

EXHIBIT A:

DESIGN AND CONSTRUCTION FUNDING AGREEMENT
FOR SE NEW WATER AVENUE

This Design and Construction Funding Agreement – New Water Avenue (this “Agreement”) is made and entered into by and between the City of Portland (“City”), Tri-County Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the State of Oregon (“TriMet”), the Portland Development Commission, an urban renewal agency of the State of Oregon (“PDC”), Oregon Museum of Science and Industry, an Oregon non-profit corporation (“OMSI”), (individually, each referred to as a “Party,” and collectively as the “Parties”), as of this ___ day of ____, 2012 (the “Effective Date”).

RECITALS

A. TriMet is constructing the Portland-Milwaukie Light Rail Transit Project (the “Project”), a 7.3-mile alignment extending from Portland State University, through the South Waterfront District, across the Willamette River, through Southeast Portland, and ending in unincorporated Clackamas County. As the alignment crosses the Willamette River with a new transit bridge, there will be a station just south of OMSI, just north of Opera, and just east of SE Water Avenue (“Old Water Avenue”). This section of the alignment is depicted on the attached Exhibit A, and is incorporated by this reference.

B. As a result of the alignment, Old Water Avenue will be relocated to its new location (“New Water Avenue”), as shown on Exhibit A.

C. On or about March 28, 2011, the Parties entered into a Memorandum of Understanding for the Design and Construction of Relocated SE Water Avenue (“New Water Avenue MOU”), which addressed, among others, the Parties’ respective funding obligations for New Water Avenue. The New Water Avenue MOU is attached as Exhibit B and incorporated by this reference.

D. The Parties desire to enter into this Agreement to formalize their respective funding obligations, as articulated in the New Water Avenue MOU, for the design and construction of New Water Avenue.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated by this reference, and mutual promises contained herein, the Parties agree as follows:

1. Project Scope and Design.

The scope of New Water Avenue is depicted on Exhibit C, which is incorporated by this reference. The scope includes a "shed section" roadway, two travel lanes, center turn lane, two bicycle lanes, stormwater facility, 8-foot asphalt sidewalk and temporary streetlights on wood poles on the Westside, 8-foot concrete sidewalk and permanent streetlights on the east side, and relocation of PGE transmission poles "B and X" to the eastside of the relocated roadway.

2. Funding Obligations.

- a. The estimated total cost for constructing New Water Avenue is \$2,361,417.51 (YOE), and each Party's respective funding obligation for New Water Avenue is detailed in Exhibit D, which is incorporated by this reference.
- b. Each of the Party's respective monetary funding obligations under this Agreement are to be delivered to TriMet via wire transfer or certified check in a single, lump sum payment, payable within 30 days after each Party receives its notice from TriMet that TriMet has issued Notice to Proceed to its New Water Avenue contractor ("New Water Avenue Notice").
- c. In the event the actual cost for constructing New Water Avenue exceeds \$2,361,417.51, that cost will be borne by TriMet. In the event the actual cost for constructing New Water Avenue is less than \$2,361,417.51, TriMet is entitled to retain those additional funds.
- d. *City Obligations.*
 - i. PBOT
 1. The Portland Bureau of Transportation ("PBOT") shall contribute toward the funding of New Water Avenue through the exchange of Transportation System Development Charge Credits ("SDC Credits") for the property required to construct New Water Avenue. As discussed further below, the value of the properties to be acquired by PBOT for New Water Avenue, and the amount of SDC Credits to be transferred to the respective property owners, will be established through an appraisal process.

2. By separate agreement, OMSI has agreed to dedicate to PBOT unencumbered permanent easements over certain property that is needed for New Water Avenue, and to convey to PBOT a temporary construction easement for the construction of New Water Avenue. In exchange, PBOT has agreed to compensate OMSI either through a combination of vacated rights-of-way and SDC Credits or other consideration, or a like value of just SDC Credits. The choice of compensation will be at OMSI's sole and reasonable discretion. The value of the OMSI property will be established through an appraisal process and negotiated resolution. If SDC credits comprise all or a portion of the consideration, they will be applied for, calculated, and transferred in accordance with Section 17.15.1060 of the City of Portland Code and Charter ("SDC Credits, SDC Credit Transfers, and SDC Reimbursements").
3. Also pursuant to the Agreement Regarding Property Transactions for Relocation of SE Water Avenue, Opera has agreed to dedicate to PBOT an unencumbered permanent easement for New Water Avenue, and to convey to PBOT a temporary construction easement for the construction of New Water Avenue. In exchange, PBOT has agreed to compensate Opera through SDC Credits. The value of the Opera property will be established through an appraisal process and negotiated resolution. If SDC credits comprise all or a portion of the consideration, they will be applied for, calculated, and transferred in accordance with Section 17.15.1060 of the City of Portland Code and Charter ("SDC Credits, SDC Credit Transfers, and SDC Reimbursements").
4. In addition to the foregoing obligations, PBOT shall contribute \$250,000 toward the funding of New Water Avenue. This contribution will be comprised of interim borrowing or revenue bonds repaid by Innovation Quadrant TSDC Overlay revenues.
5. PBOT's contributions toward New Water Avenue will be further memorialized in the second amendment to the Intergovernmental Agreement between TriMet and City of Portland for Portland-Milwaukie Light Rail Project Design and Construction Services.

ii. BES Obligations.

The Portland Bureau of Environmental Services ("BES") shall contribute \$250,000 toward the funding of New Water Avenue because the construction of New Water Avenue relieves BES of the requirement to remove the temporary roadway used by BES to construct the East Side CSO ("ESCSO") Tunnel Project. Through signature of the New Water Avenue MOU, and further documented by letter dated August 20, 2010, BES committed to paying \$250,000 toward the funding of New Water Avenue, which monies resulted from cost savings to the East Side Combined Sewer Overflow Tunnel Project. That letter is attached to as Exhibit E, and incorporated by this reference.

iii. PWB Obligations.

As part of the second amendment to the Intergovernmental Agreement between TriMet and City of Portland for Portland-Milwaukie Light Rail Project Design and Construction Services, the Portland Water Bureau ("PWB") will contribute the cost of a 12-inch water line in New Water Avenue. This cost will be tracked in accordance with other Water Bureau Betterments and reimbursed based on actual costs. The current estimate is \$101,395.86

e. TriMet Obligations.

The Project shall contribute \$1,614,041.96 toward the funding of New Water Avenue. This cost includes \$204,020.31 for construction services, and \$225,000 for engineering. Because TriMet's Project contractor will be constructing New Water Avenue, TriMet shall make the remaining \$1,185,021.65 contribution directly to its contractor through its normal billing process. TriMet's contribution of \$429,020.31 (\$204,020.31 + \$225,000) is an internal in-kind contribution for the engineering and administration services necessary to acquire and construct New Water Avenue.

f. PDC Obligations.

PDC shall contribute \$250,000 toward the funding of New Water Avenue. PDC is a signatory to the New Water Avenue MOU, and by that MOU committed to paying \$250,000 toward the funding of New Water Avenue.

g. *OMSI Obligations.*

OMSI shall contribute \$325,000 toward the funding of New Water Avenue. OMSI and the City entered into a settlement agreement regarding the City's acquisition of certain property rights, which settlement was approved by the OMSI Board on May 26, 2010. That settlement agreement and OMSI Board Resolution are attached as Exhibit F, and incorporated by this reference. In that settlement agreement, OMSI committed to paying \$325,000 toward the funding of New Water Avenue.

3. **Regional Arts and Culture Council (RACC) Percent for Art Program**

- a. City Code Chapter 5.74 sets the policy of the City of Portland to dedicate two percent of the total Eligible Costs, as defined by Code, or two percent of the total Eligible Funds, as defined by Code, of all Improvement Projects, as defined by Code, (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, management, de-accessioning, community education, documentation and registration of Public Art.
- b. This Agreement includes Eligible Costs and/or Eligible Funds for an Improvement Project. TriMet has an extensive public art program based on TriMet's policy of allocating 1.5% of a project's civil construction budget towards public art. Through this program, the City and PDC have fulfilled the requirements of City Code Chapter 5.74 and coordinating the public art with RACC.

4. **Project Construction.**

- a. TriMet has included the scope of New Water Avenue in its Issue for Construction documents. TriMet agrees to construct New Water Avenue as defined in the Project Scope, as described in Paragraph 1, and shown on the attached Exhibit C. This scope includes the relocation of PGE transmission pole "B and X" to the eastside of the relocated roadway. TriMet will coordinate this construction with PGE and compensate PGE directly for this expense.
- b. The date of New Water Avenue project construction will be determined based on the Project's East Segment construction staging planning. Construction will be complete by the start of Project revenue service.
- c. TriMet shall, to the extent reasonably possible, maintain traffic access and circulation during construction of New Water Avenue.

- d. TriMet shall keep and maintain appropriate documentation to evidence that the funding obligations under this Agreement have been properly applied toward the construction of New Water Avenue. This includes, but is not limited to keeping and maintaining documentation to evidence that urban renewal funds and Transportation System Development Charge funds contributed under this Agreement were properly applied to eligible expenditures.

5. General Provisions.

- a. *Relationship of the Parties.* Each of the Parties is deemed to be an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one Party is deemed to be an employee, agent, or contractor of the other Party for any purpose, except to the extent specifically provided herein.

Nothing herein is intended, nor may it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- b. *Project Manager and Notices.* All routine correspondence and communication regarding this Agreement must be among the Project Managers:

City Bureaus:

PBOT:

Art Pearce
Telephone 503-823-7791
Email: Art.Pearce@PortlandOregon.gov

BES:

Christa Overby
Telephone 503-823-7918
Email Christa.Overby@PortlandOregon.gov

PWB:

Steve Yeung
Telephone 503-823-7645
Email: Steve.Yeung@PortlandOregon.gov

TriMet:

Robert Barnard
 TriMet
 710 NE Holladay Street
 Portland, OR 97232
 Telephone (503) 962-2432
 Email Barnard.R@Tri-Met.org

PDC:

Steven Shain
 PDC
 222 NW Fifth Avenue
 Portland, OR 97209
 Telephone (503) 823-0137
 Email ShainS@Portlandoregon.gov

OMSI:

Paul Carlson
 1945 SE Water Ave.
 Portland, OR 97214
 Telephone (503) 797-4555
 Email Pcarlson@omsi.edu

The Project Managers are authorized to approve invoices, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement, and to carry out any other act referred to herein.

- c. *No Third-Party Beneficiary.* This Agreement is between the Parties only and creates no third-party beneficiaries. Nothing in this Agreement gives or may be construed to give or provide any benefit, direct, indirect or otherwise to any third parties unless such third party is expressly described as an intended beneficiary under this Agreement.
- d. *Subcontracting.* Each Party acknowledges that the other Parties may intend to contract or subcontract its work under this Agreement, in whole or in part. Each Party agrees to the other Party's contracting or subcontracting and no specific approval of any of the other Party's contractors or subcontractors is required. Each Party shall require any contractor or subcontractor to agree, as to the portion contracted or subcontracted, to fulfill all applicable obligations of that Party as specified in this Agreement.
- e. *Successors and Assigns.* The interests, rights, and benefits conferred by this Agreement, and the obligations assumed thereunder, must inure to the benefit of and bind the successors and assigns of the Parties hereto.

f. *Interruption of Services.*

- i. Force Majeure. No Party will be liable to the other Party for any failure of performance under this Agreement due to causes beyond its control, such as acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, or action of any other government entity claiming jurisdiction over such Party (including delay or inaction in issuing necessary construction permits, use permits, or similar authorizations), or of any instrumentality thereof of any civil or military authority; national emergencies; unavailability of materials or right-of-way; insurrections; riots; wars; or strikes, lock-outs, work stoppages or other labor difficulties (collectively, "force majeure events"); so long as, in the event of force majeure, the Party whose performance is prevented or impaired shall provide notice to the other Party within ten (10) business days of the occurrence of such event and shall thereafter use commercially reasonable efforts to complete or correct the affected performance without undue delay. If this notice is not given in the time provided in the preceding sentence, that Party may be liable to the other Party for any failure of performance under this Agreement.
- ii. No Liability for Special, Consequential, Exemplary or Punitive Damages. In no event will any Party to this Agreement be liable to any other Party for special, consequential, exemplary, or punitive damages as a result of the performance or non-performance of any obligations under, or acts or omissions related to this Agreement.

- g. *Indemnification.* Each Party shall hold harmless, indemnify, and defend the other Parties and their respective officers, employees, and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

With respect to the City of Portland, PDC and TriMet, this indemnification obligation is specifically subject to the limitations imposed by the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through ORS 30.300, as the same may be amended from time to time.

- h. *Entire Agreement; Modification; Waiver.* This Agreement and attached Exhibits constitute the final and exclusive Agreement between the Parties on the subject matter hereof, and supersede all prior or contemporaneous written or oral understandings, representations, or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification, or change of terms of this Agreement may bind

either Party unless in writing and signed by all Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement will not constitute a waiver by a Party of that or any other provision.

Nothing in this Agreement is intended to supersede the Agreement Regarding Property Transactions for Relocation of SE Water Avenue. To the extent there are any contradictory provisions, the terms of this Agreement prevail.

The New Water Avenue MOU, to the extent not superseded by this Agreement, remains in full force and effect.

- i. *Interpretation of Agreement.* This Agreement must not be construed for or against either Party by reason of the authorship or alleged authorship of any provision. The section headings contained in this Agreement are for ease of reference only and must not be used in constructing or interpreting this Agreement.
- j. *Severability/Survivability.* If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless must remain in full force and effect and the offending provision will be stricken. All provisions concerning indemnity survive the termination of this Agreement for any reason.
- k. *Effective and Termination Dates.* This Agreement is deemed effective on the date the last party signs the Agreement, and it will remain in effect until the completion of all obligations created by this Agreement.
- l. *Early Termination of Agreement.*
 - i. The Parties, by mutual written agreement, may terminate this Agreement at any time.
 - ii. Any Party may terminate this Agreement in the event of a breach of the Agreement by another Party. Prior to such termination, however, the Party seeking the termination shall give the other Parties written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within 30 calendar days of the notice, then the Party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
- m. *Oregon Law, Dispute Resolution, and Forum.*
 - i. This Agreement must be construed according to the laws of the State of Oregon, without regard to its conflict of laws principles.

- ii. The Parties shall attempt to settle any dispute arising out of this Agreement, or the breach thereof, through mediation in the City of Portland, Oregon. The Parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the Parties agree on a mediator, the mediation must be held within 60 calendar days of the selection of the mediator unless the Parties otherwise agree to a different schedule. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity.
- iii. Any litigation between the Parties arising under or related to this Agreement or out of work performed under this Agreement must occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
- n. *Remedies.* The remedies provided under this Agreement are not exclusive. The Parties are also entitled to any other equitable and legal remedies that are available.
- o. *Authority.* The representatives signing on behalf of the Parties represent and warrant that they are duly authorized by the Party for whom they sign to enter into this Agreement.
- p. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute only one and the same instrument.

[INTENTIONALLY LEFT BLANK; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF PORTLAND

Sam Adams, Mayor

APPROVED AS TO FORM:

By: _____

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

Daniel W. Blocher, P.E.
Executive Director, Capital Projects

APPROVED AS TO FORM:

By: _____
Britney Colton
Deputy General Counsel

PORTLAND DEVELOPMENT COMMISSION

APPROVED AS TO FORM:

By: _____

OMSI

APPROVED AS TO FORM:

By: _____

List of Exhibits

- A- Drawing of area
- B- New Water Avenue MOU
- C- Scope of New Water Avenue
- D- New Water Avenue Cost and Funding Summary
- E- BES August 20, 2010 letter re: 250k
- F- OMSI settlement agreement with PBOT and Board Resolution

**MEMORANDUM OF UNDERSTANDING FOR THE DESIGN AND
CONSTRUCTION OF RELOCATED SE WATER AVENUE.**

This Memorandum of Understanding ("MOU") is between the City of Portland Bureau of Transportation (PBOT), Tri-County Metropolitan Transportation District of Oregon (TriMet), Portland Development Commission (PDC), City of Portland Bureau of Environmental Services (BES), Oregon Museum of Science and Industry (OMSI), and Portland Opera (Opera) for the purpose of supporting the design and construction of the relocation of a southern section of SE Water Ave.

Recitals

Whereas, through the Portland to Milwaukie Light Rail Transit (PMLRT) Project design process, the Willamette River Partnership made recommendations for a new alignment for crossing of the Willamette River and established a station on the eastside on the SE Sherman alignment;

Whereas, OMSI Master plan proposed the relocation of SE Water Avenue to connect with SE 4th to support the PMLRT Project, the Streetcar Loop project and the future development of the OMSI District;

Whereas, OMSI supports the relocation of SE Water Ave as it would restore OMSI property access, minimize vehicle conflict with existing and future development, relocate the PGE line, and provide flexibility in the future use of "old" Water Ave as a pedestrian and bicycle friendly plaza with limited vehicle use;

Whereas, Opera supports the relocation of SE Water Ave as it would remove motor vehicle traffic between Opera parcels, minimize vehicle conflict with existing development, relocate the PGE line, and provide flexibility in the future use of "old" Water Ave as a pedestrian and bicycle friendly plaza with limited vehicle use;

Whereas, PBOT supports the relocation of SE Water Ave as it would improve district circulation, create a more direct connection to SE 4th Ave, create the possibility for improved pedestrian corridor to access the new bridge, and support "Portland Loop" and "Close the Loop" streetcar projects while eliminating interaction between streetcar and through-district freight activities; and improve functionality of traffic and train signal operations at the intersection of "old" Water Avenue and the light rail transitway;

Whereas, TriMet supports the relocation of SE Water Ave as it would support PMLRT project design and station access; support TriMet's efforts to relocate the Oregon Rail Heritage Foundation facility to site 2, provide construction staging and site access flexibility, minimize contractor interference during PMLRT construction, support future redevelopment around the LRT station, and improve

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functionality of traffic and train signal operations at the intersection of "old" Water Avenue and the light rail transitway;

Whereas, PDC supports the relocation of SE Water Ave as it would support redevelopment of OMSI and Opera and adjacent properties within the Central Eastside Urban Renewal Area, and provide flexibility in the future use of "old" Water Ave as a pedestrian and bicycle friendly plaza connecting people to the river;

Whereas, BES supports the relocation of SE Water Ave as the project relieves BES of the requirement to remove the temporary roadway and BES also agrees to allow as is possible the installation of both the Portland Streetcar work and the TriMet Light Rail bridge approach in the area and during the term currently used by BES to construct the East Side CSO (ESCSO) Tunnel Project.

Whereas, area property owners support the relocation of SE Water Ave as it improves district freight circulation and commercial activity in the district; and provide flexibility in the future use of "old" Water Ave as a pedestrian and bicycle friendly plaza.

Understandings

This MOU is a statement of the good faith effort of the parties and is not a binding legal agreement. The MOU will serve to help the parties to proceed on the following action items:

1. Project Scope

The scope of the project is shown in the attached exhibit B. This scope includes a "shed section" roadway, two travel lanes, center turn lane, two bicycle lanes, stormwater facility, 8 foot asphalt sidewalk and temporary streetlights on wood poles on the westside, 8 foot concrete sidewalk and permanent streetlights on the east side, and relocation of PGE transmission poles "B, X and C" to the eastside of the relocated roadway.

The Parties further intend that a permanent sidewalk corridor should be constructed on the westside of the roadway and include concrete sidewalks, street trees and "OMSI District light fixtures" at time of future vertical redevelopment on adjacent parcels.

2. Conceptual Funding Plan

The parties intend to support the conceptual funding plan attached as Exhibit C to this MOU and intend to pursue the finalization of the funding contributions through Inter Governmental Agreement (IGA) or other mechanism prior to July 1, 2012 or the date of the PMLRT Full Funding Grant Agreement which ever comes later.

The parties intend that OMSI's cash contribution shall be made in conformance with conditions of the Settlement Agreement between OMSI and the City of Portland for Portland Streetcar.

3. Grant applications for additional funding

The parties agree to pursue outside grants to secure additional funding for the project scope shown in exhibit A. Parties agree that BES ESCSO dollars (equivalent to the estimated cost for removal of temporary impervious surfaces determined under item 7 below), OMSI cash contribution, PDOT TSDC Overlay contribution, Central Eastside Urban Renewal and/or other PDC funds, and OMSI and Opera property donations for Right of Way can be offered as local match for applications.

Grant funding request amount should be equal to the TriMet contribution to the Conceptual Funding Plan shown in Exhibit B. TriMet intends to fund any remaining amount not funded through a grant award.

4. Project Coordination

BES, PBOT, and TriMet intend to coordinate their work on the existing ESCSO project site (prior to completion of the ESCSO project) to the extent possible. PBOT and TriMet intend to compensate BES for any additional costs incurred as a result of direct expenses or disruptions to the ESCSO work as a result of the PBOT Streetcar and TriMet PMLRT work on the site.

5. Final Design of SE Water Ave Roadway

TriMet agrees to include the complete design of the SE Water Ave relocation in the Final Design of the PMLRT Project including any and all tasks necessary to construct this roadway segment. In addition to design efforts, TriMet will also prepare property legal descriptions and materials for the relocation of the PGE easement to align over the new roadway. PBOT agrees to process the dedication of new rights of ways and any anticipated donation agreements and SDC credits.

6. Construction of SE Water Ave Roadway

TriMet agrees to include, once fully funded by all parties, the construction of SE Water in the PMLRT Project construction contracts. The date of project construction will be determined based on east segment construction staging planning but construction will be complete by the start of revenue service of the PMLRT Project. Current construction planning indicated that the project would be constructed starting in the third quarter 2012 and reaching substantial completion by the third quarter 2013.

TriMet agrees that, as much as is reasonably possible, traffic access and circulation will be maintained during the construction of the relocated roadway.

7. Acceptance of responsibility for BES Water Ave Detour

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PBOT agrees to accept responsibility for the temporary roadway constructed by BES as part of the ESCO project until the new SE Water Ave roadway can be constructed. PDOT and TriMet agree to pursue new greenway permit(s) and include amending the ESCO project greenway application and other land use approvals to transfer the BES obligation to remove the temporary impermeable areas that PBOT or TriMet may wish to retain.

8. Roadway Designation for Relocated Water Ave and "Old" Water Ave
PBOT intends that, once the project is fully funded and at the conclusion of a public process, to recommend to City Council that the Transportation System Plan (TSP) be amended to relocate the policy classifications for "Old" SE Water Ave to "New" SE Water Avenue alignment.

PDOT further intends to evaluate, through station area planning and updates to the City's comprehensive plan; the circulation and connectivity needs for the OMSI district including the desired character, width and extent of "Old" Water Ave, and at City Council's directive, adjust additional policy and streetplan designations as appropriate.

9. Exchange of property/Transportation SDC credits

OMSI and Opera intend to accept the exchange of the value of land needed for the roadway for property, Right Of Way, or other considerations as agreed to by the parties. Any net value resulting after property exchanges will be compensated through credit for Transportation System Development Charges (SDC).

The dimensions of the subject Right of Way will be finally determined by registered survey prepared by TriMet. The per square foot value of the properties to be exchanged will be established by appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction. OMSI and Opera may obtain an appraisal and any disparity between appraisals will be negotiated.

Any TSDC credits resulting from this exchange would be applied for, calculated, and transferred in accordance with section 17.15.060 (SDC Credits, SDC Credit Transfers and SDC Reimbursements) of the City of Portland Code and Charter. TSDC Credits will be issued upon final acceptance of New Water Avenue by the City Engineer and the completion of restoration of staging facilities on OMSI and Opera property as defined in lease and sublease agreements with TriMet and/or the City of Portland.

Authorization

Each Party represents that it has the authority to enter into this MOU which is non legally binding and is a statement only of good faith and intentions of the

2/22/2011

Parties. Each signatory represents that it has been authorized by that Party to execute and deliver this MOU.

Portland Bureau of Transportation (PBOT)

By: _____
Title: _____
Date: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet)

By: _____
Title: _____
Date: _____

Oregon Museum of Science and Industry (OMSI)

By: _____
Title: _____
Date: _____

City of Portland Bureau of Environmental Services (BES)

By: *Dean Mann*
Title: *BES Director*
Date: *2/28/11*

Portland Opera

By: _____
Title: _____
Date: _____

Portland Development Commission (PDC)

By: _____
Title: _____
Date: _____

3/18/2011

Parties. Each signatory represents that it has been authorized by that Party to execute and deliver this MOU.

Portland Bureau of Transportation (PBOT)

By: Susan J. Kell
Title: Transportation Director
Date: 3-28-11

Tri-County Metropolitan Transportation District of Oregon (TriMet)

By: [Signature]
Title: Exec. Director C.P.
Date: 3.18.11

Oregon Museum of Science and Industry (OMSI)

By: _____
Title: _____
Date: _____

City of Portland Bureau of Environmental Services (BES)

By: _____
Title: _____
Date: _____

Portland Opera

By: _____
Title: _____
Date: _____

Portland Development Commission (PDC)

By: _____
Title: _____
Date: _____

2/22/2011

Parties. Each signatory represents that it has been authorized by that Party to execute and deliver this MOU.

Portland Bureau of Transportation (PBOT)

By: _____
Title: _____
Date: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet)

By: _____
Title: _____
Date: _____

Oregon Museum of Science and Industry (OMSI)

By: _____
Title: _____
Date: _____

City of Portland Bureau of Environmental Services (BES)

By: _____
Title: _____
Date: _____

Portland Opera

By: _____
Title: _____
Date: _____

Portland Development Commission (PDC)

By: EST
Title: Acting Executive Director
Date: 2-22-11

2/18/2011

Parties. Each signatory represents that it has been authorized by that Party to execute and deliver this MOU.

Portland Bureau of Transportation (PBOT)

By: _____
Title: _____
Date: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet)

By: _____
Title: _____
Date: _____

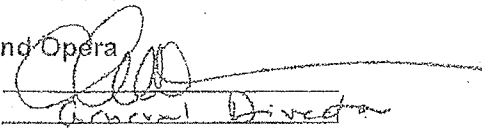
Oregon Museum of Science and Industry (OMSI)

By: _____
Title: _____
Date: _____

City of Portland Bureau of Environmental Services (BES)

By: _____
Title: _____
Date: _____

Portland Opera

By: 
Title: General Director
Date: 2.18.11

Portland Development Commission (PDC)

By: _____
Title: _____
Date: _____

2/18/2011

Parties. Each signatory represents that it has been authorized by that Party to execute and deliver this MOU.

Portland Bureau of Transportation (PBOT)

By: _____
Title: _____
Date: _____

Tri-County Metropolitan Transportation District of Oregon (TriMet)

By: _____
Title: _____
Date: _____

Oregon Museum of Science and Industry (OMSI)

By: *Nancy Wheeler*
Title: *President*
Date: *2/18/11*

City of Portland Bureau of Environmental Services (BES)

By: _____
Title: _____
Date: _____

Portland Opera

By: _____
Title: _____
Date: _____

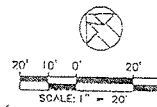
Portland Development Commission (PDC)

By: _____
Title: _____
Date: _____

New Water Avenue Cost and Conceptual Funding Plan

1/18/2011

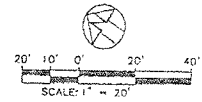
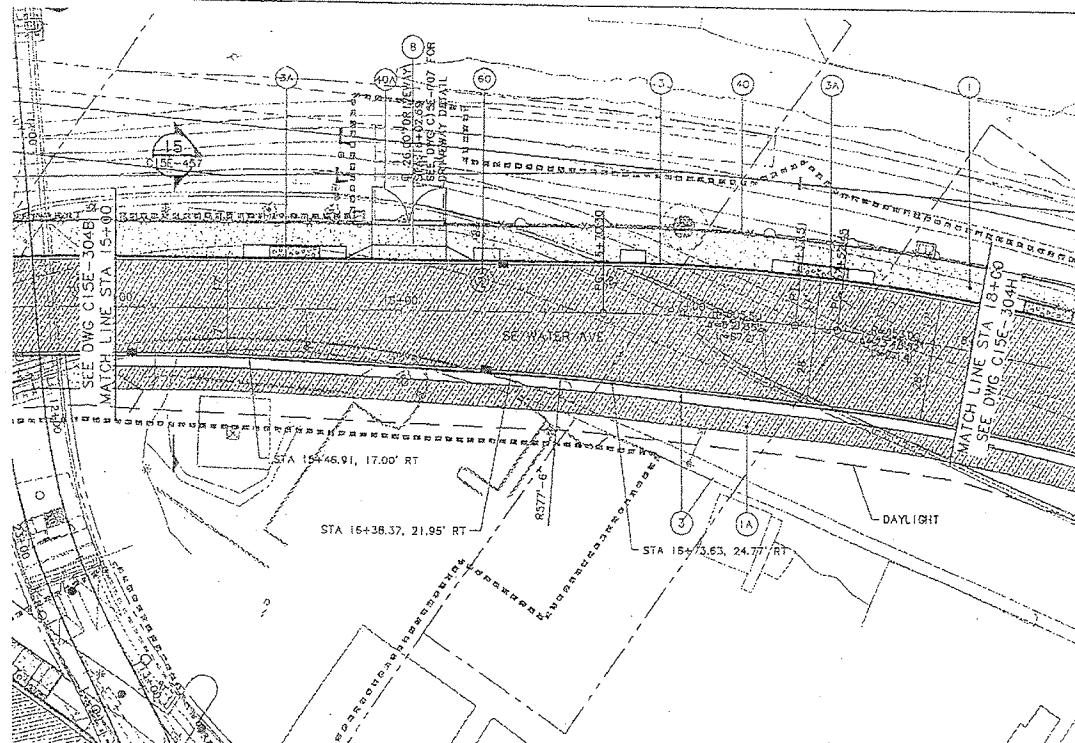
Project Cost	Amount
Demolition	\$173,132
Sidewalk	\$121,302
Roadway	\$776,345
Utilities	
Water	\$731,608
Storm sewer	\$378,197
Power	\$253,500
Lighting	\$267,020
Landscaping	\$428,227
Traffic Control	Not needed if Const with PMLRT
Mobilization Allowance (5% of directs)	Not needed if Const with PMLRT
Allowance for Art (1.5% of Direct cost)	Not needed if Const with PMLRT
Potential Insurance Costs for the work	\$116,120
Escalation to YOE (12%)	\$412,061
Added Sidewalks- Eastside of Street	\$150,000
Total Construction Cost in YOE	\$3,807,512
Right of Way Estimated Cost	\$1,200,000
Total Cost including Right of Way	\$5,007,512
Funding	Amount
PDC Central Eastside URA	\$250,000
BES CSO (Temp Water Restoration \$)	\$250,000
TSDC Overlay (Proposed New TSDC District)	\$250,000
OMSI (Eastside Streetcar Settlement)	\$325,000
PMLRT Project Construction Cost Share	\$1,200,000
PMLRT E/A Contribution	\$570,503
Land from OMSI (for TSDC Credits)	\$1,044,550
Land from Portland Opera (for TSDC Credits)	\$167,450
Water Bureau (YOE + Allowances- Less cost to case line in old water)	\$817,561
Total Funding	\$4,875,064



1. BASE MAPPING USED AS A BASIS FOR THE DESIGN WAS PROVIDED BY TRIMET. EXISTING TOPOGRAPHIC FEATURES WERE DEVELOPED BY TRIMET AND CH2M HILL FROM GIS DATA, AS-BUILT DRAWINGS, FIELD VISITS, AND AERIAL PHOTOGRAMMETRY. FEW COMPONENTS OF THE INFORMATION FROM CH2M HILL SURVEY FIELD SURVEY. CONTRACTOR SHALL VERIFY TOPOGRAPHY PRIOR TO CONSTRUCTION. HORIZONTAL AND VERTICAL CONTROL FOR THIS PROJECT SHALL BE OBTAINED FROM TRIMET PRIOR TO STARTING CONSTRUCTION.
2. FOR PROPOSED RIGHT OF WAY SEE RIGHT OF WAY PLANS, VOLUME 5.
3. ALL CONSTRUCTION TO BE PER CITY OF PORTLAND STANDARDS UNLESS NOTED OTHERWISE ON PLANS.
4. FOR STORM WATER QUALITY FACILITIES AND DRAINAGE CONVEYANCE SYSTEMS SEE DRAWINGS CISE-500 TO CISE-699.
5. TREE WELLS ARE 4'W X 9'L UNLESS NOTED OTHERWISE ON PLANS.

<div>90% FINAL DESIGN 11-28-11</div>					<div>LPY 05-03-11 DATE 05-03-11 DATE 08-08-11 DATE 08-08-11 DATE</div>	<div>TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON</div> <div>URS DAVID EVANS AND ASSOCIATES INC.</div>				<div>DE 101 TRIMET</div> <div>CAPITAL PROJECTS DIVISION 710 NE HOLADAY STREET PORTLAND, OREGON 97232</div>				<div>PORTLAND TO MILWAUKIE LRT EAST SEGMENT CIVIL ROADWAY PLAN (NEW WATER AVE) STA 10+00 TO STA 15+00</div>			
NO.	DATE	BY	APP'D	REVISIONS	DATE	SUBMITTAL	DATE	APPROVED	DATE	SCALE	1"=20'	DESIGNED BY GJSE-3048	CHECKED BY 201100544JB	SHEET NO.			

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CONSTRUCTION NOTES:

- 1. CONSTRUCT PCC STANDARD SIDEWALK (SEE 0001 STD DWG R0720)
- 1A. CONSTRUCT TEMPORARY AC SIDEWALK (SEE TYPICAL SECTION FOR DETAILS)
- 3. CONSTRUCT CURB AND GUTTER WITH 18" GUTTER PAN (12" GUTTER PAN ADJACENT TO BIKE LANE) (SEE 0001 STD DWG R0700)
- 3A. CONSTRUCT THICKENED CURB AND GUTTER WITH 18" GUTTER PAN (12" GUTTER PAN ADJACENT TO BIKE LANE) (SEE COP STD DWG P-540)
- 5. CONSTRUCT PCC DRIVEWAY (SEE COP STD DWG P-528)
- 40. INSTALL FENCE/RAILING (SEE ARCHITECTURAL DWGS FOR DETAILS - VOLUME 4)
- ADA. INSTALL GATE (SEE ARCHITECTURAL DWGS FOR DETAILS - VOLUME 4)
- 80. ADJUST MANHOLE TO FINISHED GRADE

LEGEND

- FULL AC ROADWAY OR TEMP AC SIDEWALK
- PCC ROADWAY/SIDEWALK/DRIVEWAY
- WATER QUALITY FACILITY (SEE STORM PLANS)
- CONSTRUCTION LIMITS

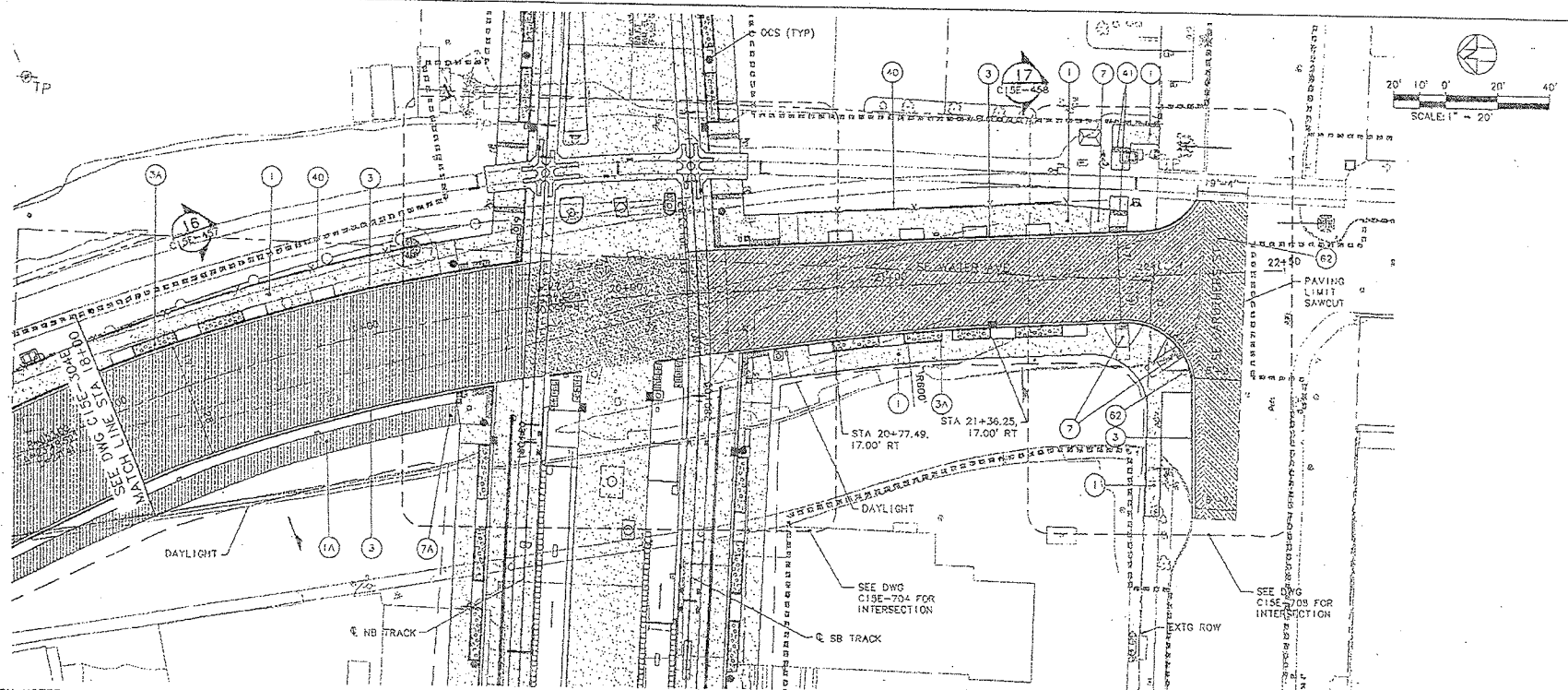
GENERAL NOTES

- 1. BASE MAPPING USED AS A BASIS FOR THE DESIGN WAS PROVIDED BY TRIMET. EXISTING TOPOGRAPHIC FEATURES WERE DEVELOPED BY TRIMET AND CH2M HILL FROM GIS DATA, AS-BUILT DRAWINGS, FIELD VISITS, AND AERIAL PHOTOGRAMMETRY. FEW COMPONENTS INCLUDE INFORMATION FROM ON THE GROUND FIELD SURVEY. CONTRACTOR SHALL VERIFY TOPOGRAPHY PRIOR TO CONSTRUCTION. HORIZONTAL AND VERTICAL CONTROL FOR THIS PROJECT SHALL BE OBTAINED FROM TRIMET PRIOR TO STARTING CONSTRUCTION.
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- 3. ALL CONSTRUCTION TO BE PER CITY OF PORTLAND STANDARDS UNLESS NOTED OTHERWISE ON PLANS.
- 4. FOR STORM WATER QUALITY FACILITIES AND DRAINAGE CONVEYANCE SYSTEMS SEE DRAWINGS C15E-500 TO C15E-599.
- 5. TREE WELLS ARE 4'W X 9'L UNLESS NOTED OTHERWISE ON PLANS.

90% FINAL DESIGN 11-28-11				LDY DESIGNED 06-03-11 DATE		JH DESIGN 05-03-11 DATE		SLH CHECKED 08-08-11 DATE		APPROVED DATE		 TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON		PORTLAND TO MILWAUKIE LRT EAST SEGMENT CIVIL ROADWAY PLAN (NEW WATER AVE) STA 15+00 TO STA 18+00			
 URS				 DAVID EVANS AND ASSOCIATES INC.				 TRIMET				CAPITAL PROJECTS DIVISION 710 NE HOLLADAY STREET PORTLAND, OREGON 97232					
SUBMITTED		DATE		APPROVED		DATE		SCALE 1"=20'		DRAWING NO. C15E-304E		CONTRACT NO. RH100544-B		SHEET NO.			

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CONSTRUCTION NOTES:

- | | |
|---|---|
| <p>1. CONSTRUCT PCC STANDARD SIDEWALK (SEE CDDT STD DWG RD720)</p> <p>1A. CONSTRUCT TEMPORARY AC SIDEWALK (SEE TYPICAL SECTION FOR DETAILS)</p> <p>3. CONSTRUCT CURB AND GUTTER WITH 18" GUTTER PAN (12" GUTTER PAN ADJACENT TO BIKE LANE) (SEE CDDT STD DWG RD700)</p> <p>3A. CONSTRUCT THICKENED CURB AND GUTTER WITH 18" GUTTER PAN (12" GUTTER PAN ADJACENT TO BIKE LANE) (SEE CDDT STD DWG P-540)</p> <p>7. CONSTRUCT PCC RAMP (SEE CDDT STD DWG RD755)</p> <p>7A. CONSTRUCT TEMPORARY AC RAMP (SEE DWG C15E-705 FOR DETAILS)</p> <p>40. INSTALL FENCE/RAILING (SEE ARCHITECTURAL DWGS FOR DETAILS - VOLUME 4)</p> | <p>41. INSTALL TACTILE PAVERS (TRUNCATED DUMES) (SEE TRIMET DIRECTIVE DWG BTM012)</p> <p>62. ADJUST VALVE BOX TO FINISHED GRADE</p> |
|---|---|

LEGEND

- | | |
|--|--|
| | FULL AC ROADWAY OR TEMP AC SIDEWALK |
| | PCC ROADWAY/SIDEWALK/DRIVEWAY |
| | BLACK PCC ROADWAY, SEE ARCHITECTURAL PLANS |
| | WATER QUALITY FACILITY (SEE STORM PLANS) |
| | CONSTRUCTION LIMITS |

GENERAL NOTES

1. BASE MAPPING USED AS A BASIS FOR THE DESIGN WAS PROVIDED BY TRIMET. EXISTING TOPOGRAPHIC FEATURES WERE DEVELOPED BY TRIMET AND CH2M HILL FROM GIS DATA, AS-BUILT DRAWINGS, FIELD VISITS, AND AERIAL PHOTOGRAMMETRY. FEW COMPONENTS INCLUDE INFORMATION FROM THE GROUND FIELD SURVEY. CONTRACTOR SHALL VERIFY TOPOGRAPHY PRIOR TO CONSTRUCTION. HORIZONTAL AND VERTICAL CONTROL FOR THIS PROJECT SHALL BE OBTAINED FROM TRIMET PRIOR TO STARTING CONSTRUCTION.
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90% FINAL DESIGN 11-28-11		IPY 05-03-11 DATE	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON		PORTLAND TO MILWAUKIE LRT EAST SEGMENT	
		JH 05-03-11 DATE	URS		DAVID EVANS AND ASSOCIATES, INC.	
		SLH 08-08-11 DATE	TRI-MET		CAPITAL PROJECTS DIVISION 710 NE HOLLADAY STREET PORTLAND, OREGON 97232	
NO.	DATE	BY	APPROV.	DATE	APPROV.	DATE
			SCALE: 1" = 20'		PROJECT NO: C15E-304H DRAWING NO: R100544J	

185578

Exhibit D: New Water Avenue Cost and Funding Summary**Costs**

General Conditions	\$273,320.31
Site Maintenance	\$22,234.45
Storm Drainage	\$121,140.00
Sewer	\$91,466.71
Water Line Betterment	\$101,395.86
Street and Civil	\$863,409.25
Lighting and Traffic Signal	\$428,200.00
Landscaping	\$24,859.48
Civil Construction CM/GC Fee (3.25%)	\$55,773.45
Power	\$379,618.00
<hr/>	
Total Construction	\$2,361,417.51

TriMet Design	\$225,000.00
TriMet Project Management	\$204,020.31
<hr/>	
Total Soft Costs	\$429,020.31

Total Cost	\$2,790,437.82
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Revenue

PDC	\$250,000.00
BES	\$250,000.00
TSDC	\$250,000.00
OMSI	\$325,000.00
PMLR Construction	\$1,185,021.65
PMLR E/A	\$429,020.31
BWW Betterment	\$101,395.86
<hr/>	
Total Revenue (without ROW)	\$2,790,437.82

CITY OF PORTLAND
ENVIRONMENTAL SERVICES

Willamette River CSO Tunnel Program

211 SE Caruthers Street, Suite 200, Portland, Oregon 97214 • Dan Saltzman, Commissioner • Dean Marriott, Director

August 20, 2010

Dave Unsworth
Senior Manager Project Development
TriMet
710 NE Holladay Street
Portland, OR 97232

Subject: Southeast Corridor: Connecting Communities

Dear Mr. Unsworth:

The purpose of this letter is to confirm the commitment of the City of Portland Bureau of Environmental Services (BES) to provide funding for certain project elements proposed in the Southeast Communities: Connecting Communities TIGER II grant application.

BES approved a \$369,400 grant for the S.E. Clinton Crossing multi-use path through the East Side Combined Sewer Overflow Tunnel Project Community Benefit Opportunity Program.

BES additionally agrees to provide \$250,000 for the SE Water Avenue relocation resulting from cost savings to the East Side CSO Tunnel Project due to streetcar-related work. BES is prepared to enter into an MOU regarding this funding.

Sincerely,

Paul Gribbon
Chief Engineer
Willamette River CSO Tunnel Program

Exhibit F:



BOARD RESOLUTION

Proceeds from Settlement Payment to OMSI from City of Portland:

Whereas, in a separate resolution dated May 26, 2010, the Oregon Museum of Science and Industry (OMSI) Board of Trustees agreed to the transfer of certain property, along with permanent and temporary rights of way and easements, for the purpose of extending the streetcar route to OMSI. And,

Whereas, OMSI and the Portland Bureau of Transportation have been in discussions regarding the need for a new alignment of Water Avenue to improve transit into and through the area surrounding OMSI for the benefit of the museum and its visitors. Now,

Therefore, in order to assist in making the realignment of Water Avenue a reality, resolved that the \$325,000 payment of the settlement amount received for the negative impact of streetcar construction on remaining OMSI property be directed toward the cost of the New Water Avenue realignment and related priorities subject to OMSI agreement as to timing of construction and design parameters.

Dated: May 26, 2010