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AUG 20 2014



Steve
Novick
Commissioner

Leah Treat
Director

TRANSPORTATION
EXTRA WORK AUTHORIZATION AGREEMENT
FOR 3514 NORTH VANCOUVER AVENUE
MAST ARM TRAFFIC SIGNAL IMPROVEMENTS
AT NORTH VANCOUVER AVENUE AND FREMONT STREET

PARTIES: City of Portland
Local Improvement District Program
1120 SW Fifth Avenue, Suite 800
Portland, OR 97204

“CITY”

AND

Karuna Properties II, LLC
3013 NE 9th Avenue
Portland, OR 97212

“KARUNA”

DATED: 8/12, 2014

RECITALS

- A. The Portland City Council approved formation of a local improvement district on March 14, 2014 with the passage of Ordinance No. 186576 which includes design and construction of a mast arm traffic signal at the North Vancouver Avenue & Cook Street intersection, and realignment of the eastbound lanes of North Cook Street from Interstate 405 and North Vancouver Avenue. The LID is known as the North Vancouver Avenue & Cook Street Local Improvement District (“LID”). Properties benefitting from the traffic signal and traffic lane realignment improvements have estimated assessments ranging from \$5,000.00 to \$83,582.64 on an equal shares basis in two (2) assessment zones.
- B. The Karuna property (“Property”) is described on the attached Exhibit A, is within the LID boundary, receives special benefit from the LID and is subject to a future assessment for the LID. The estimated project assessment for the work identified in Exhibits A and G of Ordinance No. 186576 (“Project Work”) for this property is \$5,000.00 per pending lien number 154941 reflecting one (1) equal share in Assessment Zone A at \$5,000.00 per equal share. A previous Extra Work Agreement was executed for electrical undergrounding improvements in the amount of \$65,716 resulting in a current pending lien amount of \$70,716 prior to execution of this additional Extra Work Agreement (“Agreement”).

- C. The parties wish to implement and comply with any future conditions or requirements of development by allowing the Bureau of Transportation ("PBOT") at the direction of the Local Improvement District Administrator ("LID Administrator") to have the LID construct mast arm traffic signal improvements at N. Williams Avenue & N. Fremont Street (to replace the existing span wire signal) that may be required as a condition or requirement of development. This will be additional work added to the scope of the LID (hereafter "Extra Work"). Design of these improvements will be by the property owner unless the property owner fails to provide plans approved by the City Engineer by December 31, 2014.
- D. Karuna confirmed on May 21, 2014 that it would design and construct civil engineering work (hereafter "Civil Work") under a City permit and funded privately in lieu of a separate Extra Work Agreement funded through this LID. PBOT estimated the costs of Civil Work under an LID at \$159,642 for both properties at 1 North Fremont Street and at 3514 North Vancouver Avenue including but not limited to trenching for undergrounding utilities and construction of new sidewalks and street trees.
- E. Karuna through this Agreement, agrees to allow PBOT to perform or subcontract such Extra Work and agrees to an additional Extra Work assessment by the LID. The estimated amount is \$172,885 as of July 24, 2014 for a total estimated assessment for this property of \$243,601 not including additional Extra Work Agreement(s) which may be signed for this property in the future. The Extra Work consists of two (2) properties at 3514 North Vancouver Avenue and at 3514 North Vancouver Avenue, each agreeing to the following costs under separate Extra Work Agreements:
1. \$123,389 based on bid items for construction; and
 2. \$5,338 for flagging expense; and
 3. \$250 for the Bureau of Labor & Industries' (BOLI) fee; and
 4. \$12,873 for contract contingency; and
 5. \$12,873 for construction contingency; and
 6. \$2,500 for project management costs; and
 7. \$6,400 for construction engineering; and
 8. \$8,508 for scope change contingency; and
 9. \$754 in Auditor's costs; and
 10. Actual design costs associated with Recital "C" above if not completed by Karuna, which are not included in the Extra Work total of \$172,885; and
 11. Actual design and construction costs associated with Recital "D" above if not completed by Karuna, which are not included in the Extra Work total of \$172,885 as of the date of this Agreement. PBOT will notify Karuna in writing before beginning work associated with Recital "D" above if not completed by Karuna by December 31, 2014.
- F. None of the costs of this Extra Work will be borne by other property owners in the LID or by any City bureaus; however, the Extra Work costs will be eligible for 5, 10 and 20-year financing upon final assessment currently anticipated to occur in summer 2015.

AGREEMENT

THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

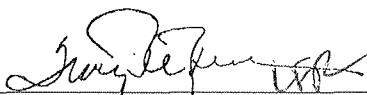
1. City and Karuna agree that this Extra Work fulfills a future obligation for frontage improvements for this property related to the work identified in Recital "E".
2. The Extra Work scope to be performed by PBOT is to construct a mast arm traffic signal at North Vancouver Avenue and Fremont Street.
3. Karuna will pay actual costs for the Extra Work identified in Recital 'E', the cost of which will be assessed to Karuna as a part of the LID. These costs are currently estimated at \$172,885 and are not guaranteed.
4. Karuna grants a permit of entry to City to allow construction to proceed pursuant to this Agreement on terms as set forth on Exhibit C, incorporated herein by this reference.
5. Karuna agrees to the LID waivers, terms and conditions as set forth in Exhibit B, Exhibit C and Exhibit D, incorporated herein by this reference.

Agreed to as of the date set forth above.

CITY OF PORTLAND

APPROVED AS TO FORM

Approved as to Form:


 Tracy Reeve
 CITY ATTORNEY
 City Attorney

By:

 8/11/12
 Andrew H. Aebi
 LID Administrator

KARUNA PROPERTIES II, LLC

By:

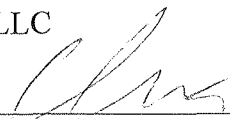

 Eric Lemelson, Manager
 BY OWEN GABBERT

EXHIBIT A
PROPERTY DESCRIPTION
Assessor Data Updated May 12, 2014

PortlandMaps

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1 N FREMONT ST - BOISE - PORTLAND

[Explorer](#) | [Property](#) | [Maps](#) | [Projects](#) | [Crime](#) | [Census](#) | [Environmental](#) | [Transportation](#)

[Summary](#) | [Assessor](#) | [Permits/Cases](#) | [Block](#) | [Schools](#) | [Parks](#) | [Development](#) | [Garbage/Recycling](#) | [Noise](#) | [Historic Permits](#) | [Water](#) | [Documents](#)

General Information

Property ID: R103333

County: MULTNOMAH

State ID: 1N1E22DC 14200

Alt Account #: R010506220

Map Number: 2630 OLD

Site Info

Site Address: 3514 N VANCOUVER AVE

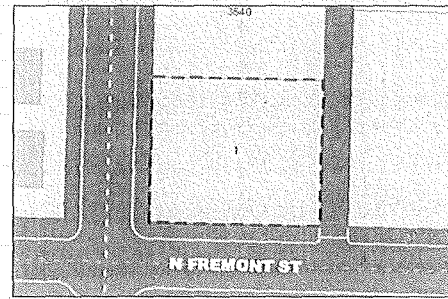
City/State/Zip: PORTLAND OR 97227

[Owner Info \(Privacy\)](#)

Owner(s) Name: KARUNA PROPERTIES II LLC

Owner Address: 3013 NE 9TH AVE

City/State/Zip: PORTLAND OR 97212



Property Description

Tax Roll: ALBINA HMSTD, BLOCK 30, LOT 9&10

Lot: 9&10

Use: VACANT LAND

Block: 30

EXHIBIT B
INDEMNIFICATION TERMS

THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Karuna represents that to its actual knowledge after appropriate and reasonable inquiry under the circumstances, the property identified in Exhibit A is in compliance with all local, State and Federal environmental laws and regulations.
2. Karuna represents after reasonable inquiry under the circumstances and to its actual knowledge, that it has disclosed all knowledge of any release of hazardous substances onto or from the property currently owned by Karuna identified in Exhibit A, and has disclosed any known report, investigation, survey, or environmental assessment regarding the property identified in Exhibit A. "Release" and "Hazardous Substance" shall have the meaning as defined under Oregon law.
3. After reasonable inquiry and to Karuna's actual knowledge, Karuna represents that there are no underground storage tanks, as defined under Oregon law, presently on or under the property identified in Exhibit A.
4. It is understood and agreed that the City, by entering into this Extra Work Agreement, is not accepting any liability for any release of hazardous substances onto or from the subject property, and that Karuna is not attempting to convey any such liability.
5. To the extent permitted by the law, Karuna, its successors and assigns, agree to defend, indemnify and hold harmless the City, its officers, agents and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the presence or release of hazardous substances onto or from the subject property. This provision shall not apply to a release of hazardous substances onto or from the property identified in Exhibit "A" caused by the officers, agents or employees of the City. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

EXHIBIT C
PERMIT OF ENTRY

THEREFORE, in consideration of the mutual covenants and conditions contained herein, Karuna agrees as follows:

1. This Permit of Entry is for the North Vancouver Avenue & Cook Street LID project.
2. The Extra Work portion of this LID will construct a mast arm traffic signal at North Vancouver Avenue and North Fremont Street, serving this property at the northeast corner of the intersection.
3. This Permit of Entry grants to the City of Portland, its employees, its agents and its contractors the right of entry upon the real property identified in Exhibit A for purposes of survey and construction of the Extra Work until final assessment of the project has been imposed by City Council.
4. This Permit of Entry grants to the City of Portland, its employees, its agents and its contractors the right of entry upon the real property identified in Exhibit A for purposes of survey and construction of the Extra Work until final assessment of the project has been imposed by City Council.
5. It is understood that Extra Work on and adjacent to Karuna's property shall be in accordance with plans approved by the City Engineer and shall be in compliance with the City Engineer's applicable general and special specifications for the Extra Work.
6. It is understood that Extra Work on and adjacent to Karuna's property shall be in accordance with plans approved by the City Engineer and shall be in compliance with the Chief Engineer's applicable general and special specifications for this Extra Work.
7. It is further understood that this Permit of Entry will in no way jeopardize my rights in any legal proceedings that may arise from the City's acquisition of property rights through, under and across Karuna's property.
8. Karuna, being the owner or contract purchaser of the Property, hereby grants to the City of Portland, its employees, agents and contractors the right to entry upon the real property described in Exhibit "A" for purposes of survey and construction of the Extra Work until final assessment has been imposed by the City Council.

EXHIBIT D
LID WAIVERS, TERMS AND CONDITIONS

THEREFORE, in consideration of the mutual covenants and conditions contained herein, Karuna agrees as follows:

1. This Agreement must be received by the City's LID Administrator via U.S. Mail or delivered in person by August 31, 2014 for the City to construct the Extra Work.
2. All rights to a public hearing on the formation of the LID or inclusion of Extra Work within the LID, on the scope of the improvements to be made, on the method for apportioning final Project Work and Extra Work costs, and on the amount of the final assessment are waived.
3. All rights to remonstrate against formation of the LID or inclusion of Extra Work within the LID are waived.
4. All rights to object to final assessment of the LID are waived.
5. All irregularities or defects, jurisdictional or otherwise, in the process by which the Project Work and Extra Work are made to the property subject to this Agreement, or in the process by which the LID was formed or administered, or by which final assessment was made are waived.
6. The City shall assess benefited property in a manner consistent with the terms identified in Directive 'd' of Ordinance No. 186576.
7. Karuna will provide assurance of performance to the City of Portland in a manner and form acceptable to the City Attorney in the amount of \$487,202 in the event that the real market value of the benefiting property were to fall below two times the estimated amount of the improvements in the future as shown on Multnomah County Assessment & Taxation records within 30 days of a written request to do so by the City of Portland's Local Improvement District Administrator.
8. Karuna will maintain such assurance of performance until the Local Improvement District Administrator has provided written acknowledgment to Karuna that such assurance of performance has been met. Such written acknowledgment will be provided only when Multnomah County Assessment & Taxation records demonstrate that the real market valuation is again sufficient to meet the 2:1 ratio.

9. This Extra Work Agreement is for the benefit of the City of Portland, is intended as an obligation of the benefited property as identified in Exhibit A, and binds all subsequent purchasers. Special assessments, which result in construction of local improvements, including Project Work and Extra Work identified in this Agreement, are a lien on real property, enforceable through foreclosure and property sale.
10. Karuna agrees that the City of Portland will remove the lien on the property identified in Exhibit "A" only when the obligation has been satisfied in full for both Project Work and Extra Work. As of January 24, 2014 an independent appraisal determined that the real market valuation was substantially in excess of this amount, so bonding is not currently being required per terms 7 and 8 above.

LIMITED POWER OF ATTORNEY

Eric D. Lemelson (the "Principal"), individually and as manager of Karuna Properties II, LLC, an Oregon limited liability company (the "LLC"), does hereby constitute and appoint Owen Gabbert (the "Attorney"), to be the true and lawful attorney in fact and agent for the Principal, and in the name, place and stead of the Principal to execute the instruments described below on behalf of the Principal and LLC and to exercise the specific limited powers set forth herein as fully and completely as the Principal might do in conjunction with local improvement project to be completed by the City of Portland with respect to certain real property owned by the LLC and known as Lots 9 and 10, Block 30, Albina Homestead in the City of Portland, Oregon (the "Property").

The powers granted to the Attorney herein shall be limited to the following:

2. The power and authority to execute, deliver, acknowledge, verify, submit, record and file, in the name of and on behalf of the Principal and LLC, that certain Extra Work Authorization Agreement for 3514 North Vancouver Street to be executed between the LLC and the City of Portland related to the Property (the "Extra Work Agreement") together with all related approvals, notary forms, affidavits, and any other documents of any nature directly related to the Extra Work Agreement or work to be performed on the Property to be constructed in connection therewith (collectively, the "Extra Work Documents");
2. The power and authority to take such other action as the Attorney may deem reasonably necessary or appropriate in conjunction with the improvements to the Property pursuant to the Extra Work Documents.

All documents and other instruments that the Attorney is authorized to execute, deliver, consent to, approve, accept, verify, submit, swear to and/or record pursuant to this Power of Attorney shall be in such form and contain such provisions as Principal or Principal's attorneys shall approve in written or oral notice to the Attorney.

The Attorney identified herein shall have the right to exercise and execute all of the powers described herein (including, without limitation, the execution of Extra Work Documents) on behalf of the Principal independently and without the joinder of any other party.

If any power herein granted is or is declared to be invalid, inoperative or void, such circumstance shall not affect the validity of the other powers herein granted.

It is expressly understood and agreed that the specific powers given above represent a limitation on the powers of attorney granted herein, it being the intention of the Principal that the authority of the Attorney created hereby be limited to the right to exercise only the specific powers set forth herein.

The Principal hereby agrees, represents and stipulates to those who may at any time deal with said Attorney that this limited power of attorney may be voluntarily revoked only

by (i) written revocation executed by the Principal, and (ii) delivery to the Attorney of a copy of such revocation.

EXECUTED the 29th day of May, 2014.



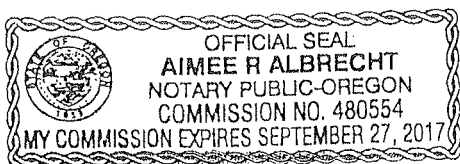
Eric D. Lemelson, in his individual capacity and as
Manager of Karuna Properties II, LLC

Oregon
Multnomah

)
) ss.
)

19th day of August, 2014 @

This instrument was acknowledged before me this ~~29th day of May, 2014~~, by Eric D. Lemelson, Manager of Karuna Properties II, LLC, an Oregon limited liability company, in his individual capacity and as Manager of the LLC.




NOTARY PUBLIC FOR Oregon
My Commission Expires: 9/27/17