

Exhibit A:**Portland to Milwaukie LRT Project****Funding Plan for City of Portland \$55 million dollar local match contribution**

Source	Amount
PDC Tax Increment Financing – North Macadam URA	\$10M
PBOT Parking Revenue	\$3.22M
Innovation Quadrant TSDC Overlay	\$5M
Citywide TSDC	\$1.78M
North Macadam TSDC Overlay	\$10M
In-Kind Property Contributions, General Transportation Revenues	\$25M
Total LRT Match	\$55M

**REVISED AND RESTATED PORTLAND-MILWAUKIE LIGHT RAIL PROJECT
INTERGOVERNMENTAL GRANT AGREEMENT BETWEEN TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON AND CITY OF
PORTLAND, OREGON**

THIS REVISED AND RESTATED INTERGOVERNMENTAL GRANT AGREEMENT (Revised and Restated Agreement) is entered into as of the effective date identified below the signatures to this Revised and Restated Agreement and is between the Tri-County Metropolitan Transportation District of Oregon (TriMet), a mass transit district organized under the laws of the State of Oregon and the City of Portland (City), a municipal corporation organized under the laws of the State of Oregon. TriMet and City are hereunder referred to as the "Parties." This Revised and Restated Agreement fully replaces and supersedes the intergovernmental agreement between City and TriMet regarding the Milwaukie LRT Project dated March 30, 2010, and such previous agreement shall be null and void as of the effective date of this Revised and Restated Agreement.

RECITALS

- A. The Parties understand and agree that the Portland-Milwaukie LRT Project (the Project) will be best served by entering into this Revised and Restated Agreement to provide for the rights and obligations of the Parties with respect to funding Preliminary Engineering (PE), Final Design, and Construction for the Project.
- B. TriMet and City are authorized to enter into this Revised and Restated Agreement with each other pursuant to the provisions of ORS 190.010.
- C. TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system.
- D. The Regional Transportation Plan for the Portland metropolitan region and the Transportation Element of the City Comprehensive Plan each anticipate the development of an additional light rail line commonly known as the Portland-Milwaukie LRT line.
- E. In May 2008, the Federal Transit Administration (FTA) issued a Supplemental Draft Environmental Impact Statement (SDEIS) for the Project, in compliance with FTA and National Environmental Protection Act (NEPA) requirements.
- F. In July 2008, the City Council endorsed the Locally Preferred Alternative (LPA) and Metro adopted the LPA and the Land Use Final Order (LUFO) for the Project.
- G. In March 2009, FTA authorized the Project's entry into the PE stage of project development.
- H. City desires to grant Local Matching Funds to TriMet to finance Final Design and Construction for the Project and has reserved certain rights in this Revised and Restated Agreement to assure that the monies granted to TriMet are expended in accordance with the governmental purpose of the transfer.

- I. TriMet will be the entity responsible for entering into a Full Funding Grant Agreement (FFGA) with the FTA as the instrument through which the Project will receive the federal funding component of the Project. As the grant recipient, TriMet will be the entity responsible for performing, or contracting for, the design services and construction work.
- J. On June 17, 2009, the Portland City Council approved Resolution No. 36709, in which the City Council approved a \$30.0 million funding plan for Local Matching Funds for the Portland-Milwaukie Light Rail Project, which included a proposed \$20.0 million contribution from the City and \$10.0 million contribution from the Portland Development Commission (PDC).
- K. On February 24, 2010, the Portland City Council approved Ordinance No. 183554, in which the City Council affirmed its \$30.0 million funding plan for Local Matching Funds for the Project and authorized an intergovernmental agreement committing its share of Local Matching Funds to TriMet for the Project.
- L. On March 24, 2010, the City of Portland executed the intergovernmental agreement with TriMet authorized in Ordinance 183554.
- M. On May 26, 2010, the Portland City Council approved Ordinance No. 183833, in which the City Council authorized execution of an intergovernmental agreement with PDC wherein PDC committed its \$10 million share of Local Matching Funds part of the City's overall finance plan for the Project.
- N. In August 2010, the FTA advised TriMet that the maximum share of New Starts funds it would provide for the Project was 50 percent; requiring TriMet to prepare a revised finance plan for the Project that required additional Local Matching Funds.
- O. In October 2010, FTA issued a Final Environmental Impact Statement (FEIS) for the Project, in compliance with FTA and NEPA requirements.
- P. In November 2010, FTA issued a Record of Decision (ROD) for the Project, in compliance with FTA and NEPA requirements.
- Q. In _____, the Portland City Council approved Ordinance No. _____, in which the City Council increased its initial \$30 million share of Local Matching Funds by an additional \$25 million, comprised of a combination of proceeds of bonds expected to be repaid from gas tax revenues (the proceeds of such bonds to be applied solely to project components determined by Tri-Met to be gas tax eligible) and in-kind real property donations; the Ordinance also authorized execution of a revised and restated intergovernmental agreement committing the additional Local Matching Funds.
- R.. This Revised and Restated Agreement is for the purpose of memorializing the Parties' commitments to provide necessary local funding for the Project, as revised in Ordinance _____, a necessary pre-requisite to obtaining a FFGA from FTA, and to allocate the various financial obligations and rights between the Parties. It replaces in its entirety and makes null and void the previous intergovernmental agreement between City and TriMet regarding the Milwaukie LRT Project dated March 30, 2010.

- S.. The Parties have entered into a Project Design and Construction Management Services Agreement or similar document separate from the execution of this Revised and Restated Agreement, which addresses in detail the design and construction responsibilities for the Project.

The Parties agree as follows:

REVISED AND RESTATED AGREEMENT

ARTICLE I. GENERAL

1.1 Overview of Agreement.

1.1.1 This Revised and Restated Agreement establishes the rights and obligations of the Parties with respect to the following aspects of the Project:

(a) **Preliminary Engineering and Final Design.** The Parties acknowledge and agree that TriMet has undertaken PE activities prior to execution of this Revised and Restated Agreement. Final Design shall commence promptly after being authorized by FTA. Upon FTA approval to enter Final Design, TriMet is authorized under this Revised and Restated Agreement to incur costs and disburse Project Funds for Final Design. It is anticipated that between 60 percent and 100 percent of the costs of Final Design will be expended prior to execution of a FFGA for the Project. In addition, TriMet is authorized under this Revised and Restated Agreement to undertake advanced right-of-way acquisition during PE and Final Design. All such pre-FFGA expenditures for PE, Final Design, and advanced right-of-way acquisition shall be made without any assurance that the Project will proceed into Construction. In the event the Project does not proceed into Construction, the Project Funds disbursed by TriMet to pay the costs of PE, Final Design, and advanced right-of-way acquisition will not be repaid or reimbursed by TriMet, FTA, or any other party. The City's approval rights during Final Design for plans and specifications and permits to be issued by the City to TriMet shall be set forth in a Project Design and Construction Management Services Agreement or similar document to be separately negotiated by the Parties after this Revised and Restated Agreement is executed.

(b) **Construction.** Construction shall commence at the earlier of (a) when a Letter of No Prejudice ("LONP") or similar approval is issued by FTA or (b) when a FFGA for the Project is executed by FTA. Immediately upon issuance of a LONP or, in the absence of a LONP, execution of a FFGA, TriMet is authorized under this Revised and Restated Agreement to incur costs and disburse Project Funds for Construction. Construction shall be undertaken in conformance with the terms and conditions set forth in the LONP or FFGA, as it may be amended from time to time, and TriMet practices and procedures. The Parties further acknowledge and agree that TriMet anticipates incurring Construction costs prior to executing a FFGA in order to maintain the Project Schedule and avoid future cost increases. In the event the Project does not proceed into or complete Construction, Project Funds disbursed by TriMet to pay such pre-FFGA Construction costs will not be repaid or reimbursed by TriMet, FTA, or any other party. The City's approval rights during Construction shall be set forth in a Project Design and Construction Management Services Agreement to be separately negotiated by the Parties after this Revised and Restated Agreement is executed.

1.2 Overview of TriMet's Role. TriMet shall: (a) identify and undertake all activities necessary or desirable to complete PE, Final Design, and Construction in accordance with the Project Schedule, FTA requirements, and TriMet processes and procedures, (b) provide project management services, (c) administer the Project Account, and (d) direct the design and the activities of any contractors on the Project. TriMet shall be the Grantee for all federal grants and, as described in Section 1.5, own the Project.

1.3 Overview of City Role. By this Revised and Restated Agreement, the City grants to TriMet the City's share of Local Matching Funds for Final Design and Construction of the Project, subject to the terms and conditions hereunder. The City's rights and obligations under this Revised and Restated Agreement are intended to be those of a grantor; City shall grant specified funding towards Final Design and Construction of the Project and retain certain review rights with regard to the Project to assure expenditure of the funding amounts in accordance with the governmental purpose of the grant. The City shall not be entitled to any interest in, or lien on, the revenues from the operations of the Project or to any compensation solely by virtue of having entered into this Revised and Restated Agreement.

1.4 General Responsibilities and Obligations of Parties. Both TriMet and the City agree to:

1.4.1 Use best efforts to ensure the Project is planned, designed, and constructed in accordance with the provisions of this Revised and Restated Agreement.

1.4.2 Use best efforts to ensure that the Project Schedule milestones shown in Exhibit A are met.

1.4.3 Act reasonably and in good faith and fully cooperate and coordinate with the other Party and Other Regional Partners in fulfilling their responsibilities with respect to the design, construction, and financing of the Project.

1.4.4 Comply with all requirements of law that apply to the design and construction of the Project, including but not limited to FTA regulations, rules, and procedures.

1.4.5 Ensure that City Local Matching Funds derived from proceeds of bonds expected to be repaid from gas tax revenues are applied solely to gas tax eligible components of the Project.

1.5 Project Ownership. The Parties acknowledge and agree that:

(a) All ballast, rail, trackwork, transit signage, communication, crossing gates, traction electrification, structures, landscaping of real property owned by TriMet, lighting on transit stations (but not street lights), light rail vehicles, stations, park-and-rides, system and ancillary improvements, and fare collection equipment shall remain under the ownership of TriMet.

(b) Unless otherwise donated to TriMet as an In-Kind Contribution, all roadways, sidewalks and streets owned by or under the control of the City that are improved as part of the

Project shall remain under control of the City with any ownership rights it has prior to construction of the Project, provided that the portion of the roadway on which trackwork is placed shall be subject to FTA's continuing control requirements and shall be operated and maintained by TriMet as part of TriMet's system until such time as the operations of the Project is permanently terminated by TriMet, as provided in a Continuing Control Agreement that will be separately negotiated by the Parties pursuant to Section 6.2 of this Revised and Restated Agreement. The obligations of the Parties with respect to maintenance shall be set forth in a maintenance agreement that will be separately negotiated by the Parties pursuant to Section 6.1 of this Revised and Restated Agreement.

(c) Except for the interests of the City in Project-related roadways, sidewalks, and streets described in paragraph (b) above, or the Project-related roadway, sidewalk, and street interests of Other Regional Partners described in separate intergovernmental agreements between TriMet and Other Regional Partners, no party other than TriMet shall have any ownership of, or property interest in, the Project or any part thereof, or any lien or encumbrance thereon.

1.6 Project Scope. The Project Scope is shown in Exhibit E to this Revised and Restated Agreement. TriMet may amend the Project Scope from time to time to reflect additional engineering and design, revised estimates of funding availability, and/or additional requirements or guidance of FTA. TriMet shall promptly provide to the City a revised Exhibit E to this Revised and Restated Agreement whenever the Project Scope is amended.

1.6.1 Supplemental Improvements may be incorporated within the Project and paid with Local Matching Funds from the Parties provided that the Project Representatives from each Party agree on the Supplemental Improvements.

1.6.2 Betterments may be incorporated within the Construction of the Project provided that (a) the Party requesting the Betterments pays the cost of such Betterments from funds that are not included in the Project Finance Plan, (b) the Project Representative of the Party requesting the Betterments obtains the written approval of the Project Representative of the other Party, and (c) the Parties agree on the ownership of the Betterment and the Party responsible for operating and maintaining the Betterment. The requesting Party may require that such Betterments be bid or otherwise priced as a separate schedule or cost item before making a final decision on inclusion, provided that the requesting Party pays the cost of soliciting such pricings with funds not included in the Project Finance Plan. If feasible, the requesting Party shall be named on the contractor's performance and payment bond and expressly authorized to enforce any warranty as relates to the Betterments.

1.7 Definitions. Capitalized terms used herein shall have the meaning set forth in Exhibit B.

ARTICLE II. PROJECT ORGANIZATION AND MANAGEMENT

2.1 Project Management Group. The Project Management Group will be retained through the PE, Final Design, and Construction phases of the Project to discuss and coordinate significant issues relating to the Project. The Project Management Group shall consist of the Project Representatives, or their designee, for TriMet, Clackamas County, City of Portland,

ODOT, City of Milwaukie, PDC, and Metro. The Project Management Group shall be chaired by the TriMet Executive Director of Capital Projects. TriMet shall provide staff support for the Project Management Group.

2.2 Project Steering Committee. The Project Steering Committee will be retained through the PE, Final Design, and Construction phases of the Project to provide executive oversight of the Project and this Revised and Restated Agreement and resolve design and construction issues identified by the Project Management Group. The Project Steering Committee shall consist of appointees representing Clackamas County, City of Milwaukie, and Metro, City of Oregon City, the Portland City Commissioner-in-Charge of Transportation, TriMet General Manager, PDC Executive Director, and ODOT Region 1 Director. The Project Steering Committee shall be chaired by the TriMet General Manager. TriMet shall provide staff support for the Project Steering Committee. Any member of the Project Steering Committee may initiate the Dispute Resolution process set forth in Section 7.21 of this Revised and Restated Agreement, if he or she determines that the Project Steering Committee is unable to resolve an issue to the mutual satisfaction of the Parties and Other Regional Partners within fourteen (14) calendar days of written notice by a Project Representative that an issue is in dispute.

2.3 Project Representatives.

2.3.1 Each Party hereby appoints the person identified below to act as its respective Project Representative with the authority and responsibility described in this Revised and Restated Agreement:

For City:	Susan D. Keil, Director
Notice Address:	Portland Bureau of Transportation 1120 SW Fifth Avenue Suite 800, Portland, OR 97204 Telephone: (503) 823-7031 Facsimile: (503) 823-7609
For TriMet:	Dan Blocher; Executive Director of Capital Projects
Notice Address:	Tri-City Metropolitan Transportation District of Oregon 710 NE Holladay Street Portland, OR 97232 Telephone (503) 962-2134 Facsimile (503) 962-2288

Either Party may, from time to time, designate in writing another person to act as such Party's Project Representative and may specify another notice address for its Project Representative. The Parties acknowledge that Project Representatives will be designated for the Other Regional Partners in separate intergovernmental agreements with TriMet.

2.3.2 No approval of a Project Representative shall be effective or be deemed to have been given unless and until such approval is memorialized in writing.

2.3.3 Each Project Representative shall have authority to act on behalf of its principal in all matters that are within the scope of the Project Representatives' authority under this Revised and Restated Agreement. The Parties acknowledge that each Party has its own internal review and approval processes and procedures to follow in connection with matters that may arise under this Revised and Restated Agreement. In accordance with and subject to the terms and conditions set forth in this Revised and Restated Agreement, each Party hereby authorizes its respective Project Representative to:

- (a) Act as liaison between each Party; and oversee the overall activities undertaken by its principal pursuant to this Revised and Restated Agreement;
- (b) Consult with the other Project Representatives to further the coordination of all activities of the Parties relating to the design and construction of the Project in order to help avoid disputes among the Parties or Other Regional Partners and ensure that the Project will be constructed in an efficient manner;
- (c) Identify issues to be addressed by the Project Management Group or Project Steering Committee;
- (d) Modify from time to time the Project Schedule;
- (e) Modify the Revised and Restated Agreement when such modification does not increase the principal's financial contribution to the Project by an amount that exceeds \$25,000.00 in the aggregate; approval by the City Council will be required when a modification to this Revised and Restated Agreement increases the City's contribution to the Project by an amount in excess of \$25,000.00 in the aggregate;
- (f) Review and comment on the final plans and specifications in order to confirm that they implement the Project Scope; and
- (g) Ensure that all internal administrative and policy-level approval procedures of its principal are diligently prosecuted with respect to actions required to be undertaken under this Revised and Restated Agreement and to represent or transmit, or designate the person to represent or transmit, the conclusion of such approvals to the other Party.

2.3.4 Any Project Representative requesting a change to this Revised and Restated Agreement shall prepare written information setting forth in reasonable detail the matter on which the Project Representatives are to act (the "Subject Action"), including, if applicable, the Project Representatives' non-binding estimate of the total costs of the Subject Action with an identification of any costs that are, or are expected, to be not included in the Project Costs, and shall deliver the Subject Action to each Project Representative, at their respective notice address, for their consideration and, if applicable, approval.

2.3.4.1 Prior to acting upon a Subject Action, the Project Representatives may consult with one another, and/or with other representatives of the Parties concerning the subject matter thereof. The Parties shall use commercially reasonable efforts to provide the Project Representatives with such information concerning a Subject Action as they may request. The Project Representatives shall exercise good faith efforts to approve or disapprove in writing

a Subject Action within fifteen (15) calendar days from the date of receipt of the Subject Action. Approval shall require approval in writing by all Project Representatives or unanimous approval of all Project Management Group members at a duly constituted meeting of the Project Management Group.

2.3.4.2 If a Subject Action is not approved or disapproved by the Project Representative or by the Project Management Group within the time period required by paragraph 2.3.4.1, the Subject Action shall be deemed to have been disapproved.

2.3.4.3 Nothing herein is intended, nor shall it be construed, to prevent a Project Representative from resubmitting any Subject Action that has previously been disapproved or deemed to have been disapproved.

2.3.5 All Project Representatives and their principals shall act reasonably and in good faith in fulfilling their responsibilities and assisting to finance the Project. The Parties hereby acknowledge that to effectively and efficiently proceed with the design and construction of the Project; it will be both necessary and appropriate for the staff personnel and outside consultants of the Parties to consult with the Project Representatives.

ARTICLE III. PROJECT BUDGET AND PROJECT FINANCE PLAN

3.1 Project Budget.

3.1.1 The Parties agree that the Project Budget is about \$1.49 billion, as summarized in Exhibit C hereto. The Project Budget encompasses funding for PE, Final Design, and Construction of the Project. The Project Budget does not address Termination Costs, if any. The Project Budget corresponds to the Project Scope at the time this Revised and Restated Agreement is first executed shown in Exhibit E.

3.1.2 TriMet shall adjust the Project Budget from time to time to reflect the latest information on Project Costs. Unless modified by the Parties' and Other Regional Partners' mutual written consent, or unless modified by the FFGA, LONP, or other FTA approval or requirement, the Project Budget shall not increase above that amount and may not decrease through a material reduction of Project Scope. Project Funds saved due to any cost savings through lower than expected bid or other contract prices, value engineering or through change order reductions shall be maintained in the Project Account until Project Close-Out and reconciliation of Project Budget, as provided in Section 5.5, below. Any cost increases due to higher than expected bid or contract prices shall be addressed as provided in Section 3.1.3 and 5.3, below.

3.1.3 The Project Budget shall be reviewed with the Project Representatives periodically, but no less frequently than the intervals established by the following benchmarks: (1) the date on which Final Design is 60% complete, (2) the date on which Final Design is 100% complete and (3) quarterly during Construction. Any projected overrun of the total budget (not line item) shall be resolved by adjustments to the Project Scope or by obtaining commitments from one or both of the Parties or Other Regional Partners to provide additional funds in an amount equal to the projected overrun, as described in Section 5.3.

3.2 Project Finance Plan.

3.2.1 The Parties acknowledge that the Project Finance Plan will be funded with a combination of Local Matching Funds, In-Kind Contributions, and, to the extent that such federal funds are authorized and appropriated, federal New Start Funds. A Project Finance Plan, summarized in Exhibit D hereto, is based on the following:

3.2.1.1 The Project Finance Plan assumes that 50% of Project Costs, or about \$745 million, will be paid with FTA New Start Funds, which must be committed to the Project by a FFGA between TriMet and FTA. If the amount of New Start Funds committed or anticipated to be committed to the Project is less than the amount anticipated at the time this Revised and Restated Agreement is first executed, TriMet shall amend the Project Scope and Project Budget to reflect the revised estimate of New Start funding that may be available for the Project.

3.2.1.2 The Project Finance Plan incorporates an estimated \$174 million of local and State revenues to pay Construction-Period Interest. The actual amount may differ from the estimate shown in the Project Finance Plan, and will depend on the borrowings undertaken by the State and local governments and the amounts approved by FTA. TriMet shall amend the Project Scope and Project Finance Plan to reflect any revised estimates of the State and local revenues used to pay Construction Period Finance Costs.

3.2.1.3 The Project Finance Plan incorporates about \$62.66 million in In-Kind Contributions, which includes an initially estimated \$6 million In-Kind Contribution from the City under this Revised and Restated Agreement. The amount of In-Kind Contributions in the Project Budget is an estimate of its real market value and, if approved by FTA, constitutes Local Matching Funds. The actual amount may differ from the estimate shown in the Project Finance Plan, and will depend on the actual contributions by local governments and private parties and the values of the contributions that are approved by FTA. TriMet shall amend the Project Scope, Project Budget, and Project Finance Plan to reflect any revised estimates of the value of the In-Kind Contributions for the Project.

3.2.2 The Parties acknowledge that the Project Finance Plan relies on interim borrowing to address the likelihood that federal New Start Funds will not be available to the Project in accordance with needs of the Project construction schedule. The Parties agree to cooperate in good faith to obtain such interim borrowing; TriMet shall take the lead role in obtaining such financing. All funds in the Project Account and any letters of credit may, in TriMet's discretion, be pledged as security for interim borrowing to the extent such borrowing is necessary for the Project. Local Matching Funds may, in TriMet's discretion, be used for Project Costs prior to receipt of a FFGA or receipt or expenditure of the federal funds to reduce or delay the need for, or the amount of, the interim borrowing or to expedite the construction schedule.

3.2.3 The TriMet Project Representative shall promptly cause to be prepared an amended Project Finance Plan whenever a material change is approved or identified for the Project Scope, Project Budget, Project Schedule, interim borrowing program, and receipt in

timing or amount of federal funds or other significant financing assumption. Such amended Project Finance Plan shall replace the Project Finance Plan shown in Exhibit D, and shall be incorporated into this Revised and Restated Agreement as an amended Exhibit D.

3.2.4 The City shall not be obligated to make any additional grant or earlier grant to the Project Account than shown in Section 4.1, unless such additional or earlier contribution is approved in writing by the City.

ARTICLE IV. COMMITMENTS AND ADMINISTRATION OF LOCAL MATCHING FUNDS

4.1 City Grant Contribution to Local Match. Subject only to execution of a FFGA for the Project by FTA, delivery of said FFGA by TriMet to City, and the terms and conditions of this Revised and Restated Agreement, City shall provide \$55.0 million to TriMet as the City's share of Local Matching Funds. The City's share of Local Matching Funds shall consist of City Proceeds (which are initially estimated to be \$49.0 million) and In-Kind Contributions (which are initially estimated to be \$6.0 million), as described hereunder.

4.1.1 The City shall donate to TriMet one or more real property interests owned by the City that:

- (a) Have an estimated fair market value, as described in Section 4.1.1.2, of about \$6.0 million or such other amount agreed to by the Parties;
- (b) Are assumed to be purchased from the City in the Project capital cost estimate submitted to FTA in the application to enter Final Design; and
- (c) Are agreed to by both Parties.

4.1.1.1 The fair market value of the donated real property interests, as defined in Section 4.1.1.2, shall be incorporated in the Project Finance Plan as an In-Kind Contribution and shall be credited toward the City's \$55 million share of Local Matching Funds.

4.1.1.2 The fair market value of the In-Kind Contribution shall be that amount (a) determined by an appraisal, prepared in compliance with FTA requirements, of the donated real property interests, and (b) submitted to FTA in TriMet's application for a FFGA. The Parties acknowledge and agree that while such appraised value submitted to FTA in the FFGA application may later be modified (upward or downward) by FTA or revised by a future appraisal update, the value of the In-Kind Contribution for the purpose of this Revised and Restated Agreement shall be the amount initially submitted to FTA in TriMet's application for a FFGA. Thus, the value of the In-Kind Contribution in the Project Finance Plan approved by FTA may differ from the value of the same In-Kind Contribution under this Revised and Restated Agreement.

4.1.1.3 All property interests comprising the In-Kind Contribution shall be conveyed to TriMet no later than sixty (60) days after the date on which a FFGA for the Project is executed by FTA.

4.1.1.4 TriMet shall prepare or cause to be prepared and shall pay as a Project Cost the expenses of all environmental reports, appraisals, surveys, legal instruments, and

other documentation required to fulfill FTA requirements and to convey the donated property interests. The City shall use its best efforts to assist TriMet to prepare and, where applicable, shall execute such documents in accordance with the Project Schedule.

4.1.2 The amount of the City Proceeds portion of the City's share of Local Matching Funds shall be the difference between the total City contribution to Local Matching Funds of \$55.0 million and the fair market value of the City's In-Kind Contribution as determined under Section 4.1.1.2. For purposes of the draft Project Finance Plan submitted to FTA in the Final Design application and for explanatory purposes hereunder, this Revised and Restated Agreement assumes that the In-Kind Contribution will be \$6.0 million and the City Proceeds will be \$49.0 million. The actual amounts of In-Kind Contributions and City Proceeds shall be the amounts calculated pursuant to Section 4.1.1.2 and this Section 4.1.2.

4.1.2.1 Unless City provides a letter of credit as set forth in Section 4.1.6, City shall pay or transfer its City Proceeds share of Local Matching Funds (initially estimated to be about \$49.0 million) into the Project Account by the later of sixty (60) days after the FFGA for the Project is signed by FTA, or September 30, 2012. In no event shall City be required to pay or transfer funds into the Project Account prior to TriMet's receipt of a FFGA for the Project.

4.1.2.2 City anticipates that its City Proceeds share of Local Matching Funds, initially estimated to be \$49.0 million, will come from the following sources and in the following amounts:

(a) \$20 million in net proceeds from City borrowings repaid by City Wide Transportation System Development charges, North Macadam Transportation System Development Overlay charges, Portland Innovation Quadrant TSDC Overlay charges, and parking revenues received by the Portland Bureau of Transportation;

(b) \$10.0 million from urban renewal funds provided by PDC to the City through a separate agreement between City and PDC; and.

(c) \$19.0 million in net proceeds from City borrowings to be repaid by the City's share of statewide gas tax revenues, SDC revenues, parking revenues or other sources.

4.1.3 City reserves the right to (i) substitute funds from other sources than shown above, (ii) provide funds from the above-mentioned sources in other amounts than those listed above, and/or (iii) undertake a borrowing program different from that described above, provided that City's full contribution of City Proceeds set forth in this Section 4.1.3 is made by the date required hereunder and TriMet has approved in writing such other source, amount or borrowing program.

4.1.4 TriMet shall continue to provide adequate opportunity for City of Portland to give meaningful input into the design and implementation plans for the Project to ensure the Project furthers the goals and objectives of City of Portland Plans and Policies and the communities adjacent to the LRT alignment. This includes, but is not limited to, participating in design and implementation plans for the Project that affect development parcel impacts and

opportunities, construction sequencing and design, supporting infrastructure, and elements that are related to the Project but not included in the Project

4.1.5 In addition to making the In-Kind Contribution described in Section 4.1.1 and the City Proceeds payment described in Section 4.1.2 of this Revised and Restated Agreement, City shall pay all Construction-Period Finance Costs associated with City's borrowings used to provide its share of Local Matching Funds. City agrees to provide any documentation TriMet may reasonably require to receive FTA approval of the amount of City funds used to pay Finance Costs that may be eligible Local Matching Funds, including documentation of any Finance Costs paid by PDC to provide the urban renewal funds portion, if any, of the City's contribution to Local Matching Funds. Any amounts of City funds used to pay its Construction-Period Finance Costs allowed as Local Matching Funds are in addition to, and do not reduce the amount of, City's grant of \$55.0 million in Local Matching Funds from In-Kind Contributions and City Proceeds under this Section 4.1.

4.1.6 In lieu of the lump-sum payment required by Section 4.1.2, the City, at its election, may provide TriMet by the later of sixty (60) days after a FFGA for the Project is signed by FTA, or September 30, 2012, an irrevocable, direct-pay letter of credit meeting the following requirements:

- a. The letter of credit shall have been issued by a commercial bank with a long term rating of at least "A" or a short-term rating of at least "A-1" by Standard & Poor's Ratings Services or a long term rating of at least "A2" or a short-term rating of at least "P-1" or better by Moody's Investors Service, Inc.;
- b. The initial stated amount of the letter of credit shall be the amount of City Proceeds determined as set forth in Section 4.1.2;
- c. Except for a termination or cancellation that is described in Section 7.4, below, such letter of credit shall have a term of not less than three (3) years and during such term shall not be cancelable or terminable by either the financial institution issuing such letter of credit, except in accordance with Section 4.1.6.e below, or the City;
- d. Such letter of credit shall be issued in favor of TriMet and shall obligate the bank providing such credit to pay to TriMet amounts drawn thereunder from time to time for the purpose of paying the City's share of Project Costs upon presentation of a simple demand for payment under such letter of credit and without any other conditions being attached as a condition to payment of a draw request presented by TriMet; and
- e. Such letter of credit shall provide that it may not be canceled or terminated by the financial institution providing the same unless: (i) TriMet is given not less than thirty (30) calendar days prior written notice of the effective date of such cancellation or termination; and (ii) prior to the effective date of any such termination or cancellation, TriMet is

expressly permitted to draw the full undrawn amount thereunder for deposit into the Project Account to be applied to the payment of Project Costs as provided in this Revised and Restated Agreement.

f. If any letter of credit provided to TriMet for the purpose of funding any portion of the City Proceeds portion of Local Matching Funds is scheduled to expire prior to the payment in full of all Project Costs (including without limitation the settlement and payment of all claims and legal proceedings relating to the acquisition and construction of the Project), then not earlier than fifteen (15) calendar days prior to such scheduled expiration date, TriMet shall draw the full amount remaining under such expiring letter of credit and shall hold the proceeds of such draw in the Project Account to be used, invested and applied as provided herein with respect to other cash funds held by TriMet in the Project Account.

g. If the financial institution does not transfer the full amount of funds to TriMet after receiving a proper demand for payment under the letter of credit from TriMet, TriMet shall promptly provide written notice to the City of the amount due TriMet under the letter of credit that was not paid by the financial institution; such notice shall include documentation of the draw request by TriMet and the financial institution's response to the draw request. Within 30 days of receipt of such notice, the City shall pay TriMet the full amount it is due under the draw request, after accounting for any payments by the financial institution.

4.1.7 \$10.0 million of the City's share of Local Matching Funds will come, based on a separate agreement between City and PDC, from borrowings to be repaid with tax increment funding from one or more Contributing URAs. For the portion of the City's Local Matching Funds derived from the tax increment funding, the following shall apply:

4.1.7.1 PDC's contribution shall not be used to pay Ineligible Costs.

4.1.7.2 The funds may come from any combination of Contributing URAs provided that in no event shall the contribution include an amount of funds from any Contributing URA that exceeds the amount of Project Costs that are not Ineligible Costs in such Contributing URA.

4.1.7.3 TriMet shall continue to provide adequate opportunity for PDC to participate and give meaningful input into the design and implementation plans for the Project to ensure the Project furthers the goals and objectives of the Contributing URA's that provide funding for the Project and also those URA's that the Project is within. This includes, but is not limited to, participating in design and implementation plans for the Project that affect development parcel impacts and opportunities, construction sequencing and design, supporting infrastructure, and elements that are related to the Project but not included in the Project.

4.2 TriMet Contribution to Local Match. TriMet shall provide \$153.91 million as its share of Local Matching Funds for Project Costs. The TriMet contribution to Local Matching Funds shall be paid into the Project Account in accordance with this Revised and Restated Agreement.

4.2.1 TriMet's source of Local Matching Funds is anticipated to be: (a) \$60.16 million from a combination of net proceeds of one or more bonds secured by TriMet's payroll tax revenues and In-Kind Contributions, and (b) \$99.75 million from the net proceeds of one or more bonds issued by TriMet and secured in part by MTIP funds programmed by JPACT and Metro for the Project.

4.2.1.1 The portion of TriMet Local Matching Funds derived from the MTIP funds programmed by Metro shall be expended in accordance with the agreement between TriMet and Metro regarding said funds.

4.2.1.2 If TriMet employs borrowings to provide all or a portion of its \$159.91 million contribution to Local Matching Funds, TriMet's contribution to Local Matching Funds shall also include the amount of TriMet funds used to pay Construction-Period Finance Costs on its borrowings, subject to FTA approval. Any amounts of TriMet funds used to pay its Construction-Period Finance Costs allowed as Local Matching Funds are in addition to, and do not reduce the amount of, TriMet's base \$159.91 million contribution to Local Matching Funds.

4.2.1.3 TriMet reserves the right to substitute funds from other sources in lieu of the fund sources described above or to undertake a borrowing program different from that described above, provided that TriMet's full contribution is made by the date required hereunder.

4.2.2 TriMet shall pay, or transfer, its share of the local match into the Project Account as follows:

4.2.2.1 On or before sixty (60) calendar days after FTA approves entry into Final Design for the Project, TriMet shall pay, or transfer, into the Project Account an amount of funds it reasonably determines will be required to complete Final Design. Such funds may, at TriMet discretion, be attributable to the bonds secured by TriMet's payroll tax revenues and/or the MTIP-backed bonds described in Section 4.2.1. In lieu of all or some of the TriMet Local Matching Funds described in the previous sentence, TriMet may, at its discretion, transfer into the Project Account proceeds from lottery bonds provided to TriMet under an intergovernmental agreement with ODOT.

4.2.2.2 TriMet is authorized to (a) incur costs for PE or Final Design prior to making the payment or transfer into the Project Account required by Section 4.2.2.1 and (b) advance such sums as it deems appropriate to maintain the Project Schedule. In the event TriMet has advanced sums for PE and/or Final Design prior to paying or transferring its share of Local Matching Funds in the Project Account as required by Section 4.2.2.1, the amount of TriMet funds to be paid into the Project Account in compliance with Section 4.2.2.1 shall be reduced by the sums so advanced.

4.2.2.3 On or before sixty (60) calendar days after a FFGA for the Project is executed by TriMet and FTA, TriMet shall pay, or transfer, into the Project Account an

amount equal to the difference between \$139.75 million minus the amount of funds paid or transferred to the Project Account under Section 4.2.2.1 and advanced under Section 4.2.2.2. In calculating such difference, the amounts paid, transferred, or advanced by TriMet under Section 4.2.2.1 and 4.2.2.2 shall exclude any amounts funded with lottery bond proceeds provided to TriMet by ODOT. TriMet shall pay or transfer into the Project Account its remaining \$20.16 million contribution, as it may be revised based on any In-Kind Contributions provided by TriMet, on or before June 30, 2015.

4.2.2.4 TriMet is authorized to (a) incur costs of Construction prior to making the payment or transfer into the Project Account required by Section 4.2.2.3 and (b) advance such sums to pay Construction costs as it deems appropriate to maintain the schedule for Construction. In the event TriMet has advanced sums for Construction prior to paying or transferring funds in the Project Account as required by Section 4.2.2.3, the amount of TriMet funds to be paid into the Project Account in compliance with Section 4.2.2.3 shall be reduced by the amount so advanced.

4.3. Project Account Establishment. TriMet agrees to administer the Local Matching Funds by establishing the "Project Account" as provided in this Revised and Restated Agreement.

4.3.1 TriMet shall establish a bank account with a financial institution qualified under the laws of the State of Oregon to hold public funds, and all Local Matching Funds received by TriMet under this Revised and Restated Agreement shall be deposited in and disbursed from such bank account. The Project Account shall document all receipts and disbursements of Local Matching Funds.

4.3.2 TriMet shall make all financial, billing and accounting records concerning the Project available to the City upon request and provide an unaudited annual accounting on or before July 31 of each year during the Project.

4.3.3 TriMet shall prepare all materials and undertake all activities required by FTA for receipt of federal funds for the Project. TriMet shall maintain all records and undertake all audits regarding the use of federal funds, as may be required by FTA. The costs of (i) preparing such materials and undertaking such activities as may be required for receipt of federal funds and (ii) such audits as may be required by FTA shall be charged by TriMet against and paid from the Project Account.

4.3.4 TriMet shall prepare all materials and undertake all activities required to establish and maintain an interim borrowing program for the Project. The costs of (i) preparing such materials and undertaking such activities, and (ii) all issuance costs, administrative fees, legal expenses, interest payments, and all other costs or fees of the interim borrowing program shall be charged by TriMet against and paid from the Project Account.

4.4 Investments. Pending disbursement, moneys shown as part of the Project Account shall be invested and reinvested in Permitted Investments, subject to the terms and provisions of this Revised and Restated Agreement. All investment earnings derived from moneys on deposit from time to time in the Project Account shall be retained in the Project

Account and invested, reinvested and disbursed in the same manner as other funds on deposit in the Project Account. Investment earnings shall not count as a credit towards the Parties' shares or Other Regional Partners' shares of the Project Finance Plan, and may be used by TriMet to pay Project Costs.

4.4.1 If any Local Matching Funds provided by a Party are subject to any restrictions as to investment yield as a consequence of such moneys constituting the proceeds of federally tax-exempt obligations ("Yield Restricted Funds"):

(a) It shall be the responsibility of the Party providing such Yield Restricted Funds to advise TriMet in writing of such yield restrictions, such written advice to be given to TriMet by the later of (i) the time such moneys are paid to TriMet; or (ii) not less than thirty (30) calendar days prior to the date such moneys first become subject to such yield restrictions;

(b) In the written advice referred to in (a) above, the Party providing such Yield Restricted Funds shall specify in writing the maximum yield at which such money can be invested (the "Yield Restriction");

(c) Following receipt of any such advice, TriMet shall invest and reinvest the subject Yield Restricted Funds in such Permitted Investments as TriMet shall select that have a yield that does not exceed the Yield Restriction. At its discretion, TriMet may:

(i) Invest or reinvest Yield Restricted Funds in U.S. Treasury Obligations - State and Local Government Series; and

(ii) Segregate such Yield Restricted Funds in a separate subaccount of the Project Account established for such purpose.

4.5 Disputes Regarding the Project Account. The City Project Representative may only dispute charges to or disbursements from the Project Account that it reasonably determines are inconsistent with the terms and conditions of this Revised and Restated Agreement. If the City Project Representative disputes one or more charges or disbursements, the City Project Representative shall provide the TriMet Project Representative with a detailed explanation of its reasons for the disputed charge(s) or disbursement(s). If a dispute as to a charge or disbursement arises, the TriMet Project Representative and City Project Representative shall work in good faith for a period of ten (10) calendar days to resolve the dispute. If the good faith effort of the City and TriMet Project Representatives fails to resolve the dispute, the Dispute Resolution procedures described in Section 7.21 shall be followed. The Parties shall continue in the performance of their respective obligations notwithstanding the dispute. Within fifteen (15) calendar days of settling a disputed charge or disbursement, TriMet shall take the necessary actions to implement the settlement.

ARTICLE 5: DISBURSEMENTS FROM PROJECT ACCOUNT, COST OVERRUNS, AND TERMINATION

5.1 Disbursements from Project Account. TriMet shall disburse moneys (including investment earnings) from the Project Account, from time to time, to pay when due the Project Costs.

5.1.1 Prior to the execution of a FFGA by TriMet and FTA, all TriMet funds, excluding any lottery bond proceeds provided to TriMet through ODOT, paid or transferred into the Project Account, up to a maximum amount of \$99.75 million, shall be attributable to the MTIP funds programmed to pay Project Costs by Metro. The Parties acknowledge and agree that TriMet shall not be required to repay or reimburse Metro for such MTIP funds disbursed to pay Project Costs in the event the Project terminates for any reason. Further, the City shall assist TriMet to ensure that MTIP funds programmed for the Project in Metro are made available to TriMet in accordance with the funding schedule set forth in Metro Resolution No. 10-4185.

5.1.2 TriMet shall disburse funds from the Project Account as required to pay Project Costs or other eligible costs hereunder, without regard to the sources or uses of such funds.

5.1.3 All costs and expenses incurred by TriMet in establishing and administering the Project Account and investing and disbursing the moneys held therein shall be charged by TriMet against and paid from the Project Account.

5.2 Project Cost Underruns. In the event that the Project is completed, and Project Costs (including other eligible costs) are less than estimates contained in the Project Budget, the excess funds remaining at Project Close-Out, or reasonably estimated by TriMet to be remaining at Project Close-out, shall be applied first to the construction of any Deferred Items, then Supplemental Improvements agreed upon by all of the Project Representatives and, with respect to remaining federal funds, approved by FTA. Local Matching Funds remaining after all Supplemental Improvements have been funded shall be distributed at Project Close-Out to the Parties as set out in Section 5.5. Any payments due to a Party as a result of such reconciliation shall be documented in a report prepared by TriMet and paid by TriMet to such Party within ninety (90) calendar days after the date of Project Close-out.

5.3 Project Cost Overruns. In the event that Project Costs (including other eligible costs) exceed, or are reasonably estimated to exceed, the total Project revenues set forth in the Project Finance Plan plus any interest earned on the investment of funds on deposit in the Project Account, TriMet shall undertake the following actions:

(a) Within thirty (30) calendar days of determining the Project Costs exceed or are reasonably anticipated to exceed the Project Budget, TriMet shall prepare and deliver to the Project Representatives for the City and Other Regional Partners a memorandum that (i) identifies reductions in Project Scope, subject to FTA approval (if applicable), and any other steps it will undertake to eliminate Project Costs in excess of the Project Budget, and, if appropriate, (ii) proposes a plan for supplemental contributions to the Project Account by one or more of the Parties and Other Regional Partners to eliminate the need for the proposed reductions in Project Scope, including a Minimum Operating Segment, and/or other steps to be undertaken.

(b) The Parties agree that their respective Project Representatives will undertake good faith negotiations with each other and the Other Regional Partners to develop a consensus on Project Scope reductions and/or supplemental contributions to the Project Account, as may be refined or revised through the negotiations. If needed, such good faith negotiations shall take place for a period of fifteen (15) calendar days from the date on which TriMet transmitted the memorandum described in paragraph (a), above, or such longer period as determined by the TriMet Project Representative.

(c) In the event that the negotiations described in paragraph (b), above, result in an agreement to provide supplemental contributions to the Project Account, TriMet shall prepare and transmit, as appropriate, to the City and Other Regional Partners, the proposed amendment to its respective intergovernmental grant agreements necessary to reflect its respective obligation to provide the supplemental funding contribution agreed to by such party. At the time any such proposed amendment is delivered to the City, TriMet shall also notify the City of the date by which the proposed amendment must be approved. Such City approval shall be in the City's sole discretion, and executed by the City in order to avoid undertaking the reductions in Project Scope or other steps identified in the memorandum prepared under paragraph (a), above, as may be refined or revised under paragraph (b), above.

(d) In the event that, by the date(s) identified by TriMet, (i) the negotiations described in paragraph (b), above, do not result in an agreement, or (ii) the amendment(s) proposed under paragraph (c), above, is not approved or executed by the City, TriMet, or, if applicable, one or more Other Regional Partners, TriMet, after consultation with the City as to proposed Project Scope reductions within the City, shall undertake all necessary actions on its own election, without any further approvals (other than, if necessary, by FTA), to implement the Project Scope reductions identified in paragraph (a), above, as may be refined or revised by paragraph (b), above, and such other actions as it reasonably determines are necessary or appropriate to mitigate the cost overruns.

5.4 City Sign-Off of Project Close-Out. The City shall make a determination that the Project has been constructed and financed in conformance with this Revised and Restated Agreement and notify TriMet of its determination in accordance with the following procedures:

5.4.1 Sign-Off on Project Scope

5.4.1.1 At least thirty (30) calendar days prior to the anticipated date of substantial completion of Construction, the TriMet Project Representative shall provide the City Project Representative with copies of "punch lists" of all additional Project components and remedial actions required to complete construction of the Project in accordance with Project plans and specifications, as may be amended from time to time.

5.4.1.2 Within thirty (30) calendar days of receipt of such punch lists, the City shall inspect the Project, review the punch lists, determine additional items, if any, to be included in the punch lists and notify, in writing, the TriMet Project Representative of its determination.

5.4.1.3 TriMet's Project Representative shall:

(a) Undertake all activities necessary to complete all punch list items identified in Sections 5.4.1.1 and 5.4.1.2, above, and

(b) Promptly notify the City Project Representative, in writing, regarding the completion of all punch list items.

5.4.1.4 Within thirty (30) calendar days of receipt of notice that all punch list items have been completed, the City Project Representative shall undertake the reviews and inspections it deems necessary and (i) notify TriMet, in writing that construction of the Project is complete in accordance with the terms of this Revised and Restated Agreement or (ii) identify to TriMet, in writing, those additional or remedial actions that must be undertaken to complete all punch list items.

5.4.2 Sign-Off on Project Funding.

5.4.2.1 TriMet shall fully satisfy its obligation to document that the City's contribution to Local Matching Funds, other than any portion derived from urban renewal funds, was properly spent by providing the City an accounting pursuant to Section 5.4.2.2 that demonstrates that TriMet paid a sum for Project Costs that equals or exceeds the difference of (i) the amount of such City contribution provided to the Project Account minus (ii) the amount of any City funds repaid to the City due to the reconciliation of the Project Account described in Section 5.5. TriMet shall fully satisfy its obligation to document that gas tax revenue, TSDC funds, grant funds, or other sources contributed to pay for project costs have been properly spent under Federal, State and local laws by showing that eligible costs exceed the amount of funds contributed and satisfy any other applicable requirements. TriMet shall also fully satisfy its obligation to document that the urban renewal funds contributed to pay Project Costs have been spent properly under Federal, State and local urban renewal laws and regulations by showing for each Contributing URA that Project Costs, excluding Ineligible Costs, for improvements within the Contributing URA equals or exceeds the amount of funds contributed from the Contributing URA minus any funds repaid to the Contributing URA due the reconciliation of the Project Account described in Section 5.5.

5.4.2.2 At least thirty (30) calendar days prior to the anticipated date of closing the Project Account, the TriMet Project Representative shall provide the City Project Representative, in a form acceptable to the City and TriMet, an accounting of actual Project Costs, including design, engineering, financing and administration costs, and other eligible costs hereunder.

5.4.2.3 Within fifteen (15) calendar days of receipt of the accounting provided under Section 5.4.2.2, the City Project Representative shall determine if the accounting complies with the criterion set forth in Section 5.4.2.1, and notify, in writing, the TriMet Project Representative of its determination. If the City Project Representative determines that the criterion in Section 5.4.2.1 has been met, the writing shall expressly state that City to the Project has been properly spent in compliance with this Revised and Restated Agreement. If the City Project Representative determines that the criterion in Section 5.4.2.1 has not been met, the writing shall detail the specific discrepancies causing such a determination, and a proposed method for resolving the discrepancies.

5.4.2.4 In the event the City Project Representative notifies the TriMet Project Representative that the accounting meets the criteria set forth in Section 5.4.2.1, no further action shall be required of the TriMet Project Representative with regard to the accounting. In the event the City Project Representative notifies the TriMet Project Representative that the accounting does not meet the criteria set forth in Section 5.4.2.1, the City, and TriMet Project Representatives shall engage in good faith negotiations, for a period of not less than fifteen (15) calendar days, to identify a mutually satisfactory resolution of the issue. If such resolution is not reached within such fifteen (15) day period, or such longer period as mutually agreed upon, the Parties shall commence Dispute Resolution under Section 7.21.

5.4.3 Disputes During Project Close-Out. Subject to Section 5.4.2.4, above, disputes among the Parties regarding (a) the list of items to be included in the punch lists, (b) the completion of punch list items, if any, (c) the accounting provided by TriMet, or (d) the determination of the City regarding the accounting, shall be resolved through Dispute Resolution set forth in Section 7.21.

5.5 Reconciliation of the Project Account. In the event the Project is completed or terminated prior to completion and there remains an unexpended balance of Local Matching Funds, such unexpended funds shall be allocated among the Parties and Other Regional Partners as follows:

5.5.1 The unexpended balance of Local Matching Funds associated with the state lottery bond proceeds and STIP GARVEE bonds shall be reimbursed to ODOT as provided in the grant agreements between ODOT and TriMet.

5.5.2 The unexpended balance of Local Matching Funds associated with the MTIP bond proceeds shall be reallocated or redirected as provided in the grant agreement between Metro and TriMet.

5.5.3 The unexpended balance of Local Matching Funds remaining after the allocations under Sections 5.5.1 and 5.5.2 above, excluding In-Kind Contributions, shall be allocated among the Parties and Other Regional Partners in proportion to their contribution toward Local Matching Funds excluding In-Kind Contributions.

ARTICLE VI: RELATED AGREEMENTS

6.1 Other Design, Construction, and Right of Way Agreements. By execution of this Revised and Restated Agreement, the Parties agree to negotiate in good faith the terms and conditions of all other agreements that may be reasonably required or desired to design, construct, and maintain the Project, which may include, without limitation, procedures for reviewing plans, material change orders, material changes in Project Scope, right-of-way acquisition, and permitting.

6.2 Continuing Control Agreement. The Parties acknowledge and agree that the Project must comply with FTA requirements regarding the continuing control by TriMet of roadways, sidewalks, and streets owned by the City on which light rail tracks or stations are placed. The Parties agree to negotiate in good faith such Continuing Control Agreements as may

be required by FTA. No less than sixty (60) calendar days prior to the date on which a fully executed Continuing Control Agreement is required, TriMet shall initiate development of and negotiations on the Continuing Control Agreement, and thereafter both Parties shall diligently prosecute the required negotiations.

6.3 Maintenance Agreement. The Parties agree to negotiate in good faith the terms and conditions of a Maintenance Agreement that sets forth the obligations of the Parties for maintaining those project components for which the responsibility for maintenance must be assigned. No less than sixty (60) calendar days prior to the date on which a fully executed Maintenance Agreement is required, TriMet shall initiate development of and negotiations on the Maintenance Agreement, and thereafter both Parties shall diligently prosecute the required negotiations.

6.4 Project Asset Ownership Agreement. The Parties shall prepare and execute an agreement detailing the ownership of project elements and improvements, provided that TriMet shall be the designated owner of all transit elements and improvements operated by TriMet or as FTA may require.

ARTICLE VII. GENERAL PROVISIONS

7.1 Relationship of the Parties. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Revised and Restated Agreement. Each of the Parties possess substantial taxing, eminent domain and police powers so that Parties are not considered part of the same "controlled group" as defined in 26 CFR §1.150-1(e). No representative, agent, employee, or contractor of one Party shall be deemed to be an employee, agent, representative, 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. Each Party represents and warrants that, except for the representations as set forth in Section 7.2 below, it has not relied upon any acts, omissions, representations or statements of, or information provided by, the other Party in deciding to enter into and perform its obligations under this Revised and Restated Agreement. This Revised and Restated Agreement is the result of an arms-length negotiation between the Parties in which each Party has been exclusively responsible for advancing its own interest, and each Party has had full opportunity to consult with its own attorneys and advisors, perform its own due diligence, and fully inform itself concerning the risks and benefits of the transactions contemplated by this Revised and Restated Agreement.

7.2 Representations and Warranties of the Parties. As of the date of execution and delivery of this Revised and Restated Agreement, each of the Parties makes the following representations for the benefit of and reliance by the other Party: (1) by proper corporate action, it has duly authorized the execution and delivery of this Revised and Restated Agreement and the performance of its respective obligations hereunder; (2) it has full power and authority to execute and deliver this Revised and Restated Agreement and perform its respective obligations hereunder; (3) this Revised and Restated Agreement has been duly executed and delivered by it;

and (4) to its actual knowledge, there is no litigation pending against it or threatened against it, challenging its authority to enter into this Revised and Restated Agreement or perform its obligations hereunder, or challenging the validity of its proceedings authorizing the execution and delivery of this Revised and Restated Agreement, or seeking to restrain or enjoin the execution and delivery of this Revised and Restated Agreement by it or the performance of its obligations hereunder.

7.3 Liability.

7.3.1 Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall 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 Revised and Restated 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 or other legally culpable acts or omissions of the indemnitor, its officers, employees, and agents. The Parties' indemnification obligations under this section shall survive the termination of this Revised and Restated Agreement.

7.3.2 Each party agrees to maintain insurance or self-insurance in accordance with ORS 30.282, for the duration of this Revised and Restated Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

7.3.3 TriMet shall include in any third party contract a provision to the effect that the contractor shall fully indemnify, hold harmless and defend City, 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 negligent or otherwise legally culpable acts or omissions of such contractor, subcontractor and their officers, employees and agents with respect to their work on the Project.

7.3.4 While this Revised and Restated Agreement is in effect, TriMet shall require its contractors and subcontractors to name the City, its officers, employees and agents as additional insured with respect to their work on the Project.

7.4 Termination.

7.4.1 This Revised and Restated Agreement shall terminate if, 1) the Parties sign a written agreement, terminating this Revised and Restated Agreement; 2) an FFGA is not executed by June 30, 2015, or 3) a Party exercises its legal or equitable rights of termination as provided by law. In the event this Revised and Restated Agreement is terminated as provided in this Revised and Restated Agreement, the Project Account shall be reconciled as provided in Section 5.5, above.

7.4.2 In the event of such termination, the TriMet Project Representative shall cease any activity that furthers the advancement of the Project and shall proceed to wind up and close out the Project activities. The TriMet Project Representative shall prepare a close-out

report and plan that details the information and status of the Project, including any Termination Costs that are to be paid by the Parties. In the event that neither Party objects to the proposed close-out plan, the Project shall be closed out in accordance with such plan.

7.4.3 Termination Costs. "Termination Costs" are defined in Exhibit B. In the event of Termination, the term Project Costs shall include Termination Costs; and such Termination Costs shall be administered in the manner set forth hereunder for all Project Costs.

7.4.4 Termination for Material Breach. This Revised and Restated Agreement may be terminated by a Party as a result of a material breach of an obligation of the other Party to this Revised and Restated Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the Project Representatives sixty (60) calendar days written notice of the material breach, including a detailed explanation of the breach, during which 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 default, the terminating party may terminate this Revised and Restated Agreement for default and seek all remedies available at law or in equity.

7.4.5 Disputes Related to Termination. Disputes regarding termination shall be resolved pursuant to the Dispute Resolution process set forth in Section 7.21 of this Revised and Restated Agreement.

7.5 Inspection of Records. Each of the Parties shall have the right to inspect, at any reasonable time, such records in the possession, custody, or control of the other Party as it deems necessary for review of the other Party's obligations and its rights under this Revised and Restated Agreement. The cost of such inspection shall be borne by the inspecting Party.

7.6 Successors; No Assignment. The benefits conferred by this Revised and Restated 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 Revised and Restated Agreement may not be assigned in whole or in part without the prior written consent of the other Party.

7.7 Time is of the Essence. Time is of the essence of each and every provision and covenant of this Revised and Restated Agreement.

7.8 Choice of Law; Place of Enforcement. This Revised and Restated Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

7.9 Amendments. This Revised and Restated Agreement (including the exhibits hereto) may only be amended by means of a writing signed by an authorized representative of each of the Parties hereto. No amendment to any provision of this Revised and Restated Agreement shall be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to the other Party's performance or failure to perform, or any failure or delay by either Party to enforce its rights hereunder.

7.10 Integration. This document constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Revised and Restated Agreement.

7.11 Interpretation of Agreement. This Revised and Restated Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision.

7.12 Severability/Survivability. If any clause, sentence, or portion of the terms and conditions of this Revised and Restated 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 Revised and Restated Agreement for any cause.

7.13 Laws and Regulations.

7.13.1 The Parties agree to abide by all applicable laws and regulations in carrying out this Revised and Restated Agreement.

7.13.2 To the extent applicable, the provisions of ORS 279 are incorporated by this reference as though fully set forth.

7.14 Waivers. No waiver by either Party of any provision of this Revised and Restated Agreement shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of the other Party or any condition inuring to its benefit under this Revised and Restated Agreement shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Party not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.

7.15 Notice.

7.15.1 Any formal notice or communication under this Revised and Restated Agreement shall be deemed received by the addressee on the earliest to occur of:

- (a) The date such notice is hand-delivered to the notice address of the addressee; or
- (b) If such notice is transmitted by telecopy or facsimile machine to the fax number of the addressee specified as part of the notice address, then:
 - (i) If such notice is transmitted during regular business hours, 8:00 a.m. to 5:00 p.m. Pacific Time, on a mail delivery day, such notice shall be deemed to be delivered on the date it is so transmitted; and
 - (ii) If such notice is not transmitted during such regular business hours, or is transmitted on a date that is not a mail delivery date, such notice shall be

deemed delivered on the next mail delivery day following the date upon which the same was transmitted; or

(c) If sent to the addressee's notice address through the United States Postal Service, postage prepaid, the third mail delivery day following the date upon which the envelope containing such notice is postmarked.

7.15.2 The notice address of each Party is set forth below:

If to TriMet: Tri-City Metropolitan Transportation District
710 NE Holladay Street
Portland OR 97232
Attn: Dan Blocher
Telephone: (503) 962-2134
Facsimile: (503) 962-2288

With copy to: TriMet Legal Department
4012 SE 17th Avenue
Portland OR 97202-3993
Attn: M. Brian Playfair
Telephone: (503) 962-3037
Facsimile: (503) 962-3095

If to City: Susan D Keil, Director
Portland Bureau of Transportation
1120 SW Fifth Avenue
Suite 800
Portland, OR 97204
Telephone: (503) 823-7031
Facsimile: (503) 823-7609

With a copy to: City Attorney
City of Portland
1221 SW Fourth Avenue
Suite 430
Portland, OR 97204
Telephone: (503) 823-4047
Facsimile: (503) 823-3089

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

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

7.17 Consents. No consent or approval of a Party hereunder shall be of any force or effect unless such consent or approval is in writing, signed by a duly authorized officer of the Party giving the same, except that an approval or consent designated hereunder to be made by a Project Representative shall be of force and effect if made orally or in writing by the Project Representative for the approving or consenting Party.

7.18 Non-Exclusive Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Revised and Restated 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.

7.19 No Third Party Beneficiaries. The Parties intend that the rights, obligations, and covenants in this Revised and Restated Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Revised and Restated Agreement, either express or implied.

7.21 Dispute Resolution.

7.21.1 Either Party may initiate formal Dispute Resolution by transmitting written notice describing the nature of the dispute to the Project Representative of the other Party. Within three (3) business days of receipt of such notice, the Project Representatives and/or the affected members of the Project Steering Committee shall initiate consultations and good faith negotiations to resolve such dispute to the satisfaction of the Parties.

7.21.2 In the event a dispute arising under this Revised and Restated Agreement is not resolved within fourteen (14) calendar days from the date of the initial request pursuant to Section 7.21.1 above, the Parties agree to mediate such dispute. The mediation shall be conducted in Portland, Oregon, in accordance with such procedures, and on such time schedules as the Parties shall mutually agree. The mediator shall be selected by mutual agreement of the Parties, or if the Parties cannot agree, by the Presiding Judge of the Multnomah City Circuit Court. Mediators' fees shall be shared equally between the Parties. Each Party shall bear its own costs and expenses in connection with the mediation. Each Party shall participate in such mediation in good faith, but nothing in this Revised and Restated Agreement shall preclude a Party from exercising its rights as provided by law in the event mediation is unsuccessful.

7.22 Counterparts. This Revised and Restated Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

7.23 Term. The term of this Revised and Restated Agreement shall be from the date of execution of this Revised and Restated Agreement below through June 30, 2019, unless terminated or extended under the provisions of this Revised and Restated Agreement.

City of Portland

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

By: _____
Sam Adams, Mayor

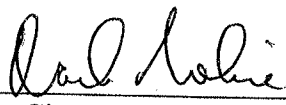
By: _____
Neil McFarlane, General Manager

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

By: 
City Attorney

By: _____
TriMet, General Counsel

Date: 3/24/2011

Date: _____

Exhibit A: Project Schedule

Activity	Date
Approval to Enter Final Design	March 2011
Receipt of Letter of No Prejudice	December 2010
Bridge Construction Contract Executed	January 2011
Right-of-Way Acquisition/Utility Relocation Starts	January 2011
In-Water Construction of Bridge Starts	July 2011
60% Final Design/Application for FFGA	May 2011
FTA Approval of Full Funding Grant Agreement	July 2012
Final Design Complete	Jan 2012
Construction Complete	May 2015
Testing Period Ends	August 2014
Service Starts	September 2015

Exhibit B: Definitions

“Allowed Claim” means any claim made by the Contractor for work performed under the construction contract that is not resolved by a change order, and is either (a) approved by the TriMet Project Representative as a valid claim; or (b) determined to be a valid claim following final resolution of any dispute relating to it (whether by mediation, arbitration, lawsuit or other dispute resolution proceeding).

“Betterment” means an improvement undertaken in conjunction with the Project, which is desired by one Party but not approved as part of the Project by the other Party, the cost of which is not a Project Cost, and which is paid for with revenues other than those shown in the Project Finance Plan by the Party requesting the improvement.

“City” means City of Portland, a political subdivision of the State of Oregon.

“City Proceeds” means the portion of the City’s contribution to Local Matching Funds paid with proceeds from system development charges, parking fees, tax increment, gas tax revenues, or other City revenues, or from bond proceeds repaid with such revenues, or the Letter of Credit described in Section 4.1.6, but does not include that portion of the City’s contribution to Local Matching Funds paid with In-Kind Contributions.

“City Project Representative” means the person designated by the City under Section 2.3.1 of this Revised and Restated Agreement, as may be re-designated from time to time.

“Construction” means, without limitation, all acquisition of real property, procurement of vehicles and equipment, installation of track, signals, communications systems, and mitigation treatments, civil work (including construction and equipping of stations, park and rides and operations facilities), structural work, and project administration (including post-Final Design engineering/ architecture, oversight, and financial administration) required to implement the Project, as described in Exhibit E, as may be amended from time to time.

“Construction-Period Finance Costs” means, for a borrowing used to fund a party’s Local Matching Funds, the total of issuance, administrative, and interest costs incurred during the Project’s construction period, including capitalized interest, associated with such a borrowing, as such costs are defined and to the extent that such costs qualify as a Project Cost under FTA rules, policies, and guidance. If the borrowing associated with a party’s Local Matching Funds is part of a larger borrowing program, the Construction-Period Finance Costs is the proportionate share of issuance, administrative and construction-period interest costs associated with the Project as determined by multiplying the total of such costs for the total borrowing program by a fraction calculated as the amount of proceeds used as a party’s Local Matching Funds divided by the total amount of net proceeds from the larger borrowing program. The amount of Construction-Period Finance Costs shown in the Project Budget is an estimate; the actual amount depends on the actual borrowings by state and local governments and must be approved by FTA.

“Continuing Control Agreement” means an agreement entered into and between TriMet and City, providing TriMet with perpetual continuing control rights, consistent with such rights required of federal grantees by FTA, to operate and maintain roadways and other improvements owned by the City on which light rail trackwork, ancillary improvements, or stations are placed.

“Contractor” means the individual, firm, or entity to which or who is awarded the Construction Contract.

“Contributing URA” means any urban renewal area from which PDC grants funds to pay Project Costs.

“Cure Period” means a sixty (60) calendar day period following a written notice by a Party seeking to terminate this Revised and Restated Agreement due to a material breach, during which period the breaching party may cure the material breach and, thereby, preclude termination of this Revised and Restated Agreement.

“Deferred Items” means those components of the Project Scope that are taken out of the Project Scope to balance the budget as a result of Preliminary Engineering, Final Design, the FFGA, or Change Orders during construction that are identified by the Project Steering Committee to be a Deferred Item that may be reincluded in the Project Scope if funding allows, subject to approval by FTA.

“Dispute Resolution” means the process and procedures for resolving disputes between the City and TriMet regarding the Project that is undertaken before initiating legal action, as set forth in Section 7.21.

“Final Design” means the design, engineering and technical work necessary to progress the Preliminary Engineering to a point that the drawings and specifications describe sufficient detail to construct the Project and satisfy FTA requirements for grants of New Start funds.

“FTA” means the Federal Transit Administration within the U.S. Department of Transportation.

“Full Funding Grant Agreement” or **“FFGA”** means a contract anticipated to be entered into and between FTA and TriMet, wherein federal funds are committed to pay Project Costs, subject to specific terms and conditions, including a commitment by TriMet of local funds to match federal funds committed by FTA.

“Ineligible Costs” means costs that would not be eligible for payment with urban renewal funds, and include the cost of (a) acquiring light rail vehicles, (b) acquiring fare collection equipment, (c) acquiring communications equipment, and (d) start-up activities; which costs shall not be paid from the City’s share of Local Matching Funds derived from urban renewal funds.

“In-Kind Contribution” means those services and real property interests contributed to the Project at no cost that are approved as eligible Local Matching Funds by FTA.

"JPACT" means the Joint Policy Advisory Committee on Transportation, a committee of Metro responsible for endorsing actions regarding regional transportation policy and funding.

"Local Matching Funds" means the contributions to pay Project Costs, including In-Kind Contributions, provided by the State of Oregon through ODOT, TriMet, City of Portland, City of Milwaukie, Clackamas County, PDC, Metro through the MTIP allocation to TriMet, and any other local or state entity contributing funds to pay Project Costs.

"ODOT" means the Oregon Department of Transportation.

"Other Regional Partners" means the City of Portland, City of Milwaukie, Metro, Clackamas County, PDC, State of Oregon through ODOT, and any other entity providing a contribution to Local Matching Funds.

"Parties/Party" means the City and TriMet. Party means City or TriMet.

"PDC" means the Portland Development Commission, the authorized urban renewal agency of the City of Portland, Oregon.

"PE" or "Preliminary Engineering" means the Preliminary Engineering stage in the FTA project development procedures during which engineering, environmental, financial, and other technical studies are undertaken in support of preparing and publishing a Final Environmental Impact Statement for the Project, under the federal National Environmental Protection Act (NEPA) and, as used in this Revised and Restated Agreement, provides continuing engineering and design activities up to the date on which Final Design commences after receipt of FTA authorization to enter into Final Design

"Permitted Investments" means any of the investments listed in ORS 294.035.

"Project" means the Preliminary Engineering, Final Design, and Construction of the Portland-Milwaukie Light Rail line, as described in Exhibit E, as may be amended from time to time.

"Project Account" means the banking account with a financial institution established by TriMet pursuant to Section 6.3.1 to hold all Local Matching Funds received by TriMet under this Revised and Restated Agreement. Except as otherwise provided under this Revised and Restated Agreement, all Local Matching Funds shall be deposited in and disbursed from the Project Account.

"Project Budget" means a line item breakdown of capital cost items showing the total cost of Preliminary, Engineering, Final Design, Construction (including costs associated with acquisition, installation and equipping the Project and project administration and management costs), and contingency for Allowed Claims, as may be amended from time to time, in the form shown in Exhibit C.

“Project Close-Out” means the activities undertaken after Construction is determined to be substantially complete to secure City and Other Regional Partner sign-off on the Project and use of its share of Local Matching Funds.

“Project Costs” means the cost of any and all elements of PE, Final Design, and Construction of the Project, as set forth in the Project Scope shown in Exhibit E, as may be amended from time to time. Project Costs may include costs that are eligible for federal match, or costs that are not eligible for federal match. Project Costs do not include Supplemental Improvements, unless such Supplemental Improvements are incorporated in the Project Scope, or Betterments.

“Project Finance Plan” means the year-by-year cash-flow of Project Costs and revenues (by source), including interim borrowing, as summarized in Exhibit D, as may be amended from time to time.

“Project Funds” means Local Matching Funds and any federal grants provided to pay Project Costs.

“Project Management Group” means the intergovernmental policy-level group described in Section 2.1 that is established to provide coordination among affected units of government.

“Project Schedule” means the listing of anticipated dates for completing major Project milestones, as set forth in Exhibit A to this Revised and Restated Agreement, as may be amended from time to time.

“Project Scope” means the narrative set forth in Exhibit E to this Revised and Restated Agreement, as may be amended from time to time, and related engineering and drawing set and project specifications, as may be amended from time to time, that describes all component elements of the Project.

“Project Steering Committee” means the committee of public officials described in Section 2.2 that is responsible for resolving issues identified by Project Representatives relating to design or construction of the Project. The Project Steering Committee is separate and distinct from the Land Use Final Order (LUFO) Steering Committee, which has the membership and charge set forth in applicable legislation.

“Revised and Restated Agreement” means this entire Intergovernmental Grant Agreement of the Parties as reflected in this document, or any modification hereof executed by the Parties. **“Subject Action”** means a writing by a Project Representative, under Section 2.3.6, requesting a specific change to this Revised and Restated Agreement and, if applicable, a non-binding estimate of the total costs of the proposed Subject Action.

“Supplemental Improvement” means an improvement or acquisition that supports or better the Project, or an ancillary improvement thereto, that at the time it is proposed is not part of the Project Scope and whose cost is not part of the Project Budget. Subject to approval as set

forth in this Revised and Restated Agreement, a Supplemental Improvement may be added to the Project Scope and its cost may be incorporated in the Project Budget.

“Termination” means the abandonment or permanent cessation of work on the design or construction of the Project for any reason except for completion of the Project in compliance with the FFGA.

“Termination Costs” means all costs incurred with respect to winding up the Project work due to a Termination. Termination Costs shall include, without limitation, costs required to be paid to (a) stop the work and close out executed contracts or purchase orders, (b) early termination damages, (c) contract claims, (d) administrative costs in winding up work, and (e) restore the site of the Project to its condition prior to the commencement of construction of the Project or to such other condition as may be agreed to by the Parties (but in no event shall the cost of achieving such other condition be greater than the cost of restoring the site of the Project to its condition prior to the commencement of the construction of the Project).

“TriMet” means the Tri-City Metropolitan Transportation District of Oregon, a mass transit district organized under the laws of the state of Oregon.

“Yield Restricted Funds” means local moneys provided by a Party that are subject to restrictions as to investment yield as a consequence of such moneys constituting the proceeds of federally tax-exempt obligations.

“Yield Restriction” means the maximum yield at which the Yield Restricted Funds can be invested, as specified in a writing provided to TriMet pursuant to Section 4.3.1 or 6.4.1.

Exhibit C
PROJECT BUDGET

Standard Cost Category	(1) (2) (3)
10 GUIDEWAY & TRACK ELEMENTS	\$247.8
20 STATIONS, STOPS, TERMINALS, INTERMODAL	\$37.3
30 SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$32.6
40 SITEWORK & SPECIAL CONDITIONS	\$117.7
50 SYSTEMS	\$68.4
60 ROW, LAND, EXISTING IMPROVEMENTS	\$204.2
70 VEHICLES	\$78.5
80 PROFESSIONAL SERVICES	\$173.4
90 UNALLOCATED CONTINGENCY	\$152.2
SCC10-90 in Base Costs (Excludes Finance Cost)	\$1,112.1
Escalation on SCC 10-90	\$116.2
SCC 10-90 in YOE Dollars	\$1,228.3
100 FINANCE CHARGES in YOE Dollars	\$262.1
TOTAL COST (YOE Dollars)	\$1,490.3
(1) Line item costs are in 2010 dollars except for "Escalation" which converts 2010 dollars to year-of-expenditure dollars and Finance Charges, which are in YOE dollars. All costs are in millions of dollars	
(2) Project Budget incorporates costs of PE, Final Design, and Construction stages	
(3) The cost estimates reflect the end of PE estimate submitted to FTA in the Final Design application. These cost estimates will be revised based on revisions to scope and refined cost estimates during Final Design.	

Exhibit D: Project Finance Plan
(in thousands of year-of-expenditure dollars)

	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	Total
Expenditures													
Construction	1,569	20,608	54,707	210,297	322,147	409,300	147,337	5,635	-	-	-	-	1,171,600
In-kind					56,661								56,661
Interim Finance		-	-	-	692	12,410	20,066	19,520	15,445	11,119	6,571	2,020	87,842
Local Interest Costs		9,756	9,750	11,388	17,195	18,209	19,557	19,657	19,512	18,433	17,313	13,477	174,247
Total Expenditures	1,569	30,364	64,457	221,685	396,694	439,918	186,960	44,812	34,957	29,552	23,884	15,497	1,490,349
Cumulative Expenditures	1,569	31,933	96,391	318,075	714,769	1,154,688	1,341,648	1,386,460	1,421,417	1,450,968	1,474,852	1,490,349	1,490,349
Revenues:													
Federal New Starts			-	-	100,000	100,000	100,000	100,000	100,000	100,000	100,000	45,175	745,175
State Lottery Bonds	250,000												250,000
TriMet GARVEE Bonds-MTIP			99,753										99,753
In-Kind					56,661								56,661
City of Milwaukie					5,000								5,000
City of Portland					49,000								49,000
Clackamas County					25,000								25,000
TriMet					40,000		20,164						60,164
Metro Nature Grant				-		349							349
CMAQ Grant			10,000										10,000
STIP GARVEE Bonds			15,000										15,000
Interim Finance				-	50,267	321,361	13,238	(74,845)	(84,556)	(88,881)	(93,429)	(43,155)	-
Local Interest Costs	-	9,756	9,750	11,388	17,195	18,209	19,557	19,657	19,512	18,433	17,313	13,477	174,247
Total Revenues	250,000	9,756	134,503	11,388	343,123	439,919	152,959	44,812	34,956	29,552	23,884	15,497	1,490,349
Cumulative Revenues	250,000	259,756	394,260	405,647	748,770	1,188,688	1,341,648	1,386,460	1,421,417	1,450,968	1,474,852	1,490,349	1,490,349
Revenues-Expenditures	248,431	227,823	297,869	87,572	34,000	34,000							

(1) The Project Finance Plan addresses Preliminary Engineering, Final Design, and Construction

(2) The project costs are based on the results of Preliminary Engineering and may be revised from time to time based on Final Design, and the Full Funding Grant Agreement. In addition, adjustments may be made to the In-Kind Contributions based on the results of Final Design.

(3) The In-Kind Contributions are a preliminary estimate and subject to revision based on future appraisals and FTA concurrence.

(4) A portion of the TriMet contribution may be provided as an In-Kind Contribution; if so, its cash and bond proceed contribution would be adjusted accordingly.

Exhibit E: Project Scope

1. General Description

The Portland-Milwaukie LRT Project (the "Project") will design and construct the Orange Line connecting downtown Portland with SE Park Avenue in Clackamas County. The Project Scope in this Exhibit E is based on the project scope submitted to FTA in the Final Design application in October 2010. This Project Scope will be amended from time to time based on Final Design, FFGA negotiations, and FTA requirements.

The line will serve the Central City, Portland State University, South Waterfront, OMSI District, SE Portland, and the Milwaukie Town Center. The alignment will consist of 7.3 miles of double-track light rail, stations, overhead catenary, park-and-ride lots, and other necessary capital elements and amenities will be constructed. Starting from the north, the new line will connect into the Green line at Portland State University and will follow SW Lincoln Street to a new structure over SW Harbor Drive into the South Waterfront District, where the alignment will cross the Willamette River on a new transit only bridge to the OMSI District. From the OMSI District the alignment will run adjacent to the Union Pacific Railroad in SE Portland and then operate in the center of SE 17th Avenue. To the south, the alignment will be located to the east of SE McLoughlin Boulevard and the Tillamook Branch Rail alignment through downtown Milwaukie. The alignment then crosses SE McLoughlin Boulevard on a new structure and will be located west of and parallel to SE McLoughlin Boulevard until it reaches SE Park Avenue.

The Project includes eleven stations: SW Jackson Street, SW Lincoln Street, SW Moody, OMSI, SE Clinton Street, SE Rhine Street, SE Holgate Boulevard, SE Bybee Boulevard, SE Tacoma Street, SE Lake Road, and SE Park Avenue. A total of approximately 675 new park-and-ride spaces will be constructed in two parking structures. The Project also includes the necessary expansion for the maintenance and storage of light rail vehicles at the Ruby Junction maintenance facility

2. Specific Project Cost Elements

- **Right of Way/ Real Estate.** The trackway will be located on publicly owned right-of-way and on newly purchased public right-of-way or rail right-of-way. Publicly owned rights-of-way include SW Lincoln, SE 17th Avenue and south of Milwaukie along SE McLoughlin Boulevard. There are several locations, such as along the alignment in SW and SE Portland, which requires purchase or contribution of additional right-of-way. These locations include between the OMSI Station to SE Powell and along SE 17th Avenue. The project will also purchase property from the Union Pacific between SE Harold and SE Lake Road in Milwaukie.
- **Utility Relocation.** Utilities such as water mains or sewers that would be made inaccessible by light rail trackway must be relocated or new accesses constructed. In addition, parallel or perpendicular utilities that are very close to the tracks and would be seriously affected by ongoing operations will require adjustments or protection.
- **Street Construction.** Repaved, reconstructed, or new street segments are required along the SW Lincoln Street, SE 17th Avenue and at various roadway crossings along the alignment and proximate to park-and-ride lots.
- **Track Grade Construction.** Project construction includes preparing and improving public right of way and private rail rights-of-way as a precursor of laying light rail track. Throughout the Project, but especially along SE Portland between the OMSI station and SE Powell Boulevard and from the

SE Harold to SE Lake Road in Milwaukie where new grade construction will be required, including cutting and filling of soils and rock.

- **Structures.** Structures include bridges and underpasses, retaining walls, sound walls, and stairways. Structures will be built over SE Harbor Drive, across the Willamette River, at SE Powell, in Milwaukie's North Industrial District and across SE Kellogg Lake. Additional structures will be constructed across SE Harold, Crystal Spring, and Johnson Creek. Retaining walls will be constructed along portions of the alignment where slopes must be modified or cut to allow the track grade. Sound walls must be provided at some locations to mitigate noise to nearby residences. Finally, stairways will provide access to stations that are at a different grade than the nearest street with a sidewalk.
- **Stations.** A total of ten stations will be constructed. Stations include platform construction, signs and graphics, shelters and other necessary amenities.
- **Park and Ride.** Park and rides will be constructed at SE Tacoma Street (approximately 320 spaces) and at SE Park Avenue (approximately 355 spaces). The Project will construct or improve access to the park-and-ride facilities, as well as elements such as lighting, water runoff management, curbs, street access, traffic signals, signage, and other elements necessary for the park-and-ride to be usable and meet local requirements. Landscaping and bicycle parking will be provided at park and rides that at a minimum complies with applicable code criteria.
- **Road Crossings.** Signals, signage, and/or gates will be constructed or installed at locations where light rail crosses streets at-grade and where such improvements are necessary to provide access for pedestrians to and from stations. Gates and signage will be installed at a number of at-grade intersections in SE Portland and Milwaukie. The Project will modify shared crossing with the Union Pacific in a manner that will eliminate some crossing movements and allow the Project and City of Portland to apply for quiet zones.
- **Track Installation and Materials.** Approximately 7.3 miles of double-track, plus storage tracks, will be constructed in SE Portland and in Milwaukie. This will be largely "tie and ballast" track in SE Portland and in Milwaukie and "paved" track from Portland State University to SE 8th Avenue. This includes special track work, curved rail, restraining rail, welding, ballast, and related work. Some components will be included within the Project right-of-way to allow streetcars to access the Willamette River Bridge.
- **Special Conditions.** The Project includes wetland and floodplain mitigation, related excavation, plantings, irrigation and other necessary features as well as hazardous materials testing and related procedural requirements necessary to complete the Project safely and in conformance with regulations. Operator facilities necessary to support service on the line will also be constructed.
- **Fare Collection.** The Project will include ticket vending machines and validators necessary to continue the current self-service, proof-of-payment system.
- **Track Electrification System.** Throughout the entire 7.3 miles of new double track, overhead wires, support poles, traction power substations, and the associated overhead catenary system elements will be constructed.
- **Signals.** Light rail signals will be installed along the new alignment including an Automatic Train Stop (ATS) system. The Project will include all the control equipment and buildings necessary to

provide power to track switches at interlocks and to the Train to Wayside Communication (TWC) system, as well as the necessary signal rooms and buildings inter-ties to complete the system.

- **Art:** The Project will coordinate with the Regional Art Commission to incorporate public art in station areas.
- **Landscaping:** The Project will incorporate landscaping in compliance with applicable code criteria at stations, park-and-rides sub-stations, and along rights-of-way.
- **Communications.** The communication system will include Supervisory Control and Data Acquisition (SCADA), Closed Circuit Television (CCTV) where installed, and public address, together with fiber optics and other associated equipment. Necessary improvements to the central control facility to allow for the additions to the system will also be included.
- **Light Rail Vehicles.** The Project includes enough vehicles to operate the Orange Line for at least the initial 5-6 years of operations, including a spare vehicle allowance, spare parts, and test equipment.
- **Operations & Maintenance Facility** – Existing facilities at Ruby Junction will be improved and expanded to accommodate the additional vehicles, communications and control systems.
- **Engineering and Administration.** Engineering and Administration necessary to complete this Project include preliminary engineering, final design, construction management and inspection services, administration, insurance, and intergovernmental agreement activities.
- **Contingencies.** Consistent with FTA requirements, contingency amounts are included to provide for unanticipated inflationary or construction cost increases that may arise.
- **Financing,** The Project costs include interim financing costs incurred to keep the Project on schedule during periods when local or federal funds are not available to pay Project Costs on a current basis, and also includes the interest costs on borrowings during the construction period on borrowings used to provide local or state matching funds.
- **Start-Up.** The Project includes testing, simulated schedule operations, training, public information, and other activities that are prerequisite to commencing actual revenue passenger operations.