

**GROUND LEASE AGREEMENT**

DATE: November \_\_\_\_, 2010

LESSOR: City of Portland, acting by and through the Portland Development Commission  
Attn: John Matschiner  
Real Estate Manager  
222 NW Fifth Avenue  
Portland, OR 97209  
Phone: 503.823.3200  
Fax: 503.865.3726  
Email: [matschinerj@pdc.us](mailto:matschinerj@pdc.us)

LESSEE: City of Portland, acting by and through the Bureau of Transportation  
Attn: Chris Armes  
SW Moody Road Project  
1120 SW 5<sup>th</sup> Avenue, Room 800  
Portland, OR 97204  
Phone: 503.823.7051 Fax: 503 823-7371  
Email: [Chris.Armes@portlandoregon.gov](mailto:Chris.Armes@portlandoregon.gov)

This Ground Lease Agreement (the "Lease") is made and entered into as of this 15 day of November, 2010 between the Portland Development Commission ("Lessor") and Portland Bureau of Transportation ("Lessee").

**RECITALS**

A. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the unimproved real property (the "Premises"), Portland, Oregon and more particularly described as: South Waterfront EXTN, Lot 3, State ID 1S1EO3CD 800 (R779900300) with Tax ID Number R273073, in the City of Portland, County of Multnomah, State of Oregon ("Property").

The Premises and area of use is depicted on Exhibit "A", which is attached hereto and incorporated herein by this reference.

B. WHEREAS, Lessee desires to use the Premises for the purpose of construction staging related to the Southwest Moody Road Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, Lessor and Lessee hereby agree as follows:

### Section 1. Occupancy.

1.1 **Term.** This Lease will commence on November 15<sup>th</sup>, 2010 and will terminate on November 14, 2011 (the "Term"). Upon the mutual agreement of the parties, this Lease may convert to a month to month rental agreement commencing November 15, 2011. If one party does not agree to extend the Lease past November 15, 2011, then Lessee's right of possession shall terminate on November 14, 2011, provided, however, the parties will remain responsible for payment of Rent, Taxes or Other Charges pursuant to Sections 2 and 6 of this Lease.

1.2 **Possession.** Lessee's right to possession and Lessee's obligations under the Lease shall commence on the first day of the Term as set forth at Section 1.1 of this Lease.

1.3 The parties acknowledge and agree that during the Term, a portion of the Premises may be conveyed to TriMet in connection with the construction of the Portland Milwaukie LRT, in which case the Premises and base rent shall be adjusted accordingly.

### Section 2. Rent.

2.1 **Base Rent.** During the Term, Lessee shall pay to Lessor as base monthly rent the following sums:

<u>Period</u>	<u>Base Rent</u>
November 15, 2010 through November 14, 2011	\$6,861.00

Rent shall be payable on the first day of each month in advance at the address of Lessor. In the event of commencement or termination of this lease at a time other than the beginning or end of a month, the base rental amount shall be prorated on a daily basis.

2.2 **Security Deposit** No Security deposit is required pursuant to this Lease.

### **Section 3 Permitted Use.**

3.1 Use. Lessee shall use the Premises for the purpose of construction staging for the SW Moody Road Project Project, including use by Lessee's construction contractor, and their subcontractors, for that purpose. Construction staging is defined as the construction of temporary perimeter fencing, aggregate base placement, temporary unloading and loading of permanent materials, excavated materials, concrete and asphalt, construction materials, operation of construction equipment and the operation of a mobile dry batch facility for the production of low Density Cellular Concrete. Construction equipment that will access and egress the site on a daily basis includes crawler excavators, rubber tired backhoe-loaders, rubber tired loaders, boom trucks and pickup trucks. Construction materials include tracks, Overhead Catenary/Contact System components, portable equipment (generators, mobile welders and compressors), traffic control devices, tool trailers and containers, two construction trailers for staff, and portable restrooms. A sketch showing the approximate placement of this property is further described in Exhibit "B" attached hereto and incorporated herein by the reference. Lessee shall have exclusive use of the Premises for the foregoing purpose, subject to Lessor's right upon 24 hours notice to Lessee to enter into or upon the Premises for the purposes of examining the condition thereof, or for any other lawful purpose. Lessor's right of inspection shall not unreasonably interfere with Lessee's use of the Premises.

3.2 Condition. Lessee shall maintain and keep the Premises in a clean and orderly condition at all times according to the standards set forth in Exhibit "C" attached hereto.

3.3 Winter Conditions. If the Premises herein leased are located at street level, then Lessee shall at all times keep the sidewalks free and clear of ice and snow.

3.4 Lessor Reimbursement. Any activities performed by Lessee upon the Premises shall be without expense of any kind (direct or indirect) whatsoever to Lessor. Lessee shall be solely responsible for all maintenance and operating costs that may result from use of the Premises. Should the Lessor incur costs or real property taxes as a result of Lessee's use of the Premises, Lessee agrees to reimburse Lessor promptly upon the presentation of an invoice and documentation of such expense.

### **Section 4. Insurance and Indemnification.**

4.1 Indemnification. Subject to to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, Lessee shall indemnify, hold harmless and at the Lessor's request, defend Lessor and its commissioners, officers, agents and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of Lessee's use of the Premises provided however, that nothing herein shall be construed to require indemnification of Lessor for liability attributable to Lessor's sole negligence.

4.2 Waiver of Subrogation. The Lessor and Lessee, as further consideration for the execution of this Lease, do each hereby agree and covenant to the other that they shall waive their respective rights to subrogate to their respective insurance carrier all claims of recovery for loss, damage, or any injury sustained by Lessor and Lessee, and arising out of or incident to fire, explosion in, on or about said Premises, including other perils included in the standard property insurance policies with extended coverage endorsement attached as used in the state of Oregon, whether such loss, damage, or injury is due to the negligence of Lessor or Lessee, their agents or employees or otherwise. Provided, however, this covenant shall be dependent upon both Lessor and Lessee having the contractual right with their respective insurance carrier to waive subrogation.

4.3 Negligence. If the loss or claim is caused by the joint or concurrent negligence or fault of Lessee and the Lessor, the resulting damages shall be borne by that applicable party in proportion to the degree of negligence or other fault attributable to that party.

4.4 Unauthorized Entry. Lessee shall agree to keep the Premises secure from the entry of unauthorized persons during the Term. Furthermore, the Lessee shall assume all liability related to injury, death or disease to invitees, licensees, or trespassers, whether resulting from latent or patent property defects. Lessee shall be deemed solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Lessee, or anyone acting on behalf of Lessee in connection with or incidental to this Lease.

## **Section 5. Restrictions on Use; Hazardous Substances**

5.1 Compliance with Laws. Lessee shall in the use of the Premises, observe all rules, regulations, and laws in effect by any local, state or federal authority having jurisdiction over the Premises, as they relate to the use of the Premises. Lessee is solely responsible for obtaining any other permits or approvals as may be necessary for the use of the Premises.

5.2 Liens. Lessee shall not allow any lien of any kind, type or description to be placed or imposed upon the Premises or upon any improvements on the Premises (if any) by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or anyone occupying or holding an interest in all or any part of the Premises through or under Lessee. If any such lien shall at any time be filed against the Premises, Lessee shall cause the same to be discharged of record within 60 days after the date of filing the same, by either payment, deposit, or bond, or Lessee shall provide Lessor with other security reasonably satisfactory to Lessor in an amount that will ensure the discharge of the lien plus costs and interest.

5.3 Hazardous Substances. Neither Lessee nor Lessee's licensees, agents or employees shall cause or permit any Hazardous Material, as hereinafter defined, to be brought upon, stored, used, generated, released into the environment or disposed of on, in, or about the Premises, except in a manner that complies with the restrictions set forth in Section 12.16, with all laws regulating any such Hazardous Materials and with good business practices. Lessee covenants to remove from the Premises no later than the end of the Term and at Lessee's sole cost and expense, any and all Hazardous Materials brought upon, stored, used, generated, or released on the Premises by

Lessee, its licensees, agents, or employees during the Term Subject to the limitations of the Oregon Tort Claims Act and Oregon Constitution, , Lessee hereby agrees to indemnify, defend, protect, and hold harmless Lessor and its commissioners, officers, agents and employees, and its successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the Term directly or indirectly from the Lessee's use, storage, disposal, release or presence of Hazardous Materials on, in, or about the Premises which occurs during the Term. Lessee will not be responsible for any claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during or after the Term which are not caused by the Lessee or its licensees, agents or employees. Lessee shall promptly notify Lessor of any release of Hazardous Materials on, in, or about the Premises that Lessee, Lessee's licensees agents or employees becomes aware of during the Term, whether caused by Lessee, Lessee's licensees agents or employees, or any other persons or entities. As used herein the term "**Hazardous Materials**" includes without limitation, any material or substance that is 1) defined as a hazardous waste, hazardous substance or hazardous material under any federal, state or local law, 2) petroleum, and 3) asbestos. The provisions of this Section 5.3, including the indemnification provision herein, shall survive any termination of this Lease.

## **Section 6. Taxes and Other Charges**

6.1 Real Property Taxes. Lessee shall pay all real estate taxes and assessments on the Premises and shall discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all business and occupation taxes, assessments and all other governmental impositions and charges of every kind and nature whatsoever ("Tax"). Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is before or after the Term, assessed, on the Premises or shall become payable, during the Term, shall be paid by Lessee. If the Premises are part of a larger tax lot, then the Tax liability for the Premises shall be apportioned based upon the square footage of the Premises in relation to the square footage of all of the real property within the tax lot. If Lessee improperly issues a Temporary Use Permit to a Permittee or if any Permittee's use of the Premises results in the assessment of real property taxes on the Premises, Lessor will hold Permittee fully responsible for reimbursement of all real property tax assessments against the Premises.

6.2 Limitation. Nothing contained in this Lease requires Lessee to pay any Tax or Taxes levied, assessed, or imposed against any property other than the Premises or based on any operations other than Lessee's operations on the Premises.

6.3 Right of Contest. Lessee shall have the right at Lessee's expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Any contest as to the validity or amount of any Tax, or assessed valuation on which such Tax was computed or based, whether before or after payment, may be made by Lessee and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, it being

understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee covenants to indemnify and save Lessor harmless from any such costs or expenses. Lessee shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Lessee or by Lessor and reimbursed to Lessor by Lessee.

#### **Section 7. Initial Improvement; Maintenance**

7.1 Lessee Obligations. The parties understand and agree that Premises is unimproved property. Lessee shall have the right to perform non-structural improvements to the Premises to facilitate its use as further defined in Section 3.1 of this Lease, or otherwise by prior written consent obtained from the Lessor. No later than the end of the Term, Lessee shall restore the Premises to its original or better condition.

7.2 Lessor Obligations. Throughout the Term, Lessor shall have no obligation to repair or maintain the Premises and shall not be required to furnish to Lessee any facilities, services or utilities of any kind whatsoever. Lessor shall in no event be required to make any alternations, rebuildings, replacements, changes, additions, improvements, or repairs during the Term.

#### **Section 8. Default; Remedies**

8.1 Default. The occurrence of any one or more of the following events constitutes a default and a breach of this Lease by Lessee:

- 8.1.1 Lessee fails to timely pay any sum owed to Lessor, and such default continues for thirty (30) days after Lessor has given Lessee a notice specifying the same.
- 8.1.2 If Lessee, whether by action or inaction, fails to perform or discharge any of its obligations under this Lease (other than a default in the payment of Base Rent or real property taxes or Lessee's failure to make prompt and immediate vacation of the Premises upon termination of this Lease, which are addressed by other provisions of this Section 8.1) and such failure continues and is not remedied within sixty (60) days after Lessor has given Lessee a notice specifying the same, or, in the case of a default that can be cured but not within a period of sixty (60) days, if Lessee has not (1) commenced curing such default within such sixty (60) day period; (2) notified Lessor of Lessee's intention to cure the default; and (3) continuously and diligently pursued the cure of the default.
- 8.1.3 If Lessee fails to make prompt and immediate vacation of the Premises upon termination of this Lease.

**Section 9. Remedies on Default.**

9.1 Termination. In the event of a default as set forth at Section 8 above, Lessor may elect to by ten (10) day written notice to Lessee terminate the Lease, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

9.2 Damages. In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately from Lessee, any real property taxes assessed upon the Premises as the result of Lessee's, its permittee's, or licensee's impermissible use of the Premises, the reasonable costs of any cleanup, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's default including but not limited to, any remodeling or repair costs, all attorney fees and court costs.

9.3 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

**Section 10. Termination; Surrender**

10.1 Early Termination. Lessor and Lessee may mutually agree in writing to terminate this Lease. Termination pursuant to this Section 10.1 will relieve both Lessor and Lessee of all further obligations under this Lease. However, any liability or obligation resulting from any act or omission which shall have occurred during the Term shall survive termination of this Lease, whether under this Section 10.1 or otherwise, as well as any provisions of this Lease that, by their terms, survive termination.

10.2 Surrender. No later than the end of the Term, Lessee shall repair any damage to the Premises that is caused or may result from Lessee's use of the Premises and shall restore the Premises to the same or better condition as existing immediately prior to utilizing the Premises, or to such other condition as the Lessor may reasonably approve. If restoration is impossible, Lessee shall compensate Lessor for any physical damage to the Premises.

**Section 11. 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 Legal Requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, 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 without liability of any kind.

## Section 12. General and Miscellaneous Provisions

12.1 Prior Agreements. This instrument is the entire, final and complete agreement of the parties pertaining to the Lease of the Premises and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Lease of the Premises is concerned. Neither party shall be bound by any other promises, representations or agreements, except as are expressly set forth herein.

12.2 Time of the Essence. Time is expressly made of the essence of each provision of this Lease.

12.3 Notices. Any notice required or permitted under this Lease shall be in writing and shall be given when actually delivered or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, or when sent by facsimile transmission with receipt confirmed, addressed as below set forth in the preamble to this Lease, or to such other address or facsimile transmission number as one party may designate by written notice to the other party.

12.5 Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

12.6 No Merger. The obligations set forth in this Lease shall not merge with the transfer or conveyance of title to any part of the Premises, but shall remain in effect until fulfilled.

12.7 Amendments. This Lease may be amended, modified or extended without new consideration, but only by written instrument executed by both parties.

12.8 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Oregon.

12.9 Severability. If any portion of this Lease shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

12.10 Counting of Days. Whenever a time period is set forth in days in this Lease, the first day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day that is not a Saturday or legal holiday.

12.11 Binding Effect. The covenants, conditions and terms of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the parties hereto. Provided, however, no assignment by Lessee shall relieve Lessee of any of its obligations and liabilities under this Lease.



12.12 Assignment / Subleasing. This Agreement may not be assigned nor the Premises subleased by Lessee during the Term of this Lease without the advanced written approval of Lessor, which approval shall be granted or withheld in Lessor's sole discretion. Lessor may assign this Lease and its rights hereunder in connection with a conveyance of the Premises.

12.13 Commissions. Each party represents that it has not had dealings with any real estate broker, finder, or other person with respect to this Lease in any manner.

12.14 Relocation Benefits. Lessee acknowledges that Lessor acquired the property on which the Premises are located for the purposes of redevelopment pursuant to an urban renewal plan and that, at the time of such acquisition, Lessee had no interest whatsoever in the Premises. Lessee acknowledges that it is not entitled to any relocation benefits as defined under ORS 35.500 et seq. and by Lessor relocation policies, and will assert no claim for such statutory relocation benefits from Lessor. Lessee agrees that upon termination of this Lease that Lessee will remove all of its personal property from the Premises at its sole expense.

12.15 Exhibits. The Exhibits attached hereto are hereby incorporated by this reference.

12.16 Additional Use Requirements. The following are additional requirements as a result of Lessee's use of the Premises:

12.16.1 Lessee shall not engage in any act that results in soil excavation or disturbance of any type whatsoever, other than the driving and removing of temporary fence and gate posts, without Lessor's prior written approval.

12.16.2 Lessee, at Lessee's sole expense, shall place a minimum of four-inches (4") of clean fill crushed rock to augment temporary base cap PRIOR to any beneficial use. Lessee shall be allowed to place geotextile fabric underneath the crushed rock. Upon the end of Lessee's occupancy and in any event no later than the end of the Term, all placed crushed rock shall be removed by the Lessee or, by written consent of Lessor, shall remain on the Premises and become the property of Lessor.

12.16.3 Lessee shall install temporary security fence. Lessee shall secure all gates during non-working hours. Prior to vacating Premises, and in any event no later than the end of the Term, Lessee shall cause to have all temporary security fence and gates removed. A double lock will be provided by Lessor to enable Lessor access and entry at the gate onto the Premises at any reasonable time with or without prior notice to Lessee.

12.16.4 Lessee shall secure all office trailers and other storage units, if any, during non-working hours. Lessee shall have the right to operate a mobile dry batch concrete equipment on the site.

12.16.5 Lessee shall have the right to install and maintain temporary electrical service to the Premises. Prior to vacating the Premises, and in any event no later than the end of the Term, Lessee shall remove the temporary electrical service to the Premises.

12.16.6 Lessee shall have the right to install temporary water service to the construction trailers. Lessee shall use an above ground water supply and return service and shall not disturb or penetrate the current Premises soil and/or surface. The cost of the permitting, installation, removal and payment for consumption and disposal shall be at the sole expense of the Lessee.

12.16.7 Lessee is solely responsible for the cost and placement of any erosion control requirements. All material stockpiles will conform to the City of Portland erosion control (EC) requirements. Any suspect material stockpile (e.g.-a/c grinding) must have special EC conditions in place to reduce soil contamination and runoff. In any event, the stockpiling of hazardous or regulated materials shall not be allowed.

12.16.8 Lessee shall promptly clean up any vehicle track-out on to adjacent City streets.

12.16.9 Lessee shall receive Lessor's advance written approval for any contemplated material assembly, welding or other potential fabrication and/or storage of hazardous materials, trailer storage, fueling, vehicle maintenance, storage of any asphaltic pavement grindings or pavement etc.

12.16.10 Lessee shall promptly report to Lessor and all other applicable regulatory officials any and all spills, actions or activities that may cause any form of contamination.

12.16.11 Lessee upon termination of use shall promptly remove any suspect environmental contamination to include but not limited to a/c grindings, diesel or oil drips/spills, storage materials etc caused by their use. Lessee acknowledges that the start of work conditions the crushed rock temporary base is clean, no environmental surface contamination. Lessee, contractor nor any other party shall not perform any environmental soil sampling of the Property without the specific written approval by Lessor.,

12.16.12 Lessee shall remove all graffiti from personal property within 24 hours of discovery.

12.17 Exhibits. The following Exhibits are attached hereto and incorporated as a part of this Lease:

Exhibit "A" Premises Map

Exhibit "B" Personal Property Location Sketch

Exhibit "C" Property Maintenance Standards

IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized officers.

**LESSEE:  
Portland Bureau of Transportation**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM  
*Sandra Henry*  
CITY ATTORNEY  
MCA

**LESSOR:  
The City of Portland Acting by and through the  
Portland Development Commission**

By: \_\_\_\_\_  
Bruce A. Warner, Executive Director

Date: \_\_\_\_\_

Approved as to Legal Form

\_\_\_\_\_  
PDC Legal Counsel

**Exhibit "A" Premises Map and Approximate Area of Use**



Exhibit "B" Personal Property Location Sketch



## Exhibit "C" Property Maintenance Standards

### Portland Development Commission Property Maintenance Standards

Portland Development Commission (PDC) requires that all of its property, including fields, planting areas, unimproved lots, parking lots, construction and construction staging sites, which may also include sidewalks, alleys, and rights-of-way including curb strips (whether planted with vegetative matter or not) and street trees, with or without tree wells, be maintained to a high standard so as not to detract from the surrounding properties. PDC's goal is not only to be a good neighbor, but to present a positive image at all times.

PDC's minimum property maintenance standards will be consistent with those established by the City of Portland's Property Maintenance Code, Title 29. (Chapter 29.20.010, Outdoor Maintenance Requirements) PDC interprets Section F of this Code as establishing a prevailing grass and weed height of no more than 10 inches. Though PDC's typical lot is not a "lawn area" as described in the section, this establishes PDC's maximum height standard. Although 10 inches is the maximum height allowed, PDC expects that grass/weeds would rarely, if ever, reach 10 inches in height. The same standard applies to lots where permanent or temporary fencing is in place and includes grass and weeds in/around the fencing and includes vegetative matter planted in rights-of-way.

#### **Inspection Schedule**

Lessee is responsible for weekly inspection of the PDC-owned property. The weekly inspection will include a general assessment of property condition as well as litter and debris pickup and graffiti removal, if present.

#### **Mowing Schedule**

Lessee will mow and/or trimmed PDC-owned property as needed in accordance with the above referenced standard. Mowing and weed removal may occur more often (weekly) during the growing seasons (spring, early summer) and less often (once or twice a month or not at all) during non-growing times of the year.

*When PDC allows its property to be leased, the Lessee assumes responsibility for maintenance of the property according to the standards established herein. Lessee shall be solely responsible for all maintenance costs that may result from use of the property. Should PDC incur costs as a result of Lessee's temporary use of the Property, Lessee agrees to reimburse PDC promptly upon the presentation of billing and documentation of such expense.*