

**BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION**

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**NORTHWEST NATURAL GAS COMPANY**

**Application for an Order  
Determining that the Central  
Property is No Longer Useful or,  
in the Alternative, an Order Authorizing  
the Sale of the Central Property**

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Exhibit D

August 22, 2013

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made by and between NORTHWEST NATURAL GAS COMPANY, an Oregon corporation ("NW Natural") and the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON ("TriMet") as of March 18, 2013 (the "Dated Date").

### RECITALS

A. TriMet is constructing the Portland-Milwaukie Light Rail Project (the "Project"), a 7.3-mile light rail alignment that will connect downtown Portland with the City of Milwaukie.

B. NW Natural owns certain real property commonly known as the "Central Property" consisting in total of approximately 5.18 acres and commonly known as 2630 SE 9<sup>th</sup> Avenue, Portland, Oregon (the "Property"). TriMet requires a portion of the Property for the Project (the "Fee Interest Property"). The Fee Interest Property is legally described in Exhibit A to the Deed (as such term is defined in Section 5 below) and depicted in Exhibit B to the Deed. TriMet has the power of eminent domain pursuant to ORS 465.255(3)(a)(B).

C. TriMet also requires a portion of the Property for the Project for a temporary construction easement (the "TCE Interest Property"). The TCE Interest Property is described and depicted in Exhibit B to the TCE (as such term is defined in Section 3 below).

D. Among other improvements, there exists three buildings and a shed on the Property. The three buildings are commonly referred to as: (i) "**Building A**" (located on the northwestern side of the Property consisting of approximately 9,076 square feet); (ii) "**Building B**" (located on the north and central side of the Property consisting of approximately 3,538 square feet); and (iii) "**Building C**" (located on the northwestern western side of the Property consisting of approximately 8,290 square feet). The shed ("**Shed**") is located on the north (central) boundary of the Property, between Building A and Building B. Building A, Building B, Building C, and the Shed are collectively referred to herein as the "**Buildings**." A portion of Building A, the Shed, and a portion of Building C are located within the Fee Interest Property. Building B is located outside of but immediately adjacent to the Fee Interest Property. Building B was designed and used as a vehicle service building with vehicles entering the west side and exiting the east (immediately adjacent to the Fee Interest Property) side of the building. The proximity of the Fee Interest Property to the east side of Building B significantly reduces Building B's usefulness.

E. TriMet has caused an appraisal report of the Fee Interest Property and the TCE Interest Property which appraisal takes into consideration the effect on and damages to the Buildings. NW Natural in turn has caused a review appraisal to be prepared. NW Natural has determined that the Buildings, as affected by the Project, are no longer useful for its utility operations and thus desires that the Buildings be demolished. After considering the respective appraisals, the effects on the Buildings, and NW Natural's desire to have the Buildings demolished, TriMet and NW Natural have agreed to a settlement in lieu of condemnation whereby: (i) TriMet shall pay NW Natural \$2,080,225.00 and TriMet shall cause, at TriMet's sole cost and expense, the demolition of the Buildings, and (ii) NW Natural shall convey to TriMet the Fee Interest Property and shall grant to TriMet a temporary construction easement over the TCE Interest Property, all subject to the terms and conditions of this Agreement.

## AGREEMENT

1. Cash Settlement Amount. Subject to the other terms and conditions of this Agreement, and specifically PUC Approval (as such term is defined in Section 4 below), TriMet agrees to pay NW Natural the sum of Two Million Eighty Thousand Two Hundred Twenty-Five and No/100 Dollars (\$2,080,225.00) in cash as payment for TriMet's acquisition of the Fee Interest Property and the TCE Interest. TriMet and NW Natural agree that: (a) \$2,057,647.00 of the total cash consideration shall be allocated to TriMet's acquisition of the Fee Interest Property (the "**Fee Interest Compensation**") and (b) \$22,578.00 shall be allocated to TriMet's acquisition of the TCE Interest (the "**TCE Interest Compensation**"). TriMet shall pay to NW Natural the TCE Interest Compensation on or before April 18, 2013. TriMet shall pay NW Natural the Fee Interest Compensation at Closing (as such term is defined below). TriMet acknowledges that the Closing is subject to PUC Approval pursuant to the terms of Section 4 below.

2. Noncash Settlement Amount. TriMet acknowledges that as a material inducement to NW Natural entering into this Agreement, TriMet shall perform the Demolition Work (as such term is defined in Section 3 below) at TriMet's sole cost and expense.

3. Grant of TCE Easement. Contemporaneously with the execution of this Agreement, NW Natural and TriMet shall execute that certain Temporary Construction Easement in the form attached as Attachment A hereto (the "**TCE**"). Pursuant to the terms of the TCE, in addition to work directly related to the Project, TriMet shall cause the Buildings to be demolished and removed from the Property (the "**Demolition Work**"). TriMet shall cause the Demolition Work to be completed subject to the terms and conditions set forth in the TCE.

4. PUC Approval. The Closing and the Fee Interest Compensation is subject to the approval ("**PUC Approval**") of the State of Oregon Public Utilities Commission ("**PUC**"). NW Natural shall apply for and shall diligently pursue PUC Approval. Upon TriMet's request, NW Natural shall provide TriMet with an update of the status of PUC review and PUC Approval. NW Natural shall promptly provide TriMet written notice of PUC Approval or should the PUC disapprove, notice of such disapproval. If and upon PUC Approval, the closing of NW Natural's conveyance of the Fee Interest to TriMet and TriMet's payment for the same shall occur in accordance with Section 5 below. If the PUC disapproves, then Section 6 shall govern.

5. Closing. If and upon PUC Approval on or before October 1, 2013, then the conveyance of the Fee Interest Property by NW Natural to TriMet shall occur (the "**Closing**") through escrow at Fidelity National Title Insurance Company ("**Fidelity Title**"). Closing shall occur no later than ten (10) business days after NW Natural provides TriMet written notice of PUC Approval. At Closing, NW Natural shall convey the Fee Interest Property to TriMet by a Bargain and Sale deed in the form attached hereto as Attachment B (the "**Deed**"). On or before Closing, NW Natural shall: (i) provide Fidelity Title such documents as Fidelity Title shall reasonably require to confirm that the Fee Interest Property will no longer be encumbered by that certain Mortgage And Deed of Trust recorded November 25, 1998 in the real property records of Multnomah County, Oregon as instrument number 98-215668; (ii) provide Fidelity Title such documents as Fidelity Title shall reasonably require evidencing NW Natural's corporate authority to complete the conveyance of the Fee Interest Property to TriMet; and (iii) provide escrow instructions necessary to authorize Fidelity Title to conduct such Closing. On or before Closing, TriMet shall (i) deposit with Fidelity Title the Fee Interest Compensation and all other sums necessary to complete the Closing (including all escrow fees, title and recording fees); (ii) provide Fidelity Title such documents as Fidelity Title

shall reasonably require evidencing TriMet's authority to complete the acquisition of the Fee Interest Property; and (iii) provide escrow instructions necessary to authorize Fidelity Title to conduct such Closing. TriMet agrees and acknowledges that TriMet shall be responsible for all escrow, recording and title fees incurred in connection with the Closing.

6. PUC Disapproval. If on or before October 1, 2013, NW Natural shall not have provided TriMet written notice that NW Natural has obtained PUC Approval, then it shall be deemed that the PUC has not given such approval. In such case: (a) the Closing shall not occur; (b) TriMet shall have the right to commence a condemnation action against NW Natural; (c) the Fee Interest Compensation shall not be binding on either TriMet or NW Natural; (d) for purposes of determining the fair market value of the Fee Interest Property, such value shall be determined as if on the date of valuation, the Buildings shall have existed on the Property (so that such fair market value shall include, without limitation, the value of the portion of the Buildings in the Fee Interest Property, the cost to cure (including demolition costs), and the loss of value in the Buildings); and (e) TriMet shall be entitled to a credit against such fair market value determination in the amount of \$209,900. For avoidance of doubt, TriMet agrees to not commence a condemnation action against the Fee Interest Property before October 2, 2013, and only if NW Natural has not obtained PUC Approval on or before October 1, 2013.

7. Notices. All notices given under this this Agreement shall be delivered personally, by facsimile, or by express delivery service (e.g. UPS, FedEx) to the address or facsimile number provided below (and with a courtesy copy sent to the respective email addresses) with respect to each of the Parties, as follows:

<p>To TriMet:</p> <p>TriMet Attention: Simon Cooper 1800 S.W. First Avenue, Suite 300 Portland, Oregon 97201 Fax #(503) 962-2283 <a href="mailto:coopers@trimet.org">coopers@trimet.org</a></p>	<p>With a Copy To:</p> <p>TriMet Attention: Lance Erz 1800 S.W. First Avenue, Suite 300 Portland, Oregon 97201 Fax #503-962-2299 <a href="mailto:erzl@trimet.org">erzl@trimet.org</a></p>
<p>To NW Natural</p> <p>NW Natural Attention: Steven Walti 222 NW 2<sup>nd</sup> Avenue Portland, Oregon 97209 Fax #(503) 220-2586 <a href="mailto:s4w@nwnatural.com">s4w@nwnatural.com</a></p>	<p>With a Copy To:</p> <p>Bateman Seidel et al. Attention: Chris Gram 888 SW Fifth Avenue, Suite 1250 Portland, Oregon 97204 Fax#503-972-9951 <a href="mailto:cgram@batemanseidel.com">cgram@batemanseidel.com</a></p>

8. Miscellaneous

8.1 Applicable Law and Jurisdiction. This Agreement will be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules, or doctrines. Any

suit or action arising from this Agreement shall be commenced and prosecuted in the courts of Multnomah County, Oregon, or the U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

8.2 Interpretation. Both Parties having had the opportunity to consult an attorney regarding the provisions of this Agreement, the Parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the Party that drafted the ambiguous provision.

8.3. Attorney Fees. In any suit or action arising from this Agreement (including any appeals and petition for review to the Oregon Supreme Court), the prevailing party shall be entitled to recover such party's reasonable attorney fees and costs.

8.4 Counterparts. This Agreement may be executed in multiple counterparts each of which will constitute one agreement, even though all parties do not sign the same counterpart.

IN WITNESS WHEREOF, NW Natural and TriMet execute this Agreement as of the Dated Date.

**NORTHWEST NATURAL GAS  
COMPANY**

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

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

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

Approved as to Form:

Its: \_\_\_\_\_

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF  
OREGON**

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

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

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

Approved as to Form:

Its: \_\_\_\_\_

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**NORTHWEST NATURAL GAS  
COMPANY**

**TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF  
OREGON**

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

By: J. Detweiler

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

Name: J. Detweiler

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

Title: Director of Real Estate

Approved as to Form:

Approved as to Form:

Its: \_\_\_\_\_

Its: Deputy General Counsel