

179537

As Amended

ORDINANCE No.

*Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram. (Ordinance)

The City of Portland ordains:

1. On April 28, 2005, City Council approved Ordinance No. 179223, which approved a Construction Manager/General Contractor (CM/GC) contract with Kiewit Pacific Company for the construction of the Portland Aerial Tram. Kiewit Pacific Company and the City fully executed the contract on June 8, 2005.
2. Kiewit Pacific Company, in its role as the CM/GC for the Portland Aerial Tram, has identified construction efficiencies that can be gained for the project by altering the construction methods for the lower station. The proposed alterations require temporary access to property owned by ZRZ Realty directly north of and adjacent to the lower station of the Portland Aerial Tram.
3. City staff and outside construction experts have analyzed Kiewit's proposal for construction of temporary shoring at the lower station, and have concluded that the proposed modification provides superior construction quality, delivers schedule acceleration of up to six weeks, and saves a minimum of \$250,000 in construction costs.
4. ZRZ Realty and City staff have successfully negotiated an agreement, attached as Exhibit A to this Ordinance, which would allow temporary access to the ZRZ property for the purposes of installing a temporary shoring system at the lower tram station.
5. Terms of the agreement with ZRZ Realty include compensation for use of property through September 30, 2006; reimbursement to Zidell Marine Corporation for the relocation of property access necessitated by the design of the tram project; and reimbursement to Zidell Marine Corporation for the modification of an existing crane which could potentially interfere with tram construction and operations.
6. Additional terms of the agreement include the addition of ZRZ Realty and Zidell Marine Corporation as an additional insured on Kiewit Pacific Company's project insurance and the issuance of a revocable permit for ZRZ Realty to utilize air rights over the north twelve inches of Gibbs Street for the use of their barge fabrication operation.
7. Funds to compensate ZRZ Realty and Zidell Marine Corporation have been appropriated as part of the South Waterfront Central District Project Development Agreement, as amended, and through the formation of the Portland Aerial Tram Local Improvement District. City Council authorized the formation of the Portland Aerial Tram Local Improvement District through Ordinance No. 178675 on August 18, 2004.

8. Appropriation is in the Transportation Operating Fund, AU 159, Center Code 15942123, Account Code 563000, Project Number 37385.

NOW, THEREFORE, the Council directs:

- a. The City Engineer is hereby authorized to execute an Agreement with ZRZ Realty for the use of a temporary construction easement for construction of the Portland Aerial Tram, and the issuance of a revocable permit for ZRZ Realty's use of the air space in the north twelve inches of Gibbs Street between SW Bond Avenue and SW Moody Avenue, in substantial conformance with Exhibit A attached hereto.
- b. The Mayor and Auditor are hereby authorized to draw and deliver checks payable to ZRZ Realty and Zidell Marine Corporation, chargeable to the Transportation Operating Fund, AU 159, Object Code 630.

Section 2. The Council declares that an emergency exists because delays in executing an agreement with ZRZ Realty will delay construction on the Portland Aerial Tram, forcing the City to assume additional cost and risk in construction and potentially forcing the City to miss contractual deadlines for project delivery; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, AUG 24 2005

Commissioner Sam Adams
Matt Brown:slg
August 18, 2005
Zidell Ordinance 081805.doc

GARY BLACKMER
Auditor of the City of Portland
By


DEPUTY



Sam
Adams
Commissioner

Susan D.
Keil
Director

Eileen
Argentina
System
Management

Bryant
Engel
Business
Services

Don
Gardner
Engineering &
Development

Sam M.
Irving, Jr.
Maintenance

Don Gillam &
Steve Iwata
Planning

MEMORANDUM

DATE: August 23, 2005

TO: Karla Moore-Love, Council Clerk

FROM: Matt Brown, Project Management

SUBJECT: Amend Council Item No. 981
"Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram (Ordinance)"

Changes to the Ordinance:

1. Item number 7., first line, "identified and approved" has been changed to "appropriated"
2. Item number 8., first line, "Funds are available" has been changed to "Appropriation is"
3. Items number 5, 6, 7 and b. "Zidell Marine Corporation" has been added.

Changes to Exhibit A:

1. Exhibit A – "Zidell Marine Corporation" has been added. Insurance provisions have been clarified. Time extent of City liability has been decreased. Language limiting City's liability has been included.
2. Figure 1 has been added.
3. Attachment 1 – "Zidell Marine Corporation" has been added to document. Clarification of shoring, crane restoration has been made.
4. Attachment 4 has been removed.

Thank you,
Sandy Graham

An Equal
Opportunity
Employer



Faint header text, possibly a title or date, located at the top right of the page.

Main body of the document containing several paragraphs of extremely faint, illegible text. The text appears to be organized into sections, possibly separated by lines or small headings, but the content is completely unreadable due to the low contrast and blurriness of the scan.



Agenda No.

ORDINANCE NO.

Title

* Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram. (Ordinance)

INTRODUCED BY	Filed:
Commissioner Sam Adams	<p>Gary Blackmer Auditor of the City of Portland</p> <p>By: _____ Deputy</p> <p>For Meeting of: <u>August 24, 2005 Consent Agenda</u></p> <p>ACTION TAKEN:</p>
NOTED BY COMMISSIONER	
Affairs	
Finance and Administration	
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Transportation Engineering & Development	
Prepared by: Matt Brown:slg <i>slg</i> Date: August 18, 2005	
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not Required	
Included PPD: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Filename: Zidell Ordinance 081805.doc	
Bureau Head: <i>Donald Gardner</i> Donald Gardner, Director	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
			YEAS	NAYS
Consent <input checked="" type="checkbox"/>	Regular			
NOTED BY		Adams	Adams	
City Attorney	<i>Pete Castong</i>	Leonard	Leonard	
		Saltzman	Saltzman	
		Sten	Sten	
		Potter	Potter	

EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that ZRZ Realty Company (Grantor) does hereby grant unto said City of Portland, a temporary easement for the purpose of supporting construction activities associated with the Portland Aerial Tram Project in consideration of the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00), and other good and valuable consideration provided for in Attachments 1 and 2 attached hereto, entered into with the City of Portland (Grantee), a municipal corporation of the State of Oregon. This Temporary Construction Easement and Agreement is through, under, over and along the following described parcel:

A portion of Tax Lot 200, situated in the southwest one-quarter of the northeast one-quarter of Section 10, T1S, R1E, W.M., in the City of Portland, County of Multnomah, State of Oregon, as shown on Figure 1 attached hereto and by this reference made a part hereof.

Said easement area contains 4400 square feet, more or less, and is generally depicted on Figure 1 attached hereto.

IT IS UNDERSTOOD and agreed that:

- A. The easement is temporary, becoming effective on August 24, 2005 and terminating at midnight on September 30, 2006.
- B. The Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction.
- C. The Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with rights herein granted to the Grantee.
- D. The easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- E. The Grantor represents and warrants that he or she has the authority to grant this easement, that the subject property is free from all liens and encumbrances that would

SID

After Recording Return to:

106/800/Linda Birth

Tax Statement shall be sent to:

No Change

materially affect the easement grant, and that he or she will defend the same to the Grantee against the lawful claims and demands of all persons whomsoever.

- F. The easement was acquired with consideration paid by the Grantee accepted as just compensation for the property or property rights conveyed.
- G. The Grantee, by accepting this dedication, agrees to assume the costs for managing any Hazardous Substances that may be encountered in or under the easement area while undertaking activity in that area, and disposing of such materials in accordance with local, State, and Federal regulations and with the existing Oregon Department of Environmental Quality cleanup plan currently in effect for the Owner's property. Should the City encounter any Hazardous Substances that would require special management (whether management, treatment, or disposal) the City shall be responsible for such special management. In the event that the City fails to properly manage any Hazardous Substances found on the Owner's property, and to the extent allowed under Oregon Law and within the limitations of the Oregon Tort Claim Act, the City will be liable for any damages associated with such failure, and shall defend, indemnify, and hold harmless ZRZ Realty Company from and against all losses, damages, costs, charges, payments, liabilities and expenses, including the cost of litigation, investigation, and legal fees incurred by ZRZ Realty Company, relating to the City's failure to properly manage any such Hazardous Substances. Grantee agrees that in the event that the Grantee encounters additional or unforeseen contaminants, Grantee shall not contend nor shall it suggest to others that such discovery might be or is grounds to reopen the study process for Grantor's property, consistent with the terms of Attachment 3. This obligation shall survive the termination of this easement and until November 1, 2008. Grantee agrees to cause its contractor responsible for work performed on Grantor's property to name Grantor and Zidell Marine Corporation as an additional insured in accordance with the terms of Sections I and J below.

"Hazardous Substances" shall mean and include any chemical, compound, material, mixture, waste or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixture of natural gas and such synthetic gas). "Hazardous Substances" shall include, without limitation, any hazardous or toxic substance, material or waste or any chemical, compound or mixture which is (i) asbestos, (ii) designated as a "hazardous substance" pursuant to Section 1317 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*), (iii) defined as a "hazardous waste" pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*), (iv) defined as "hazardous substances" pursuant to Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, or (v) listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental

Protection Agency as hazardous substances (40 CFR 302); or in any and all amendments thereto in effect as of the Closing Date; or such chemicals, compounds, mixtures, substances, materials or wastes otherwise regulated under any applicable local, state or federal Environmental Laws.

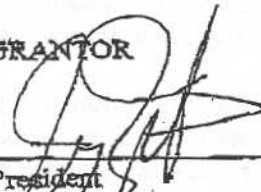
"Environmental Laws" shall mean any and all presently existing federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of any federal, state or local governmental agency, court, board, bureau or other authority having jurisdiction with respect to or relating to the environment, to any Hazardous Substance or to any activity involving Hazardous Substances, and shall include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, *et seq.*), the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*) and all amendments thereto in effect as of the Closing Date.

- H. The Grantee, by accepting this dedication, agrees, to the extent allowed under Oregon Law and within the limitations of the Oregon Tort Claim Act, to assume liability for and to promptly reimburse Grantor for any damage to Grantor's property, including to cranes and crane tracks, that may result from the installation or use of the temporary shoring tiebacks. This obligation shall survive the termination of this easement and until November 1, 2008. Grantee agrees to cause its contractor responsible for work performed on Grantor's property to name Grantor and Zidell Marine Corporation as an additional insured in accordance with the terms of Sections I and J below.
- I. During the term of this Agreement, Grantee shall ensure that its Contractor shall obtain and maintain in force the following insurance:
- 1) Comprehensive General Liability insurance (including contractual, products and completed operations, explosion, collapse, underground hazards, and consequential damages) in an amount not less than \$3,000,000;
 - 2) Commercial Automobile Liability insurance covering owned, hired, and non-owned vehicles in an amount of not less than \$3,000,000; and
 - 3) 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/\$1,000,000/\$1,000,000.
- J. Prior to performance of the Work under this Agreement, Grantee shall ensure that its Contractor shall furnish ZRZ Realty with certificate(s) of insurance evidencing compliance with the foregoing provisions, and that contain(s) the following provisions:
- 1) With respect to Sections I (1.) and (2.) above, ZRZ Realty and Zidell Marine Corporation shall be named as an additional insured as respects to operations arising out of this Agreement;

- 2) Such insurance shall be primary to any owned by ZRZ Realty and Zidell Marine Corporation; and shall have no deductible applicable to ZRZ Realty and Zidell Marine Corporation; and
- 3) Such insurance shall not be canceled or materially altered without first giving thirty (30) days' written notice thereof to ZRZ Realty and Zidell Marine Corporation.

IN WITNESS WHEREOF, the Grantor above named has set his hand this 23rd day of August, 2005.

GRANTOR



President
ZRZ Realty Company

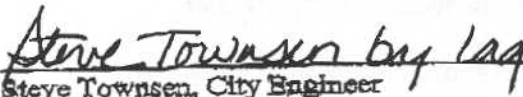
APPROVED AS TO FORM:



City Attorney

Dated: August 24, 2005

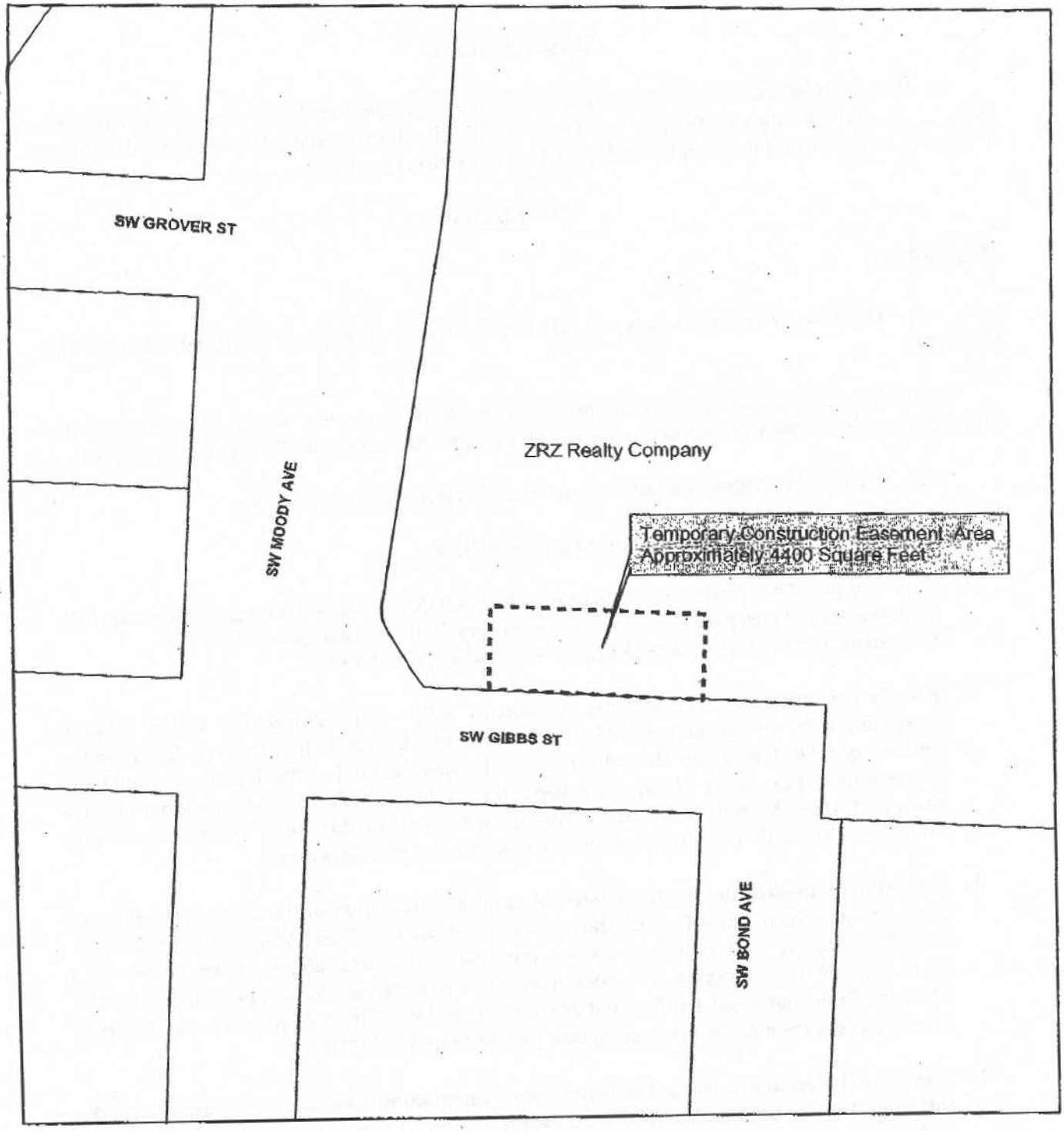
APPROVED AND AGREED:



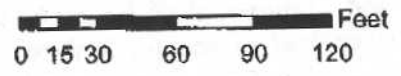
Steve Townsen, City Engineer
Portland Office of Transportation

Dated: August 24, 2005

Figure 1: Area of Temporary Construction Easement



- Taxlot Property Line
- - - Approximate Area of Construction Easement



Attachment 1
to Temporary Construction Easement And
AGREEMENT

This Attachment 1 to Temporary Construction Easement and Agreement is entered into this _____ day of August, 2005, by and between ZRZ Realty Company (Owner) and the City of Portland, acting by and through its Office of Transportation (the City).

RECITALS

WHEREAS,

- A. The Owner owns property at 3121 SW Moody Avenue in Portland, Oregon (the Property).
- B. The City requires a Temporary Construction Easement across a portion of the Property in order to install temporary shoring for the construction of the Portland Aerial Tram.
- C. The Owner requires certain reciprocal authorizations from the City.

NOW, THEREFORE, Owner and the City agree as follows:

1. City will pay ZRZ Realty the total sum of \$20,000.00, (Twenty Thousand Dollars and No Cents) as partial compensation for the Temporary Construction Easement ("the Easement") to which this Agreement is attached as Attachment 1.
2. As further consideration for the Easement, City will compensate Zidell Marine Corporation in the amount of \$11,667.00 (Eleven Thousand Six Hundred Sixty Seven Dollars and No Cents) for the relocation of the gate located at the Bond Avenue/Gibbs Street intersection to the Moody Avenue/Gibbs Street intersection. Such work has already been performed by the Owner and invoices for the cost of this work will be supplied by Owner to City within five days of mutual execution of the agreement.
3. As further consideration for the Easement, and in anticipation of the future operations of the Portland Aerial Tram Project, the City will compensate Zidell Marine Corporation for reconfiguring its east crane to reduce the crane overhang above Gibbs Street to a maximum of twelve inches. The cost of this reconfiguration will not exceed \$25,000.00 (Twenty Five Thousand Dollars and No Cents), and the City will pay the actual cost of the reconfiguration should the actual cost be less than \$25,000.00.
4. Owner will sign and execute the Temporary Construction Easement concurrent with the full execution by both parties of this Agreement. The payments as described in sections 1 and 2 above, shall be made within 30 days after Owner signs the Easement. Payment described in section 3 above shall be within thirty (30) days of Owner's provision of invoice to City. Time is of the essence for these payments.

5. As further consideration for the Easement, the City agrees that it shall, at no cost to Owner, grant to Owner a reciprocal temporary construction easement on City property as may be necessary for Owner to utilize the same tieback shoring procedure in development of its property at the site or at any property that Owner acquires and develops in the vicinity of the site, provided that in the City's judgment such easement shall not unreasonably interfere with the City's improvements and use.
6. Upon receipt of the signed Easement, the City will promptly issue "Permit to Use Air Rights Over Street Area" to Owner, with the permit to be substantially the same as Exhibit B to the Temporary Construction Easement. Such permit will specifically allow Owner's cranes to overhang its property line by twelve (12") inches along Gibbs Street between SW Moody Avenue and SW Bond Avenue, and shall be effective for the duration of time that Owner's barge construction shall occur at the Property. Permit fee will be considered paid in full as partial compensation for returned signed easement.
7. The City will provide Owner with an advance schedule of any and all activities within the Easement area.
8. The Owner understands and agrees that the shoring system proposed for use by the City on the Owner's property consists of driven piles and lagging, which will be removed upon completion of the construction process, and the installation of tie-backs below the surface of the Owner's property, which will be de-tensioned and abandoned in place upon the removal of the driven piles and lagging.
9. The City will monitor the crane tracks for vertical and horizontal position before, during and after the construction and removal of the temporary shoring system. Any movement will be promptly communicated to the Owner, and work on the temporary shoring will be suspended until the City rectifies the problem to the Owner's satisfaction, such that the crane tracks are restored to their original vertical and horizontal position, and such approval from the Owner shall not be unreasonably withheld.
10. The Owner will allow the City and/or its agents to enter the property to survey the crane tracks before, during, and after the construction and upon removal of the temporary shoring system. The City will provide the Owner with at least 24 hours notice for such survey, and will endeavor to schedule and perform the work so as to minimize impacts on Owner's ongoing operations.

III. OTHER

1. Disputes. If a dispute arises regarding this Agreement, the parties agree to exercise good faith in expeditiously resolving said dispute in the following manner:
 - a) All disputes will first be discussed and resolved if possible by the City's project manager or construction manager and the Owner.
 - b) If the dispute cannot be resolved, it shall be referred to persons with higher authority on the part of the City and the Owner, who also shall have the authority to resolve the

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PAGE 02/03

dispute. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had sufficient time to review the dispute.

- c) If the dispute is not resolved after meeting, the City and Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. The mediation fee shall be borne equally by the Owner and the City.
 - d) In the event that mediation is not successful in resolving the dispute, either party may file litigation to resolve it, but only if the litigation is filed in the Circuit Court for Multnomah County, Oregon.
2. Modification. Any modification to this Agreement must be in writing and signed by both parties.
 3. Authority. The persons signing this Agreement represent that they are authorized to bind the entities they represent to the terms and conditions herein.

APPROVED

OWNER

President
ZRZ Realty

Dated: _____

8/23/05

CITY OF PORTLAND

Approved as to Form:

Steve Townsend by lag
Steve Townsend, City Engineer
or his designee

Deul Hol
City Attorney

Exhibit B to Temporary Construction Easement and Agreement

(Permittee) (file) (Inspector)

CITY OF PORTLAND, OREGON
OFFICE OF TRANSPORTATION
BUREAU OF ENGINEERING AND DEVELOPMENT
PERMIT TO USE AIR RIGHTS OVER STREET AREA

Permit No. *

Appl Date *

Issue Date _____

The undersigned is granted a permit in accordance with the provisions of the City Charter and Title 17, Public Improvements of the Code of the City of Portland. For use of air rights over SW Gibbs Street between SW Moody Avenue and SW Bond Avenue, with said permit area depicted on Figure A hereto.

(CONDITIONS)

- (1) This permit is for the use of air rights over the street area only, and shall not exempt the Permittee from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this permit, nor shall this permit waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.
- (2) This permit is revocable by the City Engineer in the event the Permittee is found to be in breach of the terms and conditions of this permit or in the event that the permit is no longer reasonably necessary to the Permittee.
- (3) The Permittee shall hold the City of Portland, its officers, agents, and employees free and harmless from any claims for damages to persons or property, including legal fees and costs of defending any actions or suits, including any appeals, which may result from the permitted activity.
- (4) This permit is personal to the Permittee and may not be transferred, assigned or otherwise conveyed, and will require insurance with limits of coverage that will meet the maximum requirements for liability of a public body as set forth in ORS 30.260 through 30.300, or as it may be required by subsequent amendment and naming the City, its officers, agents and employees as additional insured. Said insurance to be kept in full force and effect at all times. This permit is automatically revoked without further action by the City Engineer if this insurance is permitted to lapse, is canceled, or for any other reason becomes inoperative.
- (5) The Permittee shall be liable to any person who is injured or otherwise suffers damage by reason of the Permittee's failure to keep the crane equipment covered by this permit in safe condition and good repair.
- (6) If it becomes necessary or expedient to modify the plan or location of any item authorized by this permit, the Permittee shall first obtain the approval of the City Engineer.
- (7) No modification shall be made to any installation authorized under this permit without prior approval from the City Engineer. Failure to maintain the crane in conformance with the approved plans or repair to or modification of the crane without obtaining prior approval from the City Engineer shall cause immediate revocation of this permit without further action by the City Engineer.

Exhibit B to Temporary Construction Easement and Agreement

Insurance Required YES
Insurance Received _____
Insurance Approved _____
Structural Engineering Review NO
Review Fee: -0-

Through: *

Address: 3121 SW Moody Avenue
Portland, OR 97239

Telephone No.: (503) 228-8691

Permit Fee: \$236.00
per City Code Sect. 17.24.020

Permit fee paid in full per
Ordinance No. _____, Attachment 1

TOTAL FEE \$0.00

**Approved:
CITY ENGINEER**

PERMITEE: ZRZ Realty, Inc.

SIGN _____
President, ZRZ Realty Inc.

Corporate Acknowledgement

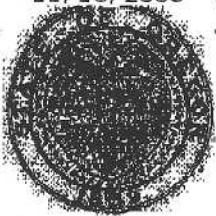
State of Oregon

County of _____

This instrument was acknowledged before me on _____ 19____

by _____

Notary Public
My Commission Expires _____



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality

Northwest Region-Eastside Office
1550 NW Eastman Parkway, Suite 290
Gresham, OR 97030-3832
(503) 667-8414
FAX (503) 674-5148

August 8, 2005

Jay Zidell
Zidell Marine Company
3121 SW Moody Avenue
Portland OR 97239

Dear Mr. Zidell:

We have been discussing the construction of the Portland Aerial Tram with representatives from the City of Portland. We understand that they are seeking access to your property to construct a temporary shoring system, which would require excavation along your south property line at Gibbs and the installation of tiebacks below your site, extending approximately 40 feet north of the temporary shoring.

As part of our work with you over the past several years, we have produced a cleanup plan to safely manage contaminants that have been identified on your properties. We believe that we have adequately identified the location and extent of contaminants on your property, and that the plan we have jointly developed to deal with hazardous material issues is workable and sensible.

Based on the information that we have available to us at this time, the risk for encountering contaminants in the course of this work is low, and because of that, we feel confident that the City's work will not create any issues relative to the cleanup program for your site. To that end, we have been asked to assure you that the work the City performs on your property will not affect the final cleanup plan for the site. In the event that the City encounters additional or unforeseen contaminants, the selected cleanup plan provides the appropriate measures to manage the contamination and would not be grounds to reopen the study process for your site.

If you have any questions regarding our position, please feel free to contact me at (503)667-8414, extension 55009.

Sincerely,

Bruce Gilles, Manager
Cleanup and Emergency Response Section

C: Matt Brown, City of Portland



DBQ-DCI

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*Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram. (Ordinance)

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Passed by the Council,

Commissioner Sam Adams
Matt Brown:slg
August 18, 2005
Zidell Ordinance 081805.doc

GARY BLACKMER
Auditor of the City of Portland
By

DEPUTY

Sam
Adams
Commissioner

DATE: August 19, 2005

TO: Commissioner Sam Adams

Susan D.
Keil
Director

FROM: Matt Brown, Project Manager, Project Management Division

Eileen
Argentina
System
Management

RE: *Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram. (Ordinance) **EMERGENCY ORDINANCE**

Bryant
Enge
Business
Services

1. **INTENDED FILING DATE:** August 19, 2005
2. **REQUESTED COUNCIL AGENDA DATE:** August 24, 2005, CONSENT AGENDA
3. **CONTACT NAME & NUMBER:** Matt Brown, Project Manager, 823-7027
4. **PLACE ON:** X **CONSENT** ___ **REGULAR**
5. **BUDGET IMPACT STATEMENT ATTACHED:** X **Y** ___ **N** ___ **N/A**
6. (3) **ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED:** ___ **Yes** ___ **No** ___ **N/A** **DRAFT ATTACHED**

Don
Gardner
Engineering &
Development

7. **BACKGROUND/ANALYSIS**

Sam M.
Irving, Jr.
Maintenance

City Council approved a Construction Manager/General Contractor (CM/GC) contract with Kiewit Pacific Company on April 28, 2005 to construct the Portland Aerial Tram project. As part of this contract, Kiewit is responsible for assisting the City in finding the most efficient methods for construction of the project, identifying potential cost-saving opportunities, and ensuring that the highest standards of quality are met.

John Gillam &
Steve Iwata
Planning

In the process of analyzing construction methods for the lower tram station, Kiewit and its subcontractors identified an alternative method for providing temporary shoring for the lower station, excavating the basement, and installing the drilled pier foundation system. Kiewit presented this alternative to City staff two weeks ago (August 1) for analysis. This method provides the following benefits over the previously identified approach:

1. **Quality (short term)** - The quality of the temporary shoring system will be much better using a tie-back system than using a coffer dam approach as previously proposed. Shoring up Zidell's cranes is an important element in the design of the shoring, whether the shoring is entirely within right-of-way or not. While both systems would be designed with crane loads in mind, the tie-back system by its very nature is a more secure shoring system but requires permission from Zidell to install.
2. **Quality (long term)** - Using the coffer dam approach will affect the quality of the construction at the lower station. Using this method, we would need to drill and install drilled shaft piers from current grade, and tie off the reinforcement and pour concrete into these shafts from 18 feet above their final grade. This does not provide optimum quality assurance for the piers, which are one of the most critical elements of the structure. Also, waterproofing and forming for the north basement wall may be compromised due to lack of work space. Our ability to ensure that construction goes according to design becomes more limited if we stay with the previous approach.
3. **Schedule** - The coffer dam approach will cost us a month to six weeks in schedule. Because the City is obligated by the Development Agreement for a delivery date, this four to six weeks presents additional risk and potential back-end penalties if we are unable to make up this time.

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Employer

4. Cost - We stand to save about \$200,000 on excavation/shoring alone, with an additional \$60,000 on drilled shaft construction and four to six weeks less of general conditions to carry on schedule.
5. Zidell Crane - This easement gives us an opportunity to ensure that the Zidell crane will be modified so as not to conflict with the lower station structure.

Emergency Ordinance

Why is it necessary to circumvent the regular agenda process and timelines?

This opportunity was identified and analyzed as a legitimate option over the last two weeks. As little as a week ago, ZRZ had expressed to the City an unwillingness to agree to allow access to their property. As of August 12, ZRZ had agreed to allow access with certain terms. These terms have been negotiated as expeditiously as possible, and have been finally resolved on August 18.

The schedule for the Portland Aerial Tram project is extremely aggressive. It is still possible to make the September 30, 2006 opening, but this possibility is limited, if not eliminated, if an alternative shoring system is not pursued. In order to keep Kiewit on schedule and avoid delays, it is necessary to obtain a decision from Council at the earliest possible date.

Why couldn't this item have been filed a month earlier preventing the need for the emergency clause?

A month ago, it appeared that ZRZ was not willing to speak to the City, let alone agree to an access easement. As noted above, the opportunity to pursue an alternative approach was identified in early August, and agreement from ZRZ obtained on August 18. Filing this a month earlier was an impossibility.

Why is it in the public's best interest to have the item filed as an emergency, precluding the opportunity for public review and input through the regular agenda process?

The approach suggested by Kiewit provides the lowest risk, lowest cost, best quality, and fastest delivery of the previously suggested construction method. Unless this item is approved and executed immediately, the public will be poorly served by the alternative given the additional risk that the City will assume on schedule, budget, and quality.

8. FINANCIAL IMPACT

No Financial Impact/Budgeted Item.

9. RECOMMENDATION/ACTION REQUESTED

Pass Ordinance.

**FINANCIAL IMPACT STATEMENT
For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Matt Brown		2. Telephone No. 503-823-7027	3. Bureau/Office/Dept. PDOT/BTED/PMD
5a. To be filed (hearing date): August 24, 2005	5b. Calendar (Check One) Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> 4/5ths <input type="checkbox"/>		4. Date Submitted to Commissioner's office and FPD Budget Analyst: August 19, 2005

1) Legislation Title:

*Authorize City Engineer to accept temporary construction easement from ZRZ Realty for the construction of the Portland Aerial Tram. (Ordinance)

2) Purpose of the Proposed Legislation:

Revenue and/or Expense:

Is ALL the Revenue and/or Expense a part of the current year's budget? Yes x No _____

If YES, identify Center Code(s) and Project No(s): 15942123

then go to Step #5.

If NO, complete Steps 3 & 4. For modifications to budgets, identify/discuss only the changes to the budget.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.

4) Expense:

What are the costs to the City as a result of this legislation? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required)

Payment for use of property not to exceed \$56,667. Included in FY 05-06 Budget.

Staffing Requirements:

5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.) No

6) Will positions be created or eliminated in future years as a result of this legislation? No

7) **Change in Appropriations** (Please reflect the dollar amount to be appropriated by this legislation. Include the appropriate center codes and accounts that are to be loaded by accounting. Indicate "new" in Center Code column if new center needs to be created. Use additional space if needed.) N/A

Fund	Center Code	Account	Amount	Project Fund	Project No.

KK 8-19-05



APPROPRIATION UNIT HEAD

SUSAN D. KEIL, Director, Office of Transportation