

INTERGOVERNMENTAL AGREEMENT WESTGATE PROPERTY DISPOSITION

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between Metro, a municipal corporation established pursuant to Oregon law and the Metro Charter (“Metro”) and the City of Beaverton (the “City”), an Oregon municipal corporation (each a “Party”; collectively, “the Parties”). This Agreement is effective as of March 19, 2015 (the “Effective Date”).

RECITALS

A. WHEREAS, on July 12, 2004, the Beaverton Downtown Regional Center Development Strategy was formally presented to a joint meeting of the Beaverton City Council and Metro Council. This strategy included identifying potential catalyst project sites, determining a marketable development program for each site, reducing minimum parking requirements, streamlining the entitlement process associated with each site and considering direct project subsidies to achieve urban scale development.

B. WHEREAS, Metro’s Transit Oriented Development (“TOD”) Program subsequently authored and Beaverton co-sponsored a Metropolitan Transportation Improvements Program (MTIP) funding proposal to allocate funds toward the acquisition of one such catalyst project site, the location of the former Westgate Theater (the “Westgate Property”), and on March 24, 2005, the Metro Council adopted Resolution No. 05-3529A allocating \$2.0 million (the “TOD Funds”) to fund the acquisition and development of the Westgate Property, described in Exhibit A, attached hereto, on the condition that it be developed as a high quality showcase TOD Program Transit-Oriented Development catalyst project within the Beaverton Regional Center.

C. WHEREAS, on December 12, 2005, the City acquired the Westgate Property from Eastgate Theatre, Inc., and on December 21, 2005, Metro and the City entered into the “Intergovernmental Agreement Beaverton Round – Westgate Property” to provide for the contribution of \$2.0 million in TOD funding toward the joint acquisition of the Westgate Property, and to govern disposition and development of the Westgate Property as a TOD Program Transit-Oriented Development catalyst project.

D. WHEREAS, on January 25, 2007, the City deeded to Metro a 4/9ths interest in the Westgate Property as a tenant in common (the “Metro Property Interest”) with the City of Beaverton in return for \$2.0 Million in TOD funding as set forth in the Intergovernmental Agreement Beaverton Round – Westgate Property.

E. WHEREAS, Metro and the City issued a Request for Proposals in 2006 and selected a developer for the Westgate Property in 2007, but due to national and local economic conditions, the proposed development did not go forward;

F. WHEREAS, Metro and the City were subsequently unable to agree upon terms for renewal or extension of the Intergovernmental Agreement Beaverton Round – Westgate Property, which then expired on December 21, 2008.

G. WHEREAS, on April 12, 2011, the Beaverton City Council adopted the Beaverton Civic Plan Strategies to, among other things, encourage and incentivize new housing, employment, and other development, in order to bring liveliness and activity to the Central City through code adjustments, shared parking strategies, and catalytic development projects.

H. WHEREAS, on November 18, 2014, the Beaverton City Council adopted the Beaverton Creekside Master Plan, which describes the barriers, opportunities and specific actions necessary to revitalize a 53-acre area including and surrounding the Westgate Property.

I. WHEREAS, the Beaverton Creekside Master Plan provides direction for policy and regulatory changes, direction on how to prioritize public investments, and criteria for developing incentive programs to support desired private development over the next 20 years.

J. WHEREAS, the Parties wish to enter into this IGA to govern the disposition of Metro's interest as a tenant in common with the City in the Westgate Property and the \$2.0 Million in TOD funding Metro contributed to the acquisition cost.

K. WHEREAS, on March 17, 2015, the Beaverton City Council adopted Resolution No. _____ authorizing the Mayor to enter into this Agreement with Metro.

AGREEMENT

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

- I. GENERAL OBJECTIVE** The purposes of this Agreement are:
- A. To provide for the conveyance to the City of Metro's interest as a tenant-in-common in the Westgate Property and payment by the City to Metro for said interest, thereby permitting the City to convey the full fee title to the developer or developers selected to redevelop the property ("Developer"); and
 - B. To provide for cooperation between the City and Metro to consider applications from a developer for Metro TOD funding for future TOD-eligible development projects in the City of Beaverton, including the Westgate Property.

II. CITY SOLICITATION, PROPERTY DISPOSITION AND DEVELOPMENT

- A. **Solicitation and Selection.** The City shall establish development criteria for the Westgate Property and select the Developer in its sole discretion.
- B. **Disposition and Development Agreement.** The City and the Developer shall be parties to a disposition and development agreement or other dispositive redevelopment agreement (“DDA”) concerning the Westgate Property. The City shall have sole authority to negotiate the terms of the DDA with the Developer. The DDA will include a condition precedent to conveyance that Metro shall have deposited into escrow the Special Warranty Deed (“Deed”) set forth below conveying Metro’s interest to the City.

III. METRO CONVEYANCE

- A. **Conveyance by Special Warranty Deed.** On the day of the closing and recording of the conveyance of Metro’s portion of the Westgate Property to the City, Metro will deposit into escrow the fully executed and acknowledged Deed, conveying its 4/9^{ths} interest in the Westgate Property as a tenant in common to the City, in consideration for payment by the City (the “City Payment”) of the full Value of Metro’s Property Interest (set forth below). The Deed shall be accompanied by instructions governing recording and funding, and shall be released for recording upon Metro’s receipt of the City Payment. The parties shall share the costs of the Metro-City escrow equally. Metro shall pay to record the Deed.
- B. **Valuation of Metro Property Interest.** The Value of Metro’s Property Interest shall be calculated based on Metro’s pro rata share (44.4%) of the fair market value of the Property, as determined by an independent MAI appraisal performed in accordance with USPAP and general appraisal standards, and confirmed by Metro’s independent review appraiser (the “Value of Metro’s Property Interest”) within 120 days prior to the conveyance set forth in III. A. The appraiser shall be selected by the Parties and the Parties shall mutually agree upon the terms of the appraisal assignment, including any assumptions. The appraisal shall be paid for by the City. The appraisal review shall be commissioned and paid for by Metro.
- C. **Metro Conveyance at City Conveyance to a Third Party.** If a conveyance by the City to a Developer or other third party of a fee or leasehold possessory interest to all or any portion of the Westgate Property takes place within the term of this Agreement (“Term”) stated in Section V. A, Metro and the City will accomplish the conveyance of the Metro Property Interest to the City in coordination with the closing of the conveyance from the City to the Developer or third party, subject to and in accord with Section III. A and B.

- D. **Conveyance at City Discretion.** In the City's sole discretion, the City may provide Metro with 30 days' notice of its election to purchase Metro's Property Interest. Upon receipt of such notice, Metro and the City will accomplish the conveyance of the Metro Property Interest to the City, subject to and in accord with Section III. A and B.
- E. **Conveyance at End of Term.** If a Metro conveyance contemplated by Section III. C. or D. has not already taken place, Metro will convey the Metro Property Interest to the City, subject to and in accord with Section III. A and B, no later than the last business day of the Term.
- F. **Condition Precedent to Metro's Conveyance.** It is a condition precedent to Metro's obligation to convey Metro's Interest hereunder that Section III. A and B, above be satisfied, and that the Metro TOD Steering Committee, Metro Chief Operating Officer and Metro Council (through the 7-day notice process) approve the disposition of Metro's interest in the Westgate Property to the City hereunder in accord with the Metro TOD Program Workplan. Metro shall provide notice of said decision no later than April 30, 2015.

IV. METRO TOD FUNDING

- A. **Future TOD Easements.** Metro will consider providing future Metro TOD funding to one or more TOD-eligible projects within the city limits of Beaverton, in at least the Value of Metro's Property Interest, including the consideration of an application from Developer for the sale to Metro of a TOD Easement over the Westgate Property, as set forth below.
- B. **Westgate TOD Easement.** The parties acknowledge that the development program to be agreed upon in the DDA may qualify for Metro TOD funding through the sale by Developer to Metro of a TOD Easement. Metro will entertain an application from Developer for such funding at any time prior to closing of the DDA as described in Section IV. C above. Metro will provide the application due consideration under TOD Program Criteria. If the Developer and project qualify for funding, Metro will forward its funding recommendation to the TOD Steering Committee for a decision on the application. If approved through the TOD Steering Committee Process, Metro will enter into a purchase and sale agreement with Developer and acquire a TOD Easement in accord with Metro TOD Program Workplan Criteria.

V. MISCELLANEOUS

- A. **Term.** The term of this Agreement shall be five (5) years from the Effective Date.

- B. Termination.** This Agreement may be terminated for cause or mutual convenience, subject to the requirements set forth in this section. Notices of termination must be issued in one of the two forms set forth below:
1. Termination for Cause. Either Party to this Agreement may declare a default before the date of expiration, if that Party determines in its sole discretion that a material breach of the terms of this Agreement has occurred. If either Party so determines, the aggrieved Party shall promptly document the breach and state a demand that the breach be cured. The breaching Party shall thereafter cure said breach within 30 days of receipt of said notice. If the breaching Party fails to so cure, or under circumstances where the breach cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or after 30 days has expired fails to continue diligently to cure the breach until finally cured, the aggrieved Party may, at its sole discretion, immediately terminate this Agreement. The exercise of this termination right shall not extinguish or prejudice the terminating Party's right to seek damages and enforcement of the terms of this Agreement in a court of competent jurisdiction with respect to any breach that has not been cured.
 2. Termination for Convenience. The Parties may terminate this Agreement for convenience based on mutual written agreement.
- C. Property Management.** The City shall manage the Westgate Property as set forth in this section until the closing of the Metro conveyance. The City shall provide reasonable security on the Property. The City shall respond to neighborhood or citizen complaints regarding nuisance uses or noise on the Westgate Property. Any license granted to third parties by the City for interim use of the Westgate Property shall be for no more than one (1) year in duration and must be terminable with no more than 90-days' notice. Any proposed alterations or improvements to the Property costing in excess of \$10,000 must be mutually pre-approved in writing by the City and Metro. The City shall be responsible for obtaining all necessary permits and for complying with all state and local rules and regulations in managing and maintaining the Westgate Property. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Westgate Property. Funding for the management and maintenance of the Westgate Property and the payment of taxes or assessments applying to the Westgate Property, if any, shall be provided from the City's own resources.
- D. General Provisions.** The following provisions of the Intergovernmental Agreement Beaverton Round – Westgate Property are hereby restated and

reinstated. These provisions shall survive and not be limited by any termination or expiration of this Agreement.

1. General Indemnification. Each Party, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and hold harmless the other Party, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Westgate Property.

2. Environmental Indemnity. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, hereby covenants to indemnify and defend (with legal counsel reasonably acceptable to Metro) Metro and hold Metro, its officers and employees, successors and assigns, harmless from and against all claims, demands, causes of action, or any other action or proceeding, meritorious or not, and all liabilities, losses, damages, costs and expenses relating to or arising, not caused or contributed to by an act or omission of Metro, its employees, agents, or contractors, in whole or in part, directly or indirectly, from: (a) the past, present or future Environmental Condition of the Westgate Property; (b) past, present or future Adverse Environmental Activity occurring on or related to the Westgate Property; (c) any and all Government Action related to the Westgate Property or past, present or future activities thereon; (d) the past, present or future Environmental Condition of real property surrounding the Westgate Property, relating to or resulting from the Environmental Condition of the Westgate Property or Adverse Environmental Activity on the Westgate Property; and (e) City or City's agents failure to comply with any and all future Environmental Requirements relating to the Westgate Property.
 - a. For purposes of this Section, "Environmental Condition" shall be interpreted to include, but not be limited to, the release of or contamination by any Hazardous Substance(s), pollutant or contaminant, as those terms are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and all other applicable federal and state environmental statutes, rules and regulations now or hereafter in effect, but shall not include conditions directly resulting from the acts of Metro, its officers and employees, agents and contractors.

 - b. For purposes of this Section, "Government Action" shall be interpreted to include any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which results directly or indirectly from the Environmental Condition of the

Westgate Property or Environmental Activity related on or related to the Westgate Property.

- c. For purposes of this Section, "Adverse Environmental Activity" shall be interpreted to include any past or current, actual, proposed or threatened surface or subsurface, storage, holding, existing, release, emission, discharge, generation, processing, abatement, removal, remediation, disposition, handling or transportation of any Hazardous Substance(s), pollutant or contaminant (as though they are defined in CERCLA, TOSCA, ORS Chapters 465 and 466, and other applicable federal and state environmental statutes, rules and regulations hereinafter in effect), from, under, into or on, the Westgate Property, or otherwise relating to the Westgate Property or the use of the Westgate Property or neighboring properties, or any other activity or occurrence, cause or causes that would cause any such event to exist, but shall not include activity by Metro, or on behalf of Metro by its officers and employees, agents and contractors.
 - d. For purposes of this Section, "Environmental Requirements" shall be interpreted to include past, present and future state and federal local laws and ordinances, including CERCLA, TOSCA, and ORS Chapters 465 and 466, as amended from time to time, including any administrative court order, judgment or decree arising there from.
 - e. The City and Metro hereby agree that the Environmental Indemnity contained herein shall survive the sale of the Westgate Property to a third Party. Metro may, at its option, tender any defense of any claim, action or suit covered under this Environmental Indemnity to the City.
3. Liens. Each Party shall pay as due all claims for work done on and for services rendered or material furnished to the Westgate Property at that Party's order or request, and shall keep the Westgate Property free from any liens. If either Party fails to pay any claims or to discharge any lien resulting from work done on and for services rendered or material furnished to the Westgate Property at that Party's order or request, the other Party may do so and collect the cost from the other Party. Such action by a Party shall not constitute a waiver of any right or remedy that the Party may have on account of the other's default. A Party may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as the other's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the responsible Party shall, within 10 days after knowledge of the filing, secure the discharge of the lien, or deposit cash with the other, or provide sufficient surety bond or other surety satisfactory to the other Party in an amount sufficient to discharge the lien plus any costs or attorney fees.

4. Metro Remedies. In the event of a default by the City that is not cured as set forth above, Metro may terminate this Agreement by notice in writing as set forth below, and except as otherwise set forth herein, Metro's exclusive remedy shall be the prompt payment by the City of the City Payment in return for Metro's delivery of the Deed conveying its interest in the property.
5. City Remedies. In the event of a default by Metro that is not cured as set forth above, the City may terminate this Agreement by notice in writing as set forth below, and except as otherwise set forth herein, the City's exclusive remedy shall be the prompt payment of the City Payment in return for Metro's delivery of the Deed conveying its interest in the property.
6. Assignment. No Party may sell its undivided interest in the Westgate Property, or assign any of its rights or responsibilities under this Agreement without prior written consent from the other Party, except the Parties may subcontract for performance of any of their responsibilities under this Agreement.
7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro:

Metro
Megan Gibb, TOD Program Manager
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City:

City of Beaverton
Cadence Moylan, Development Division
Manager
P.O. Box 4755
Beaverton, OR 97076-4755

8. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.
9. No Third-Party Beneficiary. Except as set forth herein, the Agreement is between Metro and the City and creates no third-party beneficiaries. Nothing in this Agreement gives or shall 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. Metro and the City are the only parties to this Agreement and as such are the only parties entitled to enforce its terms.

10. Further Assurances. The Parties acknowledge that they are entering into a long-term arrangement in which their cooperation is required. At any time and from time to time after the Effective Date of this Agreement, the Parties shall cooperate with each other and promptly upon request and without further consideration, execute or deliver any other documents, instruments, files, books, materials and records, and do all further acts and things as may be reasonably necessary or desirable to carry out the intent of the Parties under this Agreement. Neither Party shall unreasonably withhold conditions or delay its compliance with any reasonable request made pursuant to this Section V. D.10.

11. Entire Agreement. As of the Effective Date, this Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written communications, agreements or representations relating to this Westgate Property. No course of dealing between the Parties and no usage of trade shall be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by any Party of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth below.

CITY OF BEAVERTON

METRO

By: 
Denny Doyle

By: 
Martha J. Bennett

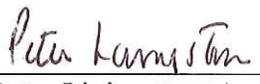
Title: Mayor

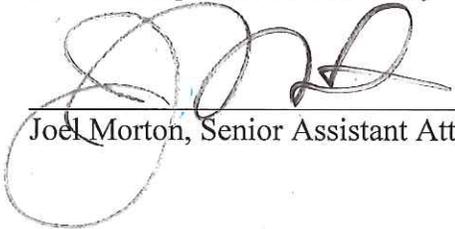
Title: Chief Operating Officer

Date: 3/19/15

Date: 3/18/15

Approved as to form:

By: 
Peter Livingston, Assistant City Attorney, Beaverton

By: 
Joel Morton, Senior Assistant Attorney, Metro

Exhibits:
Exhibit A – Legal Description of the Westgate Property

EXHIBIT A

Legal Description of Westgate Property

Part of Lots 12, 13 and 14, Steels Addition to Beaverton, in the City of Beaverton, County of Washington and State of Oregon, described as follows:

Beginning at the intersection of the Northerly projection of the East line of Mill Street (when a 20.00 foot wide street) with the North right of way line of the Oregon Electric Railroad in Section 16, Township 1 South, Range 1 West of the Willamette Meridian; thence continuing North $06^{\circ}56'$ East on the Northerly projection of the East line of Mill Street 517.44 feet to a point; thence South $82^{\circ}45'45''$ West 639.12 feet to a point on the East right of way line of Cedar Street; thence South $00^{\circ}03'15''$ East 125.00 feet to the North right of way of the Oregon Electric Railroad; thence South $61^{\circ}40'$ East on said North right of way 669.42 feet to the point of beginning.

Excepting therefrom that portion conveyed to Tri County Metropolitan Transportation District of Oregon by Warranty Deed recorded August 22, 1994 as Fee No. 94077226.

Also Excepting therefrom that portion conveyed in Dedication of Right of Way recorded on February 8, 2007, as Fee No. 2007-014815, Washington County Deed Records.