

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
and
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT BOARD**

Joint Study Session Worksheet

Presentation Date: 11/26/2013 **Approx Start Time:** ^{10:30}~~9:30~~ **Approx Length:** ^{1 hr}~~30 Min.~~

Presentation Title: Follow Up Agreements on Portland Milwaukie Light Rail.

Department: Administration

Presenters: Dan Chandler, Strategic Policy Administrator

Other Invitees: Barb Cartmill, Gary Barth

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Direction regarding three remaining agreements between the County and TriMet regarding Portland Milwaukie Light Rail:

1. Continuing Control Agreement.
2. Agreement Regarding Road Program Work.
3. Design and Construction Services Agreement.

Completion of agreements 1 and 2 above is directed by the Circuit Court ruling in *Tri Metropolitan Service District v. Clackamas County*. Agreement 3 provides that TriMet will reimburse the County and the North Clackamas Parks and Recreation District for staff time.

EXECUTIVE SUMMARY:

Clackamas County is a party to two agreements regarding the Portland Milwaukie Light Rail Line (PMLR). The first was the February 2010 Intergovernmental Grant Agreement on Portland Milwaukie Light Rail (Funding IGA). This agreement set out the respective obligations of the County, the North Clackamas Parks and Recreation District and Tri Met with respect to the PMLR line. In August 2012, the County negotiated a supplemental agreement which reduced the county's cash contribution and borrowing, and memorialized a number of system enhancements that would benefit the County. (Supplemental Agreement).

The Funding IGA and Supplemental Agreement turn obligated the parties to negotiate in good faith to complete several follow up agreements and property transactions.

After Clackamas County citizens passed Measure 3-401 last September, the County chose to place a measure on the May 2013 ballot asking whether the voters approved of several transfers of County resources to TriMet.¹ Before the May election was held, TriMet sued the County and the NCPRD, claiming that the County was required to complete the additional transactions and follow up agreements notwithstanding the requirements of Measure 3-401.

In the May 21, 2013 election, Voters approved the property transfer as to the NCPRD, and did not approve the County transfers. On July 1, 2013 Judge Breithaupt ruled that neither Measure 3-401 nor the May 21, 2013 vote relieved the County from performing the duties set out in the Funding IGA and Supplemental Agreement, including the completion of the follow-up agreements.

The three pending follow up agreements are:

Continuing Control Permit

This agreement provides that TriMet may operate the PMLR line where it crosses County rights of way. In this case, the County believes that all of the subject properties are actually City of Milwaukie right-of-way. Nonetheless, the Continuing Control Permit will provide TriMet certainty as to any potential County or NCPRD ownership issues.

Road Program IGA

This agreement is specifically required by the Supplemental IGA, and requires the County to contribute \$1.279 million to a set of road program improvements in the vicinity of the intersection of Park Avenue and Oatfield Road. The bulk of the road improvements will come from the County road fund, the remaining \$279,740 will come from Transportation System Development Charges (TSDCs) paid by TriMet. The IGA details the timing and method of payments, and details the work to be done by TriMet.

Design and Construction Services Agreement

This agreement provides that TriMet will reimburse the County and NCPRD for staff time spent reviewing PMLR plans and documents.

FINANCIAL IMPLICATIONS (current year and ongoing):

Continuing Control Permit: No financial implications. The rights of way are not county-owned.

Design and Construction Services Agreement: This agreement will provide reimbursement of up to \$300,000 in County and NCPRD staff time by TriMet.

Road Program Agreement: The IGA will authorize payment of \$1.279 million dollars toward approximately \$3 million in improvements to be constructed in the vicinity of Park Avenue and

¹ Measure 3-401 was passed by County voters in September, 2012, and requires approval of county voters before the BCC authorizes the use of county resources for public rail transit.

In addition, the NCPRD placed an advisory measure on the ballot related to what is known as the "Trolley Trail Transaction." Voters approved the outlines of that transaction, which will come before the NCPRD board at a later date.

Oatfield Road. These improvements have been identified as needed improvements in the County Transportation System plan for some time.

LEGAL/POLICY REQUIREMENTS:

The Clackamas County Circuit Court has ruled that the Continuing Control and Road Program agreements must be negotiated in good faith, and has imposed a deadline for completion of December 15th.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Each of these Agreements has been the subject of lengthy discussion in previous study sessions, business meetings and elections.

OPTIONS:

1. Direct all of the agreements for consideration at a future consent agenda.
2. Hold a public hearing on any or all of the agreements.
3. Request that staff negotiate changes to any or all of the agreements.

RECOMMENDATION:

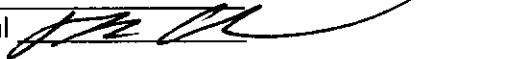
Given that the Circuit Court has ordered completion of the agreements, and that staff has negotiated the specific terms, staff recommends Option 1.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____



ATTACHMENTS:

1. Continuing Control Permit
2. Road Program Agreement
3. Design and Construction Services Agreement

CONTINUING CONTROL PERMIT FOR THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

This Continuing Control Permit ("Permit") is issued by Clackamas County ("County") and the North Clackamas Parks and Recreation District ("District") to the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the construction, operation, and maintenance of the Portland-Milwaukie Light Rail Project ("Project"), under the terms and condition set forth below. TriMet, the County and the District are collectively referred to herein as the "Parties."

PERMIT RECITALS

- A. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon County along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.
- B. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.
- C. On or about October 22, 2010, the Federal Transit Administration ("FTA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the Project.
- D. On November 29, 2010, the FTA issued a Record of Decision finding that the requirements of the National Environmental Policy Act have been satisfied for the construction and operation of the project
- E. On March 29, 2011, the FTA approved the Project's entry into the final design stage of Project development. The design reached 90 percent design in December 2011, and 100 percent design in May 2012.
- F. In May, 2012, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now under construction, and is scheduled to open for revenue service in September 2015. Upon completion of the Project, TriMet will commence light rail service to areas under the County's jurisdiction.
- H. On February 4, 2010, the County, District, and TriMet entered an intergovernmental agreement ("IGA") regarding the funding, development, and operation of the Project.

- I. In Section 6.2 of the IGA the County, District, and TriMet acknowledged and agreed to comply with FTA's continuing control requirements.
- J. In compliance with Section 6.2 of the IGA, on January 4, 2013 TriMet notified the County Representative that it required a continuing control permit in compliance with FTA requirements.
- K. This Permit is required to be issued pursuant to the Land Use Final Order for the Project.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District issue this Permit under the following terms and conditions:

TERMS AND CONDITIONS

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(c)(1)(B), the County and the District hereby grant to TriMet a permanent permit over, under, and above only those portions of right-of-way and properties owned by the County and the District, upon which the Project's facilities, features, or both are sited (the "Project Property"), which property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit A, and does not include any property to be transferred between the District and TriMet under separate agreement.
2. The Parties understand that some of the Project Property set forth in Exhibit A may be under the ownership or control of the City of Milwaukie, and the County and the District make no warranties or representations that they own or control any of the Project Property. However, to the extent that the Project Property is under the ownership or control of the County or District, the County and District agree, subject to the terms of this Permit, to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to any additional and applicable permit processes with respect to construction and maintenance within the Project Property as provided in this Permit. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Project Property, TriMet shall give 60 days prior written notice to County and the District of such intent. Upon receipt of such notice, the County and the District may revoke the continuing control rights granted herein.
3. The Parties agree that the purpose of this Permit is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Permit. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet

by FTA pursuant to the FFGA No. OR-03-0126-000, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Project Property generally shown in Exhibit A. TriMet's interest in the Project Property may not be assigned or transferred without FTA's written concurrence.

4. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District shall retain ownership of their respective property and, to the extent permitted by 49 U.S.C. § 5307(c)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
5. TriMet shall include in any third party contract under this Permit a provision to the effect that the contractor shall fully indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to the Project Property.
6. Neither the County nor the District shall charge TriMet or the Project a fee for use of or access to the Project Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Project Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Project Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Permit; provided however such maintenance obligations may be assigned to the County and/or District in subsequent agreement(s).
7. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District agree to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Permit, other than the approval of the County Commission and the District Board of Directors. However, in the event that the Parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the County and District shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the County and District staff agree to propose for enactment regulations that would:

- A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the County, District or others.
 - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Property or Project alignment.
 - C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Project Property or Project alignment.
 - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
 - E. Notify TriMet of any proposed future changes by the County or District, or which are proposed to be approved through permit by the County or District, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
 - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
 - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the County or District's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
8. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of streets and other public or private facilities, parades, or civic events may occur, provided that the County or District shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if

possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.

9. This Permit, including any interests herein, shall not be assignable without the County's or District's prior written consent, as applicable. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Permit will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.
10. All notices required under this Permit will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE COUNTY:

Dan Chandler
Strategic Policy Administrator
Public Services Building
2051 Kaen Rd
Oregon City, OR 97045

IF TO TRIMET:

Manager of Real Property Acquisition
TriMet
Capital Projects and Facilities Division
1800 SW First Ave., Ste. 300
Portland, OR 97201

11. Any modification to this Permit shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
12. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Permit (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the acts or omissions of the indemnitor, its officers, employees, or agents.
13. This Permit may not be terminated, except as set forth in Paragraph 1, above. However, the Parties agree that each party and its respective successors or assigns may avail itself of other remedies at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein, but only if the other party fails to cure the breach within 60 days of receipt of written notice specifying the breach.
14. The provisions of this Permit shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Permit

shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

- 15. If any provision of this Permit is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Permit as of the date signed by both Parties.

CLACKAMAS COUNTY

By: _____
Name:
Title:

Date: _____

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

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

Date _____

**NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT**

By _____
Chair, NCPRD Board of Directors

Date _____

**APPROVED AS FORM FOR COUNTY
AND DISTRICT**

By _____
County Counsel

Date _____

APPROVED AS FORM FOR TRIMET

By _____
TriMet Legal Department

Date _____

Exhibit "A"

File 3723
Clackamas County-Light
Rail Continuing Control
Agreement

Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 3/14/2013
Amended:

3723-001 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 10, ROBERTSON, in the southeast one-quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of 1st Street (now known as Eagle Street) and Sixth Avenue (now known as 22nd Avenue) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northeast corner of the southeast one-quarter of said Section 35; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,918 square feet, more or less.

3723-002 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 2, ROBERTSON, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 2nd Street (now known as Bluebird Street) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,540 square feet, more or less.

3723-003 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 2, ROBERTSON, and Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Seventh Avenue (now known as River Road) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,490 square feet, more or less.

3723-004 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the northeasterly side of Block 4, said BIRKEMEIER ADDITION, and lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

The strip of land to which this description applies contains 2,996 square feet, more or less.

3723-005 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 3 and 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Third Street (now known as Bobwhite Street) as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet) and the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,570 square feet, more or less.

3723-006 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 3, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the easterly side of Block 3, said BIRKEMEIER ADDITION, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet); thence S.40°16'07"E., a distance of 312.95 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,535 square feet, more or less.

3723-007 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 42 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Tenth Avenue (now known as 26th Avenue) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,412 square feet, more or less.

3723-008 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 5th Street (now known as Sparrow Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,139 square feet, more or less.

3723-009 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48, 50 and 51, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of Eleventh Avenue (now known as 27th Avenue) and 6th Street (now known as Lark Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 5,804 square feet, more or less.

3723-010 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 52 and 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Railway Avenue as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the easterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 2,726.51 feet, and East, a distance of 1,304.77 feet from the northwest corner of the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian; thence southeasterly on the arc of a 1,483.00 foot radius curve to the right (the radius point of which bears S.80°47'07"W.) through a central angle of 03°41'06", a distance of 95.38 feet (chord bears S.07°22'20"E., a distance of 95.37 feet) to the point of curve right of a 1,976.68 foot radius curve; thence along the arc of said curve right through a central angle of 01°26'30", a distance of 49.73 feet (chord bears S.04°48'32"E., a distance of 49.73 feet); thence S.04°05'18"E., a distance of 125.35 feet to the point of curve right of a 508.00 foot radius curve; thence along the arc of said curve right through a central angle of 08°38'05", a distance of 76.56 feet (chord bears S.00°13'45"W., a distance of 76.49 feet); thence S.04°32'48"W., a distance of 20.50 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 11,499 square feet, more or less.

3723-011 Easement for Continuing Control

A tract of land in Block 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of Block 53, MILWAUKIE HEIGHTS lying on the westerly side of a line which is parallel with and 60 feet westerly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

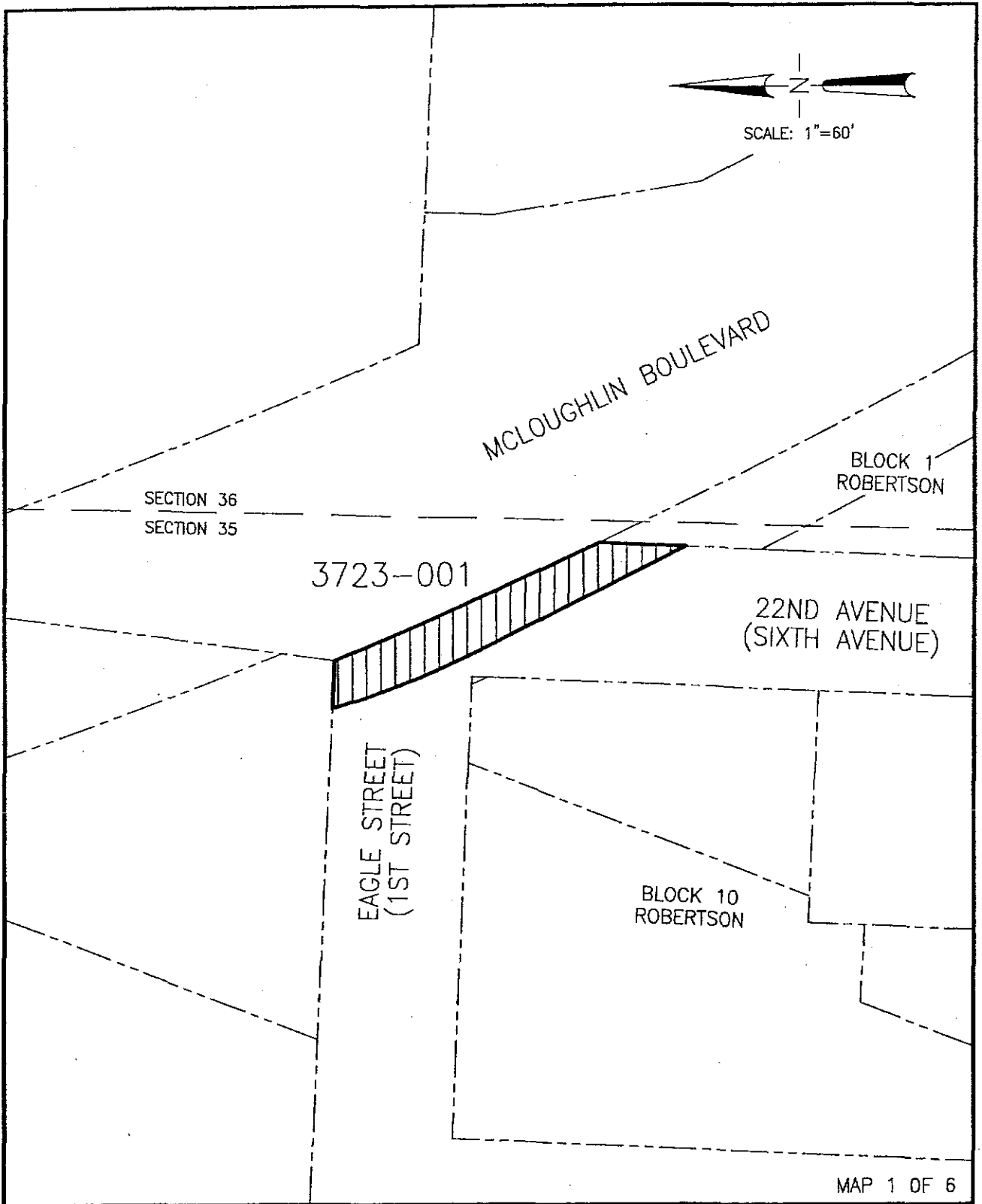
The tract of land to which this description applies contains 3,515 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

John A. Carlson

OREGON
JULY 15, 1983
JOHN A. CARLSON
2044

RENEWS 12/31/13



MAP 1 OF 6

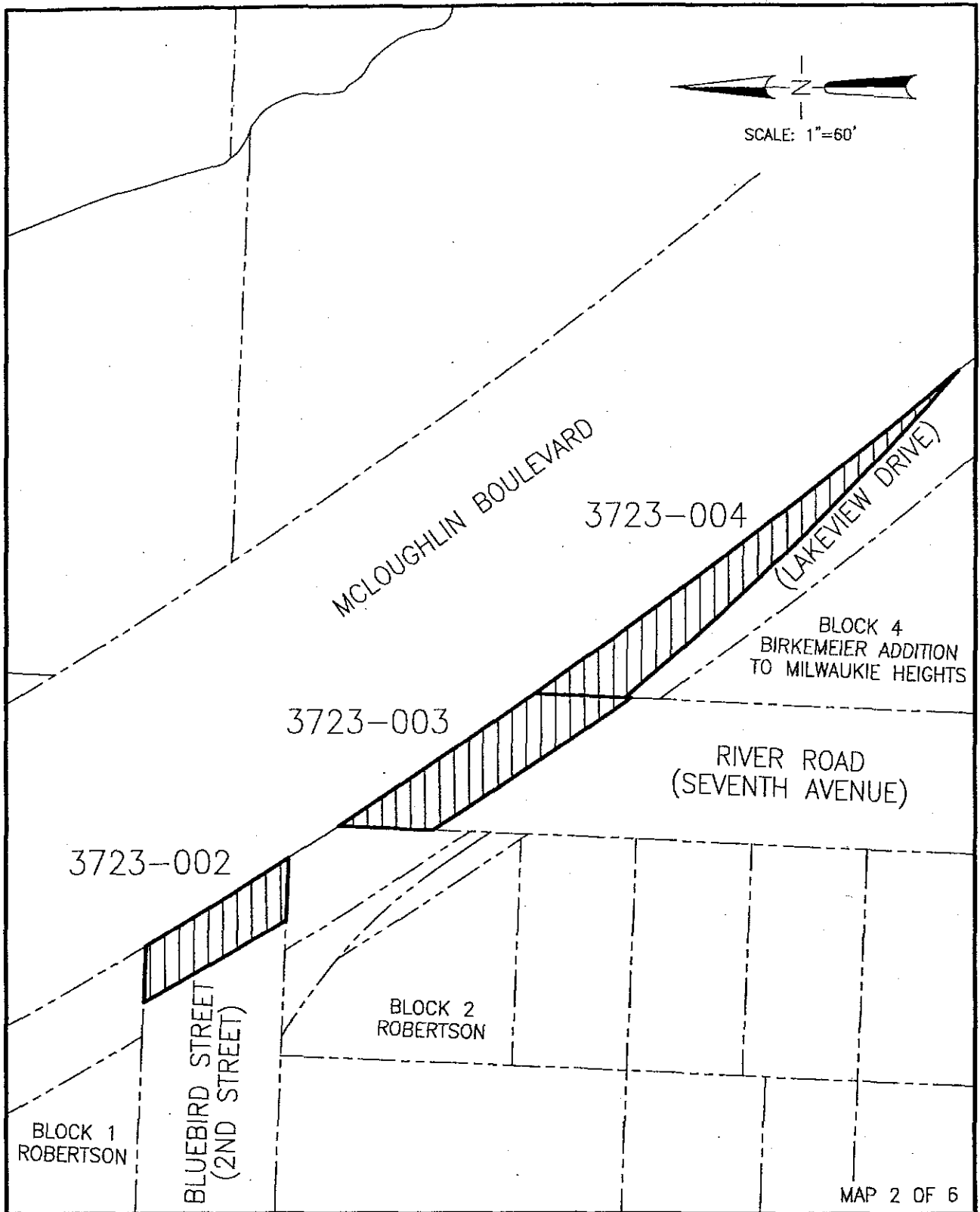
TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

| | | | |
|-------------------|---------------------|------------------------|-----------------------|
| DATE 3/14/2013 | REVISION NO. 000 | DRAWN BY J. CARLSON | CHECKED BY G. PAUL |
|-------------------|---------------------|------------------------|-----------------------|

otak

17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395



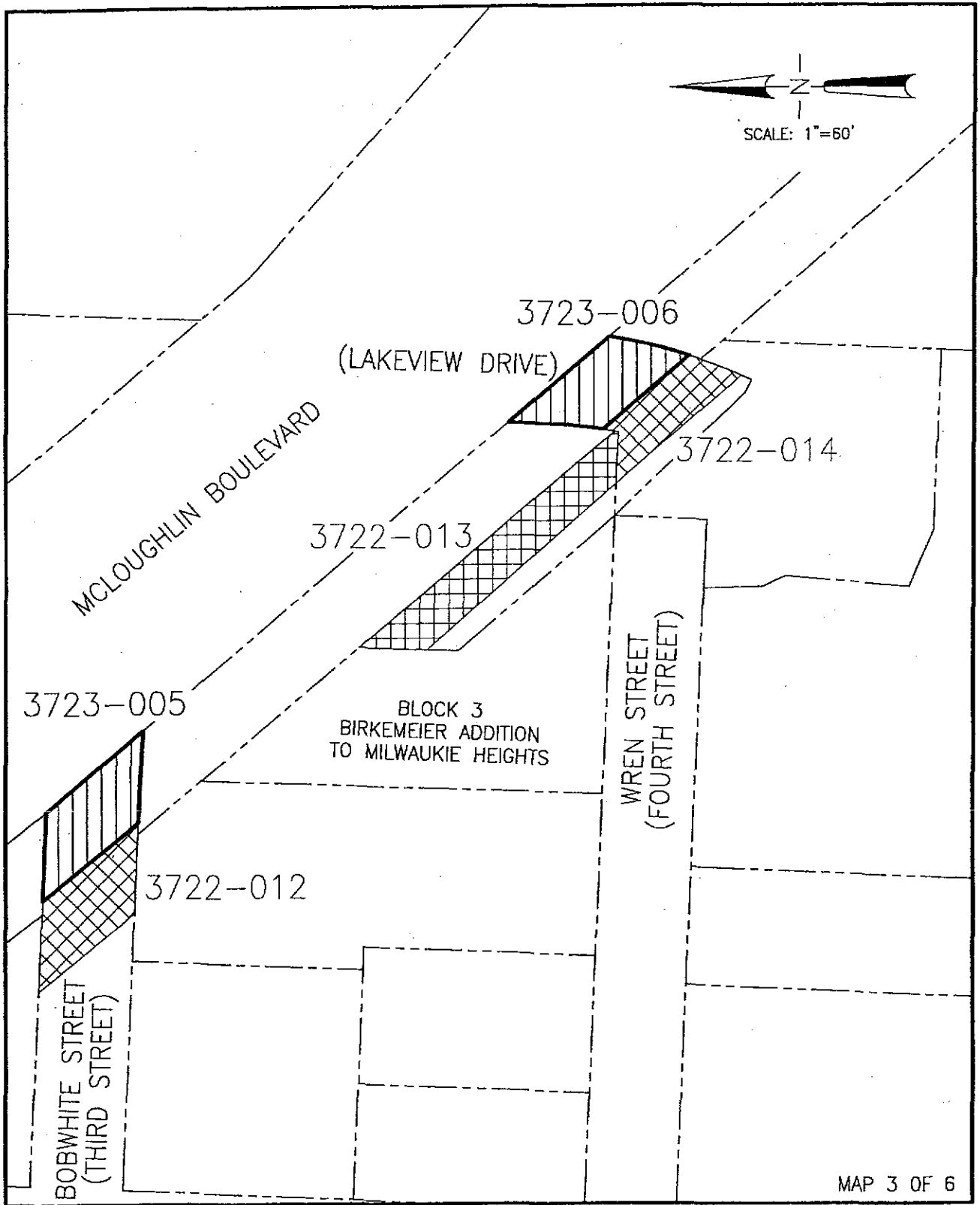
TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

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| DATE | REVISION NO. | DRAWN BY | CHECKED BY |
| 3/14/2013 | 000 | J. CARLSON | G. PAUL |

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17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

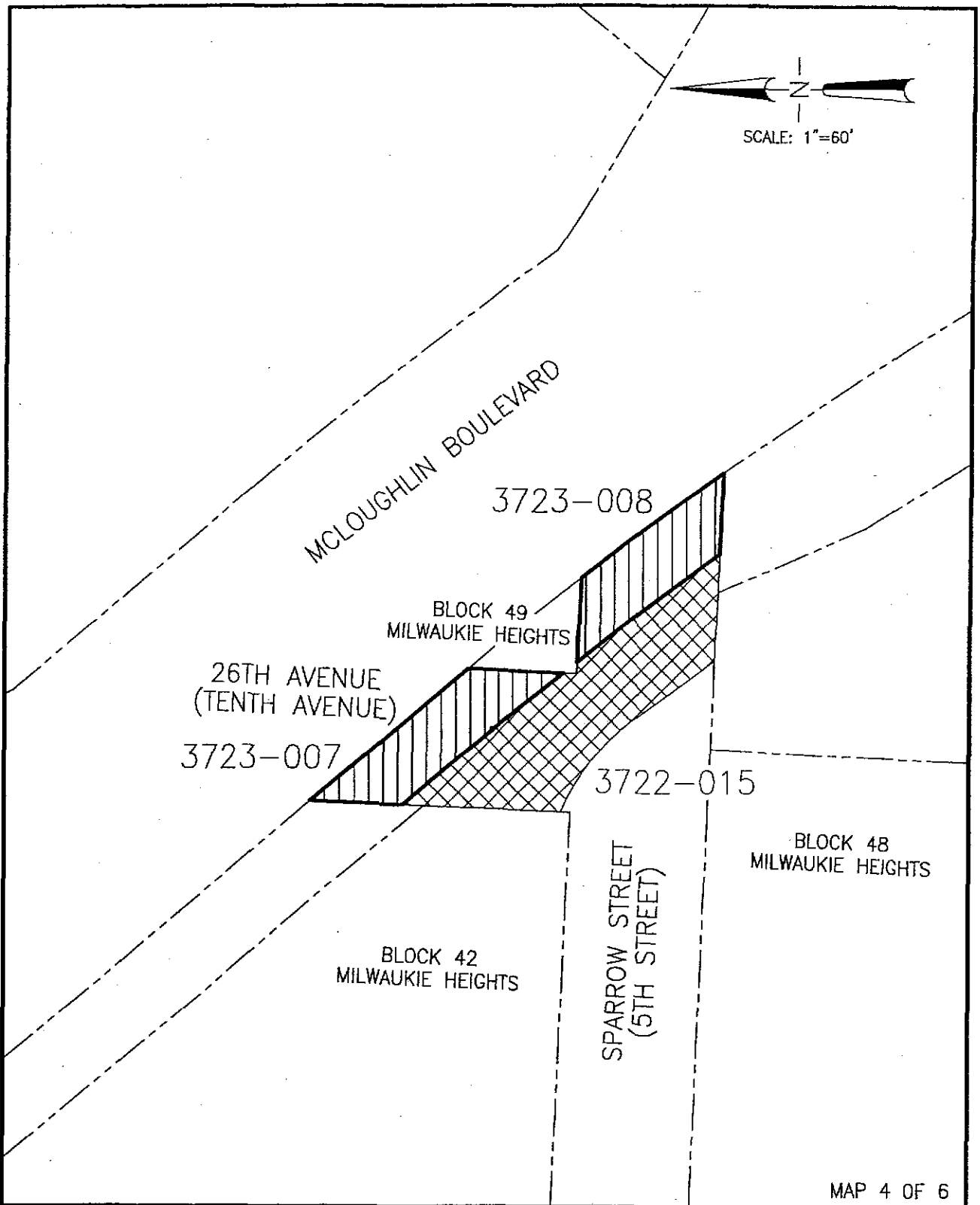


TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

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|-----------|--------------|------------|------------|
| DATE | REVISION NO. | DRAWN BY | CHECKED BY |
| 3/14/2013 | 000 | J. CARLSON | C. PAUL |

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395



MAP 4 OF 6

TRIMET

CAPITAL PROJECTS
AND
FACILITIES DIVISION

710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
PORTLAND TO MILWAUKIE LRT

FILE NOS. 3722 & 3723

DATE
3/14/2013

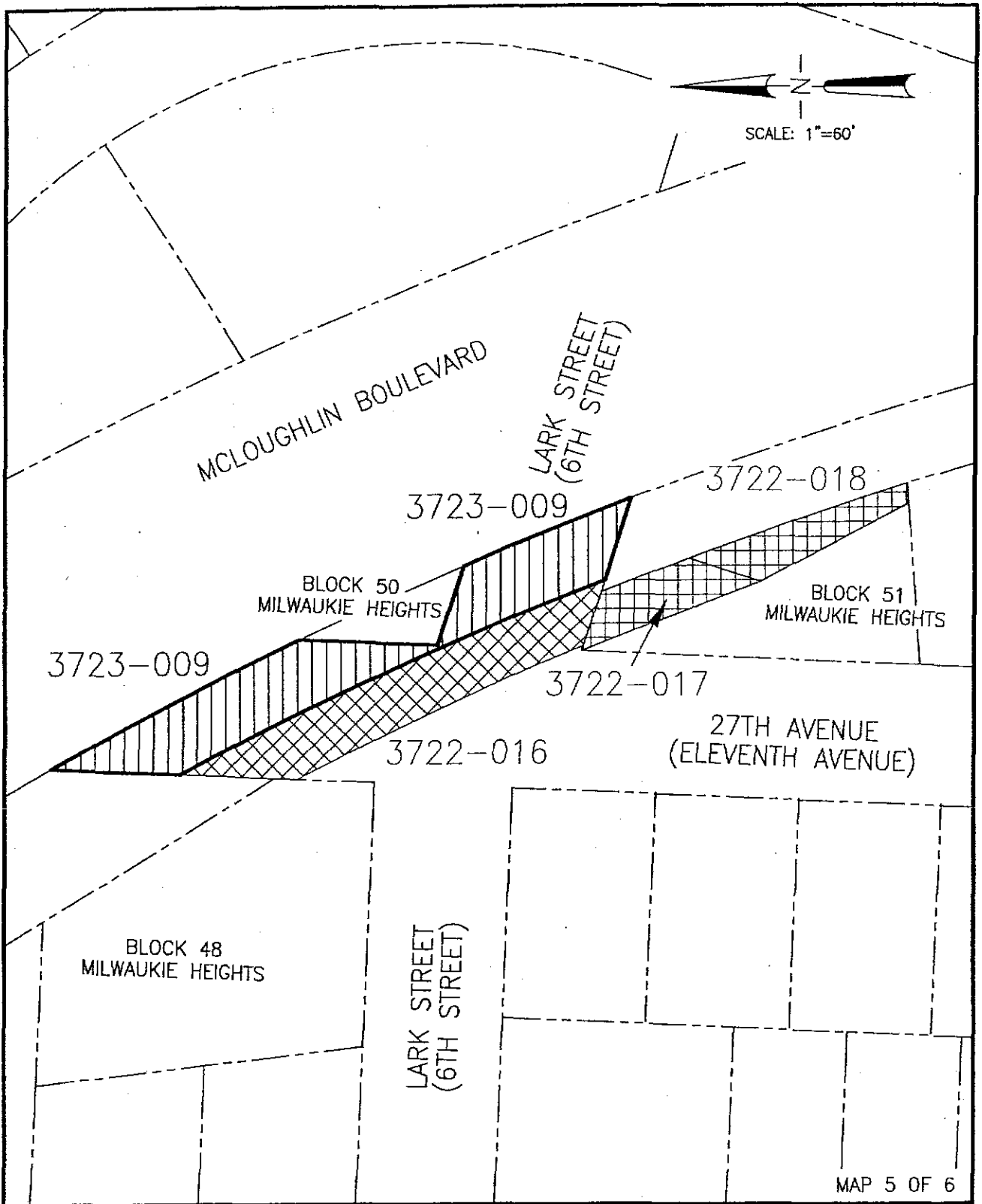
REVISION NO.
000

DRAWN BY
J. CARLSON

CHECKED BY
G. PAUL



17355 S.W. BOONES FERRY ROAD
LAKE OSWEGO, OREGON 97035
(503)635-3618 FAX (503)635-5395



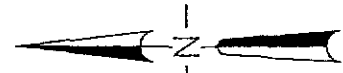
TRIMET
 CAPITAL PROJECTS
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 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

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|-----------|--------------|------------|------------|
| DATE | REVISION NO. | DRAWN BY | CHECKED BY |
| 3/14/2013 | 000 | J. CARLSON | G. PAUL |

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17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-6395

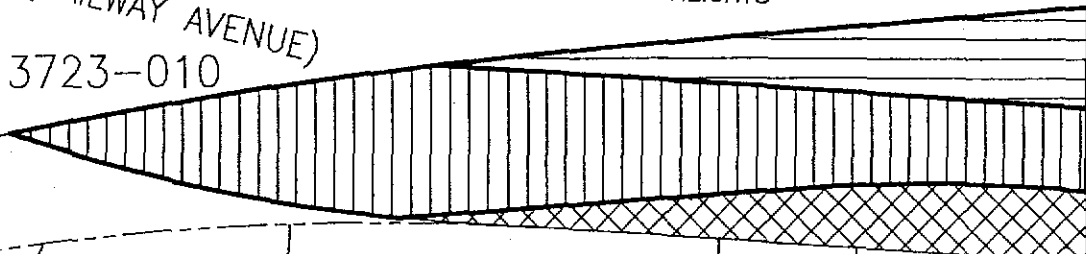


SCALE: 1"=60'

MCCLOUGHLIN BOULEVARD

(RAILWAY AVENUE)
3723-010

BLOCK 53
MILWAUKIE HEIGHTS 3723-011



3722-019

BLOCK 52
MILWAUKIE HEIGHTS

MAP 6 OF 6

TRIMET

CAPITAL PROJECTS
AND
FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
PORTLAND TO MILWAUKIE LRT

FILE NOS. 3722 & 3723

DATE
3/14/2013

REVISION NO.
000

DRAWN BY
J. CARLSON

CHECKED BY
G. PAUL



17355 S.W. BOONES FERRY ROAD
LAKE OSWEGO, OREGON 97035
(503)635-3618 FAX (503)635-5395

**AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON FOR
COUNTY ROAD PROGRAM WORK**

THIS AGREEMENT ("Agreement"), dated this ____ day of, _____ 2013, is made by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") and Clackamas County ("County") (collectively "Parties").

Recitals

A. TriMet is constructing the Portland-Milwaukie Light Rail Transit Project ("Project"), which is a 7.3 mile light rail project between Portland State University and north Clackamas County. The Project will terminate at Park Avenue in unincorporated Clackamas County.

B. On February 4, 2010, the Parties entered into an Intergovernmental Funding Agreement which obligated the County to pay twenty-five million and no/100 (\$25,000,000) dollars for its share of TriMet's final design and construction of the Project.

C. On August 29, 2012, the Parties entered into a Supplemental Agreement which changed the County's funding contribution to \$19,934,038, and also included other County contributions to the Project, including County Transportation Program funds in the amount of \$1,279,740 for road and signalization improvements in the vicinity of SE Park Avenue and SE Oatfield Road ("Road Program Improvements," further defined below).

D. TriMet, has completed the design of the Road Program Improvements, and the Road Program Improvements are included within the scope of the Project.

E. Paragraph 4 of the Supplemental Agreement requires the Parties to execute an agreement specifying the management, scope, and schedule for the Road Program Improvements by October 30, 2012.

F. The Parties desire to execute this Agreement to satisfy the requirements of the Supplemental Agreement, and clarify the rights and responsibilities of the Parties regarding the Road Program Improvements, funding, and revenue tracking responsibilities.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual promises and covenants contained herein, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. County Road Program

A. The County has agreed to provide \$1,279,740 to TriMet to perform certain road and signalization improvements within the County, at the intersection of SE Park and SE Oatfield. This intersection is identified in the County Capital Improvement Plan and is also identified in the Countywide Transportation System Development Charge methodology report as an eligible intersection

improvement.

B. The amount provided by the County will be funded in part by gas tax proceeds distributed to the County as part of the Oregon State Highway Fund allocation (\$1,000,000), and in part by Countywide Transportation System Development Charges (\$279,740). TriMet agrees to utilize these funds for the intersection outlined above, and to track expenditures separately under this Agreement to confirm that the funds are used for eligible purposes under the regulating law for the two different revenue sources.

C. Gas tax proceeds are subject to the restrictions of Article IX, Section 3a of the Oregon Constitution, and the Transportation System Development Charges ("TSDC") are subject to the restrictions set forth in the Clackamas County Code Section 11.03.

2. Road Program Improvements

A. Certain improvements to the Project are included in the Supplemental Agreement as Exhibit F, Local Enhancements. The list of Local Enhancements is incorporated by this reference herein. These Local Enhancements shall not be eliminated from the scope of the Project without the consent of the County.

B. The Local Enhancements include improvements to the Oatfield Road/Park Avenue intersection area, which are further illustrated on Exhibit A. Expenditures for this intersection will be eligible for funding under this Road Improvement Agreement, and include those items set out in Exhibit B. Exhibits A and B are incorporated into this Agreement by this reference.

3. TriMet Construction Obligations

A. TriMet shall manage the design and construction of the Road Program Improvements in accordance with its responsibilities under the Design and Construction Agreement between the Parties. The Road Program Improvements will be constructed by the Project's CM/GC contractor, and completed by September 2015. TriMet and the County are parties to a conduct of construction plan that includes provisions to minimize disruption to area residents, businesses, and local traffic during the construction phase.

B. TriMet agrees to provide data to the County illustrating construction of Gas Tax and TSDC eligible improvements equaling or exceeding \$1,279,740. Upon submission of any of the Road Program Improvements for acceptance by the County, TriMet will provide the County with an accounting of TriMet's costs for the improvement(s) in order to allow the County to record the contributed capital and total cost of the capital assets.

C. In the event the County develops an alternate scope of work and design for a betterment that would upgrade the current design of a flashing beacon to a fully signalized intersection (as set forth in Paragraph 4(C), below), TriMet agrees to present such design to its contractor for pricing.

4. Payment Obligations

A. In accordance with Paragraph 6 of the Supplemental Agreement, TriMet shall pay \$279,740 in Systems Development charges within 60 days of receipt of an invoice for such charges from County. County will provide such invoice to TriMet within 10 days to the execution of this Agreement.

B. In accordance with Paragraph 4 of the Supplemental Agreement, County shall pay TriMet \$1,279,740 for the Road Program Improvements within 60 days of execution of this Agreement.

C. In the event County desires that TriMet present a fully signalized intersection design to its contractor for pricing as described in Paragraph 3(C), above, County agrees that it is responsible for completing the design of such scope of work to a level that allows the contractor to provide pricing information with certainty. If County elects to proceed with construction of such scope of work, it will be treated as a Betterment under the Design and Construction Services Agreement between the Parties.

D. County will review the design and scope of work of the Road Program Improvements being funded by Countywide Transportation System Development Charges to ensure compliance with all applicable laws, including County Code.

5. Miscellaneous

A. Compliance with Law. The parties recognize that funds provided by FTA will be used to pay for a portion of the Project. Each party agrees to comply with all local, state and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing work of FTA contractors, and the limitations on the use of gas tax and TSDC funds.

B. Federal Funding Limitation. To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.

C. Governing Law, Disputes. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and the Clackamas County Partners shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between the Clackamas County Partners and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

D. Indemnity. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

E. Breach. This Agreement may be terminated by either party in the event of material breach. Prior to either party terminating this Agreement, the terminating party must provide 60 calendar days written notice of the material breach to the representative of the other party in accordance with the Notices provision of this Agreement. The notice must include a detailed explanation of the breach, and during this 60 day period, the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the material breach or, if the material breach is one that cannot be cured within 60 days, has not made good faith efforts toward curing the breach, the terminating party may terminate this agreement and seek all remedies available at law or in equity. Any disputes related to material breach will be handled in accordance with Paragraph 7(C) of this Agreement.

F. Notices. All routine correspondence and notices regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
TriMet Capital Projects
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2264
Fax: (503) 962-2282

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

County: Dan Chandler
Clackamas County Administration
2051 Kaen Road
Oregon City, OR 97045
Telephone: (503) 742-5394

With a copy to: Chris Storey
Senior Assistant County Counsel
2051 Kaen Road
Oregon City, OR 97045
Telephone: (503) 655-8362

CLACKAMAS COUNTY

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

By: _____

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

Date: _____

Date: _____

APPROVED AS TO FORM:

Clackamas County Counsel

APPROVED AS TO FORM:

TriMet Legal Department

**CONTINUING CONTROL PERMIT FOR THE
PORTLAND-MILWAUKIE LIGHT RAIL PROJECT**

This Continuing Control Permit ("Permit") is issued by Clackamas County ("County") and the North Clackamas Parks and Recreation District ("District") to the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the construction, operation, and maintenance of the Portland-Milwaukie Light Rail Project ("Project"), under the terms and condition set forth below. TriMet, the County and the District are collectively referred to herein as the "Parties."

PERMIT RECITALS

- A. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon County along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.
- B. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.
- C. On or about October 22, 2010, the Federal Transit Administration ("FTA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the Project.
- D. On November 29, 2010, the FTA issued a Record of Decision finding that the requirements of the National Environmental Policy Act have been satisfied for the construction and operation of the project
- E. On March 29, 2011, the FTA approved the Project's entry into the final design stage of Project development. The design reached 90 percent design in December 2011, and 100 percent design in May 2012.
- F. In May, 2012, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now under construction, and is scheduled to open for revenue service in September 2015. Upon completion of the Project, TriMet will commence light rail service to areas under the County's jurisdiction.
- H. On February 4, 2010, the County, District, and TriMet entered an intergovernmental agreement ("IGA") regarding the funding, development, and operation of the Project.

- I. In Section 6.2 of the IGA the County, District, and TriMet acknowledged and agreed to comply with FTA's continuing control requirements.
- J. In compliance with Section 6.2 of the IGA, on January 4, 2013 TriMet notified the County Representative that it required a continuing control permit in compliance with FTA requirements.
- K. This Permit is required to be issued pursuant to the Land Use Final Order for the Project.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District issue this Permit under the following terms and conditions:

TERMS AND CONDITIONS

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(c)(1)(B), the County and the District hereby grant to TriMet a permanent permit over, under, and above only those portions of right-of-way and properties owned by the County and the District, upon which the Project's facilities, features, or both are sited (the "Project Property"), which property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit A, and does not include any property to be transferred between the District and TriMet under separate agreement.
2. The Parties understand that some of the Project Property set forth in Exhibit A may be under the ownership or control of the City of Milwaukie, and the County and the District make no warranties or representations that they own or control any of the Project Property. However, to the extent that the Project Property is under the ownership or control of the County or District, the County and District agree, subject to the terms of this Permit, to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to any additional and applicable permit processes with respect to construction and maintenance within the Project Property as provided in this Permit. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Project Property, TriMet shall give 60 days prior written notice to County and the District of such intent. Upon receipt of such notice, the County and the District may revoke the continuing control rights granted herein.
3. The Parties agree that the purpose of this Permit is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Permit. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet

by FTA pursuant to the FFGA No. OR-03-0126-000, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Project Property generally shown in Exhibit A. TriMet's interest in the Project Property may not be assigned or transferred without FTA's written concurrence.

4. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District shall retain ownership of their respective property and, to the extent permitted by 49 U.S.C. § 5307(c)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
5. TriMet shall include in any third party contract under this Permit a provision to the effect that the contractor shall fully indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to the Project Property.
6. Neither the County nor the District shall charge TriMet or the Project a fee for use of or access to the Project Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Project Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Project Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Permit; provided however such maintenance obligations may be assigned to the County and/or District in subsequent agreement(s).
7. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District agree to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Permit, other than the approval of the County Commission and the District Board of Directors. However, in the event that the Parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the County and District shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the County and District staff agree to propose for enactment regulations that would:

- A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the County, District or others.
 - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Property or Project alignment.
 - C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Project Property or Project alignment.
 - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
 - E. Notify TriMet of any proposed future changes by the County or District, or which are proposed to be approved through permit by the County or District, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
 - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
 - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the County or District's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
8. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of streets and other public or private facilities, parades, or civic events may occur, provided that the County or District shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if

possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.

9. This Permit, including any interests herein, shall not be assignable without the County's or District's prior written consent, as applicable. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Permit will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.
10. All notices required under this Permit will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE COUNTY:

Dan Chandler
Strategic Policy Administrator
Public Services Building
2051 Kaen Rd
Oregon City, OR 97045

IF TO TRIMET:

Manager of Real Property Acquisition
TriMet
Capital Projects and Facilities Division
1800 SW First Ave., Ste. 300
Portland, OR 97201

11. Any modification to this Permit shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
12. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Permit (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the acts or omissions of the indemnitor, its officers, employees, or agents.
13. This Permit may not be terminated, except as set forth in Paragraph 1, above. However, the Parties agree that each party and its respective successors or assigns may avail itself of other remedies at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein, but only if the other party fails to cure the breach within 60 days of receipt of written notice specifying the breach.
14. The provisions of this Permit shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Permit

shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

15. If any provision of this Permit is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Permit as of the date signed by both Parties.

CLACKAMAS COUNTY

By: _____
Name:
Title:

Date: _____

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

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

Date _____

**NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT**

By _____
Chair, NCPRD Board of Directors

Date _____

**APPROVED AS FORM FOR COUNTY
AND DISTRICT**

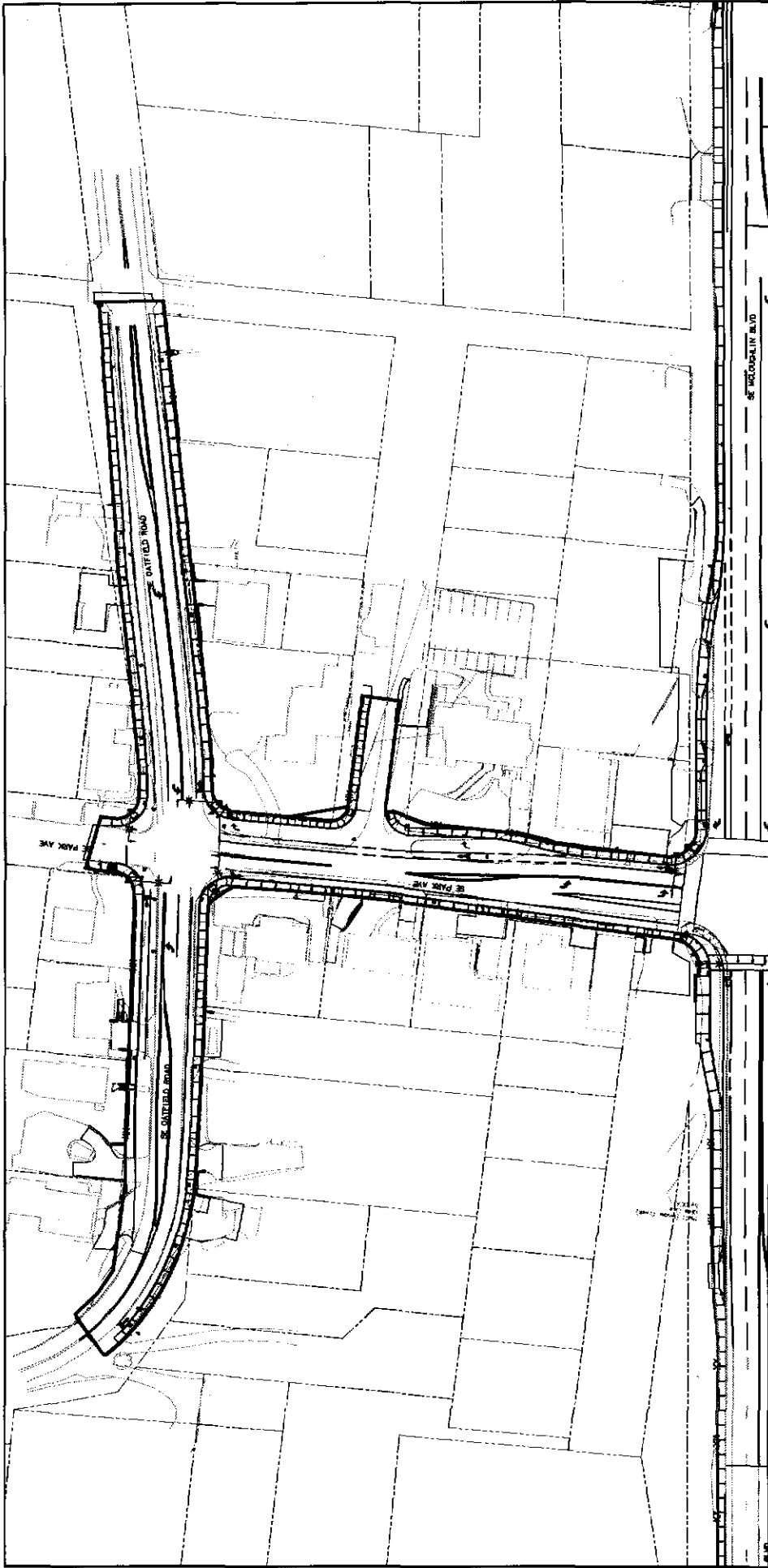
By _____
County Counsel

Date _____

APPROVED AS FORM FOR TRIMET

By _____
TriMet Legal Department


Date _____



GAS TAX ELIGIBLE SCOPE - WITHIN COUNTY R.O.W.

| NO. | DATE | BY | DESCRIPTION |
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| REVISION | DATE | BY | DESCRIPTION |
|----------|------|----|-------------|
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TRI-MET
 TRANSPORTATION DISTRICT OF OREGON
 CAPITAL PROJECTS DIVISION
 1805 NE 183RD AVE, SUITE 200
 PORTLAND, OREGON 97230

PORTLAND - MILWAUKIE LIGHTRAIL
 EAST SEGMENT
 CLATSOP COUNTY ROADWAY IMPROVEMENTS
 SE PARK AVE & SE GATFIELD RD
 E001817 A
 SCALE: 1" = 40'-0" CONTRACT NO. 10A-04(17) A



FAIR COST ESTIMATE

Exhibit B

To: Leah Robbins

Project: PMLR East Revised included sheets

Estimate # 13274 R1

Description: Clackamas County Design Review
Value of work on Park Ave Mcloughlin to Oatfield

By: RAV

11/14/2013

| Item | Description | Quantity | Units | Unit price | Total |
|--------------------|--|----------|-------|---------------|-----------------------|
| | General Conditions | 1 | LS | \$ 455,258.86 | \$455,258.86 |
| | Site Maintenance | 1 | LS | \$ 70,039.82 | \$70,039.82 |
| | Architectural drawings | 1 | LS | \$ 110,516.42 | \$110,516.42 |
| | Civil drawings | 1 | LS | \$ 871,754.67 | \$871,754.67 |
| | Structural drawings (walls) | 1 | LS | \$ 506,937.47 | \$506,937.47 |
| | Signage/Striping/Traffic drawings | 1 | LS | \$ 261,787.06 | \$261,787.06 |
| Total Price | | | | | \$2,276,294.30 |

Drawing list reference

| | ARCH | CIVIL | WALLS | |
|-------------------------|------------------------|-----------|-----------|----------|
| SIGNAGE/STRIPING | A15E-232H | C15E-432H | S15E-842 | |
| T15E-232H | TRAFFIC SIGNALS | A15E-232L | C15E-432J | S15E-843 |
| T15E-232L | T15E-875 | A15E-232P | C15E-432P | S15E-844 |
| T15E-232P | T15E-876 | A15E-525 | C15E-432Q | S15E-845 |
| T15E-432H | | A15E-549 | C15E-432R | S15E-846 |
| T15E-432L | | | C15E-432S | |
| T153-432P | | | C15E-432T | |
| | | | C15E-432U | |
| | UTILITIES | C15E-487A | | |
| | U15E-166D | C15E-488 | | |
| | U15E-166E | C15E-491 | | |
| | | C15E-616 | | |
| | | C15E-617 | | |
| | | C15E-618 | | |
| | | C15E-930 | | |

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET, CLACKAMAS COUNTY, AND THE NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT
FOR THE PORTLAND - MILWAUKIE LIGHT RAIL PROJECT
DESIGN AND CONSTRUCTION MANAGEMENT SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA" or "Agreement") is entered into as of April 1, 2011 and is between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district organized under the laws of the State of Oregon; Clackamas County ("County"), a political subdivision of the State of Oregon; and the North Clackamas Parks and Recreation District ("District"), a service district located in Clackamas County. TriMet, the County, and the District are hereunder jointly referred to as the "Parties." The County and the District are hereinafter together referred to as the "Clackamas County Partners".

ARTICLE I - RECITALS

A. TriMet and the Clackamas County Partners are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.

B. TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system composed of segments commonly known as the Eastside/Banfield, Westside/Hillsboro, Airport, Interstate lines, and the Phase I South Corridor Light Rail Project, consisting of the I-205 Segment and the Portland Mall Segment.

C. TriMet and the Clackamas County Partners have a joint interest in serving north Clackamas County, the City of Milwaukie and the Portland Metro region with high quality, convenient public transit.

D. TriMet is currently constructing the Phase II South Corridor Light Rail Project from Portland to Milwaukie ("Project"). The Project will provide a reliable, high frequency transportation option for north Clackamas County and City of Milwaukie commuters, and will benefit north Clackamas County and City of Milwaukie residents and workers by providing car-free linkages to multiple destinations in the TriMet system.

D. On May 9, 2008, the Federal Transit Administration ("FTA") issued a Supplemental Draft Environmental Impact Statement ("SDEIS") on the Project, in compliance with FTA and National Environmental Protection Act ("NEPA") requirements.

E. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon City along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.

F. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "1996 Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.

G. In March 2010, the Federal Transit Administration ("FTA") authorized TriMet to enter into the preliminary engineering stage of project development.

H. The 1996 Act defines the relationship between TriMet and other governmental entities following the adoption of the Land Use Final Order for the Project, and states "The State and all counties, cities, special districts and political subdivisions shall:

(a) Amend their comprehensive or function plans, including public facility plans, transportation system plans, and land use regulations, to the extent necessary to make them consistent with the Land Use Final Order, and

(b) Issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with the land use final order. Development approvals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of the Land Use Final Order."

I. In March 2011, FTA authorized TriMet to enter into Final Design Phase of project development.

J. In May 2012, FTA and TriMet signed the Full Funding Grant Agreement, committing the federal funding share of the Project.

K. TriMet cannot construct or implement the Project without the use of County streets and right-of-way, and the County is willing to allow TriMet to use County streets and right-of-way without being compensated for reasonable wear and tear.

L. The County has a duty to the general public to provide safe and convenient streets and to protect itself from unreasonable financial burdens imposed by TriMet's use of the streets.

M. The Project is, or will be, subject to budgetary limitations imposed by the Federal Transit Administration (FTA) and Finance Agreements. The Project is, or will be, subject to all terms and conditions of the FTA Full Funding Grant Agreement as a result of Federal participation in the costs of the Project.

N. The parties desire to enter into this Agreement to document each party's understandings and agreements relating to the design and construction phases of the Project.

O. The parties shall enter into a maintenance agreement that will detail each party's obligations with respect to maintenance of the facilities after completion of construction.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

ARTICLE II – TERM

- A. The term of this Agreement shall be effective from the date set forth below through December 31, 2015, unless terminated or extended under the provisions of this Agreement. Under this Agreement, the parties acknowledge and confirm that TriMet's financial responsibility for Clackamas County Partners' services provided will cover all eligible work done on the Project from April 1, 2011 forward, regardless of the date this Agreement is ultimately signed.

ARTICLE III – TRIMET OBLIGATIONS

- A. Responsibility for the Project.** Except as otherwise provided, TriMet shall design, construct, operate and bear all costs for the Project, including the costs for street improvements necessitated by transportation issues identified in the Final Environmental Impact Statement as having been caused by the Project, to the extent such costs are grant eligible; except as set forth under separate agreement(s) between the Parties. In the execution of the design and construction, except as otherwise provided, TriMet shall provide for the public's health, safety, and welfare by providing the proper construction, reconstruction, and modifications to those existing public facilities in the right-of-way which are affected by the Project.
- B. Construction Standards for the Project.** TriMet shall use current standards of design and construction adopted by local agencies located within Clackamas County. These agencies include, but are not limited to:
1. Clackamas County North Clackamas Parks and Recreation District
 2. Oak Lodge Sanitary District: Storm and Sanitary standards
 3. Oak Lodge Water
 4. Oregon Department of Transportation
 5. Clackamas County Service District #5 – Street Lighting
 6. Private Utility Providers

The agencies listed above are hereinafter together referred to as "Local Service Providers". Design, construction, conveyance and documentation shall be consistent with Local Service Providers' adopted standards, guidelines, and policies.

- C. Conduct of Construction Plan.** TriMet shall work with Clackamas County Partners staff to develop a Conduct of Construction Plan that TriMet will require its contractors to adhere to, seeking to minimize Project impacts on neighborhoods.
- D. County Requests for Additional Work.** TriMet shall design and construct, at the Clackamas County Partners' expense, any extra work identified and requested by the

Clackamas County Partners that enhances the basic Project or public improvements in the vicinity of the light rail alignment.

- E. Development of Final Plans and Specifications.** TriMet and its contractors shall work in close cooperation with Clackamas County Partners and Local Service Providers during preparation of final engineered documents and will submit all documents, including plans and specifications, for official Clackamas County Partner and Local Service Providers review at the milestones designated for the parties.

Clackamas County Partners and TriMet shall cooperate and exercise good faith efforts to provide documents, review and comment, and resolve comments on plans and specifications so that the project schedule milestones are met. The current milestone project schedule is identified in **Exhibit A – Project Schedule & Milestones**, attached hereto and fully incorporated by this reference. Should the schedule be revised in the future, the parties agree to make best efforts to comply with the updated schedule milestones.

The parties understand that Clackamas County Partners' review times shall not commence until all elements appropriately included at each stage are incorporated into the submission at a level of detail that allows effective and efficient review by Clackamas County Partners. Clackamas County Partners shall use their best efforts to minimize the review times.

The review at the Issued for Construction (IFC) stage is intended only to verify that the revisions identified at the previous review stage have been completed. The 100% review shall be accomplished within 15 working days, unless otherwise agreed between Clackamas County Partners and TriMet. Changes required by Clackamas County Partners at the IFC stage may be incorporated by change order into construction documents. TriMet shall maintain records of all comments received from reviews done by Clackamas County Partners, including TriMet response and action taken.

- F. Preliminary List of Anticipated Project Approvals.** TriMet's Project Manager, or designee, shall work with the County's Project Manager, or designee, to develop an agreed upon list of permits and approvals necessary for Project construction. The list shall include but not be limited to: (1) conditional use approvals, (2) zoning adjustments (3) sign encroachment variances or waivers, (4) design review permits, (5) building and/or construction, (6) parking during construction, (7) variances, and (8) occupancy permits.
- G. Real Property Acquisition/Relocation Assistance.** TriMet shall be solely responsible for the acquisition process of property for the Project, including property that will eventually become County right-of-way. TriMet shall also be responsible for providing any relocation assistance required for the Project, and any relocation assistance shall be pursuant to the Uniform Relocation Assistance Act, and other applicable Federal, State, and local laws.
- H. Relocation of Privately-Owned Utilities.** The County shall use its best efforts to cause relocation of privately-owned utilities without cost to the County or Project, as provided in Article IV, paragraph C below. However, if the County does not have the legal authority or power to cause such relocation, TriMet, without cost to the County, shall effect relocation of

existing privately-owned utility facilities as necessary to conform utilities or facilities to the plans for the Project. The cost of relocating in-kind publicly owned utilities for purposes of the Project shall be at TriMet's expense or shared between the parties as provided in this Agreement. The parties understand that relocation in-kind does not include betterment(s) of the existing facilities.

- I. Inspecting Relocated Utility Placement.** TriMet shall also allow Clackamas County Partner engineers and/or inspectors or consulting engineers/inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities (including stray current mitigation measures) in order to determine whether they have been relocated or installed in accordance with the contract documents and this IGA. All abandoned utilities shall be reviewed and approved by Clackamas County Partners engineers and/or inspector consistent with County standard practices.
- J. County Fiber Relocation.** TriMet will pay reasonable costs associated with the relocation of Clackamas County's existing fiber optic cable system as set forth in the Agreement between the Parties for Relocation of Fiber Optic Cable, dated September 27, 2013. Any Betterment work related to fiber relocation will be the responsibility of the County under Article V, Paragraph L (Betterments/Cost Sharing) of this Agreement.

ARTICLE IV – CLACKAMAS COUNTY PARTNERS' OBLIGATIONS

- A. Creating Design Standard.** The Clackamas County Partners and TriMet agree that final design of the Project will utilize the 100% preliminary engineering documents, together with Clackamas County Partners' comments, as the starting point for final design.
- B. Maintaining Project Schedule.** The Clackamas County Partners agree to use good faith efforts to assist TriMet in maintaining the Project schedule. To this end, Clackamas County Partners' staff shall assist TriMet with all permit/approval processes including, but not limited to, scheduling all hearings and briefings before the Board of County Commissioners, or other necessary entities as provided in the Clackamas County Code.
- C. Relocations in Right-of-Way.** The Clackamas County Partners, at TriMet's expense unless otherwise apportioned in this Agreement, shall relocate, cause to be relocated, or assist in the relocation of all Clackamas County Partner-owned conduits, lines, poles, mains, pipes, and other facilities, whether located within the public right-of-way or not, as required by the Project. The Project documents shall include all relocations necessary to conform facilities to the Project. The Clackamas County Partners shall endeavor to conduct this relocation work in accordance with the Construction Phasing/Scheduling Plan for the Project as noted in Article VI.

The County shall cause the owners of privately owned utility conduits, lines, poles, mains, pipes and other facilities in or on County streets or rights-of-way to relocate their facilities at the expense of said privately owned utilities as necessary to conform to the Project, to the extent the County has the power to do so. The County shall endeavor to cause this relocation work to be accomplished in accordance with *Construction Phasing/Scheduling Plan for the*

Project noted in Article VI.

The County shall allow TriMet participation in review of utility relocation plans submitted by public and private utilities for the alignment area. The County shall also allow TriMet engineers or inspectors or consulting engineers or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities in order to determine whether they have been relocated in accordance with the plans of the Project and County standard practices.

- D. Issuing Permits.** In accordance with the provisions of this Agreement, the Clackamas County Partners shall issue all necessary permits for the Project, which shall permit Project construction based on the end products referred to in Article VI. The Clackamas County Partners agree to utilize good faith efforts toward this end.
- E. End Products.** The Clackamas County Partners agree to provide the end products identified as their responsibility in Article VI of this Agreement, or a reasonable substitute product as agreed by the parties.
- F. Coordination of Local Partner Issues.** The County Project Manager, or designee, shall coordinate comments from the Clackamas County Partners and shall assist in resolution of all Project issues raised by any Clackamas County Partner.
- G. Managing Services within the Budget.** The County Project Manager, or designee, shall exercise good faith efforts to manage the Clackamas County Partner services within the budget specified in this Agreement.
- H. Trolley Trail Agreement:** TriMet shall, in good faith, negotiate with North Clackamas Parks and Recreation District (NCPRD) to craft a partnering agreement for design, construction, operation, and future maintenance of the Segment 2 of the Trolley Trail.
- I. Park Avenue: Nature in the Neighborhood Grant:** TriMet shall continue to coordinate with Local Partners and citizens to ensure Park Avenue Station, and associated amenities, are designed in a manner to achieve the objectives of Metro's Nature in the Neighborhood grant criteria and the reasonable expectations of the community.

ARTICLE V – LOCAL PARTNER SERVICES TO BE PROVIDED

- A. Ensuring No Adverse Affects to County.** The Clackamas County Partners have and shall provide services in conjunction with the Project's final design and construction as described in this Article. The Clackamas County Partners' services are intended to ensure: (1) that the Clackamas County Partners' facilities and operations within the Project's right-of-way are adequately provided for; (2) that the Clackamas County Partners' facilities and operation outside the Project's right-of-way are not adversely affected; (3) that vehicular, bicycle and pedestrian traffic is adequately provided for; and (4) that the public health, safety, and welfare, including without limitation aesthetic, environmental, and commercial values, are

not adversely affected.

B. Clackamas County Partner Services – General. Each Clackamas County Partner with Code authority or other responsibility over the Project shall provide to TriMet the following services:

1. Supply copies of all available file data on all existing facilities as requested by TriMet for the Project. The Clackamas County Partners have found the completeness and accuracy of this file information to be inadequate when used as the sole basis for design and construction purposes and recommend verification before incorporation into any final design. Any reliance on the data by TriMet shall be at its own risk.
2. Review, comment on and approve Project plans as provided for in this Agreement.
3. Cooperate with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project and to perform obligations required under this Agreement.
4. Review, require revisions to, and approve the Project plans as provided for in this Agreement.
5. Cooperate fully with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project.
6. Assist TriMet in reviewing, designing, permitting and constructing the Project elements that will be built in Clackamas County. Tasks performed by the Clackamas County Partners may include, but not be limited to, the following:
 - (a) Participate in Technical Advisory Committee meetings;
 - (b) Participate in Project Team Leaders meetings;
 - (c) Participate in Design Team meetings
 - (d) Participate in Project Management Group meetings;
 - (e) Attend and participate in community design meetings associated with the Project, with specific attention related to meetings associated with the Trolley Trail, Park Avenue Station and the park and ride structure at Park Avenue;
 - (f) Participate in other meetings as deemed necessary;
 - (g) Participate in preparation of, and review and comment on, the 60%, 90% and final design, and Issued for Construction drawings; and

C. Compliance with Applicable Laws and Standards. Any obligation to review or issue permits as set forth in this Agreement is subject to the compliance of the proposed permit with applicable laws and standards, and such processes as are required by law, including the 1996 Act. Staff will exercise good faith efforts towards timely issuing approvals and permits.

D. Department of Transportation and Development (DTD).

1. DTD Services - General. Under the coordination of the County's Project Manager, the Department of Transportation and Development shall provide services as described below:
 - (a) Act as the lead County agency in carrying out the County's obligations and exercising the County's rights under this Agreement.
 - (b) Provide as necessary, services of the County's Project Manager and other positions as identified in the Agreement.
 - (c) Assist TriMet in coordinating the relocation of all County publicly owned utilities.
 - (d) Assist in and coordinate all plan reviews, including structures.
 - (e) Assist in resolution of all design and construction issues.
 - (f) Coordinate and track compliance with all County permits.
2. Engineering Division. Under the coordination of the County's Project Manager, the County's Engineering Division shall provide services as described below:
 - (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager.
 - (b) Review, require revisions to, and approve plans for all traffic signaling devices, parking meter relocations, pavement markings, traffic signs, utility work and any other work in the County right-of-way that affects vehicular, bicycle and/or pedestrian traffic. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.
 - (c) Participate in the review and approval of construction phasing plans.
 - (d) Review, require revisions to, and approve plans for all street lighting facilities. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.

- (e) Develop, in cooperation with TriMet, a Traffic Diversion Monitoring plan, which includes the County performing baseline data collection and diversion monitoring during construction..
 - (f) Review and approve plans for street trees.
3. Planning Division. Under the coordination of the County's Project Manager, the Planning Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Provide additional public involvement and outreach as specifically requested by the County's Project Manager and TriMet at TriMet's expense.
 - (c) Assist in the identification of all Project elements located outside of County right-of-way requiring a land use approval. Assist in the processing of the land use approvals for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the pertinent laws. Review times shall conform to the requirements of law. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary permit(s).
 - (d) Perform design, greenway, environmental reviews and other land use review as required.
 - (e) Perform zoning code enforcement as needed.
 - (f) Assist with assignment of addresses for payphones, buildings and stations.
7. Building Division. Under the coordination of the County's Project Manager, the Building Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Assist in the identification of all Project elements located outside of County right-of-way requiring a building, plumbing, electrical, and/or mechanical permit. Assist in the processing of such permits for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the Oregon State Specialty Codes, appropriate NFPA standards, and pertinent portions of

County Code Title 9. Review times shall conform to the requirements the County Code. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary construction permit(s).

- (c) Review and comment on recommended changes to plans for the portion of TriMet's electrical systems subject to state jurisdiction under new electrical rules proposed by the Division of Consumer and Business Services for fixed guideway rail systems.
- (d) Review and issue permits as needed for the Project such as retaining wall, sign, building, plumbing, and electrical.
- (e) Perform building, plumbing and electrical permit inspections, as needed.
- (f) Perform building, plumbing and electrical code enforcement, as needed.

E. North Clackamas Parks and Recreation District (NCPRD). Under coordination with the County's Project Manager, NCPRD shall provide services as described below:

1. Assign a single Project Coordinator/point of contact for all elements of design and construction for Segment 2 of the Trolley Trail constructed in conjunction with the Project, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee. The parties recognize and agree that a separate agreement will be negotiated for the design, construction, operation, and future maintenance of Segment 2 of the Trolley Trail, as referenced in Article IV Section J above.

F. Other County Divisions & Departments. Other County Divisions & Departments with Code authority or other responsibilities over the Project shall provide the required services necessary to carry out their responsibilities as defined by the County Code. Compensation shall be under the County Code on a fee basis or as set forth in this Agreement.

G. COMPENSATION.

1. Generally. Except as otherwise provided in this Agreement, compensation to the Clackamas County Partners shall be based on staff time expended rendering the services required by this Agreement, except that in cases where division fees are required by law or specified in an agreement between the parties, compensation for the service shall be based solely on the fees required by law or as specified by agreement.
2. Fees Required by Law.

- (a) Permit and application fees will be charged as required by law, and paid in conjunction with issuance of the applicable permits.

3. Final Design and Construction Services.

- (a) Further compensation will be provided for services rendered by the Clackamas County Partners during final design and construction. The Clackamas County Partners' compensation for services provided during final design and construction under this Agreement shall not exceed the amounts listed in subsection (c) below, without prior written authorization from TriMet. This amount is based upon the staffing plan for final design and construction services contained in **Exhibit B**, attached. In the event Clackamas County Partners' actual costs reach these maximum amounts, then the Clackamas County Partners shall be released from performing further services under this Agreement to the extent that TriMet fails to approve an increase in the maximum costs.
- (b) TriMet recognizes that the amounts listed in subsection (c) below are initial budget amounts and may change due to the preliminary nature of the data on which they are based. TriMet agrees not to withhold the timely approval of additional resources without cause, subject to available budget. Additionally, the parties agree that line item budgets may be reallocated within this Agreement when approved by the Clackamas County Partners' and TriMet Project Managers, so long as the overall approved budget amount of this Agreement is not exceeded.
- (c) **Estimated Maximum Costs for Clackamas County Partners' Services.** Services provided by the Clackamas County Partners and the costs to TriMet under this Agreement, other than permit or application fees set out by law or separate agreement, shall not exceed \$399,743.89 unless the parties execute a modification signed by authorized representatives. Such services shall be provided on a reimbursable cost basis and are estimated as follows:

| | |
|--|---------------------|
| Project Coordination | \$210,964.96 |
| Building Department | \$3,567.74 |
| Department of Transportation and Development (DTD) | |
| Administration | \$2,496.20 |
| Land Use & Zoning/Long Range Planning | \$9,321.20 |
| Engineering | \$142,497.54 |
| CCSD #5 – Street Lighting | \$1,276.60 |
| NCPRD | \$9,119.65 |
| Surveyor | \$20,500.00 |
| Total | \$399,743.89 |

H. Method of Payment. Subject to the limitations stated in this Agreement, TriMet agrees to pay the Clackamas County Partners' actual costs for the performance of the services required herein. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead to be determined as follows:

(1) Direct Salary Costs and Fringe Benefits. The cost of salaries, wages, and fringe benefits are determined as follows:

(a) Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. The County's salary rates for any time period shall be as set out in the official County Compensation Plan or as amended by the Board of County Commissioners for the particular period.

(b) Charges in addition to (a) above for vacation, sick leave, holiday, jury duty, and bereavement leave are authorized but shall be charged to the Project only in proportion to the time devoted to the Project.

(2) Direct Non-Salary. Those reasonable costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to, reproduction, telephone long distance, equipment rentals, and purchase of outside services requested by TriMet.

(3) General Overhead. The Clackamas County Partners shall charge for general overhead as provided by the Federal Acquisition Regulations (FARs), as deemed necessary.

I. Invoices. With the exception of those services provided on a fee basis to TriMet's contractor(s), or reimbursement for expenses incurred to date, the County shall submit to TriMet monthly billings for reimbursable costs and fees based upon costs that have been incurred since the previous billings. TriMet shall pay the County the balance due within thirty (30) days of receipt of such billings. Financial reports accompanying requests for reimbursement shall be in accordance with FTA requirements. TriMet shall review records for suitability and provide assistance as necessary to assure compliance with FTA requirements.

(1) Invoices shall be supported by current time reports for each month. The Project Managers shall review the invoices and billings against the Project budget to provide real time cost tracking and budget management.

(2) The County Project Manager shall oversee the work of the Clackamas County Partners to the end that their work is completed within the budget for that work.

(3) Overtime premium (pay in excess of straight time) after Clackamas County Design Review approval for Phase I shall be minimal and will relate to community meetings or inspections outside normal operating hours; or in the event of an emergency (such as structural damage to the sanitary sewer or any event where sewage is released from the sewer system is considered an emergency).

(4) The fringe rate applied to overtime hours shall be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by TriMet.

(5) Upon receipt of payment from TriMet, the County will distribute funds to reimburse the Clackamas County Partners under this Agreement.

J. Additional Services. TriMet will not pay any claim for additional services not specifically provided for herein, unless agreed to mutually by written modification of this Agreement.

K. Status of Contractor. The Clackamas County Partners shall perform this Agreement as independent contractors, and their respective staff shall not be deemed employees of TriMet.

L. Betterments/Cost Sharing. The Clackamas County Partners agree to share in certain costs of the Project, as provided in the Project Funding Agreements between the Clackamas County Partners and TriMet, and as further identified in this Agreement. In addition, the Clackamas County Partners agree that they shall specify and provide or pay all costs for any Betterments (defined below) that are incorporated into the Project at the request of the Clackamas County Partners. The parties shall, through modification of this Agreement, negotiate the work scope and cost of such Betterments prior to TriMet proceeding with the design and construction of such Betterments. As used in this Agreement, "Betterment" shall mean:

- a. Replacement of existing infrastructure with new where the existing infrastructure is beyond its useful life; or
- b. Replacement of existing infrastructure materials or facilities with a more costly kind, size or type of material or facility that constitutes an unnecessary upgrade requested by a Clackamas County Partner, but not required for compliance with rules, regulations, laws and standards applicable to the Project. Providing new sleeves for pipeline crossings through TriMet designated future no-dig areas is not considered a betterment. Strengthening pipelines for loads imposed by the Project's facilities is not considered a betterment.
- c. If the facility is near the end of its useful life, "Betterment" shall include that portion of the cost associated with replacing new that is equivalent to the portion of the expended useful life when compared to the entire useful life.

"Betterment" does not include any item identified as a Local Enhancement in the Supplemental Agreement entered into between the County and TriMet in August, 2012.

ARTICLE VI – END PRODUCTS

A. Purpose. This Agreement is intended to enable TriMet, with Clackamas County Partner assistance, to perform all tasks necessary to ensure the successful design, construction, operation and maintenance of the Project. Additionally, it allows for integration of Project

facilities into the Clackamas County Partners' existing public and private improvements in a manner that ensures the protection of the public health, safety, and welfare. TriMet and the Clackamas County Partners acknowledge that amendments to this Agreement may be necessary to reflect changing conditions.

The purpose of this Article is to identify the end products that TriMet and the Clackamas County Partners cooperatively must produce or accomplish to accommodate construction of the Project. The list of end products identified in this Article is not all-inclusive. The Clackamas County Partners or TriMet may identify other required end products during final design. The parties may produce or accomplish individual end products at any time between the date this Agreement becomes effective and the issuance of the Construction Permit(s). Prior to issuance of the Construction Permit(s), the Clackamas County Partners will require the production or accomplishment and approval of all end products identified herein or added hereto.

B. End Products. The lead agency designated for the following end products shall have primary responsibility for initiating and accomplishing those end products. It is understood, however, that the accomplishment of the end products will require the cooperative efforts of all parties, and TriMet and the Clackamas County Partners agree to utilize their best efforts to this end.

(1) Detailed Final Plans and Specifications

Lead Agency: TriMet

- (a) Baseline Project
- (b) Utility, Water, Sanitary and Storm Sewers relocation, as required.
- (c) Traffic, Parking and Loading Zone Control Facilities
- (d) Public Utility Relocations Plans. Private utility plan and specifications will be completed by the private utilities themselves.
- (e) County Requested Extra Work. Plans, specifications and bid documents for any such extra work shall be structured so that actual bid prices, construction costs, extra billings, post construction claims, and any and all other cost items are clearly separated from the baseline Project costs.

(2) Permitting For Construction

Lead Agency: Clackamas County Partners
and Local Service Providers

Within the framework established by House Bill 3478 (Oregon Laws 1996, Chapter 12), design and permit approvals involving:

- (a) Those Clackamas County Partners with County Charter or County Code Responsibility
- (b) Sewer, Water, Utility Relocations
- (c) Improvements within public right-of-way unrelated to Project
- (d) Private property improvements unrelated to Project
- (e) Board of County Commissioners

(3) Construction Phasing/Scheduling Plan

Lead Agency: TriMet

- (a) Project Overall
- (b) Sewer, Water, Utility Relocations windows
- (c) Improvements within public right-of-way unrelated to Project
- (d) Private property improvements unrelated to Project

(4) Public Information/property owner liaison plan Lead Agency: TriMet

(5) Conduct of Construction Plan Lead Agency: TriMet

- (a) Protection of public and private property provisions
- (b) Dirt/Debris/Noxious Weed/Tree Removal Mitigation Provisions
- (c) Construction Drainage and Erosion Control provisions
- (d) Construction Zone Traffic Control Provisions
 - (1) Traffic Control
 - (2) Temporary street closures
 - (3) Emergency vehicle access
 - (4) Construction staging
- (e) Construction Zone Private Property Access Provisions
 - (1) Through pedestrian/bicycle traffic
 - (2) Building-pedestrian access
 - (3) Driveway/Loading Zone Access
- (f) Provisions to assure the protection of pedestrians, bicycles and vehicles using the LRT corridor
- (g) Provisions for days of the week, hours of the day construction activity may proceed
- (h) County Noise Control Variance Provisions
- (i) Provisions for Construction Restriction during special civic events
- (j) Provisions for conflict resolution between Project contractors and contractors performing public or private work unrelated to the Project

(6) Property owner/TriMet/County three-party agreements Lead Agency: TriMet

(7) Liability/Insurance Agreement Lead Agency: TriMet

- (a) During Construction
- (b) Between construction completion and County acceptance of the Project and assumption of ongoing maintenance responsibilities for components in the public right-of-way

(8) Record Drawings. Lead Agency: TriMet

Record drawings will be produced by TriMet and distributed to the Clackamas County Partners and Local Service Providers within 120 days of completion of the work. Record Drawings for infrastructure accepted by Clackamas County Partners shall be provided with the designations required by the receiving entity and have dimensions in customary "English" units of measure.

ARTICLE VII - PROJECT POLICY AND MANAGEMENT

A. Project Steering Committee. The Project Steering Committee will be retained through the design and construction phases of the Project as described in Section 2.2 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.

B. Project Management Group (PMG). The Project Management Group will be retained through the design and construction phase of the Project as described in Section 2.1 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.

C. Project Management

(1) Project Managers. TriMet designates Leah Robbins as its Project Manager and the County designates Dan Chandler as its Project Manager. The Project Managers shall be responsible for coordinating all aspects of their respective work scopes for the Project and all the respective employees, consultants and contractors assigned to the Project. The Project Managers shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be the contact persons through whom TriMet and the Clackamas County Partners officially communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. In the event that a disagreement or dispute occurs between the Project Managers, they shall refer it to TriMet's Executive Director of Capital Projects and the County's Director of the Department of Transportation for resolution.

(2) Clackamas County Partner project engineers.

(a) The Clackamas County Partners shall assign project engineers, reporting to the County's Project Manager, with the required engineering experience, ability, and skills necessary to perform the following tasks:

(1) Have access to the Clackamas County Partner, County Project Manager, and TriMet's Project Director and Manager.

(2) Inform the Clackamas County Partner and County Project Manager of TriMet's Project staffs' decisions.

(3) Inform Project staff of progress of required Clackamas County Partner approvals and work on end products.

(4) Assist TriMet in coordinating privately-owned utility relocation.

- (5) Prepare a schedule interfacing Clackamas County Partner or Clackamas County Partner-permitted work with Project work.
- (6) Assist TriMet in gathering information in a timely manner from Clackamas County Partners' staff and assist TriMet's Project staff in understanding the information.
- (7) Assist TriMet in obtaining required end products and approvals.
- (8) Advise TriMet of documentation necessary to obtain Clackamas County Partner approvals and permits.
- (9) Advise and assist TriMet in accomplishing Clackamas County Partner issuance of the necessary permits.
- (10) Assist assigned TriMet design lead persons as necessary so that final design is accomplished in accordance with Project schedule milestones, budget and identified quality standards.
- (11) Provide field and/or office engineering functions during construction, as part of the assigned TriMet and Clackamas County Partners' resident engineer staff responsible for overseeing a particular construction contract.
- (12) Report to the assigned TriMet design or construction lead and interface with Project consultants or subconsultants only as permitted by the assigned TriMet lead person.

ARTICLE VIII - GENERAL PROVISIONS

- A. Compliance with Law.** The parties recognize that funds provided by FTA will be used to pay for a portion of the Project. Each party agrees to comply with all local, state and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing work of FTA contractors.
- B. Federal Funding Limitation.** To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
- C. Liability.** TriMet shall hold harmless and indemnify the Clackamas County Partners, their officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of TriMet's errors, omissions, fault or negligence under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act. The Clackamas County Partners shall hold harmless and indemnify TriMet and its officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of the errors, omissions, fault or negligence of the Clackamas County

Partners under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.

1. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party which may result in litigation in any way related to this Agreement.
2. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

D. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

E. Interest of Public Officials. No member, officer, or employee of the Clackamas County Partners or TriMet during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

F. Disadvantaged Business Enterprise. In connection with the performance of this Agreement, the Clackamas County Partners will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. TriMet and the Clackamas County Partners may desire to enter into an agreement whereby the Clackamas County Partners provide technical assistance for the DBE efforts. In the event an agreement is reached on the scope and budget for this work, the parties will modify this Agreement to provide for such scope and budget.

G. Equal Employment Opportunity. In connection with the execution of this Agreement, neither the Clackamas County Partners nor TriMet shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; and selection for training, including apprenticeship.

H. Public Contracting Requirements. To the extent applicable, the provisions of ORS Chapter 279 are incorporated by this reference as though fully set forth.

I. Relationship of the Parties. Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be a representative, agent, employee or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

J. No Participation. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

K. Not Used.

L. Termination for Default. If the Clackamas County Partners materially breach this Agreement, TriMet may terminate this Agreement in the manner set forth in this Section. The Clackamas County Partners will be paid only the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by TriMet that the Clackamas County Partners have an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of the Clackamas County Partners, TriMet shall establish a new performance schedule, and allow the Clackamas County Partners to continue work.

If TriMet materially breaches this Agreement, the Clackamas County Partners may terminate this Agreement in the manner set forth in this Section.

If it is later determined by the Clackamas County Partners that TriMet has an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of TriMet, the Clackamas County Partners shall allow TriMet to continue work.

In the event TriMet fails to pay the Clackamas County Partners for the services provided under this Agreement, such failure shall be deemed a material breach of this Agreement.

Prior to exercising its right to terminate this Agreement for a material breach by the other party, the terminating party must provide 60 calendar days written notice of the material breach to the representative of the other party in accordance with the Notice provision of this Agreement. The notice must include a detailed explanation of the breach, and during this 60 day period, the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the material breach or, if the material breach is one that cannot be cured within 60 days, has not made good faith efforts toward curing the breach, the terminating party may terminate this agreement for default and seek all remedies available at law or in equity.

M. Maintenance of Records. The Clackamas County Partners shall maintain records to show actual time involved in accomplishment of the Project and the cost incurred for the period of time specified. The Clackamas County Partners shall cooperate in good faith with TriMet and the FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and provide assistance to the Clackamas County Partners as necessary for compliance with FTA requirements. TriMet shall notify the Clackamas County Partners of the date the Project grant ends, to assist them in calculating the length of time they must keep records under the law.

N. Audit and Inspection of Records. The Clackamas County Partners shall permit the

authorized representatives of TriMet, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Clackamas County Partners relating to its performance under this Agreement. TriMet shall be responsible for all auditing costs incurred by TriMet or Clackamas County Partners to conduct its audits under this Agreement.

- O. Documents.** All records, reports, data, documents, systems, and concepts, whether in writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property. All design drawings and documents prepared by the Clackamas County Partners' staff under this Agreement shall be property of TriMet. Nothing herein shall prevent the Clackamas County Partners from retaining original design drawings and providing reproducible copies to TriMet.
- P. Debt Limits.** To the extent required by law, this Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
- Q. Amendments.** This Agreement embodies the full agreement between the parties with regard to the subject matters set forth herein, unless amended by a writing signed by the parties. The Board of County Commissioners delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect the total financial commitment up to \$25,000.00. The Board of County Commissioners also delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect procedural aspects of the delivery of services described in Article V, if necessary.
- R. Authority.** Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.
- S. Third Party Beneficiary.** The Clackamas County Partners and TriMet are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
- T. Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the parties. The rights and obligations of each party under this Agreement may not be assigned in whole or in part without the prior written consent of the other party.
- U. Governing Law, Disputes.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and the Clackamas County Partners shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon.

The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between the Clackamas County Partners and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

V. Survival. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

W. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

X. Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other party.

Y. Notice. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2264
Fax: (503) 962-2283

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

The Clackamas County Partners:
Clackamas County
Administration
Public Service Building
Attn: Dan Chandler
2051 Kaen Road

Oregon City, OR 97045
Telephone: (503) 742-5918

With copy to:

Clackamas County Counsel
Public Service Building
2051 Kaen Rd.
Oregon City, OR 97045

Either party may change the foregoing notice address by giving prior written notice thereof to the other party at its notice address.

**Board of Commissioners
County of Clackamas**

**Tri-County Metropolitan Transportation
District of Oregon**

By: _____
John Ludlow, Chair

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

Date: _____

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

Approved as to Form:

By: _____
Clackamas County Counsel

By: _____
TriMet Legal Department

**Board of County Commissioners
Acting as the Governing Body of the
North Clackamas Parks and Recreation
District**

By: _____
John Ludlow, Chair

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

By: _____
District Counsel

Exhibit List

Exhibit A – Project Schedule & Milestones

Exhibit B – Clackamas County Staffing Plan

Exhibit A – Project Schedule and Timeline

| Activity | Date (1) |
|--|----------------|
| Complete Preliminary Engineering | March 2010 |
| FTA Issues Final Environmental Impact Statement | Oct 2010 |
| FTA Issues Record of Decision | Nov 2010 |
| FTA Approval to Start Final Design, and Letter of No Prejudice, Construction Starts under LONP | December 2010 |
| Full Funding Grant Agreement Executed by FTA | May 2012 |
| Construction Complete | May 2015 |
| Operations Starts | September 2015 |

(1)Subject to change based on Final Design, FFGA, and FTA requirements.

Exhibit B
 Portland Milwaukie Light Rail
 Clackamas County Staffing Plan
 June 2011

| Division / Position | Total Employee Cost Estimated | 10/11 Job Cost Invoice Totals | 11/12 Job Cost Invoice Totals | 12/13 Job Cost Invoice Totals | 13/14 YTD Job Cost Invoice Totals | Total Employee Cost To Date | Remaining Staffing Plan Balance |
|--|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-----------------------------------|-----------------------------|---------------------------------|
| PROJECT COORDINATION | | | | | | | |
| PROJECT COORDINATION TOTALS: | \$ 120,464.05 | \$ 3,487.53 | \$ 33,869.44 | \$ 13,497.07 | \$ 1,908.07 | \$ (52,757.11) | \$ 67,706.94 |
| BUILDING DEPT. | | | | | | | |
| * BUILDING DEPARTMENT TOTALS: | \$ 3,567.74 | \$ - | \$ - | \$ 247.92 | \$ - | \$ (247.92) | \$ 3,319.82 |
| DTD ADMINISTRATION | | | | | | | |
| DTD ADMINISTRATION TOTALS: | \$ 25,121.43 | \$ 4,650.00 | \$ 18,038.20 | \$ 11,510.04 | \$ - | \$ (34,198.24) | \$ (9,076.81) |
| LAND USE & ZONING / LONG RANGE PLANNING | | | | | | | |
| * LAND USE & ZONING TOTALS: | \$ 9,321.20 | \$ 1,539.88 | \$ 2,029.45 | \$ - | \$ - | \$ (3,569.33) | \$ 5,751.87 |
| ENGINEERING | | | | | | | |
| DTD ENGINEERING TOTALS: | \$ 210,373.22 | \$ 22,085.57 | \$ 79,333.90 | \$ 82,303.57 | \$ 20,895.19 | \$ (204,618.23) | \$ 5,754.99 |
| CCSD#5 - STREET LIGHTING | | | | | | | |
| CCSD #5 TOTALS: | \$ 1,276.60 | \$ 31.91 | \$ 1,271.60 | \$ 414.31 | \$ - | \$ (1,717.82) | \$ (441.22) |
| NCPRD | | | | | | | |
| NCPRD TOTALS: | \$ 9,119.65 | \$ 4,875.12 | \$ 16,712.57 | \$ 7,680.43 | \$ - | \$ (29,268.12) | \$ (20,148.47) |
| SURVEYOR | | | | | | | |
| SURVEYOR TOTALS: | \$ 20,500.00 | \$ 3,947.25 | \$ 471.45 | \$ - | \$ - | \$ (4,418.50) | \$ 16,081.50 |
| GRAND TOTAL: | \$ 399,743.89 | \$ 40,617.26 | \$ 151,726.41 | \$ 115,648.34 | \$ 22,803.26 | \$ (330,795.27) | \$ 68,948.62 |

* This amount covers pre-permit coordination. Additional permit fees will be applicable.