

RESOLUTION NO. 09-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING PERMIT OF ENTRY ON A PORTION OF KRONBERG PARK FOR STAGING ACTIVITIES RELATED TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT.

WHEREAS, the City and TriMet are partnering to construct the Portland-Milwaukie Light Rail project ("Project"); and

WHEREAS, the Project requires that construction of a bridge over Lake Road, Kellogg Lake, Kronberg Park and McLoughlin Boulevard (the "Kellogg Structure") begin no later than March 1, 2012; and

WHEREAS, constructing the Kellogg Structure requires a staging area on City property (Kronberg Park) that will allow light rail contractors to stage bridge construction, build a temporary work bridge in Kellogg Lake and perform in-water work in Kellogg Lake; and

WHEREAS, the Planning Commission and City Council have approved a Community Service Use permit (CSU-11-09) allowing TriMet to use the westernmost fifty feet of Kronberg Park for this purpose, subject to conditions; and

WHEREAS, TriMet acknowledges and agrees that the final size and extent of the staging area will be adjusted to account for recommendations made by the Certified Arborist evaluating the health of the white oak on the Property, as is required by the condition of approval as provided in CSU-11-09; and

WHEREAS, TriMet will compensate the City for use of the property through a to-be-executed Temporary Construction Easement, the terms of which are under negotiation between the City and TriMet; and

WHEREAS, a permit of entry agreement will allow TriMet contractors to gain access to the site on March 1, prior to execution of the temporary construction easement, thereby keeping the Portland-Milwaukie project on schedule and avoiding a delay that would either add project expense or reduce project scope and quality.

NOW, THEREFORE, BE IT RESOLVED that the City Manager is authorized to execute a permit of entry agreement with TriMet, effective March 1, 2012, providing TriMet and its contractors access to and use of a portion of Kronberg Park for construction activities related to the Portland-Milwaukie Light Rail project.

Introduced and adopted by the City Council on February 21, 2012.

This resolution is effective on February 21, 2012.



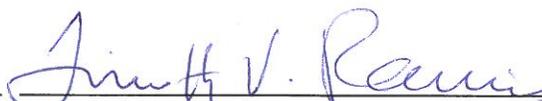
Jeremy Ferguson, Mayor
Greg Chalmers, President

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

Document2 (Last revised 09/18/07)



PERMIT OF ENTRY

Owner: City of Milwaukie
File No.: 3562
Project: Portland-Milwaukie
Light Rail Project

In order to allow the Tri-County Metropolitan Transportation District of Oregon ("TriMet") to (i) implement protection of the Oregon white oak in Kronberg Park; (ii) stage construction of the Kellogg Bridge; (iii) stage construction of a temporary work bridge; and (iv) perform in-water work in Kellogg Creek (collectively, the "Work") related to the Portland-Milwaukie Light Rail Project (the "Project"), the City of Milwaukie ("Owner" or "City" or "Grantor") grants to TriMet and its employees, agents, contractors and representatives, the non-exclusive right to enter upon the real property located at Kronberg Park, McLoughlin Blvd, Milwaukie, OR, depicted on Exhibit A, attached hereto and made a part hereof (the "Property").

This Permit of Entry is being provided in anticipation of the City's grant of a Temporary Construction Easement over the Property to TriMet, including agreement between the parties to the terms of the Temporary Construction Easement. This Permit of Entry is granted with the following understandings:

- A. The parties recognize that the footprint of the Property may be adjusted depending on the recommendations of the Certified Arborist as required by City's land use decision (Final Order Affirming Applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09) (the "Land Use Decision"); any adjustment of the Property footprint will be agreed upon by the parties and accounted for either in an amendment to this Permit of Entry or in the Temporary Construction Easement granted to TriMet;
- B. The parties recognize that to the extent TriMet requires a larger portion of Kronberg Park to stage construction than contemplated prior to issuance of the Land Use Decision, the City will in proceed in good faith to provide an update to its January 28, 2010 letter to Metro reaffirming that the use is acceptable; and
- C. The parties recognize that TriMet may not proceed with Kellogg Bridge construction until all required permits have been obtained from the City.

For good and sufficient consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, TriMet shall defend, indemnify, and hold harmless Owner, its agents, employees, officers, officials, and representatives, (collectively, "Owner Indemnified Parties") from and against all claims, demands, causes of action and suits of any kind or nature, liabilities, damages, losses,

costs or expenses (including, without limitation, attorney fees and costs incurred in defending the same) (collectively "Liability") for personal injury, death or damage to property related to TriMet's use or occupation of the Property, except to the extent that such Liability is caused by the Owner Indemnified Parties' own negligence or wrongful acts. TriMet's obligation to defend, indemnify, and hold harmless the Owner Indemnified Parties shall survive the termination of this Permit of Entry and shall not be limited by any insurance required under this Permit of Entry.

2. TriMet agrees to repair any damage to the Property caused by TriMet or its employees, agents, contractors, representatives or subcontractors and to restore the Property back to its original condition once the Work is completed.

3. TriMet will maintain (through a licensed insurer or through self insurance) commercial general liability insurance for bodily injury and/or property damage and commercial automobile liability insurance covering owned, hired, and non-owned vehicles, each having limits consistent with TriMet's obligations under the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300. In addition, TriMet will maintain at its own expense statutory workers compensation insurance covering all employees as required by law. TriMet shall ensure that it or its contractors who will be performing activities on the Property have and maintain in force, as appropriate: (a) commercial general liability insurance with a combined, single limit of not less than \$2,000,000; (b) commercial automobile liability insurance covering owned, hired, and non-owned vehicles in an amount of not less than \$1,000,000; (c) statutory workers compensation insurance covering all employees as required by law (such coverage also shall provide Coverage B, employer's liability limits of at least \$1,000,000); and (d) professional design errors and omissions liability insurance with an aggregate coverage or limit of at least \$1,000,000. Except for workers compensation insurance and professional liability, Owner shall be named as an additional insured on all policies required under this Section. Each such policy shall be primary, not contributory, and shall include a waiver of subrogation clause specific to the Permit of Entry, provided that the coverage required hereunder is not adversely affected, and a severability of interest clause. As a condition of entry, TriMet shall furnish to Owner certificates of such insurance that evidence the insurance required by this section.

TriMet shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) property/casualty; and (b) personal property.

4. TriMet agrees to provide all security measures reasonably necessary, in TriMet's opinion, to protect the Property, including, if reasonably necessary, warning signs, fences, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of any personal property or injury or damage to persons or property on the Premises.

5. Owner shall not be responsible for damage or destruction of personal property or injury or damage to persons on the Property unless such injury, damage is caused by the Owner's own negligence or wrongful acts.

6. Owner reserves the right to have unrestricted access to the Property at any time and without notice, provided that such access shall not unreasonably interfere with TriMet's Work on the Property.

7. This Permit of Entry will automatically terminate upon recording of a Temporary Construction Easement between the parties over the same Property.

8. Owner may terminate this Permit of Entry upon written notice if TriMet fails to comply with any term or condition, or fulfill any obligation of this Permit of Entry within seven (7) days after written notice by Owner specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the seven (7) day period, there shall be no event of default if TriMet begins correction of the alleged default within the seven (7)-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible. Should a default occur the non-defaulting party may seek any legal or equitable remedy available to them, including injunctive relief.

9. All notices given or permitted to be given hereunder shall be in writing. Notice is considered given either (a) when delivered in person to the recipient named below, or (b) three (3) business days after deposit in the United States mail-in a sealed envelope or container, postage and postal charges prepaid, addressed by name and addressed to the party or person intended as follows:

Notice to Owner:

Notice to TriMet:

Real Property Manager
TriMet
710 NE Holladay Street
Portland, OR 97232

With a copy to:

Tamara Lesh, Deputy General Counsel
TriMet
710 NE Holladay Street
Portland, OR 97232

10. The parties agree that time is of the essence regarding each provision of this Permit of Entry.

11. This Permit of Entry may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

12. Failure by either party at any time to require performance by the other of this Permit of Entry shall in no way affect that party's right to enforce any Permit of Entry provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

13. The parties agree that this Permit of Entry is not assignable.

14. TriMet accepts the Property in its present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Permit of Entry.

15. Each party warrants and represents that the undersigned has the authority to execute this Permit of Entry, and that such signature constitutes the binding agreement of that party.

16. The parties covenant, warrant and represent to each other that they will conduct themselves with good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations required under this Permit of Entry. All promises and covenants of the parties are mutual and dependent.

17. If any provision in this Permit of Entry is found to be ambiguous, an interpretation consistent with the purpose of the Permit of Entry that would render the provision valid shall be favored over any interpretation that would render it invalid.

18. If any of the provisions contained in the Permit of Entry are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability and all provisions concerning indemnification shall survive the termination of the Permit of Entry.

19. This Permit of Entry constitutes the entire agreement between the parties with respect to the terms of this Permit of Entry and supersedes all prior or contemporaneous communications and proposals of every kind on the subject. The terms of this Permit of Entry may not be waived, altered, modified, supplemented or amended in any manner except upon subsequent written agreement signed by both parties.

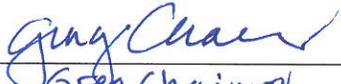
20. All rights and responsibilities of ownership remain with Grantor. It is understood and agreed that no title interest is granted as part of this Permit of Entry, and it is further understood that this Permit of Entry will in no way jeopardize the undersigned's rights as Grantor.

21. This Permit of Entry shall be effective March 1, 2012 and shall continue until December 31, 2015 unless terminated earlier pursuant to the provisions of this Permit of Entry.

DATED this ___ day of February, 2012.

CITY OF MILWAUKIE

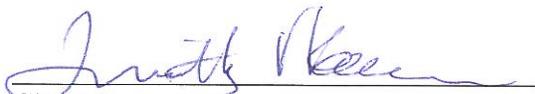
TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON

By: 
Name: Greg Chaimov
Title: President

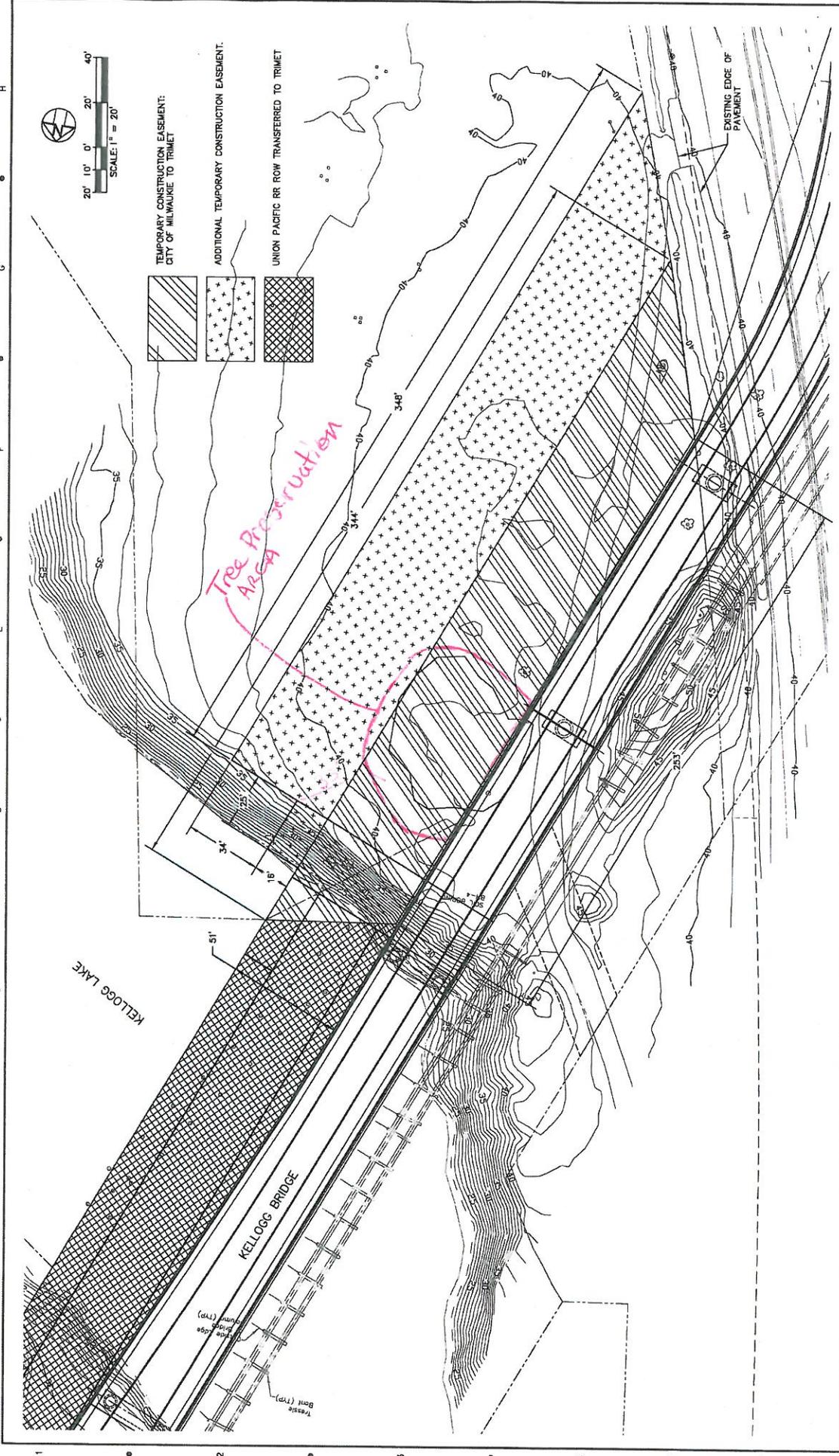
By: _____
Daniel W. Blocher, P.E.
Executive Director

Approved as to Form:

Approved as to Form:


City Attorney

TriMet Legal Department



<p>PORTLAND TO MILWAUKEE LRT EXHIBIT KRONBERG PARK R.O.W.</p>	
<p>TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON</p>	
<p>CAPITAL PROJECTS 710 NE MILLIKEN STREET PORTLAND, OREGON 97232</p>	
<p>TRIMET</p>	<p>DATE: _____</p>
<p>APPROVED: _____</p>	<p>DATE: _____</p>
<p>SUBMITTED: _____</p>	<p>DATE: _____</p>
<p>SCALE: 1" = 20'-0"</p>	<p>CONTRACT NO.: SWKalegg</p>
<p>SHEET NO.:</p>	<p>DATE: _____</p>