

**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:

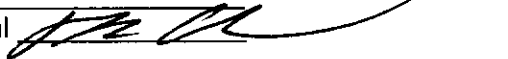
Given that the Circuit Court has ordered completion of the agreements, and that staff has negotiated the specific terms, staff recommends Option 1.

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.

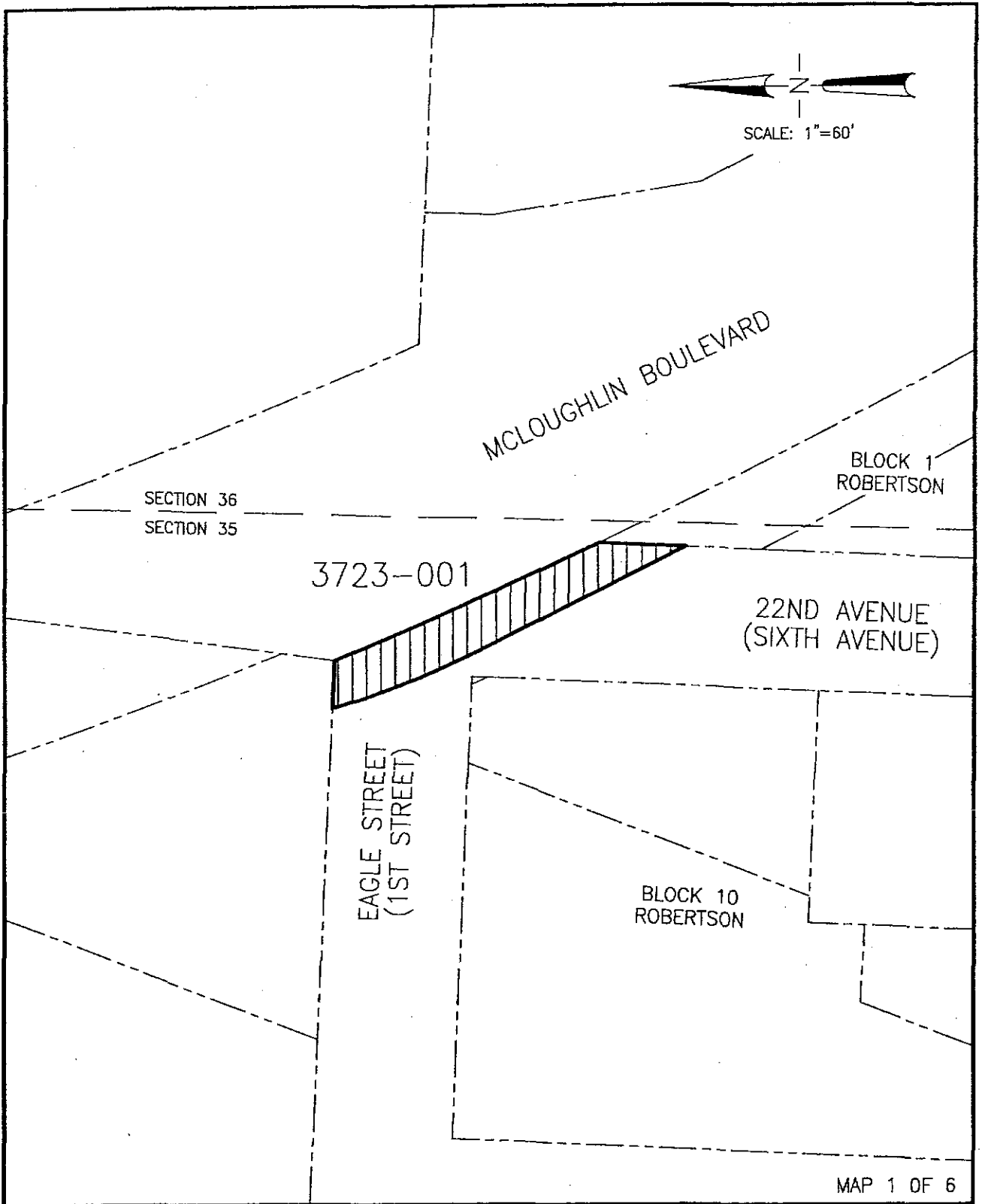
The tract of land to which this description applies contains 3,515 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

John A. Carlson

OREGON
JULY 15, 1983
JOHN A. CARLSON
2044

RENEWS 12/31/13



MAP 1 OF 6

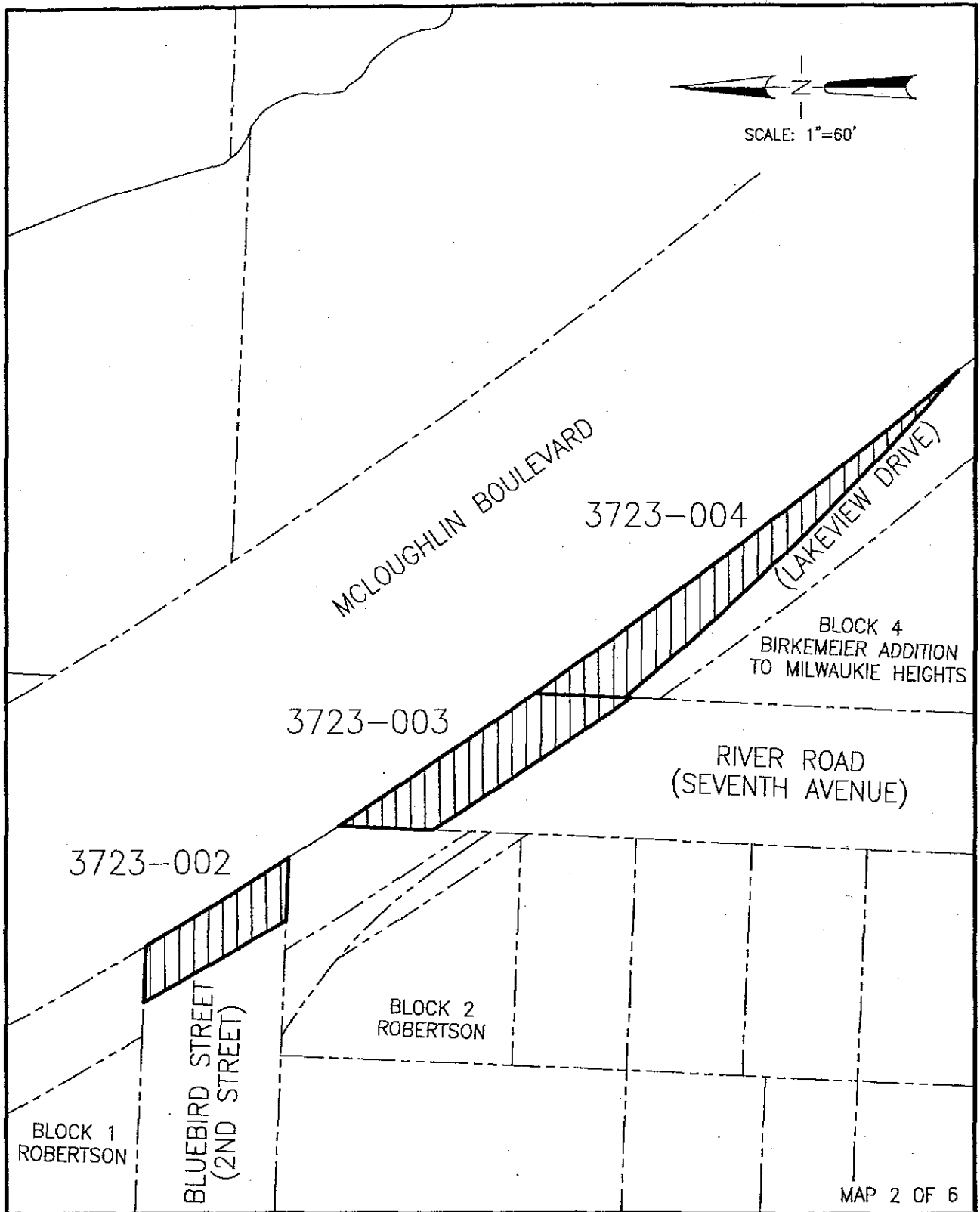
TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

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
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otak

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



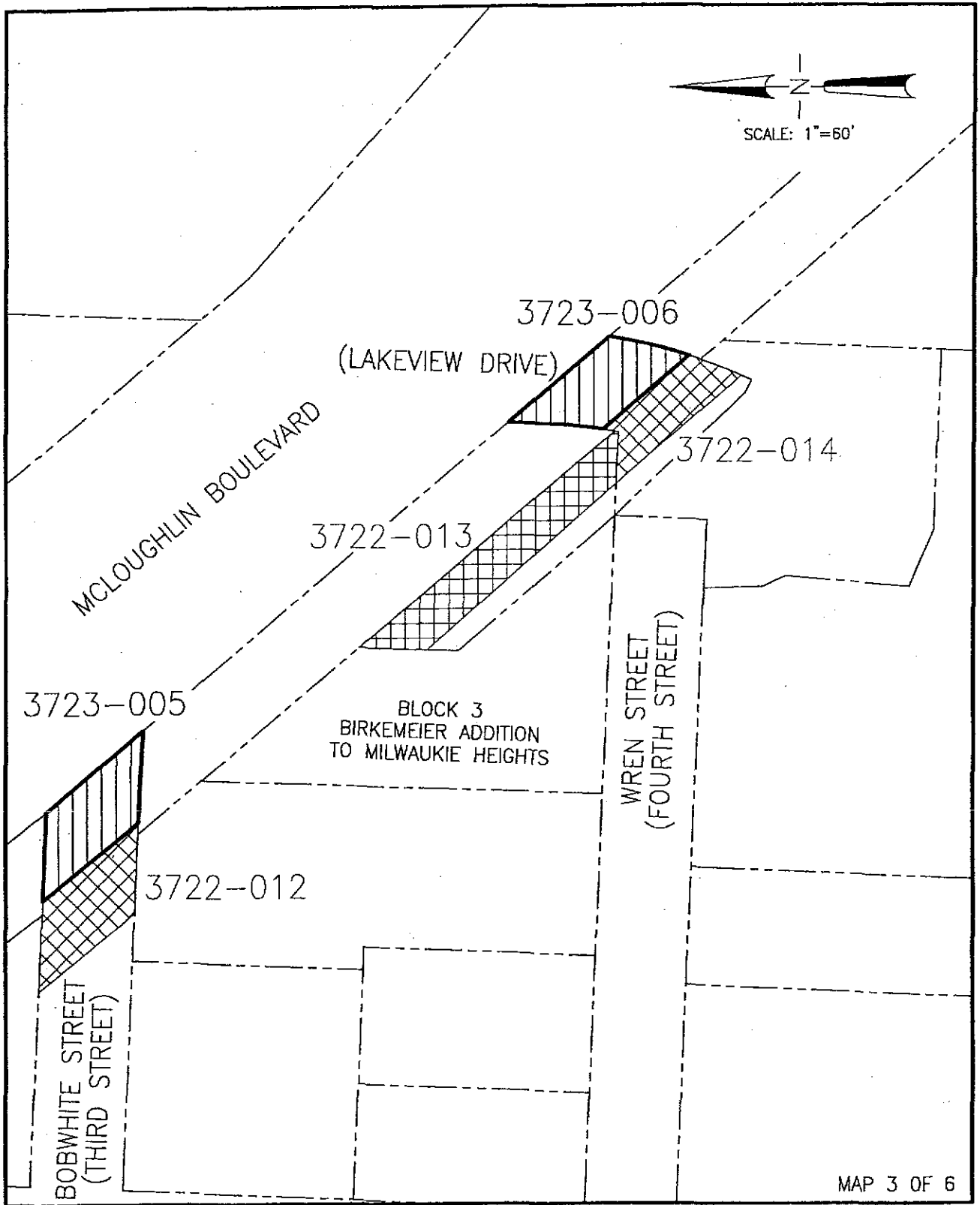
TRIMET
 CAPITAL PROJECTS
 AND
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 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

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

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

otak

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 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395



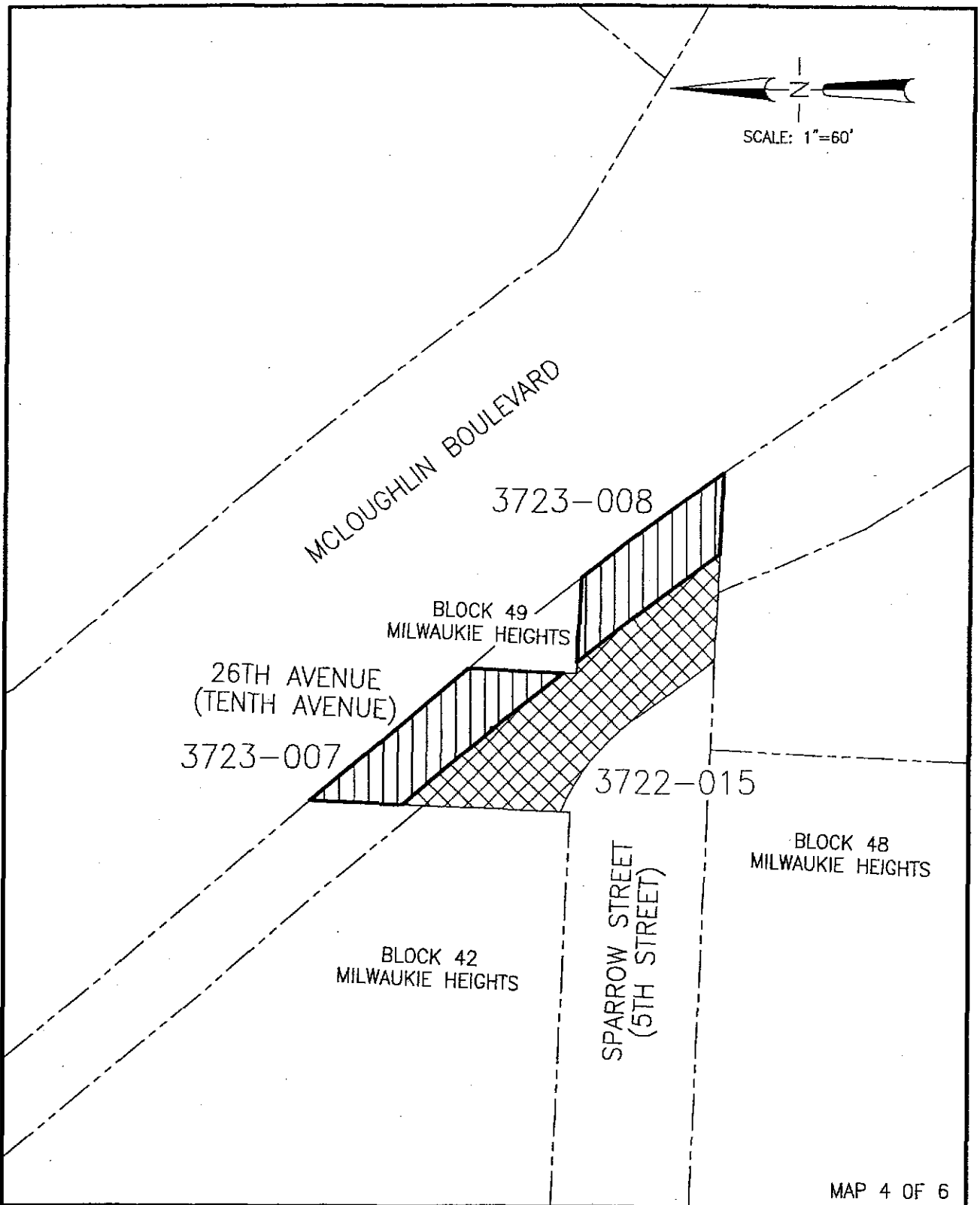
MAP 3 OF 6

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

otak
 17355 S.W. BOONES FERRY ROAD
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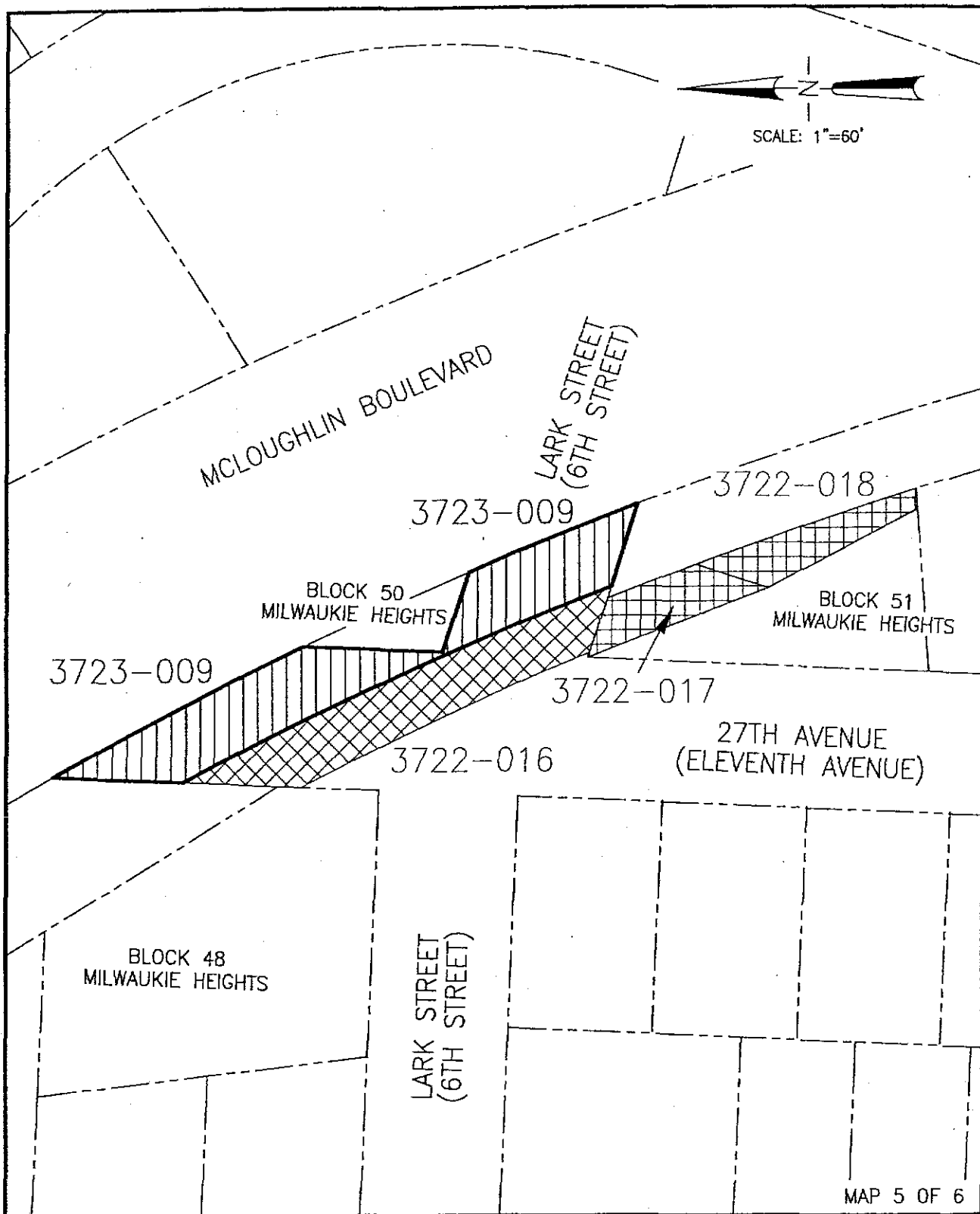
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 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

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

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

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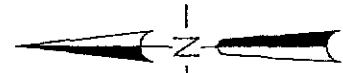
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 PORTLAND, OREGON 97232

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



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

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

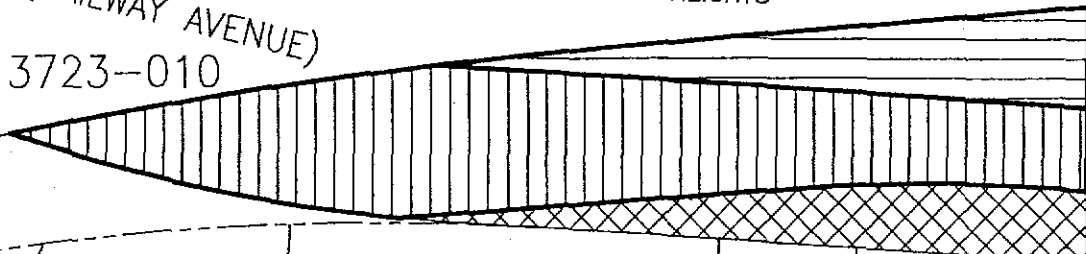


SCALE: 1"=60'

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