

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Acting as the Governing Body of the
North Clackamas Parks and Recreation District

Study Session Worksheet

Presentation Date: 4/10/12 **Approximate Start Time:** 2:00 pm **Approximate Length:** 45 min

Presentation Title: Intergovernmental Agreement (IGA) Between the North Clackamas Parks and Recreation District (NCPRD) and TriMet for the Design and Construction Services for the Trolley Trail Segment 2

Department: NCPRD

Presenters: Gary Barth and Michelle Healy, NCPRD, Chris Storey, County Counsel

Other Invitees:

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Should the Board approve the IGA with TriMet for the design and construction of Segment 2 of the Trolley Trail?

EXECUTIVE SUMMARY:

This study session is to follow up on questions raised by the Board at the March 29, 2012 Business Meeting regarding the IGA with TriMet for the design and construction of Segment 2 of the Trolley Trail.

Since 2008, NCPRD has been working with TriMet and other partners to coordinate the Trolley Trail multi-use path project with the Portland to Milwaukie light rail extension (LRT) (see attached timeline, exhibit 1). The LRT and Trolley Trail projects are co-located for approximately 0.6 miles between the railroad trestle at 22nd Avenue in the city of Milwaukie and SE Park Avenue in Clackamas County. This area is also known as Segment 2 of the Trolley Trail (see attached map and graphic, exhibit 2). Early on in the planning for the LRT it was determined that the construction of the LRT would require the use of the existing Trolley Trail right of way and necessitate the purchase of additional land to the west to relocate the trail.

Due to the close proximity of the projects; their differing timelines; and focus on efficient use of public funds, design changes were made to the existing Trolley Trail plans removing Segment 2 from the current NCPRD construction contract. The intent being that this segment would be built by TriMet at the same time as the LRT project. Public discussion supported delaying construction, rather than seeing public resources wasted by building Segment 2 in its existing location and then having it removed and rebuilt to the west when the LRT is constructed.

The specific LRT design of Segment 2 is a result of prior discussions and decisions by the Board. Attached is a letter of concurrence signed by the Board that lays out the design requirements for the Trolley Trail as part of the LRT project (see exhibit 3). In addition, the design of the two projects has been shared extensively with the public in

numerous LRT public meetings. The specific design of the trail was also vetted through a public land use process by the city of Milwaukie.

Some of the design features incorporated by TriMet to minimize impacts on the trail include:

- Maximizing the amount of space for the trail – a six foot planted buffer zone is provided between the LRT and trail for the majority of the extent. Where possible the trail has been designed to utilize adjacent right of way to create additional buffer zone.
- Planting of extensive native vegetation between and along the trail and the LRT to improve the trail user experience and buffer the trail from the LRT operations.
- Designing the retaining walls required for the project to include terracing and/or planted slopes to provide a more open and natural setting adjacent to the trail.
- Designing the trail elevation relative to light rail elevation to maximize visibility to and from the trail to maintain safety and security “Crime Prevention Through Environmental Design” (CPTED) principles.
- Providing pedestrian-scale lighting under the light rail structure and adjacent to the trail.
- Designing fencing and other LRT related utilities and features to be aesthetically compatible with the trail.

The attached design and construction IGA further memorializes these design features and formalizes the roles and responsibilities for each agency related to the construction of Segment 2 of the Trolley Trail. The IGA specifically address the following key details (see exhibit 4):

- As determined during the preliminary planning of the LRT project, TriMet would purchase the Trolley Trail right of way from NCPRD for fair market value based on an independent property appraisal. A new easement to the west of the existing right of way is proposed to be provided for the Trolley Trail in exchange. NCPRD would be compensated for the value of the property. Any net proceeds from the property transaction would be directed to other parks projects, in accordance with the terms of the 1996 Metro Greenspaces bond funds, which were used to purchase the original trail right of way.

While there was extensive consideration on the final form of ownership, the District believes a perpetual easement provides NCPRD the necessary property rights to operate and maintain the trail, while limiting NCPRD’s exposure to liability and other potential issues related to the LRT.

The value of the property and terms of the sale will be negotiated in a separate Right of Way agreement. This agreement will be discussed during a future executive session and be subject to final review and approval by the Board.

- TriMet will construct Segment 2 of the trail at no cost to NCPRD. This provides a savings of between \$350,000 and \$450,000 that can be applied to other needed capital projects in the District.
- If TriMet fails to build the trail, it must provide funding to NCPRD for the construction and related costs. NCPRD would use these funds to complete Segment 2.
- Segment 2 of the trail shall be completed by December 1, 2014.

NCPRD is currently working towards completion of the construction of the Trolley Trail and needs a formal agreement with TriMet stating that they will complete Segment 2 of the trail, or provide funding to NCPRD to do so. Approval of this IGA assures the integrity of the Trolley Trail and confirms completion of the project regardless of the outcome of the LRT project. This assurance is required not only by NCPRD, but also by the Federal Highway Administration (FHWA) and the Oregon Department of Transportation (ODOT), which provided significant transportation grant funding to NCPRD to construct the entire Trolley Trail. If the entire trail fails to be completed in accordance with grant requirements, NCPRD could be found in breach of the grant agreement with ODOT and FHWA and be required to reimburse the grant funds.

County Counsel has reviewed and approved the language in the IGA.

FINANCIAL IMPLICATIONS:

Construction of Segment 2 of the Trolley Trail by TriMet is anticipated to save NCPRD between \$350,000 and \$450,000 in capital costs. These funds would be directed to other needed capital projects in the District.

LEGAL/POLICY REQUIREMENTS:

Completion of the Trolley Trail is required by FHWA and ODOT as part of the federal transportation grant funds used to build the project. Should the project fail to be completed as required NCPRD could be found in breach of the grant agreement. The IGA assures NCPRD, FHWA and ODOT that Segment 2 will be completed.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Coordination of the Trolley Trail and LRT projects have been publically discussed in numerous public and community meetings over the last four years. The public and partners have been aware that Segment 2 of the Trolley Trail would be built as part of the light rail project and have provided input throughout the design process.

OPTIONS:

1. Direct staff to present the IGA, in its current form, for discussion and decision at the next available Business Meeting.
2. Direct staff to coordinate with TriMet to amend the IGA to address concerns raised by the Board and schedule revised IGA for discussion and decision at the next available Business Meeting.
3. Direct staff to coordinate with TriMet to amend the IGA to address concerns raised by the Board and schedule revised IGA for discussion at the next available Study Session.
4. Reject IGA and direct NCPRD to build Segment 2 of the Trail now, at NCPRD's expense, and risk the possibility of the trail being removed in the future to accommodate the LRT.

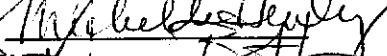
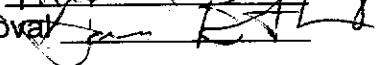
RECOMMENDATION:

Staff respectfully recommends that the Board direct staff to present the IGA, in its current form, for discussion and decision at the next available Business Meeting.

ATTACHMENTS:

- Exhibit 1 - Timeline
- Exhibit 2 - Map and conceptual graphic
- Exhibit 3 - Letter of Concurrence
- Exhibit 4 - IGA

SUBMITTED BY:

Division Director/Head Approval 
Department Director/Head Approval 
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Michelle Healy @ 503-742-4356

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

- YES
 NO

START-UP EXPENSES AND STAFFING:

This is the continuation of over four years of project coordination between NCPRD and TriMet. There are no start up expenses anticipated as a result of this agreement. However, NCPRD staff time and costs to coordinate Segment 2 of the Trolley Trail project with the LRT are being billed to TriMet.

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING:

There are no significant added operational or maintenance costs anticipated as a result of this IGA because the maintenance of Segment 2 of the Trolley Trail is already budgeted by NCPRD as part of the overall Trolley Trail development. However, final maintenance roles and responsibilities will be determined through a separate IGA with TriMet, subject to approval by the Board. Per that agreement, NCPRD is expected to only be responsible for maintenance of the trail and its associated infrastructure (e.g., storm pipes) and amenities (e.g., landscaping, signage, bollards). All LRT facilities and infrastructure would be maintained by TriMet.

ANTICIPATED RESULTS:

Approval of this IGA results in the assurance of the construction of Segment 2 of the Trolley Trail regardless of the outcome of the LRT project. This will complete the full extent of the Trolley Trail project linking Milwaukie, Oak Grove, Jennings Lodge and Gladstone.

COSTS AND BENEFITS:

This assures the efficient use of taxpayer dollars by not having NCPRD build Segment 2 of the trail and then having it torn out and rebuilt by TriMet at a later date. In addition, the agreement saves NCPRD capital construction funds (\$350,000 - \$450,000) that can be applied to other priority projects in the District.

TROLLEY TRAIL/LIGHT RAIL COORDINATION TIMELINE

EXHIBIT 1

July 2008 – Clackamas County, City of Milwaukie, City of Portland, City of Oregon City, Multnomah County, ODOT, Trimet, and Metro adopt Locally Preferred Option for the Portland to Milwaukie Light Rail (LRT) project; use of Trolley Trail right of way is identified as being necessary for the project.

January 20, 2009 – Study session to discuss status of Trolley Trail project including coordination with LRT.

November 10, 2009 – Study session to discuss Trolley Trail and LRT coordination including LRT project impacts identified in the LRT's Environmental Impact Statement.

2009/2010 – Metro prepares and completes Final Environmental Impact Statement (FEIS) for the LRT. FEIS includes properties to be acquired, as well as project impacts on community resources. Evaluation of the impacts of the LRT project on the Trolley Trail (a park resource) included in the FEIS as part of "4F" analysis.

January 5, 2010 – Study session to discuss light rail coordination and results of FEIS "4F" determination of the trail. FEIS identifies impacts to Trolley Trail as "deminimus".

January 14, 2010 – Board approves Letter of Concurrence for the "4F" determination - includes language that Trimet will purchase the Trolley Trail right of way from NCPRD and build the relocated trail as part of the LRT project.

February 4, 2010 – Board approves funding agreement for the LRT project. NCPRD staff time is able to be reimbursed for work on LRT project.

2010/11 – Trimet develops construction documents for construction of LRT. Plans coordinated with NCPRD, County and other partners. NCPRD concurrently working with Trimet to draft three intergovernmental agreements pertaining to the coordination of the trail and LRT projects - design and construction, right of way acquisition and maintenance.

2011/12 – Trolley Trail construction underway. Segment 2 of trail project to be pulled from contract since identified to be built as part of LRT.

August 23, 2011 – Study session to update Board on Trolley Trail progress.

December 2011 – Update on trail construction during Board Issues session.

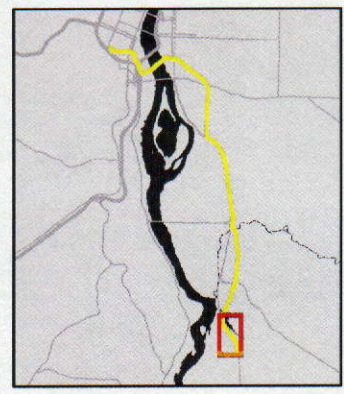
February/March 2012 – Oregon Department of Transportation and Federal Highway Administration request formal documentation from NCPRD confirming that segment 2 will be built by NCPRD or Trimet.

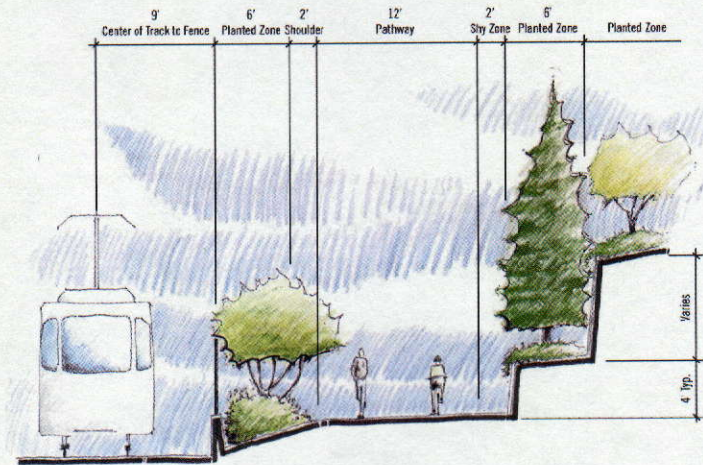
March 2012 – Trimet requests permission to enter Trolley Trail right of way to begin utility relocation in advance of LRT construction.

Portland-Milwaukie Light Rail Project

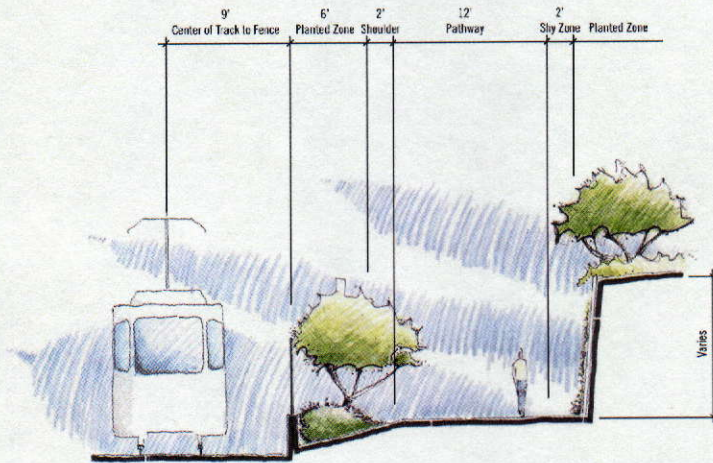
Trolley Trail

- Light Rail track
- station platforms
- Construction Limit
- Trolley Trail

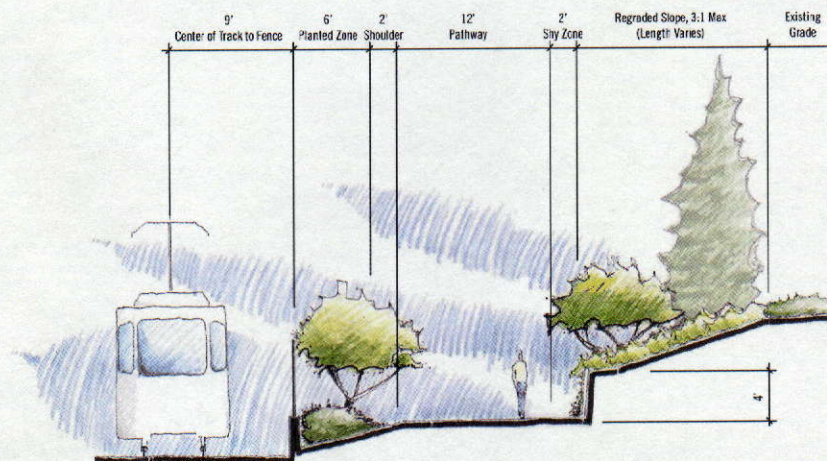




Section -
Terraced Double Wall



Section -
Single Wall



Section -
4 Foot Single Wall

Portland - Milwaukie Light Rail Project

Trolley Trail - Cross Section of Retaining Walls



**NORTH
CLACKAMAS**
PARKS & RECREATION
DISTRICT

January 14, 2010

Ms. Bridget Wieghart
Metro
600 NE Grand
Portland, OR 97232

Dear Ms. Wieghart:

The North Clackamas Parks and Recreation District (NCPRD) concurs with the Section 4(f) *de minimis* finding involving the use of a portion of the Trolley Trail right of way for the construction and operation of the Portland Milwaukie Light Rail Project, while accommodating the development of the Trolley Trail. As the light rail project enters final design and continues toward permitting and construction, NCPRD looks forward to working with TriMet to finalize the terms and agreements needed to develop our projects in collaboration.

Based on the analysis and proposed features discussed by the project partners to date, we concur with the finding that the proposed activities would not adversely affect the long term activities and attributes envisioned for the trail, consistent with a *de minimis* use determination that allows a small or minimal action that will not "adversely affect the activities, features, and attributes" that make the Trolley Trail eligible for protection under Section 4(f). The specific findings in support of this concurrence include:

- TriMet will purchase either property or a property easement from NCPRD and this will be based on an appraisal to be conducted after the record of decision.
- TriMet would construct the trail section between the park-and-ride at SE Park Avenue to SE River Road, as part of the light rail project civil construction contract.
- TriMet will be responsible for relocating the PGE utility at SE Park Avenue.
- TriMet has worked extensively with NCPRD to minimize the impacts on the trail by defining the following features as part of the project:
 - A design that maximizes the amount of space for the trail. At a minimum, a six foot planted buffer zone will be located between light rail and trail. Where possible the trail will be designed to utilize adjacent right-of-way to create additional buffer zone.
 - The light rail project is designing the retaining walls required for the light rail project and trolley trail to include terracing and/or planted slopes to provide a natural setting adjacent to the trail.
 - By designing the trail elevation relative to light rail elevation to maximize visibility to and from the trail to maintain safety and security "Crime Prevention Through Environmental Design" (CPTED) principles.

www.co.clackamas.or.us/ncprd

Administration Office
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4348
fax: 503-742-4349

Aquatic & Recreation Services
7300 SE Harmony Road
Milwaukie, OR 97222
503-794-8080
fax: 503-794-8085

Milwaukie Center
5440 SE Kellogg Creek Drive
Milwaukie, OR 97222
503-653-8100
fax: 503-794-8016

Parks Maintenance Office
9909 SE 40th Avenue
Milwaukie, OR 97222
503-794-8030
fax: 503-794-8087

*A service district
of Clackamas County*

- For the trail section between SE Park Avenue and SE River Road, providing pedestrian-scale lighting under the light rail structure and adjacent to light rail. The design of the lighting may be incorporated into the light rail system or be within the trail section; details of this design will continue to be developed in partnership with the NCPRD.
 - The light rail project is designing fencing and other light-rail related utilities and features to be aesthetically compatible with the adjacent trail.
- Recognizing the importance of delivering the new regional trail connection envisioned for the Trolley Trail, TriMet, City of Milwaukie and the NCPRD have developed an approach for completing the link from SE Park Avenue to Kellogg Creek prior to construction of the light rail in this area. Trail users for this section of trail would be directed to a sidewalk and bike lane on the east side of SE McLoughlin Boulevard from Park Avenue to the existing crosswalk at River Road until the light rail and trail construction are completed in this section. Pedestrians and bicyclists would be able to utilize existing bike lanes and sidewalk on the east side of SE McLoughlin Boulevard. TriMet will provide accommodations for gaps in the sidewalk on the east side of McLoughlin Boulevard between Park Avenue and River Road. This limit was identified as a project element because it will connect the two built elements of the Trolley Trail affected by the construction of the light rail project (River Road – Park Avenue).
 - All parties recognize the desire to open the trail in its permanent location as soon as possible.
 - Public access to the trail would be increased by providing a light rail station at SE Park Avenue. Further, access to the trail would be improved by allowing trail users to park in the Park Avenue park-and-ride structure in non-peak times.
 - NCPRD and TriMet are jointly drafting an Intergovernmental Agreement (IGA) further defining our shared understanding of our approach to developing our two projects in collaboration.

We support the project's plan to allow our two projects to be developed together, and we believe it will have benefits to users of the Trolley Trail, as well as to the general public and the regional transportation system.

Sincerely,



Bob Austin, Vice Chair
Clackamas County Board of County Commissioners

cc:

Mark Turpel, Metro
Dave Unsworth, TriMet
Dan Zinzer, NCPRD
Michelle Healy, NCPRD

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET AND THE NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT FOR DESIGN AND CONSTRUCTION SERVICES
FOR TROLLEY TRAIL SEGMENT 2**

This intergovernmental agreement ("Agreement") is made and entered into by and between the North Clackamas Parks and Recreation District ("NCPRD") and the Tri-County Metropolitan Transportation District of Oregon ("TriMet") (collectively the "Parties"), effective as of the date of the last signature, below.

RECITALS

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

B. In 2008, Clackamas County, City of Milwaukie, City of Portland, City of Oregon City, Multnomah County, ODOT, TriMet and Metro adopted the Locally Preferred Alternative that called for TriMet to construct the Project to SE Park Avenue and requiring utilization of real property between SE River Road and SE Park Avenue ("Property").

C. During the planning for the Project, TriMet requested that NCPRD allow the proposed Project to utilize the Property owned by NCPRD, and NCPRD agreed.

D. TriMet will purchase, through a Right of Way Agreement with NCPRD, fee title to a portion of the Property, as well as an access easement for light rail transportation ("LRT") facilities between SE 22nd Avenue and SE River Road, which are necessary for the construction and operation of the Project.

E. After TriMet's purchase of the Property, TriMet will transfer an easement for use as a hard surface multiple use public trail ("Trail") and Trail amenities on the Property and related TriMet-owned properties, such as landscaping, stormwater pipes, and drainage. The amount paid by TriMet for the Property will be "net" of the value of the easement to be transferred to NCPRD, and the transfer of the easement will also be documented in the Right of Way Agreement between the Parties. The value of both the fee transfer and the easement will be determined by an independent appraiser, in accordance with the Right of Way Agreement.

F. The Parties desire to continue to work collaboratively to minimize impacts on the Trail due to the construction of the Project, and to design and construct the Trail on the Property in a manner that provides a significant benefit to both Trail and transit users. NCPRD is prepared to assign staff to the Project as necessary to provide design guidance for the Trail.

G. At no cost to NCPRD, TriMet will construct the Trail on the Property from Park Avenue to River Road by December 1, 2014.

H. TriMet will also grant a permanent easement to NCPRD for maintenance of the Trail and Trail facilities. NCPRD will maintain the hard surface trail, shoulders, stormwater facilities, swales and associated landscaping of the Trail only. All other elements of the Project, including landscaping and swales, will be maintained by TriMet or others. The Parties' respective maintenance obligations will be memorialized in a Maintenance Agreement between the Parties, and the Parties hereto acknowledge that such agreement is a condition for conveyance of the Property to TriMet.

I. TriMet and NCPRD are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.

NOW, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

I. NCPRD OBLIGATIONS

A. Design Phase

1. NCPRD staff will assist, review and approve the design of the Trail from Park Avenue to River Road. NCPRD staff will participate in design phase meetings, review design submittals, and provide feedback regarding TriMet's Trail design, including quality and compatibility with NCPRD Trail guidelines. Such review and assistance shall occur in a prompt and expeditious manner, in order to ensure that TriMet meets its design schedule. NCPRD staff will be reimbursed for time associated with the design and construction of the Trail as set forth in the Design and Construction Agreement between TriMet and Clackamas County.

2. NCPRD staff will participate at public meetings regarding the Project or the Trail, as requested by TriMet or as appropriate.

3. NCPRD and TriMet are partners in a Natural Areas Bond Measure Capital Grant Award, and agree to comply with the terms of the grant while designing the Trail. NCPRD is not party to the agreement between Metro, OLSD and TriMet related to the grant award; however, NCPRD will support the grant with staff time directly related to the terms of the grant application.

B. Construction

1. Utility Relocation. If the Property has not been transferred to TriMet prior to the time notice must be given for utility relocation related to the Project or the Trail, NCPRD shall, at TriMet's request and specifications, convey any notice required in order to facilitate such relocation. After such notice is given, NCPRD agrees to delegate to TriMet the authority to act on its behalf related to such utility relocation consistent with the design. TriMet agrees to bear any cost of utility relocation on the Property.

2. Detours. NCPRD staff will assist TriMet regarding Trail detours during construction.

3. Access. TriMet and its contractor shall have the right to enter onto the Property, prior to the Right of Way Agreement's completion, for the purposes of construction staging, advanced utility relocation, bridge foundation work, and other construction work ("Construction Work") related to construction of the Project. TriMet shall hold NCPRD and its employees, agents and elected officials harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including without limitation settlement payments and attorney's, expert's and consultant's fees ("Claims") arising from the Construction Work except to the extent caused by NCPRD's gross negligence or willful misconduct. Any claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses, including without limitation settlement payments and attorney's, expert's and consultant's fees, arising from this Agreement but not from the Construction Work on the Property, shall be governed by Section IV(0), below.

II. TRIMET OBLIGATIONS

A. Design Phase

TriMet shall be responsible for designing the Trail from Park Avenue to River Road, with NCPRD review and final approval authority. TriMet understands that certain mitigation is required, as set forth in the FEIS. Unless otherwise agreed by the parties in the manner described in this paragraph, TriMet's design will include the following:

1. A planted buffer zone will be installed between the Trail and the light rail line. This buffer zone will be at least six feet wide, unless otherwise agreed by NCPRD as part of the design review and approval process. Where possible, the Trail will be designed to utilize adjacent right-of-way to create a wider buffer zone.

2. Include terracing or planted slopes on the retaining walls adjacent to the Trail in order to provide a natural setting, in accordance with the design submitted as the basis of the approved Trolley Trail City of Milwaukie land use action.

3. Include a new signalized crossing of SE Park Avenue that will allow Trail users to safely cross Park Avenue. This signal will include a bicycle activated exclusive

phase that allows bikers using the Trail to cross Park Avenue diagonally, maintaining a direct connection to the Trail.

4. Design the Trail elevation relative to light rail to maximize visibility to and from the Trail to incorporate Crime Prevention Through Environmental Design ("CPTED") principles.

5. Include pedestrian scale lighting along the Trail between Park Avenue and River Road. Functional lighting will be included under the light rail structure and adjacent to light rail to maintain a similar level of lighting that would have existed if the Trail had been constructed as planned prior to the presence of light rail. The lighting may be incorporated into the light rail system or the Trail section.

6. NCPRD and TriMet are partners in a Natural Areas Bond Measure Capital Grant Award, and agree to comply with the terms of the grant while designing the Trail.

B. Construction

TriMet will construct the Trail from Park Avenue to River Road to conform to the design finalized in accordance with Section II (A), above.

1. Prior to construction of light rail in the area that affects existing Trail users between SE Park Avenue and River Road, TriMet will direct Trail users to the existing sidewalk and bike lane on the east side of SE McLoughlin Blvd, or other mutually agreed upon detour, until light rail and Trail construction are completed in this area.

2. TriMet will confirm by December 1, 2013 that it is on schedule to complete the Segment 2 of the Trail. If TriMet is not able to complete the construction by December 1, 2014, NCPRD may commence construction of Segment 2 and TriMet agrees to pay all direct and indirect costs of such effort and will pay promptly any written payment demand provided by NCPRD for the construction and management of completion of the Trail.

3. Unless TriMet is paying NCPRD to complete construction under B.2 hereof, TriMet will complete construction of the Trail by December 1, 2014.

4. TriMet will allow NCPRD to inspect work progress during construction of the Trail, and any on-site design changes will be discussed and pre-approved by NCPRD. NCPRD shall promptly respond to any requests for changes that arise from design changes or site conditions.

5. Upon completion of construction, TriMet will provide NCPRD with as-built drawings of the Trail.

6. TriMet will provide NCPRD with one point of contact for coordination during the design, construction and maintenance of the light rail and the Trail.

7. TriMet will provide NCPRD with timely updates on the progress of construction for NCPRD to share on its Trail web site or by other means.

III. JOINT OBLIGATIONS

The parties agree to negotiate in good faith, and enter into a separate Right of Way Agreement and a separate Maintenance Agreement, as described above. The right of way agreement will detail the transfer of a portion of the Property in fee to TriMet, the transfer of an access easement to TriMet, and the transfer of a Trail easement to NCPRD. The maintenance agreement will set forth the Parties' maintenance roles and responsibilities, addressing, at a minimum, (i) long term capital asset replacement, (ii) regular maintenance and repair, (iii) insurance coverage, (iv) indemnification, and (v) impact of maintenance or repair efforts for the light rail on the Trail. The Parties agree that the Maintenance Agreement is a precondition to the transfer of the Property to TriMet and further agree to execute these agreements prior to the time the Project opens for revenue service.

IV. GENERAL PROVISIONS

A. 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.

B. Compliance with Law: The parties recognize that funds provided by the Federal Transit Administration (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 the work of FTA contractors.

C. 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.

D. Unless terminated sooner by a method set forth in this Agreement, the Agreement shall terminate 30 days after the conclusion of substantial completion of construction the Project. The Agreement may be extended by the mutual written consent of both Parties.

E. This Agreement may be terminated at any time by the mutual written consent of both Parties.

F. Either Party may terminate this Agreement in the event of a material breach by the other Party, but only if the other Party fails to cure the breach within 60 days of receipt of written notice specifying the breach.

G. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

H. NCPRD 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.

I. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

J. 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.

K. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and NCPRD 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. 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 NCPRD 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.

L. 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.

M. 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.

N. 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. If TriMet fails to complete the Trail as required herein, the parties agree that a component of any remedy shall include restoration of the Property to a state at least equal if not better to the conditions that existed prior to construction.

O. 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.

P. All routine correspondence and communication 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

NCPRD: Michelle Healy
Deputy Director
North Clackamas Parks and Recreation District
150 Beaver Creek Road

Oregon City, OR 97045

With a copy to: Chris Storey
Assistant County Counsel
150 Beaver Creek Road, 4th Floor
Oregon City, OR 97045

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

R. 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.

[Signature Page Follows]