rate per annum which is the lesser of (i) the floating rate per annum which is the sum of 4% per annum plus the "Prime Rate" published in the "Money Rates" section of the Wall Street Journal (or, if the Wall Street Journal shall cease to publish said rate, or if said publication shall cease to exist, then such other publication as selected by Landlord in its reasonable discretion), as in effect on the last business day of the preceding calendar month, or (ii) the maximum rate permitted to be charged for purposes hereof by applicable Law (the "Interest Rate"). Landlord shall not be obligated to so cure any of Tenant's defaults; and such right to cure shall be in addition to and not in lieu of any other right or remedy.

### **SECTION 16 SURRENDER UPON TERMINATION**

Upon any termination of this Lease and this Section 16, Tenant shall deliver possession of the Property to Landlord in the condition required by Section 9 and this Section 16. Tenant shall remove all Tenant's personal property from the Property upon termination of the Lease. Any of Tenant's personal property not so removed by Tenant from the Property within 30 days after termination of the Lease shall be deemed abandoned by Tenant, and Tenant shall be responsible for the cost of removal, which obligation shall survive the termination of this Lease. In addition to the above, upon the end of the Term, Tenant shall:

**16.1** Turn over possession of the Property to Landlord, free and clear of any liens or encumbrances arising from Tenant's possession of and use of the Property.

**16.2** Turn over to Landlord a reconstructed Auxiliary Parking Lot in substantially the same condition, including number of stalls, striping, landscaping and paving materials, as of the Commencement Date.

16.3 If Water Avenue has been relocated, then restore Water Avenue as close as reasonably possible to its original alignment in accordance with applicable standards for construction of streets.

16.4 Return possession of the Property in a generally level condition and free of any construction debris.

16.5 If requested by Landlord, remove those riverbank Improvements or alterations caused by Tenant which Landlord requests be removed, and return the riverbank to generally its condition as of the Commencement Date.

## **SECTION 17 DISPUTE RESOLUTION**

### **17.1 Mediation**

In the event of any dispute arising out of or relating to this Lease or the breach thereof, the Parties agree to try in good faith to settle the dispute by mandatory and confidential mediation in accordance with ORS 36.226, as amended, before resorting to arbitration, litigation, or any other dispute resolution procedure. The mediation shall be conducted under the Arbitration Service of Portland, Inc. or its successor ("Arbitration Service") Commercial Mediation Rules (except as modified by this Lease), but shall otherwise be administered by the mediator. The mediator shall be selected by mutual agreement of the parties; if the parties cannot agree, the mediator will be selected by the Arbitration Service. The Arbitration Service shall select a mediator with experience in mediating and arbitrating commercial disputes of the type at issue between the Parties. If the Arbitration Service of Portland, Inc., or its successor is no longer in existence, the American Arbitration Association shall be the "Arbitration Service."

### **17.2 Arbitration**

In the event that the Parties are unable to resolve a dispute by mediation within 45 days of a Party's request for mediation, the dispute will be submitted to arbitration in accordance with the Arbitration Service Commercial Arbitration Rules (except as modified by this Lease). The mediator named under Section 17.1 shall not serve as the arbitrator. An arbitrator shall be selected by mutual agreement of the Parties; if the Parties cannot agree, the arbitrator will be selected by the Arbitration Service. The Arbitration Service shall select an arbitrator with experience in arbitrating commercial disputes of the type at issue between the Parties. The arbitrator shall administer the arbitration after he or she has been selected. If the arbitration does not resolve the dispute, then either Party shall be entitled to pursue its available legal or equitable remedies through litigation.

### **17.3 Discovery**

The Parties to the arbitration shall be entitled to such discovery as would be available to them in United States District Court for the District of Oregon (the "District Court"), provided that the Parties agree to limit requests for documents, depositions and other discovery to only those requests as appear reasonably necessary to prepare for the arbitration hearing and further agree to use all reasonable efforts to expedite the arbitration proceeding. The Parties

agree that all facts and other information relating to any arbitration shall be kept confidential to the fullest extent permitted by Law.

#### **17.4 Procedural Matters**

The mediator or arbitrator, as the case may be, shall resolve any disputes concerning location, scheduling, discovery, timeliness and other procedural or substantive matters concerning the proceedings.

#### **17.5 Venue**

The mediation and arbitration (if any) shall be held in Portland, Oregon. Exclusive venue of any action to compel arbitration, enforce or defend an award of the arbitrator or otherwise arising out of this Lease shall lie in the state and federal courts in Portland, Oregon.

#### **17.6 Limitations of Actions**

The statute of limitations of the State of Oregon applicable to the commencement of a lawsuit will apply to the commencement of an arbitration hereunder, except that no defense will be available based on the passage of time during any mediation called for by this Section 17.

#### **17.7 Expenses**

Each Party to the mediation or arbitration will pay a portion of the expense of the mediator and/or arbitrator equal to one divided by the number of Parties to the mediation or arbitration.

#### **17.8 Attorneys' Fees**

In any mediation or arbitration hereunder, each Party shall bear the Party's own attorneys' fees and costs of mediation or arbitration. In any litigation to compel arbitration, defend or enforce an award of the arbitrator or otherwise arising out of this Lease, and on any appeal or review thereof, the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, expert witness fees and costs from the other Party or Parties.

#### **17.9 Confidentiality**

The Parties agree that the confidentiality of any mediation or arbitration proceedings shall be maintained to the fullest extent permitted by Law. In the event that court proceedings are nevertheless commenced for any reason, the Parties will cooperate in seeking to have the matter placed under seal and to ensure confidentiality of the matter to the fullest extent permitted by Law.

### **SECTION 18 GENERAL PROVISIONS**

#### **18.1 Estoppel Certificates**

Each of the Parties agrees that it will, at any reasonable time and from time to time, within ten (10) days following written notice by the other Party, execute, acknowledge and deliver to the Party who gave such notice a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent and any other payments due from Tenant have been paid in advance, if any, and stating whether or not to the best of knowledge of the signer of such certificate the other Party is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge, and specifying any other factual information concerning this Lease as reasonably requested by either Party.

#### **18.2 No Partnership**

Nothing in this Lease or in any instrument relating to this Lease shall be construed as creating a partnership or joint venture between Landlord and Tenant, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other Party.

#### **18.3 Time of the Essence**

Time is of the essence of this Lease and of each and every term, covenant, agreement, condition and provision of this Lease.

#### **18.4 Captions**

The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

#### **18.5 Meaning of Terms**

Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

#### **18.6 Lease Construed as a Whole**

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant.

#### **18.7 Severability**

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

#### **18.8 Survival**



Each provision of this Lease, the full performance of which is not required prior to the expiration of the Term hereof or its earlier termination shall survive expiration or earlier termination, and be fully enforceable thereafter, including, without limitation, all indemnity obligation hereunder.

**18.9 Memorandum of Lease**

The Parties shall execute and acknowledge a Memorandum of this Lease in the form attached as Exhibit E for public recordation purposes, so that public notice of the Term of the Lease be given; however, this Lease shall not be recorded.

**18.10 Amendment**

This Lease may be amended, or modified, only in writing, signed by both Landlord and Tenant.

**18.11 Commissions**

Landlord and Tenant represent and warrant that neither Party has engaged a real estate broker, agent, or finder who may be due a commission or other fee in connection with this Lease. Landlord and Tenant shall save and hold the other harmless from any and all claims or demands for compensation made by real estate brokers, agents or finders with whom such indemnifying Party may have dealt in connection with this Lease.

**18.12 Notices**

A notice or communication under this Lease by a Party to the other Party shall be sufficiently given or delivered upon personal delivery or if dispatched by registered or certified mail, postage prepaid, return receipt requested or by an "overnight delivery" service that provides a written confirmation of delivery, and addressed to a Party as follows:

If to Landlord: Oregon Museum of Science and Industry  
1945 SE Water Avenue  
Portland, Oregon 97214  
Attn: President

and to: Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, OR 97204  
Attn: Stephen T. Janik

If to Tenant: Property Manager  
Bureau of Environmental Services  
1120 SW Fifth Avenue, Room 1000  
Portland, Oregon 97204

and to:

Willamette CSO Program Manager  
211 SE Caruthers St., Suite 200  
Portland, OR 97214

Each Party may, by notice to all the other Parties, specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

#### **18.13 References to Documents**

Any reference to any document contained in this Lease, including, without limitation, any reference to this Lease, shall be construed to mean such document, as amended, supplemented or modified from time to time.

#### **18.14 Force Majeure**

If the performance by either of the Parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Unavoidable Delay (and not attributable to an act or omission of the Party), the Party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence.

#### **18.15 No Personal Liability**

No stockholder, director, officer, member, or employee of Landlord shall be personally liable to Tenant or any successor in interest to Tenant in the event of any default or breach by Landlord or for any amount which may become due to Tenant or such successor with respect to any obligations under the terms of this Lease. No officer or employee of Tenant shall be personally liable to Landlord or any successor in interest to Landlord in the event of any default or breach by Tenant or for any amount which may become due to Landlord or such successor with respect to any obligations under the terms of this Lease.

#### **18.16 Exhibits**

Exhibits attached to this Lease are hereby incorporated into this Lease:

#### **18.17 No Third Party Beneficiaries**

This Lease is not intended to create or confer, and shall not be construed to create or confer (directly, indirectly, contingent or otherwise), any rights or benefits or any so-called third-party beneficiary rights on any Person other than Landlord, Tenant and the respective permitted successors and assigns of Landlord and Tenant.

#### **18.18 Reference Date of Lease**

For reference purposes, the date of this Lease shall be the date on the first page, irrespective of the date Landlord or Tenant actually executes this Lease.

**18.19 Entire Agreement**

This Lease contains the final and complete expression of the Parties relating in any manner to the leasing, use and occupancy of the Property and other matters set forth in this Lease. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

IN WITNESS WHEREOF, this Lease has been executed by the Parties effective as of the date first set forth above.

LANDLORD:

OREGON MUSEUM OF SCIENCE AND  
INDUSTRY, an Oregon not-for-profit corporation

By: Nancy Jewell  
Its: President

TENANT:

CITY OF PORTLAND, by and through its Bureau  
of Environmental Services

By: Will Fry  
Its: DIRECTOR DESIGNER

Approved as to form:

Office of the City Attorney

By: Pete Larson  
Its: Chief Deputy City Attorney

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**EXHIBIT A**

**PROPERTY DESCRIPTION**

EXHIBIT A  
PROPERTY DESCRIPTION

1. Parcel 1

Lots 3 and 4, PORTLAND GENERAL ELECTRIC STATION L, in the City of Portland, County of Multnomah, State of Oregon.

2. Parcel 2

Lots 1 through 8 inclusive, Block 14; Lots 1 through 8 inclusive, Block 27, Lots 1 through 8 inclusive, Block 34; Lots 1 through 8 inclusive, Block 47, "STEPHENS ADDITION TO EAST PORTLAND", in the City of Portland, County of Multnomah, State of Oregon.

That certain parcel of real property in Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point 30 feet West of the Southwest corner of Block 46 in STEPHENS ADDITION TO EAST PORTLAND at a point which would be in the North line of S.E. Lincoln Street, if extended Westerly; thence South 30 feet parallel with the East line of S.E. Third Avenue; thence West on a line parallel with the North line of said S.E. Lincoln Street, if extended, to the Willamette River; thence Northerly along said Willamette River to a point which would be in the North line of said S.E. Lincoln Street, if extended Westerly; thence East along said North line of S.E. Lincoln Street, if so extended, to the point of beginning.

EXCEPTING THEREFROM:

Commencing at the intersection of the centerlines of E. Lincoln and E. Third Streets, thence West following the centerline of E. Lincoln Street (if produced Westerly), 216 feet; thence Northwesterly on a curve of 406 foot radius to a point on the North boundary of said E. Lincoln Street (if produced Westerly), 336 feet West of the centerline of E. Third Street (if produced Northerly); thence East following the said North boundary line of E. Lincoln Street (if produced Westerly), 336 feet; thence South following the centerline of E. Third Street (if produced Northerly), 30 feet to the point of beginning.

TOGETHER WITH those portions of vacated streets inuring thereto by Vacation Ordinances 102-169 and 123-419.

EXCEPTING THEREFROM:

Beginning at a point in the North line of Block 47 in said STEPHENS ADDITION distant 67.35 feet West along said North line of Block 47 from the Northeast corner thereof, said Northeast corner being the point of intersection of the South line of S.E. Lincoln Street (60 feet wide) with

the west line of S.E. Union Avenue (60 feet wide); thence West along said North line of Block 47, a distance of 88.48 feet to a point; thence Southeasterly on a compound curve to the right (tangent to said compound curve at last mentioned point bears South 33° 44' 00" East) having the following radii, central angles, and arc lengths:

RADII	CENTRAL ANGLES	ARC LENGTH
1889.91 feet	0° 52' 59"	29.13 feet
1617.09 feet	1° 03' 00"	29.63 feet
1412.47 feet	6° 56' 42"	171.12 feet

to a point in the South line of said Block 47 that is distant 42.81 feet West along said South line of Block 47 from the Southeast corner thereof, thence East along said South line of Block 47, a distance of 42.81 feet to a point in the East line of said Block 47; thence North along said East line of Block 47 and also said West line of S.E. Union Avenue, a distance of 146.49 feet, thence North 51° 32' 00" West, a distance of 86.02 feet to the point of beginning.

AND EXCEPTING from Parcels I through IV the following described land:

A tract of land situated in the Southeast quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at the Southwest corner of Block 19, STEPHENS ADDITION TO EAST PORTLAND, and proceeding thence South along the Southerly extension of the West line of said Block 19, a distance of 30.00 feet to the South line of S.E. Market Street; thence West along said South line of S.E. Market Street, a distance of 373 feet to the upland settlement boundary line (being the low water line of 1908 as per the Port of Portland Records); thence Southerly along said upland settlement boundary line, the following courses:

South 26° 10' 00" West, a distance of 59.00 feet;  
 South 07° 00' 00" West, a distance of 49.00 feet;  
 South 16° 20' 00" East, a distance of 50.00 feet;  
 South 31° 40' 00" East, a distance of 276.00 feet;  
 South 21° 50' 00" East, a distance of 183.00 feet;  
 South 16° 10' 00" East, a distance of 222.00 feet;  
 South 29° 30' 00" East, a distance of 44.48 feet to the North line of vacated S.E. Grant Street; thence West along the North line of said vacated S.E. Grant Street, A distance of 80.83 feet to the ordinary low water line of the East bank of the Willamette River at elevation +6.1 feet, City of Portland Datum, as said ordinary low water line was established in 1988; thence Northerly along said ordinary low water line of 1988, the following courses:

North 29° 30' 00" West, a distance of 61.00 feet;  
 North 36° 00' 00" West, a distance of 54.00 feet;  
 North 25° 50' 00" West, a distance of 71.00 feet;  
 North 22° 40' 00" West, a distance of 47.00 feet;  
 North 39° 10' 00" West, a distance of 21.00 feet;

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North 30° 30' 00" West, a distance of 39.00 feet;  
North 26° 30' 00" West, a distance of 31.00 feet;  
North 13° 30' 00" West, a distance of 103.00 feet;  
North 00° 40' 00" East, a distance of 76.00 feet;  
North 11° 00' 00" West, a distance of 147.00 feet;  
North 39° 40' 00" West, a distance of 37.00 feet;  
North a distance of 35.00 feet;  
North 32° 50' 00" West, a distance of 67.00 feet;  
North 24° 20' 00" West, a distance of 82.00 feet;  
North 05° 10' 00" West, a distance of 45.00 feet;  
North 17° 10' 00" West, a distance of 118.00 feet;  
North 20° 30' 00" West, a distance of 55.00 feet;  
North 06° 50' 00" West, a distance of 66.00 feet;  
North 26° 40' 00" West, a distance of 54.00 feet;  
North 11° 40' 00" West, a distance of 30.00 feet;  
North 23° 50' 00" West, a distance of 37.00 feet;  
North 02° 50' 00" East, a distance of 20.00 feet;  
North 24° 00' 00" West, a distance of 73.46 feet to said South Line of S.E. Market Street; thence  
East, a distance of 151.00 feet to the point of beginning.

**ALSO EXCEPTING:**

Any portion lying West of the Westerly boundary of that parcel described in Deed to the State of Oregon, by and through the Division of State Lands, recorded August 1 1990 in Book 2328, Page 1977, Deed Records.





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**EXHIBIT B**  
**EXCEPTIONS**

**EXHIBIT B****PARCEL 1 EXCEPTIONS**

1. General and special taxes and assessments for the fiscal year 2005-2006.
2. City liens, if any, for the city of Portland.
3. Rights of the public and governmental bodies in and to that portion of the premises herein described lying below the high water mark of Willamette River and the ownership of the State of Oregon in and to that portion lying below the high water mark thereof.
4. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
5. Reservation of utilities in vacated street areas as set forth in Vacation Ordinances 102-168, 102-169, 105-941, 106-070 and 106-759.
6. Conditions contained in Deed from Portland Railway, Light and Power Company to Southern Pacific Company, recorded December 28, 1928 in Book 1165, page 149.
7. An easement for Railway lines and railway overhead system and incidental purposes, recorded September 23, 1930 in Book 96 of Deeds, Page 1.  
  
In Favor of: Pacific Northwest Public Service Company  
Affects: Blocks 14, 34, 47, 48 and 49
8. Reservation by Pacific Northwest Public Service Company in Deed recorded September 23, 1930 in Book 96, page 1: Grantor reserves from said lands the "Railway overhead system" and "Railway lines" as described in Paragraphs 2 and 3 of above mentioned instrument.
9. An easement for Right of way and incidental purposes, recorded November 16, 1939 in Book 231 of Deeds, Page 25.  
  
In Favor of: Portland General Electric Company
10. An easement for Transmission line and incidental purposes, recorded September 17, 1941 in Book 637 of Deeds, Page 535.  
  
In Favor of: Portland General Electric Company  
Affects: Steel tower in Block 49

11. "Perpetual and Exclusive Easement" for the construction, operation, inspection, maintenance and reconstruction of the elevated highway structures and supporting bents over property herein described as disclosed by Final Judgement, Multnomah County Case No. 315-164, State of Oregon, by and through its State Highway Commission, composed of Glenn L. Jackson, Kenneth N. Fridley and David B. Simpson, Plaintiff, vs. Portland General Electric Company, an Oregon corporation; and the Marine Midland Trust Company of New York, a New York corporation, Defendants.
12. Reservations and Restrictions as contained in Final Judgement, Multnomah County Case No. 315-164, State of Oregon, by and through its State Highway Commission, composed of Glenn L. Jackson, Kenneth N. Fridley and David B. Simpson, Plaintiff, vs. Portland General Electric Company, an Oregon corporation, and the Marine Midland Trust Company of New York, a New York corporation, Defendants.
13. Conditions and Restrictions contained in Conditional Use Permit No. CU 9-69, Recorded: March 12, 1969 in Book 667, page 291  
  
(The property affected is the North 1/2 of vacated SE Grant Street)
14. Conditions and Restrictions contained in Ordinance No. 158940 of the City of Portland, a copy of which was Recorded : October 15, 1986 in Book 1947, page 1077
15. Conditions and Restrictions contained in Ordinance No. CU 121-87/GP 21-87 of the City of Portland, a copy of which was Recorded : December 1, 1987 in Book 2066, page 1761
16. The terms and provisions contained in the document entitled "Bill of Sale, Easement and Assignment" recorded April 2, 1991 as Book 2399, page 40 of Official Records. Affects Lot 4.
17. Conditions and Restrictions contained in Land Use Review File No. LUR 94-00896 ZC SU GW AD, Recorded: April 4, 1995 as Fee No. 95-52980
18. Conditions and Restrictions contained in Land Use Review File No. LUR 95-00273 DZ GW (ZGF for KPTV and PGE), Recorded: June 20, 1995 as Fee No. 95-72396
19. The terms and provisions contained in the document entitled "Street Waiver" recorded August 3, 1995 as Fee No. 95-92380 of Official Records.
20. Conditions and Restrictions contained in Land Use Review File No. LUR 97-00771 GW, Recorded: October 31, 1997 as Fee No. 97168538
21. An easement for Public walkway and utility and temporary construction and incidental purposes, recorded June 26, 1998 as Fee No. 98112218 of Official Records.

In Favor of: City of Portland

22. The terms and provisions contained in the document entitled "Consent to Relinquishment, Release, Conveyance of Easement, Right of Way and Property" recorded July 10, 1998 as Fee No. 98122021 of Official Records.
23. The terms and provisions contained in the document entitled "Relinquishment, Release and Conveyance of Easement and Right of Way, Quitclaim Deed, and Bill of Sale" recorded July 10, 1998 as Fee No. 98122022 of Official Records.
24. Easements shown or dedicated on the plat of PORTLAND GENERAL ELECTRIC STATION L

For: 'I' construction easement and incidental purposes.

For: A 15' and a 5' private storm easement for Lots 1 and 3 and incidental purposes.

For: 25' public greenway trail easement and incidental purposes.

**EXHIBIT B****PARCEL 2 EXCEPTIONS**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances, not shown by the public records unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights or claims or title to water.
4. Any lien, or right to a lien, for taxes, worker's compensation, services, labor, equipment rental or material, heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose.
6. Taxes, including the current fiscal year, have been assessed with Scientific/Literary Exemption. If the exempt status is terminated under the statute prior to the date on which the assessment roll becomes the tax roll in the year in which said taxes were assessed, an additional tax may be levied.
7. Municipal liens, if any, imposed by the City of Portland.
8. Right, title and interest of the State of Oregon in and to that portion of the subject property lying below the ordinary high water line of the Willamette River, as of February 14, 1859.
9. Any adverse claim based on the assertion that an' portion of the subject property has been created by artificial means or has accreted to such portions so created, or based on the provisions of ORS 274.905 through 274.940.
10. Any adverse claim based upon the assertion that some portion of the subject property has been removed from or brought within the property's boundaries by an avulsive movement of the Willamette River or has been formed by the process of accretion or reliction.
11. Rights of fishing, navigation, commerce, flood control, propagation of anadromous fish, and recreation and other rights of the public, Indian tribes or governmental bodies in and to the waters of the Willamette River.

12. An easement created or disclosed by instrument, including the terms and provisions thereof,

Dated: September 1, 1930  
 Recorded: September 23, 1930 in Book 96 Page 1  
 In favor of: Pacific Northwest Public Service Company  
 For: "Light and Power Transmission and  
 Distribution System" AND "Railway  
 Overhead System" AND "Railway Lines"  
 Affects: Please see recorded document for details

12a. Easements shown as No. 12 above, "definitely described" and modified or amended by instrument,

Recorded: November 16, 1933 in Book 231 Page 25  
 Affects: Please see recorded document for details.

13. Easements for existing public utilities in vacated street area and the conditions imposed thereby, reserved by ordinance,

Number : 102169  
 Certified Copy Recorded: June 29, 1955 in Book 1730 Page 374

14. Conditions, restrictions and/or easements contained in and imposed by the Ordinance No. 105241 of the City of Portland (RE: Zone Change), a copy of which was,

Recorded: January 16, 1957 in Book 1825 Page 344

15. Easements created by Decree of-Condernnation including the terms and provisions thereof,

Dated : October 27, 1966  
 Entered : October 27, 1966  
 Suit No.: 315-164  
 In the Circuit Court for Multnomah County;  
 State of Oregon  
 In favor of: State of Oregon, by and through its State  
 Highway Commission  
 For and Affects: Please see Decree for details

15a. The effect, if any, of Release, including the terms and provisions thereof,

Recorded: October 20, 1967 in Book 587 Page 1384

16. Easements for existing public utilities in vacated street area and the conditions imposed thereby, reserved by ordinance,

Number : 123419

Certified Copy Recorded : December 20, 1966 in Book 539 Page 925

17. Conditions, restrictions and/or easements contained in and imposed by the Conditional Use Request No. 9-69 of the City of Portland (RE: Helistop) , a copy of which was,

Recorded : March 12, 1959 in Book 667 Page 291

18. Conditions, restrictions and/or easements contained in and imposed by the Ordinance No. 158940 of the City of Portland (RE: Central Eastside Urban Renewal Plan), a copy of which was,

Recorded: October 15, 1986 in Book 1947 Page 1077  
 First Amendment: February 24, 1988 in Book 2082 Page 545  
 Second Amendment: June 28, 1990 in Book 2317 Page 1923  
 Third Amendment: October 3, 1991 in Book 2462 Page 2795  
 Fourth Amendment: January 8, 1993 in Book 2636 Page 573

19. An easement created or disclosed by instrument, including the terms and provisions thereof,

Dated: December 31, 1986  
 Recorded: January 16, 1987 in Book 1973 Page 1429  
 In favor of: Portland General Electric Company  
 For: Underground power line  
 Affects: Please see recorded document for details

20. An easement created or disclosed by instrument, including the terms and provisions thereof,

Dated: December 31, 1986  
 Recorded: January 16, 1987 in Book 1973 Page 1440  
 In favor of: Portland General Electric Company  
 For: Electric transmission line  
 Affects: Please see recorded document for details

21. The effect, if any, of easements created by instrument, including the terms and provisions thereof,

Dated: December 29, 1986  
 Recorded: January 22, 1987 in Book 1974 Page 1680  
 Executed by: Portland General Electric Company  
 In favor of: State of Oregon, by and through its  
 Department of Transportation, Highway  
 Division  
 For and Affects: Please see recorded document for details



22. Conditions, restrictions and/or easements contained in and imposed by the Conditional Use/Greenway Permit No. CU 121-87/GP 21-87, a copy of which was,

Recorded: December 18, 1987 in Book 2066 Page 1761

23. conditions, restrictions and/or easements contained in and imposed by the conditional Use/Greenway Permit Nos. CU 127-87/GP 23-87, a copy of which was,

Recorded: February 24, 1988 in Book 2082 Page 541

24. Conditions, restrictions and/or easements contained in and imposed by the Design Review DZ 7-90, a copy of which was,

Recorded: June 28, 1990 in Book 2317 Page 1641

Amended by instrument,

Recorded: June 28, 1990 in Book 2317 Page 1645

25. Restrictive covenants to waive future rights of remonstrance against the formation of a local improvement district and any assessment thereof,

Recorded: March 21, 1991 in Book 2395 Page 2161

Type of Improvement: Storm Sewer

26. Restrictive covenants to waive future rights of remonstrance against the formation of a local improvement district and any assessment thereof,

Recorded: March 21, 1991 in Book 2395 Page 2163

Type of Improvement: Street

27. Deed of Trust, Security Agreement and Fixture Piling, including the terms and provisions thereof,

Dated: September 20, 1992

Recorded: September 30, 1992 in Book 2594 Page 2616

Grantor: Oregon Museum of Science and Industry

Trustee: Chicago Title Company of Oregon

Beneficiary: The State of Oregon Department of Energy

Amount: \$15,500,000.00

28. Trust Deed, Security Agreement and Assignment of Rents, including the terms and provisions thereof,

Dated: October 30, 1991

Recorded: October 30, 1991 in. Book 2471 Page 1600

Re-recorded: November 4, 1991 in Book 2473 Page 1742  
 Grantor(s): Oregon Museum of Science and Industry  
 Trustee: U.S. Bank of Washington, National Association  
 Beneficiary: United States National Bank of Oregon, as agent for itself and The Daiwa Bank, Ltd., The Bank of California, Bank of America, Oregon and The Bank of Tokyo, Ltd., Portland Branch  
 Amount: 17,799,795.00  
 Loan Number: Not disclosed

28a. The lien of the above trust deed was subordinated to the lien of the trust deed recorded September 30, 1992 in Book 2594, Page 2616 by instrument,

Recorded: September 30, 1992 in Book 2594 Page 2649

29. Conditions, restrictions and/or easements contained in and imposed by the Conditional Use, Greenway and Design 93-00368 CU GW DZ, a copy of which was,

Recorded: September 23, 1993 in Book 2755 Page 2485

30. Conditions, restrictions and/or easements contained in and imposed by the Design Review LUR 96-00224 DZ, a copy of which was,

Recorded: May 24, 1996 in Volume 96 Page 079387

31. Conditions, restrictions and/or easements contained in and imposed by the City of Portland, Land Use Review File No. LUR 96-00389 CU DZ GW, a copy of which was,

Recorded: July 23, 1996 in Volume 96 Page 111013

32. Rights to spur tracks in place on the premises belonging to other parties, recorded or unrecorded.

33. The rights of the public, governmental bodies, and public utilities, in and to that portion of the herein described property lying within the limits of roads and highways.

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## EXHIBIT C

### EASEMENTS

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### PERMANENT SHAFT EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **Oregon Museum of Science and Industry**, an Oregon not-for-profit corporation (Grantor), does hereby grant to the City of Portland, a municipal corporation of the State of Oregon (Grantee), a perpetual easement for the purpose of laying down and constructing a sewer shaft facility and appurtenances, with said grant made in consideration of One (\$1.00) and no/100 Dollars, and other good and valuable consideration, as provided for in that certain lease agreement between Grantor and Grantee, dated December , 2005 (the Lease). The easement granted herein runs through, under, over and along the following described parcel:

R/W #6246-2005 (Shaft)

A portion of Lot 4, Portland General Electric Station L, situated in the southeast quarter of Section 3, T1S, R1E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Commencing at the southwest corner of Lot 4, Portland General Electric Station L; thence S 88° 12' 05" E along the south line of said Lot 4 a distance of 107.18 feet to the ESCSO tunnel centerline; thence N 01° 53' 58" E along the tunnel centerline a distance of 31.43 feet to the True Point of Beginning; thence N 88° 06' 02" W a distance of 42.50 feet; thence N 01° 53' 58" E a distance of 85.00 feet; thence S 88° 06' 02" E a distance of 85.00 feet; thence S 01° 53' 58" W a distance of 85.00 feet; thence N 88° 06' 02" W a distance of 42.50 feet to the True Point of Beginning. Contains 7,225 square feet (85 feet square), more or less, and is generally depicted on Exhibit A attached hereto.

IT IS UNDERSTOOD and agreed that:

- A. Grantee has the right to construct the sewer shaft and utilize said shaft for tunnel construction. Grantee agrees to remove the top 5 feet of the shaft walls upon completion of construction work, unless otherwise directed not to by the Grantor.

1S1E03D 300

After Recording Return to:

106/800/Linda Birth

Tax Statement shall be sent to:

No Change

- 820481
- B. Right of access to and through the sewer shaft will terminate upon completion of sewer shaft construction and restoration of the sewer shaft area, unless otherwise provided for in the Lease.
  - C. Grantee will restore the easement area to a condition that is as good or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under this easement.
  - D. If Grantor undertakes any construction activities in the easement area, as depicted on Exhibit A, Grantor agrees to maintain a distance of at least five vertical feet between the shaft walls and any load bearing structures (e.g. building foundations, piles) prior to such construction activities; provided that, Grantor will remove the shaft walls, if necessary, to the depth required to comply with this condition. Grantor will submit documentation demonstrating compliance with the provisions of the easement to the Director of Bureau of Environmental Services, or his designee, prior to installation of load bearing structures on the easement area.
  - E. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with rights herein granted.
  - F. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
  - G. Grantor represents and warrants that it has the authority to grant this easement, that the subject property is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
  - H. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights.
  - I. Grantee agrees to remove and dispose of excavated material generated from Grantee's construction activities at Grantee's expense.
  - J. Grantor represents that to the best of its knowledge, after appropriate inquiry under the circumstances, the subject property is in compliance with all local, State and Federal environmental laws and regulations; and further, that Grantor has provided Grantee with copies of all reports that it is aware of regarding the environmental condition of the subject property.
  - K. Grantee, by accepting this easement, is not accepting liability for any release of hazardous substances onto or from the subject property, and Grantor is not attempting to convey any such liability.

IN WITNESS WHEREOF, Oregon Museum of Science and Industry, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_ President and \_\_\_\_\_ Secretary, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Oregon Museum of Science and Industry

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

State of Oregon

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by \_\_\_\_\_, as President, and \_\_\_\_\_, as Secretary of Oregon Museum of Science and Industry.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

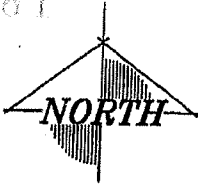
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

184657



34

S.E. LINCOLN ST.

OMSI

STEPHEN'S ADD

S.E. GRANT ST.

TUNNEL  
CENTERLINE

PORTLAND GENERAL  
ELECTRIC STATION L  
LOT 4

OMSI

S.E. WATER AVE.

S.E. 4TH AVE.

PORTLAND  
OPERA  
ASS'N INC.

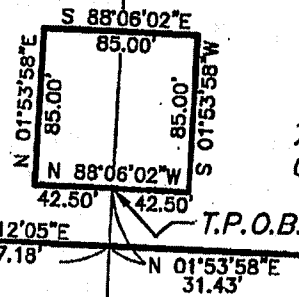
PROPERTY OWNER:

OMSI

STATE ID: 1S1E03DD 300

RNO: R247369

PROJECT ID: 2005



PORTLAND  
OPERA  
ASS'N INC.

O/SI-Shaft.dwg, 10/06/05 at 10:07



BAR EQUALS ONE  
INCH WHEN DRAWING  
IS PLOTTED FULL SIZE.  
IF NOT, SCALE ACCORDINGLY

100 0 50 100 200



SCALE: 1"=100'

**EXHIBIT "A"**

PROJECT COORDINATES

CITY OF PORTLAND  
**ENVIRONMENTAL SERVICES**  
EAST SIDE CSO TUNNEL PROJECT  
**PB PARSONS BRINCKERHOFF**  
400 S.W. Sixth Ave, Portland, OR 97204

**EAST SIDE CSO PROJECT**  
PERMANENT SHAFT EASEMENT  
PROJECT ID NO. 2005  
STATE ID NO. 1S1E03DD 300  
OWNER: OREGON MUSEUM OF SCIENCE AND INDUSTRY

1/4 SECTION  
3231  
JOB NO.  
5516  
SHEET NO.  
1 of 1

520481

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# **PERMANENT TUNNEL EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Oregon Museum of Science and Industry**, an Oregon not-for-profit corporation (Grantor), does hereby grant to the City of Portland, a municipal corporation of the State of Oregon (Grantee), a perpetual easement for the right to lay down, construct, operate and perpetually maintain sewer tunnel facilities and appurtenances, with said grant made in consideration of One (\$1.00) and no/100 Dollars, and other good and valuable consideration, as provided for in that certain lease agreement between Grantor and Grantee, dated December, 2005 (the Lease). The easement granted herein runs through, under and along the following described parcel:

R/W #6246-2005 (Tunnel)

A portion of Lot 4, Portland General Electric Station L, situated in the southeast quarter of Section 3, T1S, R1E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Commencing at the southwest corner of Lot 4, Portland General Electric Station L; thence S 88° 12' 05" E along the south line of said Lot 4, a distance of 81.18 feet to the True Point of Beginning; thence N 01° 53' 58" E a distance of 340.00 feet to the north line of said Lot 4; thence S 88° 12' 05" E along said north line, a distance of 3.22 feet; thence S 01° 47' 55" W along the westerly right-of-way of SE Grant Street, a distance of 60.00 feet; thence S 88° 12' 05" E along the south line of SE Grant Street, a distance of 48.67 feet; thence S 01° 53' 58" W a distance of 280.00 feet to the south line of said Lot 4; thence N 88° 12' 05" W along the south line of said Lot 4, a distance of 52.00 feet to the True Point of Beginning. Contains 14,757 square feet or 0.339 acres.

IT IS UNDERSTOOD and agreed that public sewer easements include the right of access for construction, inspection, maintenance or other sewerage system activities.

1S1E03D 300

After Recording Return to:

106/800/Linda Birth

Tax Statement shall be sent to:

No Change



IT IS UNDERSTOOD and agreed that Grantor reserves the right to use the easement area for any lawful purpose not inconsistent with Grantee's permitted use, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services, paths, roadways or driveways, parking lots, shallow-rooted landscaping, and continued operation and development of Grantor's property; except that Grantor shall not use the area thirteen (13) feet either side of the tunnel, and shall not install load bearing underground improvements within thirty-nine (39) feet above the crown of the tunnel and non-load bearing underground improvements within twenty-six (26) feet of the crown of the tunnel, as shown on Exhibit B, attached hereto. Grantor further agrees to provide prior notification of its intent to use the easement area for above or below surface installations, which must be approved by the Director of the Bureau of Environmental Services to ensure compliance with this easement.

THIS INSTRUMENT does not grant or convey to the City of Portland any right or title to the surface of the soil along the route of said sewer.

IT IS FURTHER UNDERSTOOD and agreed that:

- A. This easement includes the right to make visual and photographic inspection of the surface and associated improvements during construction.
- B. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- C. Grantor represents and warrants that it has the authority to grant this easement, that the subject property is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- D. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights.
- E. Grantor represents that to the best of its knowledge after appropriate inquiry under the circumstances, the subject property is in compliance with all local, State and Federal environmental laws and regulations; and further, that Grantor has provided Grantee with copies of all reports that it is aware of regarding the environmental condition of the subject property.
- H. Grantee, by accepting this easement, is not accepting liability for any release of hazardous substances onto or from the subject property, and Grantor is not attempting to convey any such liability.

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IN WITNESS WHEREOF, Oregon Museum of Science and Industry, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_ President and \_\_\_\_\_ Secretary, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Oregon Museum of Science and Industry

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

State of Oregon

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by \_\_\_\_\_, as President, and \_\_\_\_\_, as Secretary of Oregon Museum of Science and Industry.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

720081

1S1E03DA 300

84657

S.E. LINCOLN ST.

1S1E03D 302  
OMSI  
STEPHEN'S ADD

OMSI  
1S1E03DD 200

S.E. WATER AVE.

22.78'  
84.97'  
107.75'  
194.09'  
S.E. GRANT ST.  
216.31'

OMSI  
22.67'  
C/L TUNNEL & 52' WIDE TUNNEL EASEMENT

PORTLAND GENERAL  
ELECTRIC STATION L  
LOT 4

52'  
206.07'  
280.00'

CENTER OF  
OMSI SHAFT

85' SQUARE  
SHAFT EASEMENT

PORTLAND  
OPERA  
ASS'N INC.

107.18'  
PORTLAND  
OPERA  
ASS'N INC.

220.11'  
PERMANENT  
EASEMENT  
14,756 S.F.

S.E. 4TH AVE.

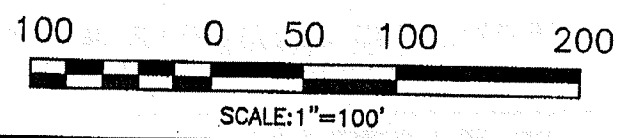
PROPERTY OWNER:  
OMSI  
STATE ID: 1S1E03DD. 300  
RNO: R247369  
PROJECT ID: 2005

D-2005.dwg, 09/27/05 at 14:45

1 INCH

BAR EQUALS ONE  
INCH WHEN DRAWING  
IS PLOTTED FULL SIZE.  
IF NOT, SCALE ACCORDINGLY

**EXHIBIT "A"**



PROJECT COORDINATES

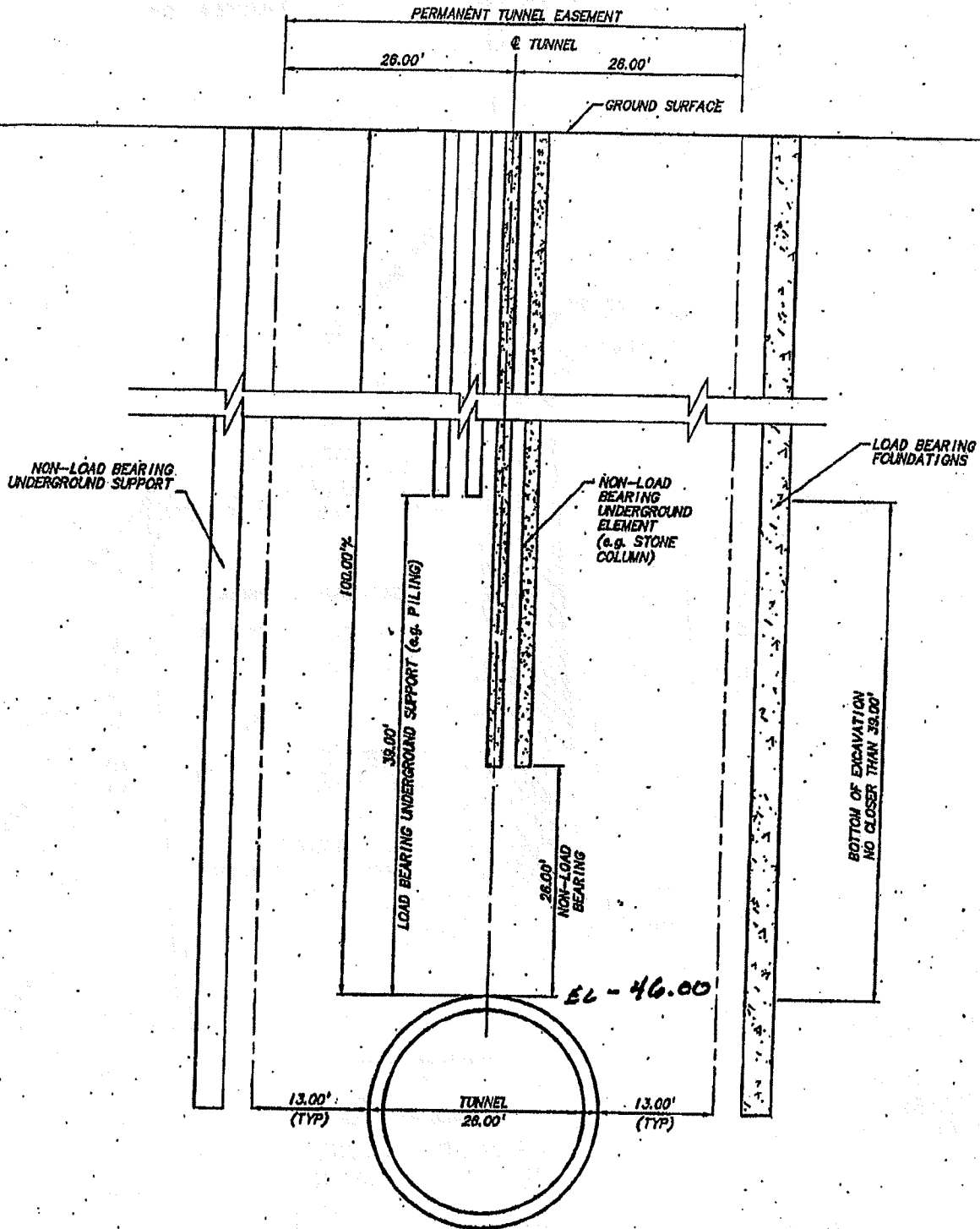
CITY OF PORTLAND  
**ENVIRONMENTAL SERVICES**  
EAST SIDE CSO TUNNEL PROJECT  
**PB PARSONS BRINCKERHOFF**  
400 S.W. Sixth Ave, Portland, OR 97204

**EAST SIDE CSO PROJECT**  
**PERMANENT TUNNEL EASEMENT**  
PROJECT ID NO. 2005  
STATE ID NO. 1S1E03DD 300  
OWNER: OREGON MUSEUM OF SCIENCE AND INDUSTRY

1/4 SECTION  
3231  
JOB NO.  
5516  
SHEET NO.  
1 of 1

OMSI

184657



**RESTRICTIONS ON SUBSURFACE DEVELOPMENT  
FOR PROTECTION OF TUNNEL**

*Elevation  
Based on CITY  
OF PORTLAND, OR  
DATUM*

**PB PARSONS  
BRINCKERHOFF**  
400 S.W. Sixth Ave, Portland, OR 97204

CITY OF PORTLAND  
**ENVIRONMENTAL SERVICES**

10 0 5 10 20  
SCALE FEET



**EAST SIDE CSO TUNNEL  
TUNNEL EASEMENT  
EXHIBIT B**

JOB NO.  
**5516**  
FIGURE NO.  
**2**

**PERMANENT TUNNEL EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Oregon Museum of Science and Industry** (Grantor), does hereby grant to the City of Portland, a municipal corporation of the State of Oregon (Grantee), a perpetual easement for the right to lay down, construct, operate and perpetually maintain a sewer or sewers, and sewer tunnel facilities and appurtenances, with said grant made in consideration of One (\$1.00) and no/100 Dollars, and other good and valuable consideration, as provided for in that certain lease agreement between Grantor and Grantee, dated December, 2005 (the Lease). The easement granted herein runs through, under and along the following described parcel:

R/W #6246-2007

A portion of Block 34, Stephen's Addition to East Portland, situated in the southeast quarter of Section 3, T1S, R1E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Commencing at the northwest corner of Lot 4, Portland General Electric Station L; thence S 88° 12' 05" E along the north line of said Lot 4, a distance of 81.78 feet to the True Point of Beginning; thence N 01° 53' 58" E a distance of 230.00 feet to the centerline of vacated SE Lincoln Street; thence S 88° 12' 05" E along said vacated centerline, a distance of 2.82 feet; thence S 01° 47' 55" W along the westerly right-of-way line of SE Lincoln Street, a distance of 30.00; thence S 88° 12' 05" E along the southerly right-of-way line of SE Lincoln Street, a distance of 49.13 feet; thence S 01° 53' 58" W a distance of 200.00 feet to the north line of said Lot 4; thence N 88° 12' 05" W along said north line of Lot 4, a distance of 52.00 feet to the True Point of Beginning. Contains 10,485 square feet or 0.241 acres.

IT IS UNDERSTOOD and agreed that public sewer easements include the right of access for construction, inspection, maintenance, or other sewerage system activities.

1S1E03D 302

After Recording Return to:

106/800/Linda Birth

Tax Statement shall be sent to:

No Change

IT IS UNDERSTOOD and agreed that Grantor reserves the right to use the easement area for any lawful purpose not inconsistent with Grantee's permitted use, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services, paths, roadways or driveways, parking lots, shallow-rooted landscaping, and continued operation and development of Grantor's property; except that Grantor shall not use the area thirteen (13) feet either side of the tunnel, and shall not install load bearing underground improvements within thirty-nine (39) feet above the crown of the tunnel and non-load bearing underground improvements within twenty-six (26) feet of the crown of the tunnel, as shown on Exhibit B, attached hereto. Grantor further agrees to provide prior notification of its intent to use the easement area for above or below surface installations, which must be approved by the Director of the Bureau of Environmental Services to ensure compliance with this easement.

THIS INSTRUMENT does not grant or convey to the City of Portland any right or title to the surface of the soil along the route of said sewer.

IT IS FURTHER UNDERSTOOD and agreed that:

- A. This easement includes the right to make visual and photographic inspection of the surface and associated improvements during construction.
- B. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- C. Grantor represents and warrants that it has the authority to grant this easement, that the subject property is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- D. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property or property rights.
- E. Grantor represents that to the best of its knowledge after appropriate inquiry under the circumstances, the subject property is in compliance with all local, State and Federal environmental laws and regulations; and further, that Grantor has provided Grantee with copies of all reports that it is aware of regarding the environmental condition of the subject property.
- H. Grantee, by accepting this easement, is not accepting liability for any release of hazardous substances onto or from the subject property, and that Grantor is not attempting to convey any such liability.

IN WITNESS WHEREOF, Oregon Museum of Science and Industry, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_ President and \_\_\_\_\_ Secretary, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Oregon Museum of Science and Industry

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

State of Oregon

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by \_\_\_\_\_, as President, and \_\_\_\_\_, as Secretary of Oregon Museum of Science and Industry.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

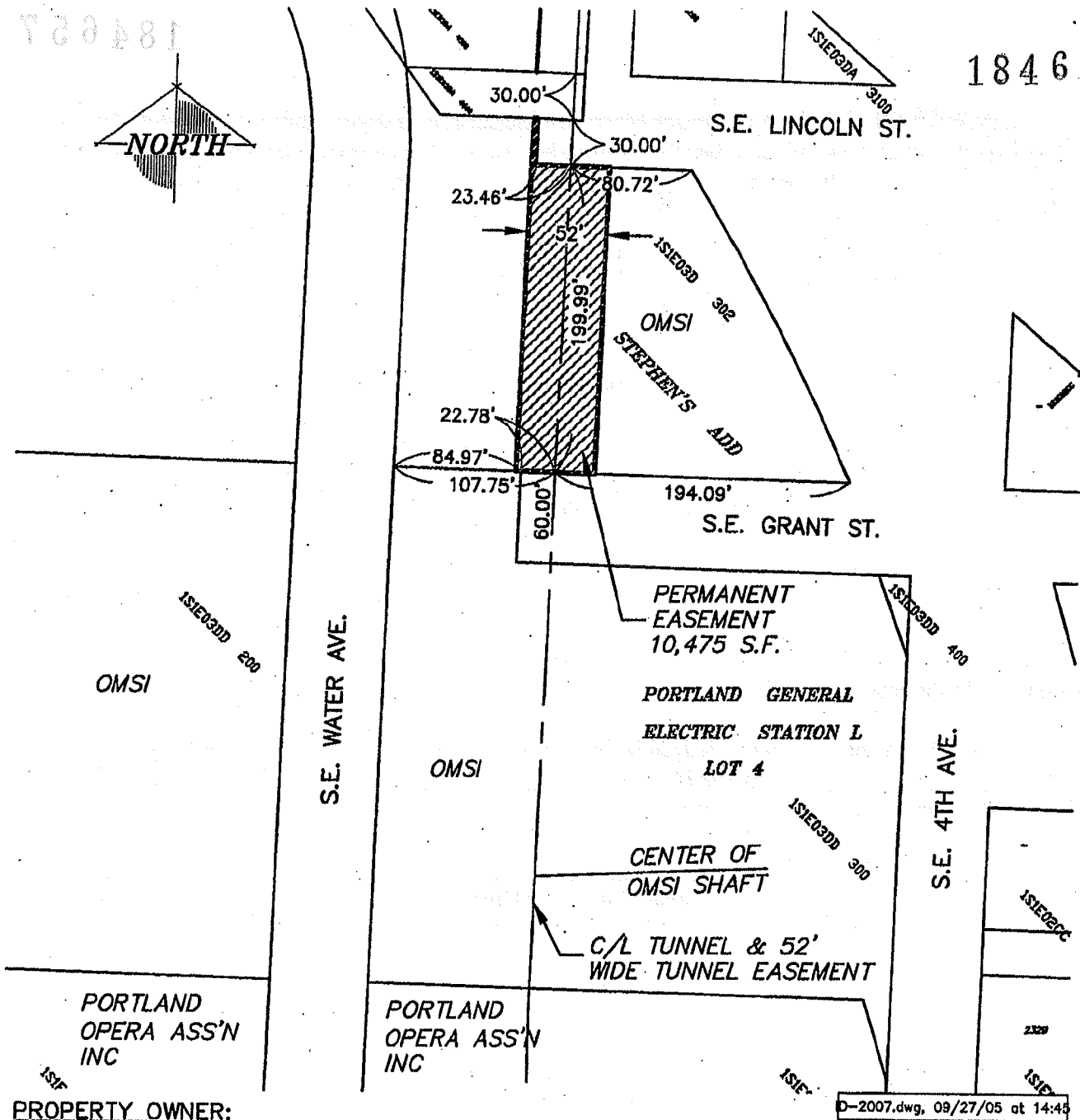
\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

728481

184657



**PROPERTY OWNER:**

OMSI

STATE ID: 1S1E03DD 302

RNO: R490517

PROJECT ID: 2007

**EXHIBIT "A"**



BAR EQUALS ONE  
INCH WHEN DRAWING  
IS PLOTTED FULL SIZE.  
IF NOT, SCALE ACCORDINGLY

100 0 50 100 200



SCALE: 1"=100'

**PROJECT COORDINATES**

CITY OF PORTLAND  
**ENVIRONMENTAL SERVICES**

EAST SIDE CSO TUNNEL PROJECT

**PB** PARSONS  
BRINCKERHOFF  
400 S.W. Sixth Ave, Portland, OR 97204

**EAST SIDE CSO PROJECT**

**PERMANENT TUNNEL EASEMENT**

PROJECT ID NO. 2007

STATE ID NO. 1S1E03DD 302

OWNER: OREGON MUSEUM OF SCIENCE AND INDUSTRY

1/4 SECTION  
3231

JOB NO.  
5516

SHEET NO.

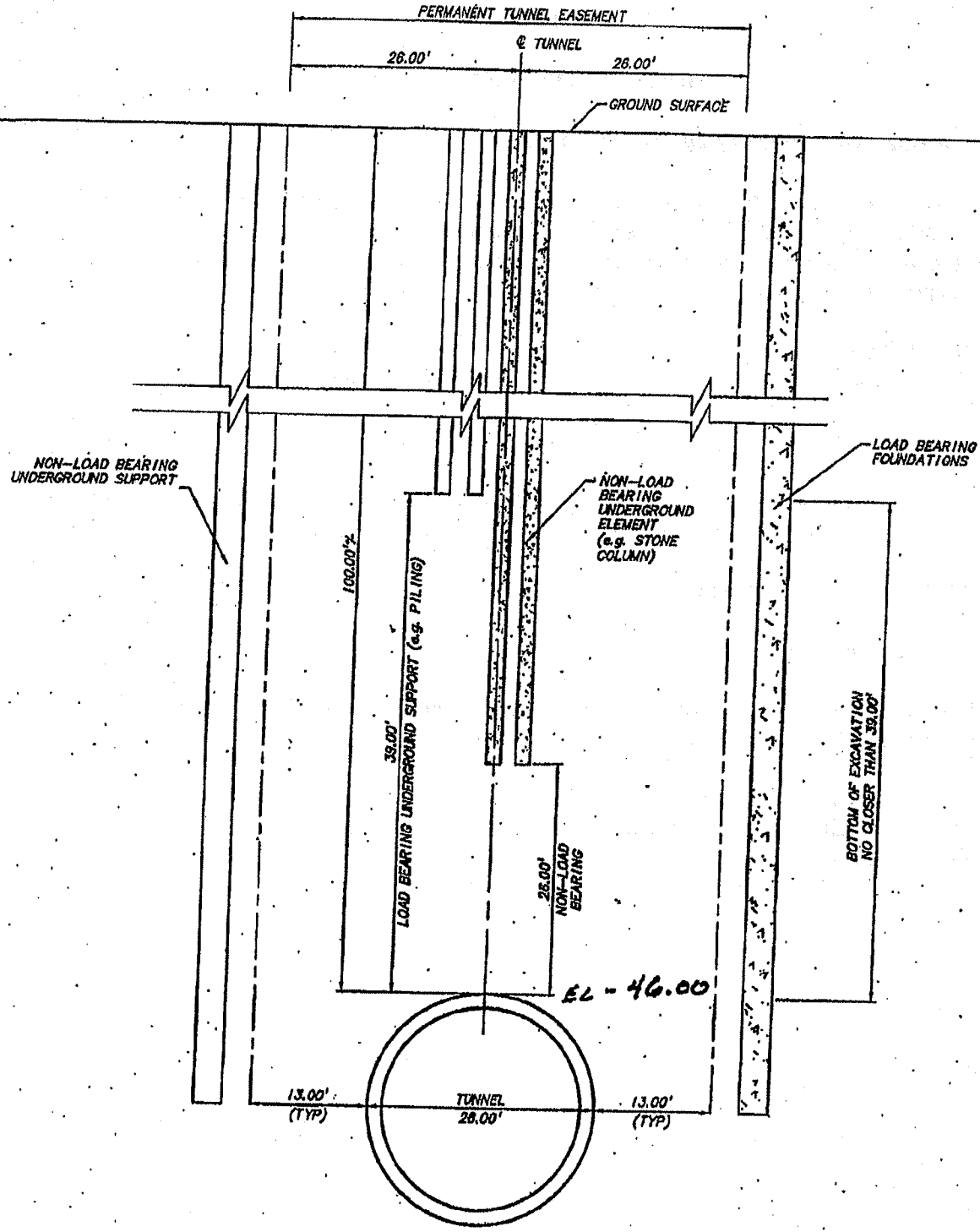
1 of 1



720181

OMSI

184657



**RESTRICTIONS ON SUBSURFACE DEVELOPMENT  
FOR PROTECTION OF TUNNEL**

*Elevation  
Based on CITY  
OF PORTLAND, OR  
DATUM*

**PB PARSONS  
BRINCKERHOFF**  
400 S.W. Sixth Ave. Portland, OR 97204

CITY OF PORTLAND  
**ENVIRONMENTAL SERVICES**

10 0 5 10 20  
SCALE FEET

**EAST SIDE CSO TUNNEL  
TUNNEL EASEMENT  
EXHIBIT B**

JOB NO.
5516
FIGURE NO.
2

K:\dms\MSOPHIL-ROPP\OMSI-Forg\seamant-section.dwg, Layout1, 7/13/2005 2:25:53 PM

**EXHIBIT D****REQUIRED INSURANCE****1. Commercial General Liability Insurance**

For the duration of this contract, BES will maintain commercial general liability including products and completed operations, broadform property damage and contractual, sudden & accidental pollution, independent contractors, and explosion/collapse/underground hazards insurance coverage in the following amounts:

\$1,000,000 Each occurrence  
\$2,000,000 General and Products/Completed Operations Aggregates

**2. Commercial Automobile Liability Insurance**

For the duration of this contract, BES or its contractors will maintain commercial automobile liability for owned, non-owned, and hired autos in the following amounts:

\$1,000,000 Any one occurrence or loss

**3. Worker's Compensation:**

BES agrees to maintain worker's compensation insurance for its employees working in any capacity related to this contract in the amount of:

Workers' Compensation Statutory  
Employer's Liability \$1,000,000 bodily injury by Accident each accident  
\$1,000,000 bodily injury by disease each employee  
\$1,000,000 bodily injury by disease policy limit

**4. Property Insurance:**

BES agrees to maintain personal property insurance against loss by fire and other perils to the extent required for the Project activities. Such property insurance shall contain a waiver of subrogation clause in favor of OMSI.

**5. Umbrella Insurance:**

For the duration of this contract, BES agrees to maintain umbrella/excess liability insurance in the following amounts:

\$10,000,000 EACH OCCURRENCE  
\$10,000,000 AGGREGATE.

Coverage shall be in excess of the above commercial general liability insurance, commercial automobile liability insurance, and employer's liability insurance.

**6. General Requirements:**

- 6.1 BES insurance shall be placed with an insurance company licensed to do business in OR and rated A-7 or better by A.M. Bests.
- 6.2 With respect to BES general liability, automobile, and umbrella/excess insurance, (A) OMSI, its directors, officers, employees and agents will be named as an additional insured on the policies, (B) coverage shall be primary and noncontributory with any insurance maintained by OMSI, (C) coverage shall contain a severability and cross liability clause, and (D) coverage shall contain a waiver of subrogation clause in favor of OMSI.
- 6.3 With respect to BES worker's compensation and employer's liability, unless prohibited by law, to provide that the insurer shall waive all rights of subrogation against OMSI, its directors, officers, employees and agents.
- 6.4 BES will provide OMSI with an ACORD certificate of insurance evidencing the coverage outlined above. BES will provide thirty days notice to OMSI if coverage is cancelled, non-renewed, or limits are reduced.

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**EXHIBIT E**

**MEMORANDUM OF LEASE**

After Recording, Return To:

184657

Ms. Jan Betz  
Office of City Attorney  
1221 SW Fourth Avenue, Suite 430  
Portland, OR 97204

**MEMORANDUM OF LEASE**

This Memorandum of Lease is executed, delivered and recorded to evidence and give notice of that Ground Lease Agreement, dated December 29, 2005, pursuant to which OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon not-for-profit corporation, has leased to the CITY OF PORTLAND, a municipal corporation of the State of Oregon, the real property described on attached Exhibit A. The term of the Ground Lease Agreement commences on December 31, 2005 and, if not sooner terminated, ends on September 30, 2012.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease effective December 29, 2005.

OREGON MUSEUM OF SCIENCE AND  
INDUSTRY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF PORTLAND, a municipal corporation of  
the State of Oregon, by and through its Bureau of  
Environmental Services

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form:

OFFICE OF CITY ATTORNEY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

728481

184657

STATE OF OREGON     )  
                                  )  
COUNTY OF \_\_\_\_\_ )

This instrument was executed before me on \_\_\_\_\_, 2005,  
by \_\_\_\_\_, the \_\_\_\_\_  
of OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon not-for-profit corporation,  
on behalf of and as the act and deed of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON     )  
                                  )  
COUNTY OF \_\_\_\_\_ )

This instrument was executed before me on \_\_\_\_\_, 2005,  
by \_\_\_\_\_, the \_\_\_\_\_  
of the Bureau of Environmental Services, on behalf of THE CITY OF PORTLAND, a municipal  
corporation of the State of Oregon, on behalf of and as the act and deed of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON     )  
                                  )  
COUNTY OF \_\_\_\_\_ )

This instrument was executed before me on \_\_\_\_\_, 2005,  
by \_\_\_\_\_, the \_\_\_\_\_  
of the Office of the City Attorney of the City of Portland, a municipal corporation of the State of  
Oregon, on behalf of and as the act and deed of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF OREGON  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
PROPERTY DESCRIPTION

1. Parcel 1

Lots 3 and 4, PORTLAND GENERAL ELECTRIC STATION L, in the City of Portland, County of Multnomah, State of Oregon.

2. Parcel 2

Lots 1 through 8 inclusive, Block 14; Lots 1 through 8 inclusive, Block 27, Lots 1 through 8 inclusive, Block 34; Lots 1 through 8 inclusive, Block 47, "STEPHENS ADDITION TO EAST PORTLAND", in the City of Portland, County of Multnomah, State of Oregon.

That certain parcel of real property in Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point 30 feet West of the Southwest corner of Block 46 in STEPHENS ADDITION TO EAST PORTLAND at a point which would be in the North line of S.E. Lincoln Street, if extended Westerly; thence South 30 feet parallel with the East line of S.E. Third Avenue; thence West on a line parallel with the North line of said S.E. Lincoln Street, if extended, to the Willamette River; thence Northerly along said Willamette River to a point which would be in the North line of said S.E. Lincoln Street, if extended Westerly; thence East along said North line of S.E. Lincoln Street, if so extended, to the point of beginning.

EXCEPTING THEREFROM:

Commencing at the intersection of the centerlines of E. Lincoln and E. Third Streets, thence West following the centerline of E. Lincoln Street (if produced Westerly), 216 feet; thence Northwesterly on a curve of 406 foot radius to a point on the North boundary of said E. Lincoln Street (if produced Westerly), 336 feet West of the centerline of E. Third Street (if produced Northerly); thence East following the said North boundary line of E. Lincoln Street (if produced Westerly), 336 feet; thence South following the centerline of E. Third Street (if produced Northerly), 30 feet to the point of beginning.

TOGETHER WITH those portions of vacated streets inuring thereto by Vacation Ordinances 102-169 and 123-419.

EXCEPTING THEREFROM:

Beginning at a point in the North line of Block 47 in said STEPHENS ADDITION distant 67.35 feet West along said North line of Block 47 from the Northeast corner thereof, said Northeast corner being the point of intersection of the South line of S.E. Lincoln Street (60 feet wide) with

the west line of S.E. Union Avenue (60 feet wide); thence West along said North line of Block 47, a distance of 88.48 feet to a point; thence Southeasterly on a compound curve to the right (tangent to said compound curve at last mentioned point bears South 33° 44' 00" East) having the following radii, central angles, and arc lengths:

RADII	CENTRAL ANGLES	ARC LENGTH
1889.91 feet	0° 52' 59"	29.13 feet
1617.09 feet	1° 03' 00"	29.63 feet
1412.47 feet	6° 56' 42"	171.12 feet

to a point in the South line of said Block 47 that is distant 42.81 feet West along said South line of Block 47 from the Southeast corner thereof, thence East along said South line of Block 47, a distance of 42.81 feet to a point in the East line of said Block 47; thence North along said East line of Block 47 and also said West line of S.E. Union Avenue, a distance of 146.49 feet, thence North 51° 32' 00" West, a distance of 86.02 feet to the point of beginning.

AND EXCEPTING from Parcels I through IV the following described land:

A tract of land situated in the Southeast quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon and more particularly described as follows:

Commencing at the Southwest corner of Block 19, STEPHENS ADDITION TO EAST PORTLAND, and proceeding thence South along the Southerly extension of the West line of said Block 19, a distance of 30.00 feet to the South line of S.E. Market Street; thence West along said South line of S.E. Market Street, a distance of 373 feet to the upland settlement boundary line (being the low water line of 1908 as per the Port of Portland Records); thence Southerly along said upland settlement boundary line, the following courses:

South 26° 10' 00" West, a distance of 59.00 feet;  
 South 07° 00' 00" West, a distance of 49.00 feet;  
 South 16° 20' 00" East, a distance of 50.00 feet;  
 South 31° 40' 00" East, a distance of 276.00 feet;  
 South 21° 50' 00" East, a distance of 183.00 feet;  
 South 16° 10' 00" East, a distance of 222.00 feet;  
 South 29° 30' 00" East, a distance of 44.48 feet to the North line of vacated S.E. Grant Street; thence West along the North line of said vacated S.E. Grant Street, A distance of 80.83 feet to the ordinary low water line of the East bank of the Willamette River at elevation +6.1 feet, City of Portland Datum, as said ordinary low water line was established in 1988; thence Northerly along said ordinary low water line of 1988, the following courses:

North 29° 30' 00" West, a distance of 61.00 feet;  
 North 36° 00' 00" West, a distance of 54.00 feet;  
 North 25° 50' 00" West, a distance of 71.00 feet;  
 North 22° 40' 00" West, a distance of 47.00 feet;  
 North 39° 10' 00" West, a distance of 21.00 feet;



**FIRST AMENDMENT TO GROUND LEASE**

THIS AMENDMENT is entered into this 2nd day of March, 2010, between OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon not-for-profit corporation ("Landlord") and CITY OF PORTLAND, acting by and through its Bureau of Environmental Services ("Tenant").

**RECITALS**

- A. Landlord and Tenant entered into that certain Ground Lease dated December 29, 2005 (the "Ground Lease").
- B. Landlord has granted a Permit of Entry to the City of Portland by and through its Bureau of Transportation which covers a portion of the Property leased under the Ground Lease. Tenant has consented to Landlord's grant of the Permit of Entry.
- C. Landlord and Tenant wish to revise and amend the Ground Lease to remove the property covered by the Permit of Entry (the "PE Property") from the Ground Lease as set forth below and on the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, the parties agree as follows:

1. Removal of PE Property from the Ground Lease Property. The PE Property, as described on Exhibit A, attached hereto and incorporated herein, shall be removed from the Property as defined in the Ground Lease and shall no longer be covered by the Ground Lease. Tenant shall no longer have any obligations with respect to the PE Property unless said obligations accrued prior to the date of the Permit of Entry.
1. Counterparts. This Amendment may be executed in two or more counterparts, any of which may be delivered by facsimile or electronic transmittal, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
2. Full Force and Effect. Except as provided herein all other terms and conditions of the Ground Lease shall remain in full force and effect..

**SIGNATURE PAGE FOLLOWS**

728481

184657

DATED as of the day first written above

**LANDLORD:**

OREGON MUSEUM OF SCIENCE AND  
INDUSTRY,  
an Oregon not-for-profit corporation

By: Nancy Queber  
Its: President & CEO

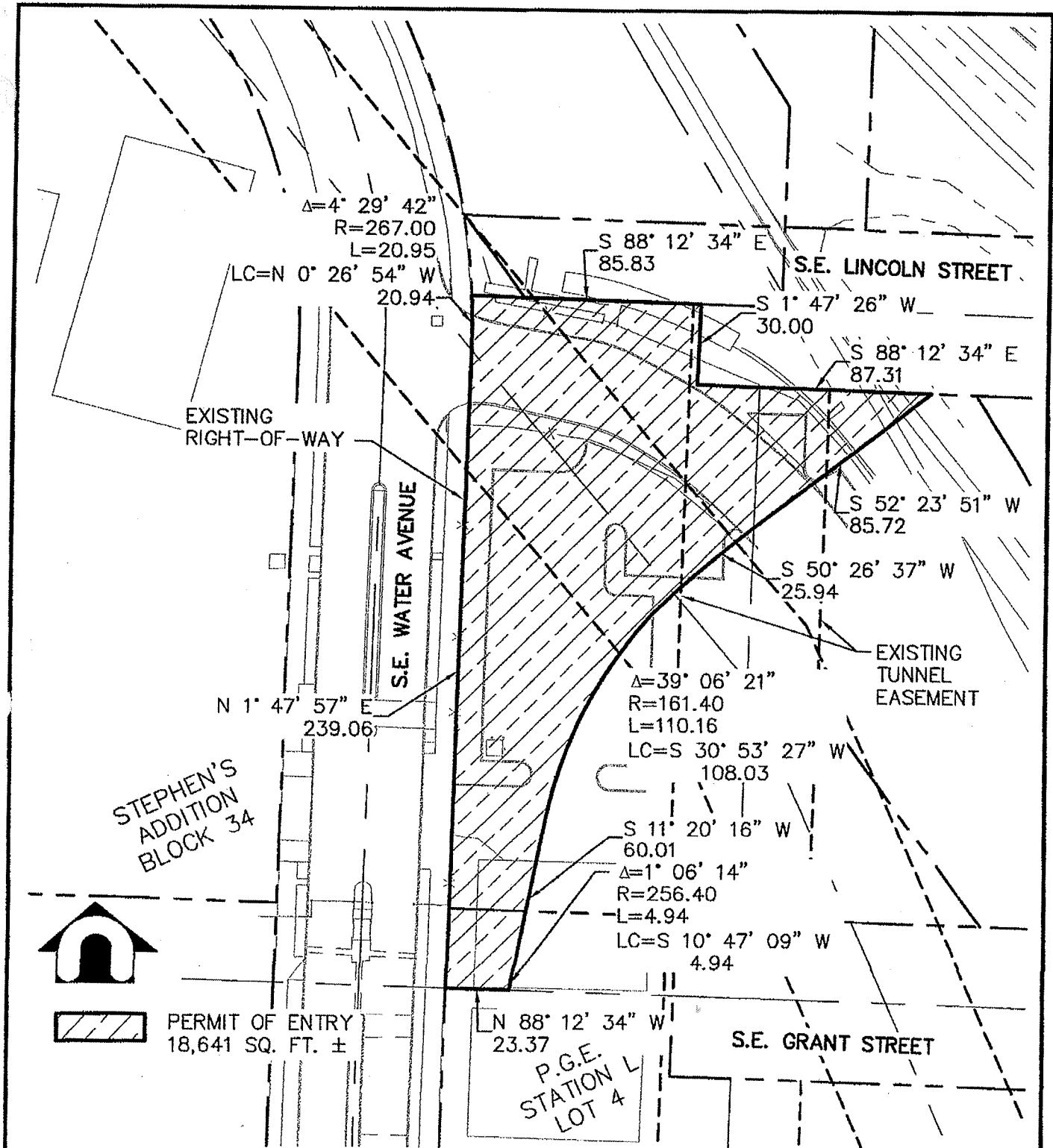
**TENANT:**

CITY OF PORTLAND, by and through  
its Bureau of Environmental Services

By: Dean Mann  
Its: BES Director

APPROVED AS TO FORM

Amela Menez  
CITY ATTORNEY  
by Jan V. V. Butz



**DAVID EVANS  
AND ASSOCIATES INC.**

2100 Southwest River Parkway  
Portland Oregon 97201  
Phone: 503.223.6663

PROJECT

EXHIBIT "A"

SHEET

TITLE

PORTLAND STREETCAR LOOP

DWG. REF.

SvEm14Ursx0041

PROJECT

URSX0041

SCALE

1" = 50'

AMENDMENT NO.

1.0

DRAWN BY

ASI

DESIGN BY

PNS

APPROVED BY

DATE

3/1/10

1