

DEVELOPER AGREEMENT BETWEEN THE CITY OF PORTLAND, ZRZ REALTY COMPANY, OREGON HEALTH AND SCIENCE UNIVERSITY, AND TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON REGARDING THE GREENWAY TRANSITION TRAILS AT SOUTH WATERFRONT

TriMet Contract No. GH120307BC

THIS DEVELOPER AGREEMENT ("Agreement") is made by and between the City of Portland ("City"), by and through its Bureau of Parks and Recreation ("Parks"), and its Portland Development Commission ("PDC"), ZRZ Realty Company ("ZRZ"), Oregon Health & Science University ("OHSU"), and Tri-County Metropolitan Transportation District of Oregon ("TriMet"). For purposes of this Agreement, the City, ZRZ, OHSU, and TriMet, and their respective successors and assigns, will be referred to individually as a "Party", and jointly as "Parties".

A. Recitals

1. TriMet is planning to construct the Portland-Milwaukie Light Rail Project ("Project"). The Project is a 7.3-mile light rail alignment that will extend from downtown Portland to Milwaukie, and is the next segment of the Portland metropolitan region South Corridor Project. The Project will include a new light rail station in South Waterfront ("South Waterfront Station"), and a transit bridge ("Bridge") over the Willamette River ("River"), with the west Bridge abutment beginning at the South Waterfront Station. TriMet expects to enter into a Full Funding Grant Agreement ("FFGA") with the Federal Transit Administration ("FTA") in the spring of 2012.
2. ZRZ and OHSU are each owners of certain real property in South Waterfront ("ZRZ Property" and "OHSU Property", respectively). Under those certain Agreement(s) Concerning the Donation of Real Property to the Tri-County Metropolitan Transportation District of Oregon ("Donation Agreements"), ZRZ and OHSU each agreed, subject to a series of conditions precedent, to donate to TriMet certain real property for the South Waterfront Station and Bridge abutment. The Donation Agreements, and the property transactions contemplated thereunder, closed on January 31, 2011.
3. The ZRZ Property, the OHSU Property, the South Waterfront Station and west Bridge abutment are within the Greenway Overlay Zones, set forth in Portland City Code Chapter 33.440 ("Greenway Code"). Under Chapter 33.510.253 ("Greenway Overlay Zone in South Waterfront District"), upon development or re-development of property within the Greenway Overlay Zones, the property owner is required to design and construct certain improvements to the South Waterfront District Greenway.
4. The ZRZ Property, the OHSU Property, the South Waterfront Station and west Bridge abutment are also within the Design Overlay Zone, set forth in Chapter 33.825. This means that the Project requires, as will future development of the ZRZ and OHSU Properties, a Greenway Design Review and approval that will be based on the South Waterfront Design Guidelines. The Guidelines further the City's vision for the South Waterfront District, which among others, emphasizes bike and pedestrian access. On December 16, 2010, the City's design review commission approved the design for the appropriate connections to the Greenway Trail and improvements from the South Waterfront Station and west Bridge abutment ("Transition Trails").

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5. As for constructing the improvements, under Chapter 33.851 ("South Waterfront Greenway Review"), an applicant can meet the Greenway approval criteria by entering into a developer agreement with the City that fixes the applicant's financial contribution to the Greenway improvements, but delays construction of the improvements to a later date. PDC, on behalf of the City, has led the effort to develop an implementation strategy to construct, operate, and maintain the Greenway. This implementation strategy includes entering into public-private partnerships to achieve full build-out of the Greenway and successful long term operations and maintenance of the Greenway.
 6. The Parties each agree that the Greenway trail and improvements serve an important community purpose. The Parties also agree that it does not make sense to construct Transition Trails simultaneously with TriMet's construction of the South Waterfront Station and Bridge while the ZRZ Property and OHSU Property remain vacant land. It makes more sense to construct the Transition Trails at some later date when ZRZ and OHSU develop on their respective properties and the improvements can be integrated into the overall vision for the South Waterfront District.
 7. Land Use Review of TriMet's Project is governed by a Land Use Final Order adopted by Metro, and amended most recently by Metro Resolution No. 08-3964, adopted by the Metro Council on July 24, 2008 (the "LUFO"). The Oregon Legislature delegated this authority to Metro under the provisions of 1996 Oregon Laws chapter 12 ("HB 3478"). Under the provisions of HB 3478, the City may attach reasonable conditions on its approval of TriMet's development, but may not attach conditions that, by themselves or cumulatively, prevent the implementation of the LUFO.
 8. On June 30, 2010, TriMet submitted to the City its Type III Greenway Design Review application. As part of the application, TriMet indicated its intent to work with the City to enter into a development agreement to fulfill TriMet's obligations under the Greenway Code. TriMet understands it has two primary improvement responsibilities under the Greenway Code, for each of which TriMet intends to enter into a development agreement: (1) satisfy the Code conditions with respect to the Greenway Trail on the TriMet Fee Parcel, which is within the 100-foot Greenway setback; and (2) satisfy the Code conditions with respect to the Transition Trails. With respect to TriMet, this Agreement expressly covers only TriMet's obligation for the Transition Trails.
 9. On December 16, 2010, the City's Design Commission approved TriMet's design, including its design of the Transition Trails, with certain conditions (Exhibit A and B). The conditions of approval imposed by the Design Commission are reasonable, except to the extent that either they or the Portland Zoning Code, and in particular Portland City Code 33.730.130, "Expiration of Approval," would operate to cause the design review approval to lapse before the Parties contemplate that the Transition Trails actually will be built. Specifically, without certainty as to the design they ultimately would be responsible to fund and/or construct, the private property owners would not have agreed to provide the land donations which TriMet requires in order to construct the Project, and, without those property donations, TriMet would be prevented from implementing the LUFO.

10. On or about January 28, 2011, the Parties entered into a Memorandum of Understanding ("MOU") regarding the design, cost, and construction of the Transition Trails. That MOU provides the foundation for this Agreement.
11. The Parties understand and agree that this Agreement will be approved by Portland City Council, whose action will bind the City and all of the City's respective bureaus so that, except as provided in this Agreement, no other bureau may at any time propose a change to the design for the transition trails that was approved by the Design Commission on December 16, 2010 ("Transition Trails Design").

NOW, THEREFORE, the Parties agree as follows:

B. Agreement

- a. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.
- b. Effective Date. This Agreement will be effective when signed by all the Parties, and approved by Portland City Council.
- c. Design for Transition Trails
 - (i) The Transition Trails Design was approved by the Design Commission at TriMet's December 16, 2010 hearing (LU-10-151765DZGW; "Willamette River Transit Bridge").
 - (ii) The Parties agree that this design approval will govern the design and construction of the Transition Trails at such time, respectively, as OHSU and/or ZRZ apply for development permits for parcels directly adjacent to the transition trails (Exhibit C) that trigger their responsibility to dedicate and/or construct their respective Greenway Trail segments.
 - (iii) The Parties agree that irrespective of PCC 33.730.130, this Design Commission approval will not lapse, and is the only design that will be required by the City. No Party will propose a modification to the Transition Trails Design unless:
 - a. The physical characteristics of the development proposed by OHSU and/or ZRZ make it impossible or infeasible to construct the Transition Trails according to the approved design; or
 - b. Any Party decides to construct the Transition Trails in advance of adjacent property development.
 - (iv) In the event that the physical characteristics of the development proposed by OHSU and/or ZRZ make it impossible or infeasible to construct the Transition Trails according to the approved design, this will constitute a modification to the Transition Trails Design, and the property owner of

that property whose development causes the modification shall be responsible for any increased cost associated with constructing the revised trail design.

- (v) In the event the City decides to construct the permanent Transition Trails in advance of adjacent property development, this will constitute a modification to the Transition Trails Design, and the City shall be responsible for any increased cost associated with constructing the revised trail design.

d. Construction of the Transition Trails

- (i) The City, OHSU, and ZRZ have not yet determined which entity will be responsible for constructing all or a portion of the Transition Trails. The City, OHSU, and ZRZ agree that each entity's respective development aspirations, and the timing of those development efforts, will guide which Party should construct which portion of the Transition Trails.
- (ii) Once any of the City, OHSU, or ZRZ has determined it is ready to move forward with its own development aspirations, that Party shall notify the other Parties and the Parties shall meet, confer, and resolve who should construct the Transition Trails, or a portion thereof, and at what time or in what sequence.

e. Cost for Transition Trails

- (i) The Parties agree that the cost to construct the Transition Trails Design will be apportioned among themselves, with the owners responsible, between them, for 25% of the cost of constructing the Transition Trails, TriMet responsible for 50%, and the City responsible for 25%. The City's 25% portion will be comprised of various sources and will generally follow the funding composition of the Greenway in the north District itself (except for private property owner sources). The total, agreed upon cost estimate for TriMet to build the Transition Trails Design improvements is One Million, Six Hundred Thirty-Four Thousand, Three Hundred and Nineteen Dollars and No/Cents (\$1,634,319). This estimate, itemized in Exhibit D attached hereto, is based on TriMet's cost structure, not on the cost structure of the other parties.
- (ii) In order to permit TriMet to construct the Project in advance of the construction of the Transition Trails, TriMet will pay up-front its estimated share of the Transition Trails Design (50% of \$1,634,319 = \$817,160) ("TriMet's Financial Contribution"), and the property owners and the City will bear the risks of inflation and of inaccuracies in the cost estimate, in proportion to their agreed shares of the cost of construction.

- (iii) After execution of this Agreement and within a reasonable time after TriMet has received its FFGA, but in no event later than sixty (60) days after receipt of the FFGA, TriMet shall deposit \$817,160 into an agreed-upon City owned and operated escrow account or trust fund. The City shall designate these monies for use only to fund the construction of the Transition Trails, and the City shall ensure that these monies are not commingled with any other funds.
- (iv) TriMet's deposit of the \$817,160 will be TriMet's sole contribution to the Transition Trails, and upon deposit, TriMet's obligation under the Code with respect to the Transition Trails will be deemed satisfied. TriMet will have no further obligation with respect to the Transition Trails, including the construction, although TriMet agrees to reasonably cooperate in the construction of the Trails. In the event the cost of improvements exceeds the cost estimate, the cost will not be borne by TriMet.
- (v) The Parties are allowed to utilize any interest that accrues on TriMet's deposit for use in constructing the Transition Trails.
- (vi) Prior to TriMet's deposit of its Financial Contribution, the City and TriMet shall enter into an appropriate agreement regarding the deposit of funds, and release of TriMet's obligations under this Agreement, except as expressly provided in this Agreement.

f. Maintenance of the Transition Trails

- (i) The maintenance responsibility for the properties beneath the future Transition Trails will remain with the underlying private property owner until such time as the construction of the Transition Trails begins on that property.
- (ii) If the City constructs the Transition Trails, prior to construction of the Transition Trails, the underlying private property owner shall dedicate either an easement or fee title to the City to construct, operate, and to provide long-term maintenance of the Transition Trails. The underlying private property owners will have the right to retain reasonable rights to access and maintain their respective properties. Once the City begins construction on the Transition Trails, the underlying private property owner will have no maintenance responsibility for the Transition Trails.
- (iii) If either OHSU or ZRZ construct the Transition Trails, or a portion thereof, upon completion of construction, and acceptance of the construction by the City, the underlying private property owner shall dedicate either an easement or fee title to the City to operate and to provide long-term maintenance of the Transition Trails. The underlying private property owners will have the right to retain reasonable rights to access and maintain their respective properties.

g. Apportionment of Liability

- (i) If the City constructs the Transition Trails, at the time the underlying private property owner dedicates either an easement or fee title to the City, the City shall assume all liability that arises from the construction, operation, or maintenance of the Transition Trails. Notwithstanding the City's acceptance of liability, each Party remains liable for all claims that arise from its own affirmative acts or omissions.
- (ii) If either OHSU or ZRZ construct the Transition Trails, or a portion thereof, after construction is complete, OHSU and ZRZ agree to dedicate either an easement or fee title to the City for the Transition Trails. At the time of the dedication, and after the City has accepted the construction, the City shall assume all liability that arises from the operation or maintenance of the Transition Trails. Notwithstanding the City's acceptance of liability, each Party remains liable for all claims that arise from its own affirmative acts or omissions.

h. Temporary Transition Trails

- (i) If the City constructs a temporary Greenway Trail prior to construction of the permanent Greenway Trail and the City desires to construct temporary transition trails, and the City does not yet own the property for the Transition Trails, the City shall present to ZRZ and OHSU a concept for temporary transition trails. The Parties shall meet and confer about the City's proposed concept for temporary transition trails in an attempt to reach agreement on, among others, the design, cost, maintenance, construction, and removal of the temporary transition trails. The Parties will act in good faith and will not unreasonably withhold or delay agreement, approval or consent regarding the design of the temporary Transition Trails or regarding any temporary easements or permits of entry necessary to the construction of or public access to and use of the temporary Transition Trails.

C. General Provisions

a. Term.

This Agreement is effective, subject to any conditions listed, when executed by the Parties and approved by City Council, and terminates when the obligations agreed to by the Parties have been fully performed.

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b. Governing Law.

This Agreement is to be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflict of laws principles. The laws of the State of Oregon govern all matters arising under or relating to this Agreement.

c. Waiver and Nonwaiver.

A waiver by one Party of a right to a remedy for breach of this Agreement by the other Party will not be deemed to waive the right to a remedy for a subsequent breach by the other Party. Except as otherwise expressly provided in the Agreement, the signing and execution of this Agreement will not waive any of the legal rights of either Party.

The Parties having had the opportunity to consult an attorney regarding the provisions of this Agreement, the Parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the Party that drafted the ambiguous provision.

d. No Other Representations.

The Parties acknowledge that no other party, nor agent, nor attorney of any other party, has made any promise, representation or warranty, express or implied not contained in this Agreement concerning the subject matter of this Agreement to induce this Agreement, and the Parties acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained in this Agreement.

e. Severability/Survivability.

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired, and the Parties shall negotiate an equitable adjustment of this Agreement so that the purposes of this Agreement are effected.

f. Notices and Communication.

All notices and other communications concerning this Agreement must be written in English and bear the contract number assigned by TriMet as set forth above in this Agreement. Notices and other communications may be delivered personally, by facsimile, by express delivery service (e.g. UPS, FedEx), by electronic mail (e-mail), or by regular, certified or registered mail to the address, facsimile number, or e-mail address provided below with respect to each of the Parties, as follows:

For City:

Mike Abbate, Director
Portland Bureau of Parks & Recreation
1120 SW Fifth Avenue, #1302
Portland, OR 97204

503-823-5379
Mike.abatte@portlandoregon.gov

and

Lisa Abuaf
Portland Development Commission
222 NW Fifth Ave
Portland, OR 97209-3859
503-823-7380
AbuafL@pdc.us

For ZRZ:

Jay Zidell
ZRZ Realty Co.
3121 SW Moody Ave.
Portland, OR 97239
503-228-8691
jayz@zidell.com

For OHSU:

Brian Newman
Director, Campus Planning and Development
Oregon Health and Science University
Mail Code PP22E
3181 Sam Jackson Park Rd.
Portland, OR 97239-3098
503-346-0005
newmanb@ohsu.edu

For TriMet:

Rob Barnard
710 NE Holladay Street
Portland, OR 97232
503-962-2432
barnardr@trimet.org

g. Assignment and Subcontracting.

No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties. Any attempted assignment of rights or delegation of duties by a Party without the written consent of the other Parties will be void. The City, OHSU, and ZRZ shall include in any subcontract any provisions that the Parties agree are necessary to make all of the provisions of this Agreement fully effective.

h. Compliance with Other Laws and Regulations.

The Parties recognize that funds provided by the FTA will be used to pay for TriMet's Financial Contribution, and consequently, the construction of the Transition Trails. Each Party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA contractors. Furthermore, the City, OHSU, and ZRZ, as appropriate, agree to incorporate by reference the Federal Requirements set forth in Exhibit E, including any modifications thereto, to the extent applicable, into the contracts of all subcontractors or third party contractors used by the City, OHSU, or ZRZ to construct the Transition Trails.

i. Section Headings and Other Titles.

The Parties agree that the section headings and other titles used in this Agreement are for convenience only, and are not to be used to interpret this Agreement.

j. Integration, Modification, Administrative.

This Agreement includes the entire agreement of the Parties on the subject matter hereof and supersedes any prior discussions or agreements regarding the same subject. This Agreement may not be modified or amended except by written agreement of the Parties.

k. Authority.

The representatives signing on behalf of the Parties certify they are duly authorized by the Party for whom they sign to make this Agreement.

l. Performance; Reporting Requirement.

Each Party shall maintain fiscal records pertinent to this Agreement for at least three (3) years following completion of the work under this Agreement. Each Party shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, each Party shall maintain all other records pertinent to this Agreement in such a manner as to clearly document its performance hereunder.

m. No Third-Party Beneficiaries.

The City, OHSU, ZRZ, and TriMet are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.

n. Mediation.

The Parties, prior to any litigation, shall attempt to settle any dispute arising out of this Agreement, or the breach thereof, through mediation in the City of Portland, Oregon. The Parties shall attempt to agree on a single mediator. The cost of mediation shall be shared equally. If the parties agree on a mediator, the mediation must be held within 60

days of selection of the mediator unless the Parties otherwise agree to a different schedule. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity.

o. Entire Agreement; Amendments.

This Agreement, including the Recitals and all exhibits incorporated herein, constitutes the entire agreement between the Parties. There are no understandings, agreements, or oral or written representations not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement will bind either Party unless in writing and signed by both Parties. Any such amendment, consent, or waiver will be effective only in the specific instance and for the specific purpose given. The Parties, by the signatures of their authorized representatives below, acknowledge having read and understood the Agreement and agree to be bound by its terms and conditions.

p. Further Assurances.

Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations and to carry out the intent and agreements of the Parties.

q. Counterparts.

This Agreement may be executed in any number of counterparts, each of which is an original, but all of which constitute one and the same instrument.

r. Covenants binding on Successors and Assigns.

All of the terms, conditions, and covenants of this Agreement must inure to the benefit of and be binding upon the permitted successors and assigns of the respective Parties.

CITY

By: _____

Mike Abbate, Director
Portland Parks and Recreation

By: _____

Lisa Abuaf, PDC

Date: _____ Date: _____

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APPROVED AS TO FORM


CITY ATTORNEY

OHSU**TRIMET**

By: _____

Dr. Norwood Knight-Richardson, OHSU

By: _____

Dan Blocher, TriMet

Date: _____

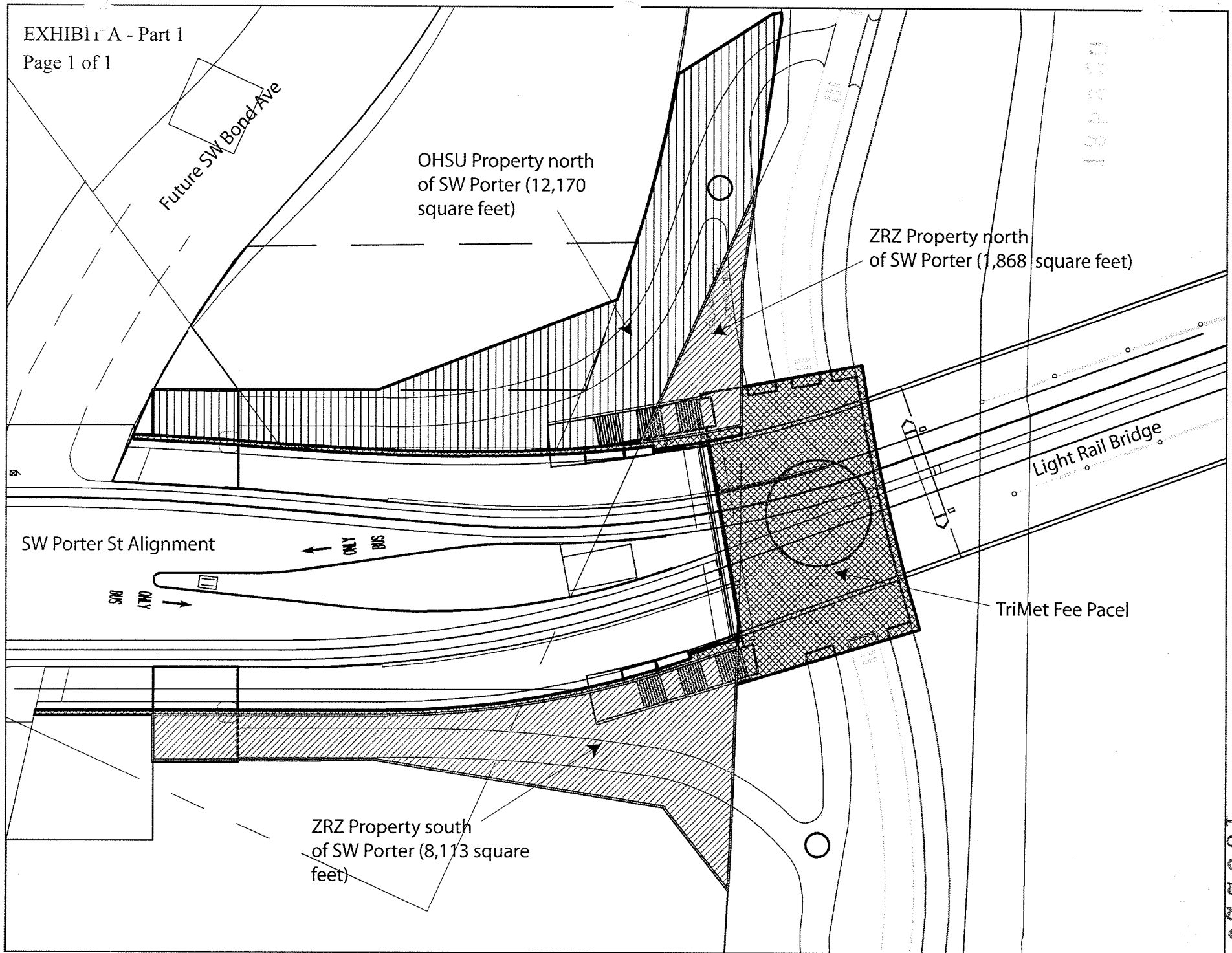
Date: _____

ZRZ

By: _____ Date: _____

Jay Zidell, ZRZ

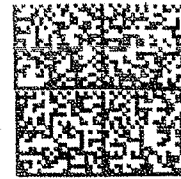
APPROVED AS TO FORM_____
City_____
ZRZ_____
OHSU_____
TriMet





CITY OF PORTLAND
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201
Land Use Decision Enclosed
Case # LU 10-151765 DZ GW

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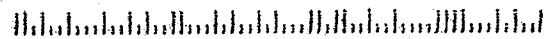
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Return Service Requested

185220

APPLICANT
DAVE UNSWORTH
TRIMET
710 NE HOLLADAY ST
PORTLAND OR 97232

9723232158 C011





City of Portland, Oregon
Bureau of Development Services
Land Use Services

1900 SW 4th Avenue, Suite 5000
 Portland, Oregon 97201
 503-823-7300
 Fax 503-823-5630
 TTY 503-823-6868
www.portlandonline.com/bds

Date: December 28, 2010
To: Interested Person
From: Tim Heron, Land Use Services
 503-823-7726 / tim.heron@portlandoregon.gov, and
 Stacey Castleberry, Land Use Services
 503-823-7586 / stacey.castleberry@portlandoregon.gov

FINAL DECISION BY THE DESIGN COMMISSION
RENDERED ON December 16, 2010

CASE FILE NUMBER: LU 10-151765 DZ GW
PC # 10-110353
Willamette River Transit Bridge--West

GENERAL INFORMATION

Applicants:	Dave Unsworth TRIMET 710 NE Holladay St Portland, OR 97232	Karen Karlsson KLK Consulting LLC 906 NW 23rd Ave Portland, OR 97210
Owners:	Rick Saito ZRZ Realty Company 3121 SW Moody Ave Portland, OR 97239	Cy Young State of Oregon 355 Capitol St NE #411 Salem, OR 97301-3871
	Brian Newman Oregon Health & Science University 3181 SW Sam Jackson Park Rd Portland, OR 97239	
Site Address:	2600 SW Moody Avenue; 3121 SW Moody Avenue, and RIGHT OF WAY	
Legal Description:	SECTION 03 1S 1E, TL 500 5.59 ACRES; SECTION 10 1S 1E, TL 200 13.51 ACRES; SECTION 10 1S 1E, TL 300 15.69 ACRES	
Tax Account No.:	R326743, R327897, R327850	
State ID No.:	1S1E03DC 500; 1S1E10 200; 1S1E10 300	
Quarter Section:	3229, 3230	
Neighborhood:	South Portland NA., contact Jim Davis at 503-248-9820.	
Business District:	None	
District Coalition:	Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.	
Plan District:	Central City Plan District - South Waterfront Subdistrict	
Other Designations:	100-year Floodplain, FEMA Floodway, Recreational Trail, Central City Plan Viewpoint, Greenway Plan Viewpoint.	

Exhibit A - Part 2
 Page 2 of 17

Zoning: CX d g (Central Commercial with Design and Greenway overlays)
Case Type: DZ GW (Design Review and South Waterfront Greenway Review)
Procedure: Type III, with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

Proposal: The Portland-Milwaukie Light Rail Project proposes to construct a 1,720-foot cable stayed bridge across the Willamette River from approximately SW Porter Street to SE Sherman Street located just north of the Portland Opera building. This bridge will include two multi use paths and single eastbound and westbound transit travel lanes for bus, light rail and streetcar. Included in the scope of this review is also the SW Porter Street Station and related rail improvements, as well as Landside access and trail connections from the bridge to the Greenway Trail. This bridge and the associated station is referred to as the Willamette River Transit Bridge (WRTB), or the Project.

Note that the Portland-Milwaukie Light Rail Project is approved under a Land Use Final Order pursuant to House Bill 3478 (1996). The context of the City's land use review process in light of this State-legislated process is described below.

This land use review addresses only the west portion of bridge that will be situated within the South Waterfront Subdistrict of the Central City Plan District. The east portions of the WRTB will be reviewed under a separate land use application for Type II Greenway Review. The applicant proposes development of the bridge, piers, trackway, pedestrian and bike lanes, station, in addition to temporary construction bridge and staging areas, elements for approval under the current land use review. The applicant also seeks approval of future transition trails from the intersection of the project with SW Bond Avenue to the plaza area under the bridge. All other greenway improvements such as the plaza beneath the bridge, and riparian enhancement projects are to be addressed under Development Agreements and future reviews.

Because the proposal is within the design and greenway overlay zones in the South Waterfront Subdistrict of the Central City Plan District, design review and greenway review are required.

Elements of the Current Proposal:

The bridge will be supported by two in-water piers, two landside piers and two abutments. The in-water piers require eight 10-foot diameter drilled shaft piers with a waterline foundation pier support.

West of the Willamette River, the bridge pier will be located above the top of bank and the visible portion of the bridge abutment, above finished grade, will be located outside of the greenway setback (approximately 100 feet from the top of bank). In this area, the Project will secure an aerial easement from the property owner, Zidell Realty Co.. Landside access and transition trails to the future Greenway Trail are proposed, including landscaping and access from the bridge in the form of ramped and stair connections.

From the bridge abutment to SW Moody Street, the alignment will be located on retained fill to accommodate future redevelopment of South Waterfront properties. The South Waterfront/SW Moody Avenue transit station will be located between the future SW Bond Street and SW Moody Avenue. This station will include dedicated space for sidewalks, bike lanes, buses, future streetcar and light rail.

Construction of the bridge will require building a temporary work bridge on pilings, just north of the permanent bridge. This temporary work bridge will allow materials to be efficiently delivered to the site. The Project proposes to construct a 110-foot diameter cofferdam in which the eight ten-foot diameter piers will be constructed. The Project intends to construct the

temporary work bridges and the cofferdam during the in-water work window from July 1, 2011 to October 31, 2011.

Temporary staging areas will be required for materials delivery, storage and preparation and to access the temporary work bridge and permanent bridge. These staging areas are both north and south of SW Porter Street and shown on attached plan sheets.

Hydraulic analysis predicts scour around the in-water piers and the work bridge piers causing re-suspension of contaminated media located in the vicinity. Erosion of these soils should be prevented and scour protection is proposed, around the piers of the work bridge and tower.

Scour protection associated with Tower 3 (west in-water pier) will encompass approximately 44,000 square feet and will include 1 foot of sand overlain by 2 to 4 feet of rounded Class 100 rock overlain by 2 to 4 feet of rounded Type B rock. The total thickness of sand rock armor will vary between three feet near shallow water and nine feet near the edge of Zidell's proposed sediment cap.

Scour protection will also be added near the temporary work bridges to protect against scour related re-suspension of contaminated media. This scour protection will include Type B rock. The Project may adjust the size of the based on further analysis of sediments samples from the scour areas around Tower 3.

Public art will also be a component of the project. The integrated art and artists will be selected through TriMet's art program and process, and may be subject to further review.

The South Waterfront Street Plan identifies this Project to be built on the identified SW Porter Street alignment. In addition, the Project proposes to use bridge furnishings from the west abutment to the intersection with future SW Bond Street to create a bridge zone. Project elements that do not meet standards are specifically addressed in this application.

The Project will install erosion control seeding on all its disturbance areas within the greenway setback and will, remove all non-native plants. The Project will use a seed mix of native plants selected from the City of Portland's approved plant list on the disturbed areas. In the area immediately under the bridge, the Project will include a metal enclosure to secure the area under the bridge and a temporary pad of crushed rock above the top of bank.

Future Projects addressed in Development Agreement:

Within the greenway area, trails greenway features will not be installed by the Project. Instead, the Project will financially participate in Development Agreements that will provide project funding to a future City Greenway Development Plan. This approach has been selected to ensure that the public investment in the greenway is sequenced to minimize the cost of temporary features and reserve funds for implementation of the ultimate park design in a holistic manner with the other anticipated development in the north reach. That future Greenway Development Plan will also be subject to future review processes. The Project has demonstrated that its permanent features will not preclude, and in fact will help move forward, implementation of a future plan in accordance with the requirements of these reviews. With the exception of the design of the transition trails, the Project's sole responsibility will be its financial contribution; the applicant does not anticipate the Project's involvement with the design, review, or construction of the riparian enhancement and greenway features.

In addition to the Development Agreements for transition trails and the plaza under the bridge, the Project will financially participate with the City of Portland's project to enhance shallow water habitat in the Central District Greenway. The Project intends to partially fund this work and use this beach area as environmental enhancement as part of commitment made in the Project's Biological Opinion with NOAA Fisheries Service.

Metro Council Land Use Final Order and House Bill 3478:

In 1996, the Oregon legislature passed House Bill 3478. House Bill 3478 established a special land use decision-making process for the South-North Project, of which the Portland-Milwaukie Light Rail Project is a part, to ensure its timely and cost-effective construction. Pursuant to this Bill, in 2008, the Metro Council adopted a land use final order (LUFO) amendment for the South-North Project.

Under Section 3 of HB 3478, the LUFO processes is described for approving the location of the light rail route, stations, lots and maintenance facilities, and highway improvements for the project and project extension. These are "the only land use procedures and requirements" that are required to approve these locational elements.

Under Section 8, affected local governments are required "issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with the" LUFO. In issuing these approvals, affected local governments may, however, impose "reasonable and necessary conditions of approval" as long as they do not "by themselves or cumulatively, prevent implementation of the" LUFO.

Thus, the city does not have the ability to say that the Light Rail route or component elements of the route are not allowed or must go elsewhere, but does have the ability to impose reasonable and necessary conditions of approval.

The Light Rail bridge will include development that triggers the City's design and greenway reviews. Using the land use review procedures specified in the Zoning Code for these reviews--and the applicable approval criteria--is an appropriate way to enable the City to determine what "reasonable and necessary" conditions to impose on the project.

Portland Zoning Code Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- | | |
|--------------------------------------|--|
| ▪ 33.825 Design Review | ▪ 33.851.300 Approval Criteria for South |
| ▪ Central City Fundamental Design | Waterfront Greenway Review |
| Guidelines | ▪ South Waterfront Greenway Design |
| ▪ South Waterfront Design Guidelines | Guidelines |

DESIGN COMMISSION DECISION

It is the decision of the Design Commission to **approve** Design Review and South Waterfront Greenway Review of the Willamette River Transit Bridge, including the following features as shown on Exhibits C.1 through C.70, and subject to Conditions of Approval A through G that follow:

- approximately the west half of the Willamette River Transit Bridge;
- one in-water pier at bridge Tower #3;
- one land pier (Bent #2) within Subarea 2 of the greenway;
- Abutment #1, partially within Subarea 3 of the greenway;
- in-water revetment;
- native erosion control seeding of disturbance areas in Subareas 2 and 3 of the greenway;
- trackway, and pedestrian and bike lanes;
- landside access and transition trails;
- light rail station;
- temporary construction staging areas;

- temporary work bridge construction and deconstruction; and
 - temporary construction easements.
- A. As part of the building permit application submittal, the following development-related conditions (B through G) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-151765 DZ GW. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Development Agreements:** Executed Development Agreements (DA's) shall be copied to the Bureau of Development Services **by December 31, 2011**, and shall include the following:
1. The Development Agreements shall be reviewed and approved as to form by Portland's City Attorney before they are executed.
 2. The Development Agreements shall include provisions for the following improvements:
 - Greenway trail and plaza for the "Fee Parcel"—the area under the Willamette River Transit Bridge to be owned by Tri-Met, as shown graphically throughout Exhibits C.1-70; and
 - Greenway Access and Transition Trails, as shown graphically throughout Exhibits C.1-70;
 3. The applicant shall include the following in the Development Agreement for the Fee Parcel and the Access and Transition Trails:
 - A description and site plan indicating the location, design, and aerial extent of trail connections and landscaping to be provided;
 - The responsible parties for proposed work;
 - The basis for the financial agreement between the parties, demonstrating how the access trails and the plaza will be funded through the agreement; and
 - The proposed schedule and proposed timing of construction/installation of proposed improvements. Improvements shall be reviewed and constructed concurrently with adjacent development.
- C. Wetland Mitigation in the Central District:** The applicant shall provide funding as described in the October 14, 2010 MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF PORTLAND AND THE TRI-OCUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON REGARDING WETLAND MITIAGTION IN THE CENTRAL DISTRICT (Exhibit A.9), to ensure creation of 25,000 square feet of enhanced shallow water habitat in the Central Reach of the South Waterfront greenway.
1. The applicant and the City shall execute the Final Agreement for Wetland Mitigation in the Central District by March 31, 2011.
 2. The applicant shall provided the funding for Wetland Mitigation in the Central District by December 31, 2013.
 3. The Central Reach shallow water habitat project is subject to City land use review and permitting approval.
- D. Derelict Piling Removal:** The applicant shall conduct the removal of approximately 180 derelict piles in the Lower Willamette River, as described in the October 15, 2010 DERELICT PILE REMOVAL PROGRAM—PORTLAND-MILWAUKIE LIGHT RAIL PROJECT (Exhibit A.10).
1. The applicant shall remove the derelict piles by October 31, 2011.
 2. The derelict pile removal project is subject to City land use review and permitting approval.

- E.** Removal of the temporary work bridge shall occur from entirely within the designated construction disturbance area, and work to remove piles shall only occur between July 1 and October 31. Removal of the temporary work bridge shall occur within **one year of completion** of construction of the Willamette River Transit Bridge.
- F.** All plantings, whether for temporary erosion control within temporary construction work areas, or permanent greenway landscaping, shall utilize plant species selected from Zoning Code tables 510-2 and 510-3.
- G.** Stormwater management facilities for the Willamette River Transit Bridge, and landside access and transitions trails, shall undergo City review as appropriate for the zone in which they will be constructed.

By: 
Guenevere Millius, Design Commission Chair

Application Filed: June 30, 2010

Decision Rendered: December 16, 2010

Decision Mailed: December 28, 2010

Decision Filed: December 17, 2010

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on June 30, 2010; and was determined to be complete on **August 24, 2010**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on June 30, 2010.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant waived the 120-day review period, as stated with Exhibit A.1.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. This report is the final decision of the Design Commission with input from other City and public agencies.

Conditions of Approval. This approval may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the

use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of this decision. This decision is final unless appealed to City Council, who will hold a public hearing. Appeals must be filed by 4:30 pm on January 11, 2011 at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor in the Development Services Center until 3 p.m. After 3 p.m. and on Monday, appeals must be submitted to the receptionist at the front desk on the fifth floor. Information and assistance in filing an appeal is available from the Bureau of Development Services in the Development Services Center or the staff planner on this case. You may review the file on this case by appointment at, 1900 SW Fourth Avenue, Suite 5000, Portland, Oregon 97201.

If this decision is appealed, a hearing will be scheduled and you will be notified of the date and time of the hearing. The decision of City Council is final; any further appeal is to the Oregon Land Use Board of Appeals (LUBA).

Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing, one in which new evidence can be submitted to City Council.

Who can appeal: You may appeal the decision only if you have written a letter which was received before the close of the record at the hearing or if you testified at the hearing, or if you are the property owner or applicant. Appeals must be filed within 14 days of the decision. **An appeal fee of \$17,591.00 will be charged (one-half of the application fee for this case).**

Neighborhood associations and low-income individuals may qualify for a waiver of the appeal fee. Additional information on how to file and the deadline for filing an appeal will be included with the decision. Assistance in filing the appeal and information on fee waivers are available from the Bureau of Development Services in the Development Services Center, 1900 SW Fourth Ave., First Floor. Fee waivers for low income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval. Fee waivers for neighborhood associations require a vote of the authorized body of your association. Please see appeal form for additional information.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **January 12, 2011 - (the day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit must be obtained before carrying out this project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Tim Heron
Stacey Castleberry
December 23, 2010

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

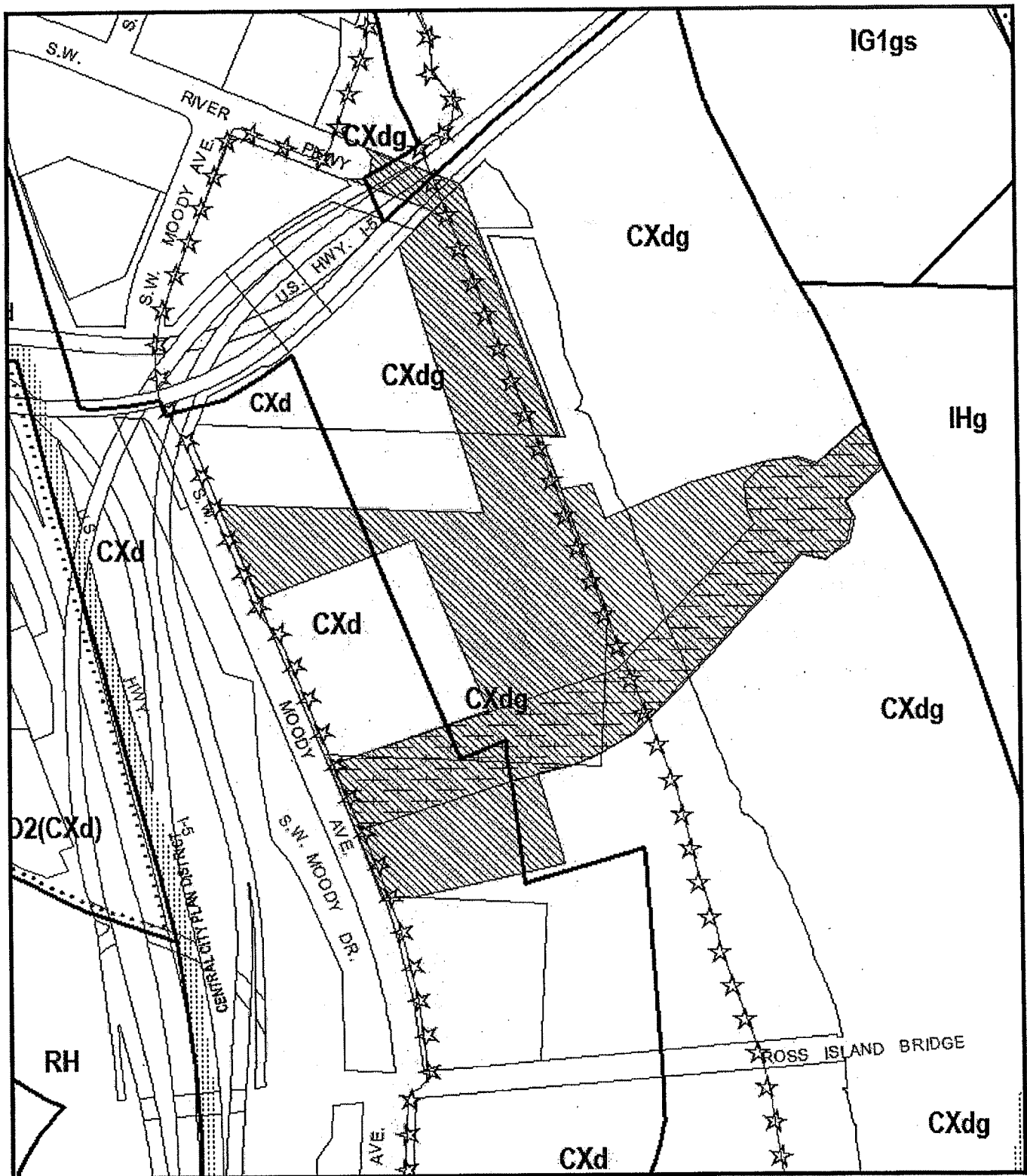
EXHIBITS - NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement, Application, Drawings and Photos
 - 1. July 21, 2010 120-day waiver
 - 2. August 10, 2010 Meeting notes
 - 3. August 24, 2010 Revised Application & Drawing submittal
 - 4. September 3, 2010 Draft Developer Agreement for the Greenway Transition Trail
 - 5. September 3, 2010 Draft Developer Agreement for the Greenway Trail
 - 6. September 9, 2010 Meeting notes
 - 7. October 1, 2010 Response to Water and BES
 - 8. October 1, 2010 Email response and LUFO submittal
 - 9. October 14, 2010 Central District Mitigation Memorandum of Understanding
 - 10. October 15, 2010 Derelict Pile Removal project description
 - 11. December 6, 2010 Supplemental Greenway Findings
 - 12. December 6, 2010 Draft Development Agreement documents for the Fee Parcel plaza improvements and the Access and Transition Trails
 - 13. December 6, 2010 Supplemental Design Review Findings and Exhibits
- B. Zoning Map (attached)
- C. Plan & Drawings
 - 1. Images Cover Sheet



- 1a. Supplemental Information Cover Sheet – December 6, 2010
- 1b. Issues: Bridge and Landside
- 2 Overview Looking North (attached)
3. View Looking East (attached)
- 3a. Bridge: Design Vocabulary
- 3b. Bridge: Design Vocabulary
4. Bridge Walkway Plan
- 4a. Bridge: Widen Path at Towers (Belvederes)
5. Bridge Walkway Railing Details
- 5a. Bridge: Railings – Stainless Steel included in project
- 5b. Bridge: Railing Details
6. Tower and Pier Cap
- 6a. Bridge: Pier Cap
- 6b. Bridge: Pier Cap
- 6c. Bridge: Pier Cap
- 6d. Bridge: Pier Cap
7. Bridge Lighting
8. Bridge Aesthetic Lighting
9. Bridge Night View with Aesthetic Lighting
- 9a Bridge: Aesthetic Lighting
- 9b Bridge: Aesthetic Lighting
- 9c Bridge: Aesthetic Lighting
- 9d Bridge: Aesthetic Lighting
- 9e Bridge: Aesthetic Lighting
- 9f Bridge: Aesthetic Lighting
- 9g Bridge: Concrete – Natural color, finish and detailing
- 9h Bridge: Concrete – Natural color, finish and detailing
- 9i Bridge Concrete – Construction joints
- 9j Landside: Security Measures at abutment
- 9k Landside: Concept Diagram- resolution of design standards
- 9l Landside: Base Plan – ROW dimensions and Greenway delineation
10. Bridge Landing on West Side (attached)
11. Plan – Bridge to Station Area (attached)
- 11.1 Project Elements: Bridge to Station Area
- 11a Landside: Rendered Urban Design and Landscape Plan – Materials & Character
- 11b Landside: Longitudinal Section 1
12. Area Under Bridge
- 12a Landside Cross Section 2- facing west at abutment
- 12b Landside: Hardscape under WRTB – Materials and Layout
13. Section – Bridge to Station
14. Stairs and Retaining Wall – Bridge to Station
15. Section – Bridge to Station
- 15a Landside: Cross Section 3
16. Plan – Bridge to Station
17. Streetscape Elements
18. Streetlights and Joint Use Cantenary Poles
19. Plan – Station Area
20. Station Architecture Elements
- 20a Landside: Transit Shelter
21. Station Architecture Elements
- 21a Landside: Paving
- 21b Landside: Lighting
- 21c Landside: Planting
- 21d Landside: Railing
- 21e Landside: Family Portrait of WRTB + SWF + TM elements

- 21f Landside: Renderings
 - 21g Landside: Renderings
 - 21h Landside: Renderings
 - 22. Engineering Drawings Cover Sheet
 - 23. Engineering Drawings Index
 - 24. Vicinity Map (WGW-002)
 - 25. Land Use Context (WGW-010)
 - 26. Site Plan (WGW-100) (attached)
 - 27. Existing Conditions (WGW-110)
 - 28. Existing Conditions Enlarged (WGW-111)
 - 29. Existing Conditions Enlarged (WGW-112)
 - 30. Conditions Enlarged (WGW-113)
 - 31. Notes and Legend (WGW-200)
 - 32. Development Overview (WGW-200A)
 - 33. Roadway Plan and Drainage (WGW-201)
 - 34. Plan and Drainage (WGW-203)
 - 35. Plan and Drainage (WGW-204)
 - 36. Bridge Plan and Elevation (WGW-300)
 - 37. Abutment 1 Plan and Elevation (WGW-301)
 - 38. Bent 2 Plan and Elevation (WGW-302)
 - 39. Tower Elevations (WGW-303)
 - 40. Deck Plan Span 1 and 2 (WGW-304)
 - 41. Deck Plan Span 2 and 3 (WGW-305)
 - 42. Typical Deck Section (WGW-306)
 - 43. Pedestrian and Bicycle Railings (WGW-307)
 - 44. Peregrine Falcon Nest Box Location (WGW-308)
 - 45. Peregrine Falcon Nest Box Details (WGW-309)
 - 46. Architectural Key Notes and Legend (WGW-400)
 - 47. South Waterfront Station Area Plan (WGW-401)
 - 48. South Waterfront Station Area Plan (WGW-402)
 - 49. South Waterfront Station Platform Plan (WGW-403)
 - 50. South Waterfront Station Platform Plan (WGW-404)
 - 51. Station Platform Amenities Matrix (WGW-405)
 - 52. Shelter Type 2 Details (WGW-406)
 - 53. Retaining Wall 5 Layout and Elevation 1 (WGW-500)
 - 54. Retaining Wall 5 Layout and Elevation 2 (WGW-501)
 - 55. Retaining Wall 6 Layout and Elevation 1 (WGW-502)
 - 56. Retaining Wall 6 Layout and Elevation 2 (WGW-503)
 - 57. Landscape Plan (WGW-800)
 - 58. Landscape Plan (WGW-801)
 - 59. Landscape Plan (WGW-802)
 - 60. Luminaire Schedule (WGW-700)
 - 61. Electrical Lighting Plan (WGW-701)
 - 62. Electrical Lighting Plan (WGW-702)
 - 63. Electrical Lighting Details (WGW-703)
 - 64. Electrical Lighting Details (WGW-704)
 - 65. Electrical Power Details (WGW-705)
 - 66. Electrical Power Details (WGW-706)
 - 67. Construction Management Overview (WGW-801)
 - 68. Rock Armor Details (WGW-803)
 - 69. Temporary Work Bridge Typical Section (WGW-808)
 - 70. Construction Sequence (WGW-807)
- D. Notification information:
- 1. Request for response
 - 2. Posting letter sent to applicant

3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailed notice
 6. Mailing list
- E. Agency Responses [RFC & RFR]:
1. Bureau of Environmental Services [9/27/10, 10/7/10, 12/14/10]
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Bureau of Parks
 6. Site Development Review Section of BDS
- F. Letters [none received]
- G. Other
1. Original LUR Application
 2. Site History Research, February 25, 2010 Pre-Application Conference Responses
 3. July 30, 2010 Incomplete Letter
 4. September 2, 2010 Meeting Notes response to 8-10-2010 Meeting Notes
 5. October 11, 2010 Staff Memorandum to Design Commission & Staff Recommendation
 6. Staff Powerpoint Presentation
 7. December 7, 2010 Staff Memorandum to Design Commission & Rev'd Recommendation
- H. October 21, 2010 Design Commission hearing
1. Portland Parks Recreation response, Brett Horner
 2. Police Bureau Response, Richard Kepler
- cc: Applicants and Representatives
Neighborhood Associations
Those who testified, orally or in writing
Development Services Center



ZONING

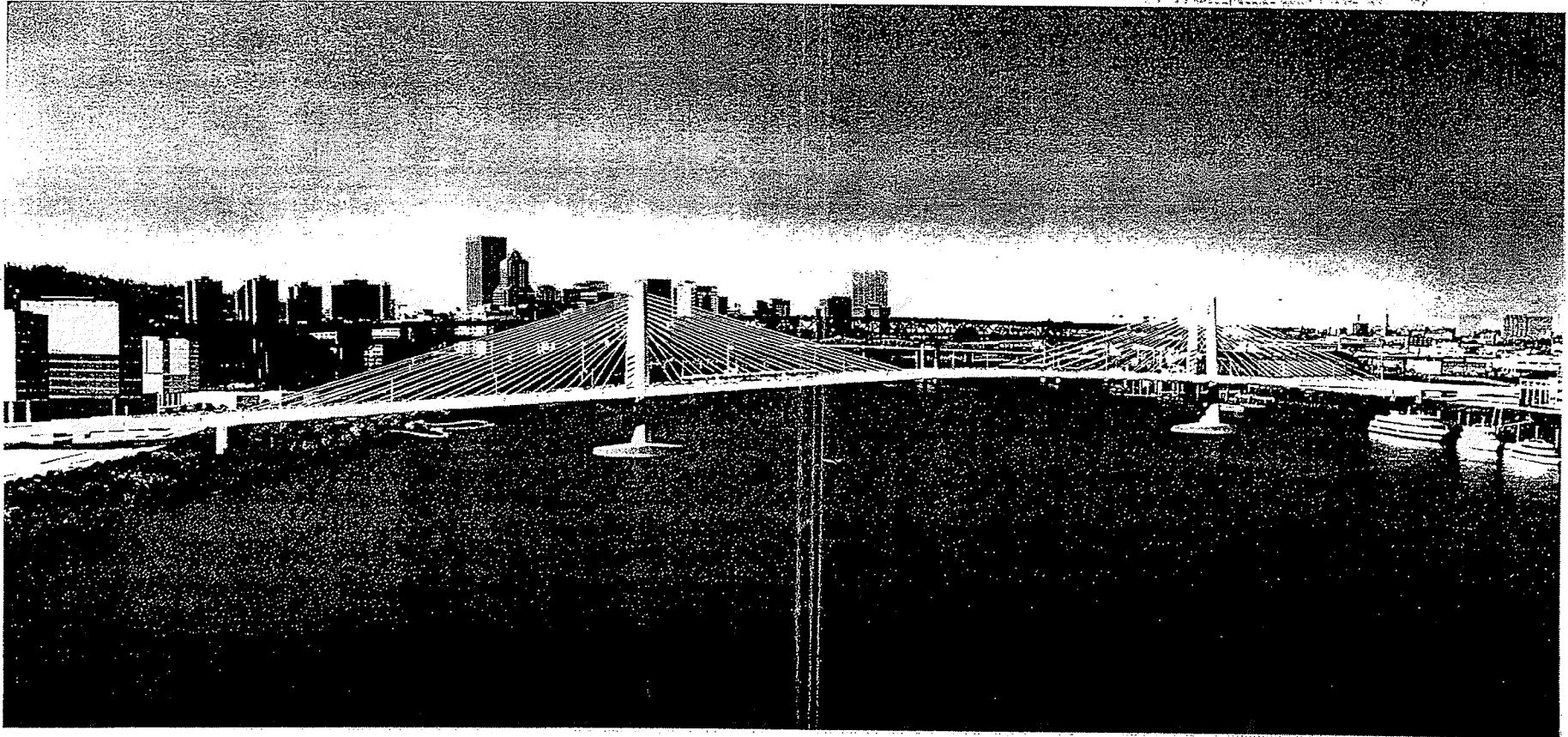
-  Project Area
 Permanent Development Area



This site lies within the:
CENTRAL CITY PLAN DISTRICT

File No. LU 10-151765 DZ,GW
 1/4 Section 3229.3230.3329.3330
 Scale 1 inch = 300 feet
 State_Id 1S1E10 300
 Exhibit B (Sep 20,2010)

"Approved"
 City of Portland - Bureau of Development Services
 Project T04 Date 12/16/10
 This approval is only to the reviews requested and is not a guarantee.



Overview: View looking north

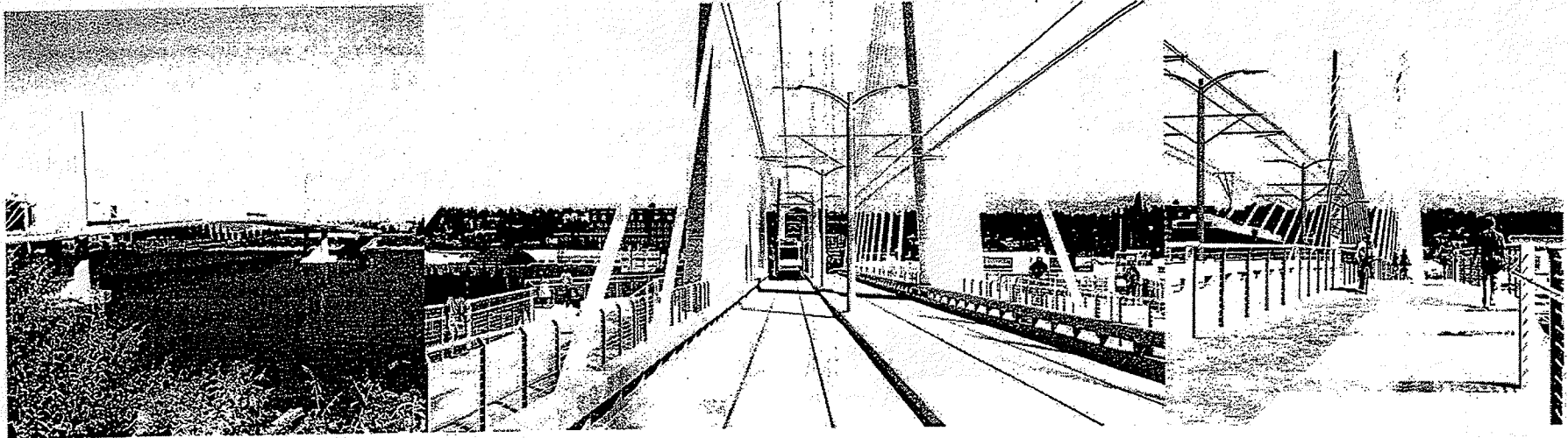
Land Use Review number (LU 10-151765 DZ, GW)

Exhibit C. 02

0855281

--- "Approved" ---
City of Portland - Bureau of Development Services
Planner TDH Date 12-16-10
This stamp applies only to the reviews requested and is subject to change. Additional zoning requirements may apply.

Project Elements: Bridge

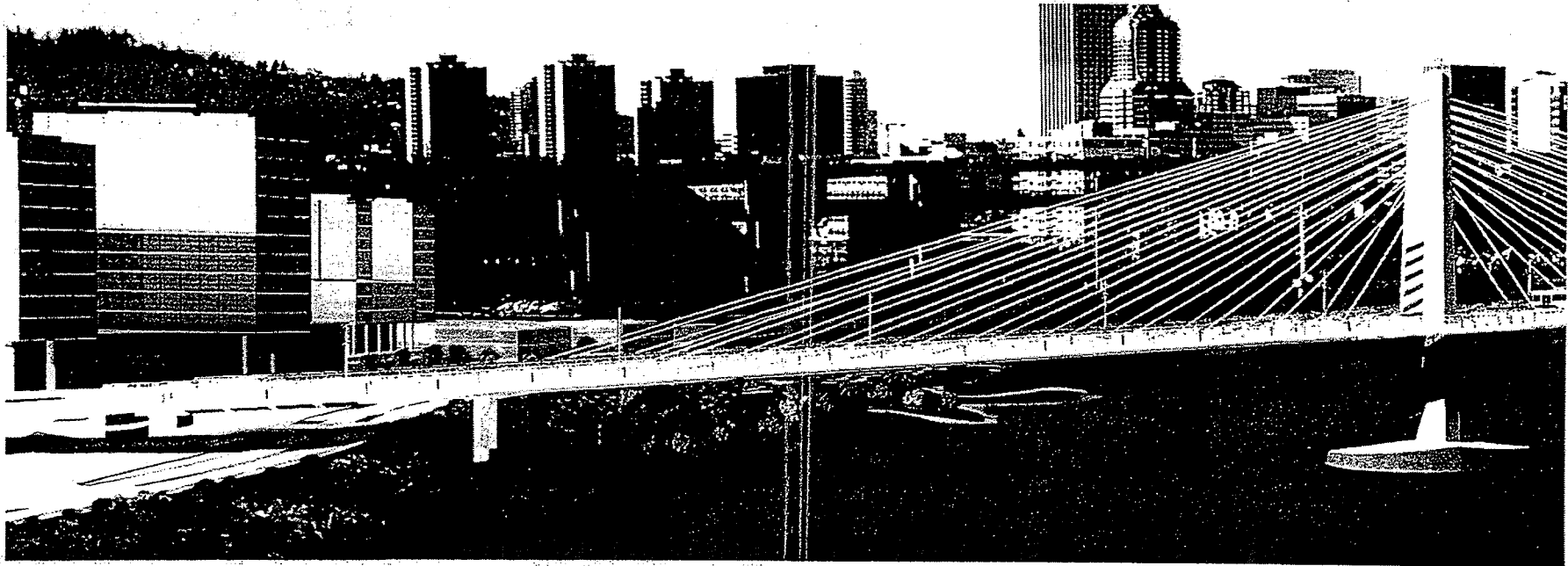


Overview: Views to the east side

1828281

Approved
City of Portland - Bureau of Development Services
Planner: TDH Date: 12.16.10
This plan applies only to the project requested and is subject to approval. Additional zoning requirements may apply.

Project Elements: Bridge to Station Area



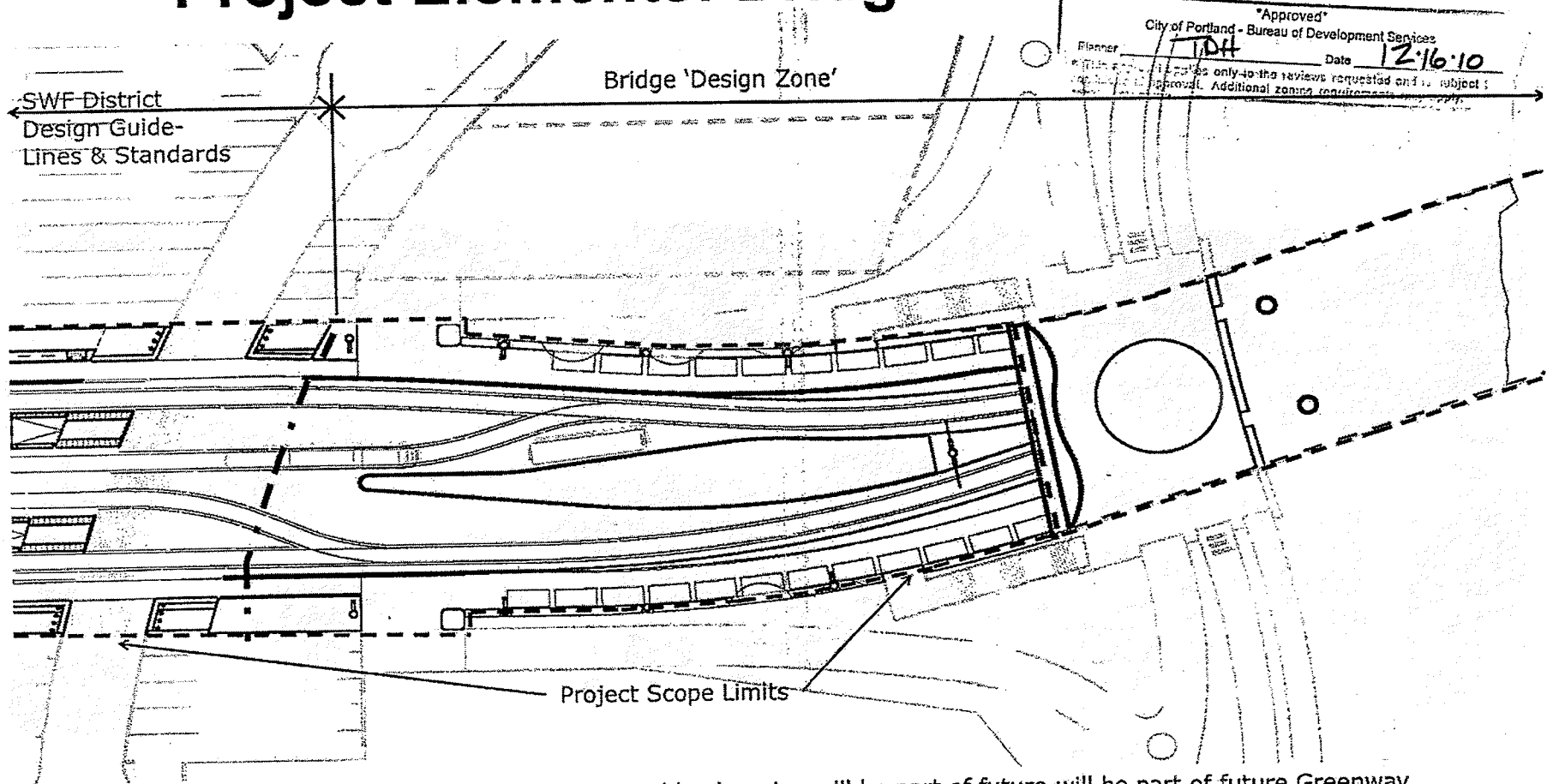
Overview: View looking at West Landside

Note: Any changes to pedestrian trail, connections and landscaping will be part of future will be part of future Greenway improvements. Urban Design improvements outside the Project's scope will be provided and permitted through future Development agreements.

Land Use Review number (LU 10-151765 DZ, GW)

Exhibit C. 10

Project Elements: Bridge to Station Area

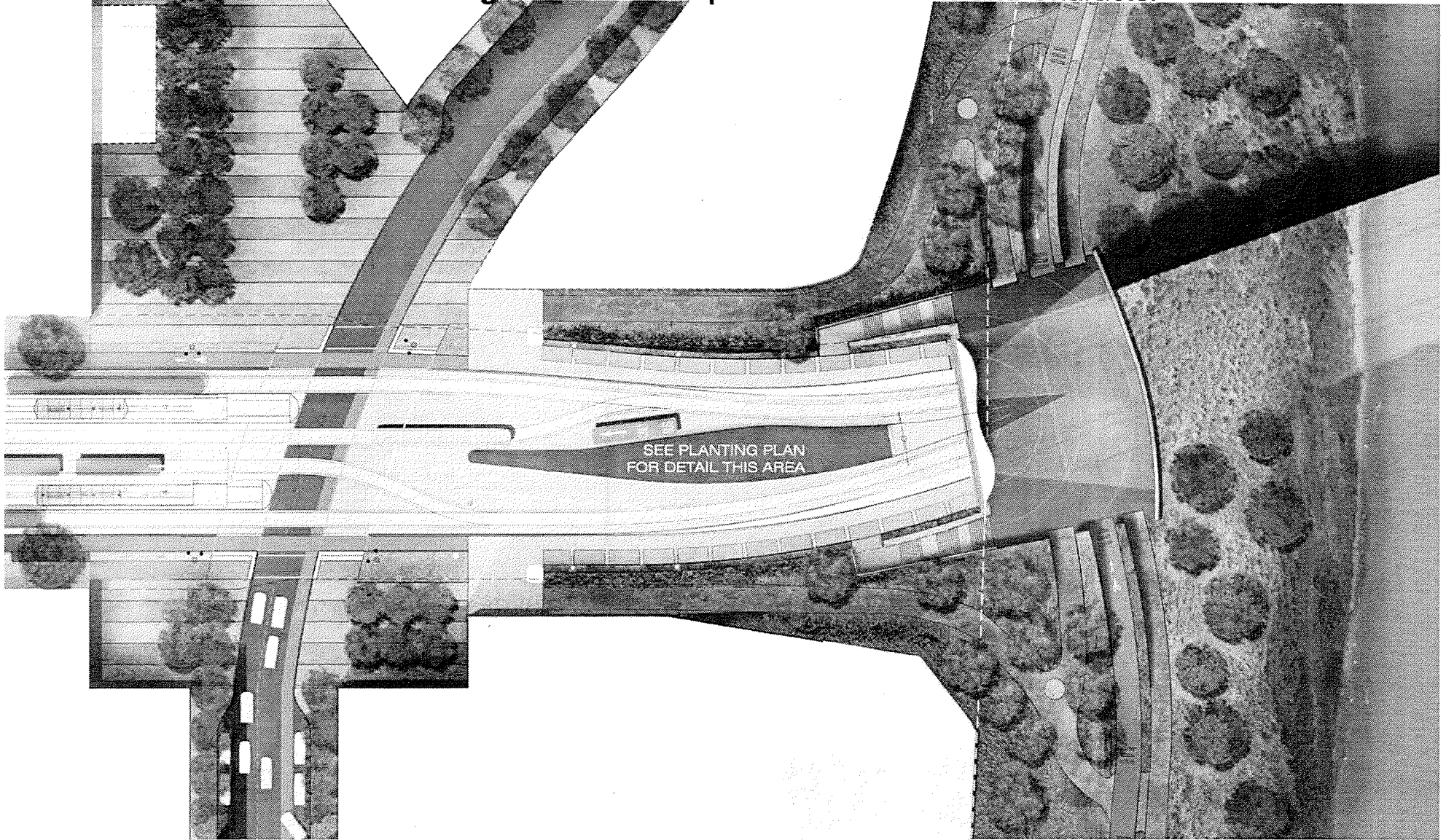


Note: Any changes to pedestrian trail, connections and landscaping will be part of future will be part of future Greenway improvements. Urban Design improvements outside the Project's scope will be provided and permitted through future Development agreements.
Land Use Review number (LU 10-151765 DZ, GW)

Exhibit C. 11

182850

Landside: Rendered Urban Design and Landscape Plan - Materials and Character



Landside: Planting

PORTER STREET ZONE PLANTING

TREES:
Fraxinus p. 'Summit Summit Green Ash

SHRUBS:
Ilex crenata 'Green Island' Green Island Japanese Holly

BRIDGE MEDIAN PLANTING

SHRUBS:
Berberis verruculosa Warty Barberry
Festuca glauca Sheep Fescue
Pennisetum setaceum Fountain Grass

WATER QUALITY SITE PLANTING

SHRUBS:
Iris tenax Oregon Iris
Juncus ensifolius Dagger-Leaf Rush

SUB-AREA 2 PLANTING

TREES: (1/1000sf)
Fraxinus latifolia Oregon ash

SHRUBS + GROUND COVER:
Cornus s. 'Kelsey' Kelsey Dogwood
Lupinus latifolia Bigleaf Lupine
Mahonia repens Creeping Oregon Grape
Polystichum munitum Western Sword Fern
Ribes sanguineum Flowering Currant
Symphoricarpos albus Common Snowberry

TRANSITION TRAIL PLANTING

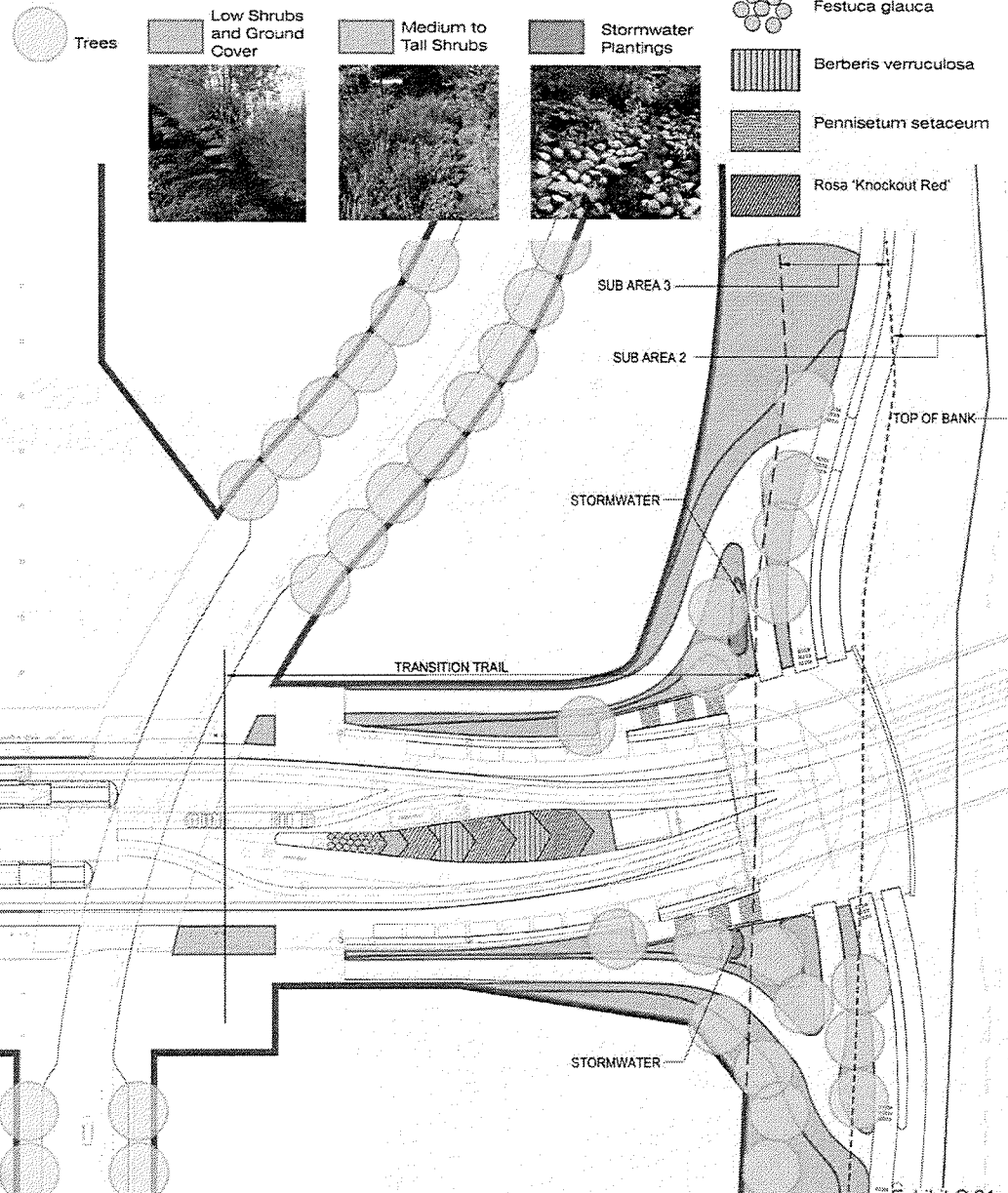
TREES:
Fraxinus latifolia Oregon Ash

SHRUBS:
Acer circinatum Vine Maple
Berberis verruculosa Warty Barberry
Cornus s. 'Kelsey' Kelsey Dogwood
Lupinus latifolia Bigleaf Lupine
Mahonia repens Creeping Oregon Grape
Parthenocissus quinifolia Virginia Creeper
Pennisetum setaceum Fountain Grass
Polystichum munitum Western Sword Fern
Ribes sanguineum Flowering Currant
Sarcococca ruscifolia Sarcococca
Symphoricarpos albus Common Snowberry

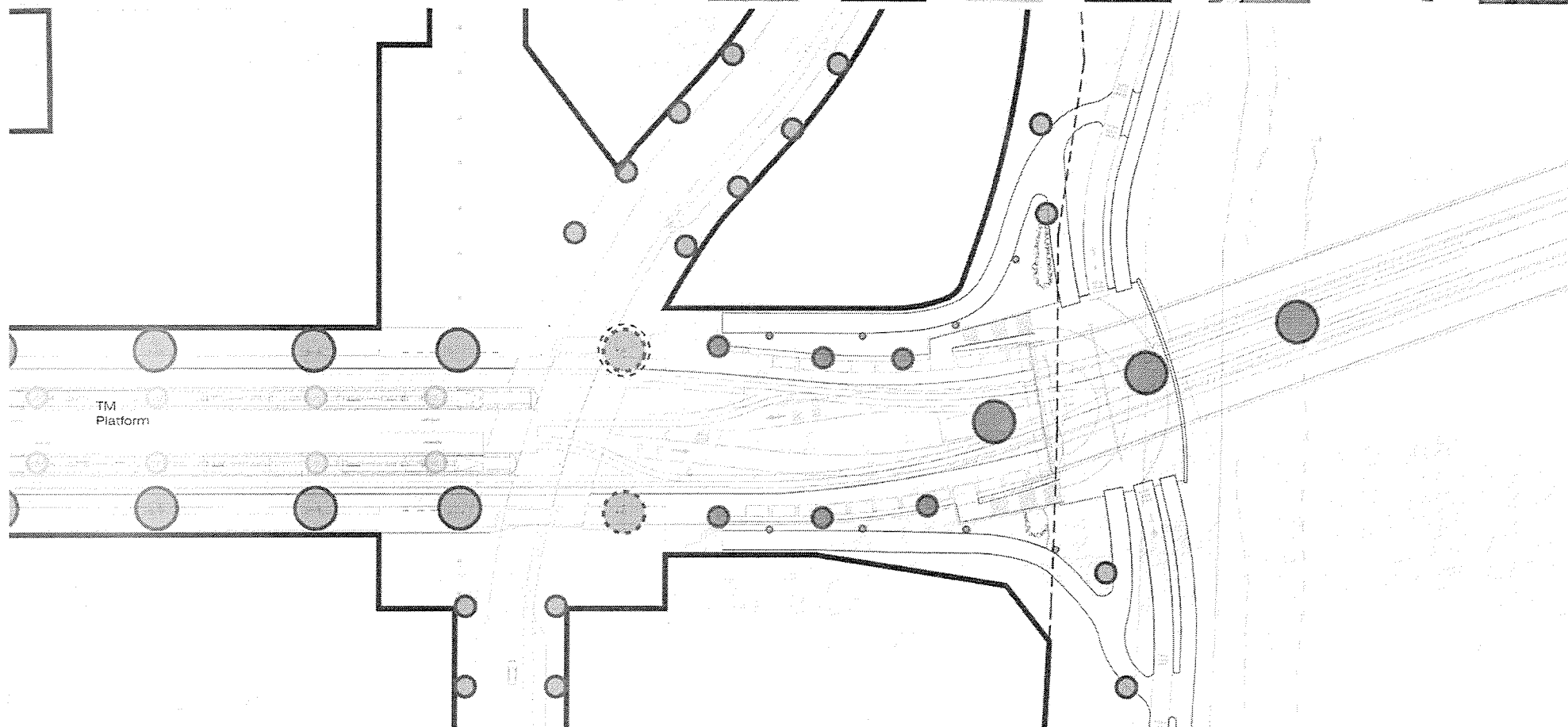
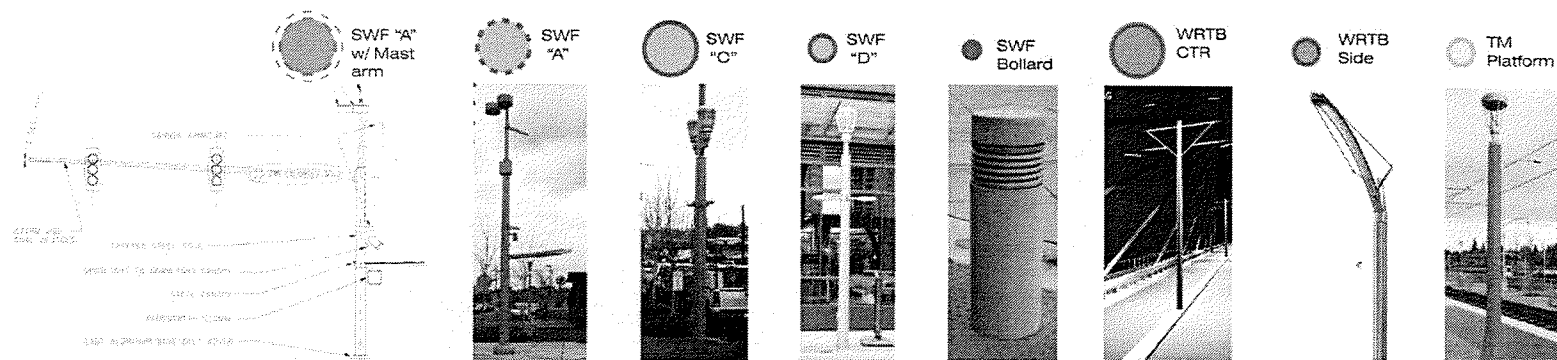
SUB-AREA 3 PLANTING

TREES: (1/1000sf)
Fraxinus latifolia Oregon ash

SHRUBS + GROUND COVER:
Acer circinatum Vine Maple
Cornus s. 'Kelsey' Kelsey Dogwood
Lupinus latifolia Bigleaf Lupine
Mahonia repens Creeping Oregon Grape
Polystichum munitum Western Sword Fern
Ribes sanguineum Flowering Currant
Symphoricarpos albus Common Snowberry

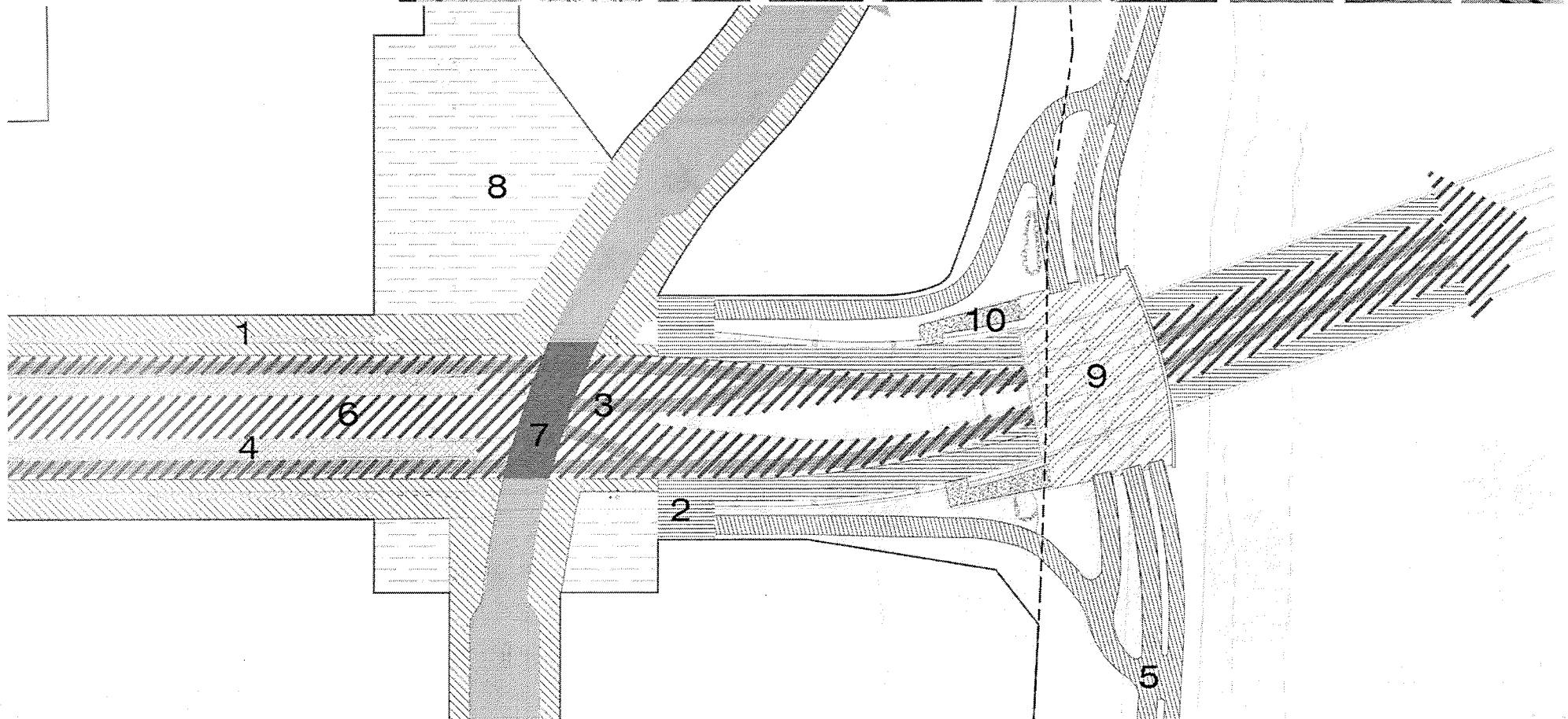
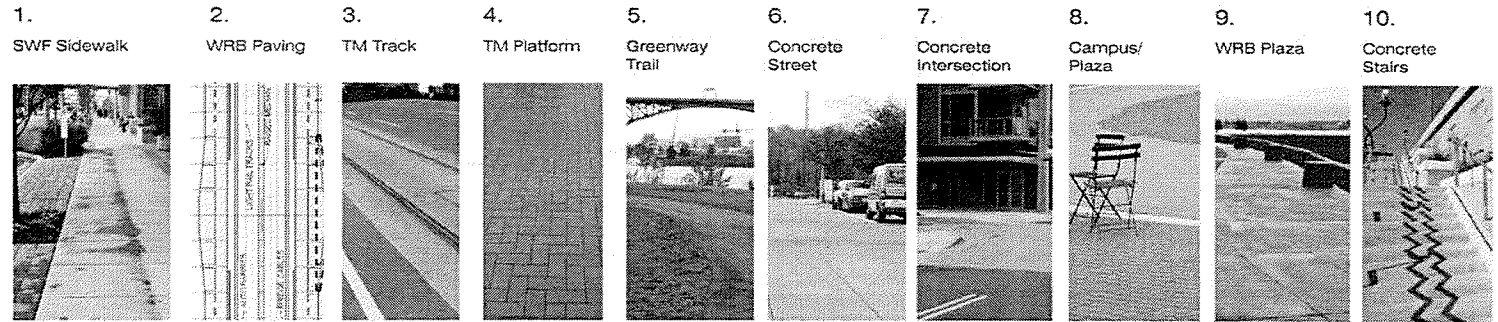


Landside: Lighting

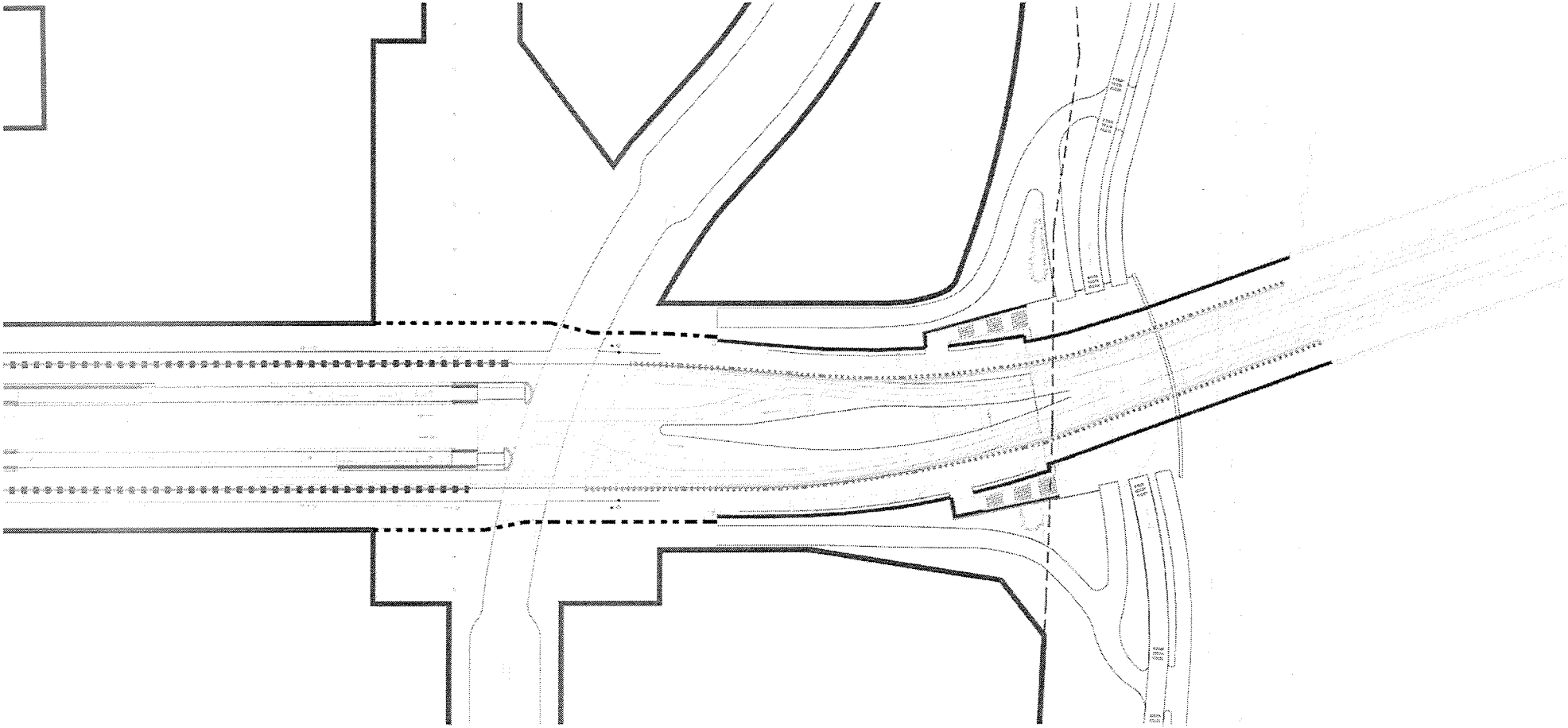
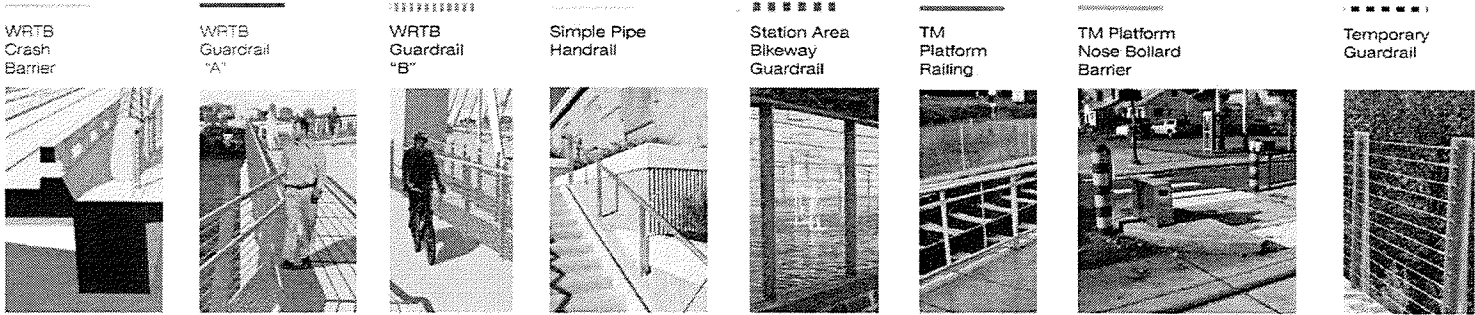


Landside: Paving

CONCRETE
ASPHALT
PAVERS



Landside: Railing



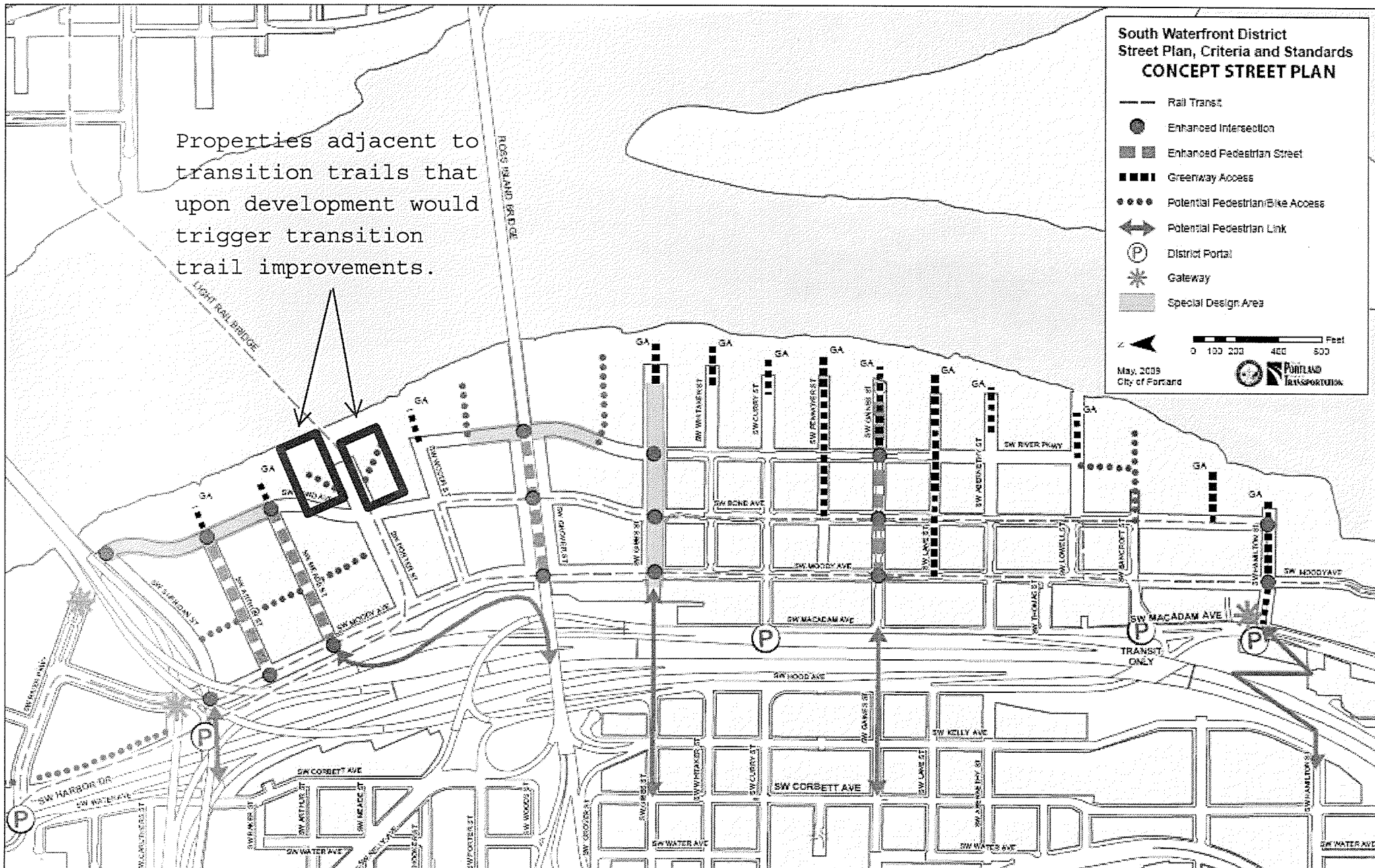
185220

Properties adjacent to transition trails that upon development would trigger transition trail improvements.

South Waterfront District Street Plan, Criteria and Standards CONCEPT STREET PLAN

- Rail Transit
- Enhanced Intersection
- Enhanced Pedestrian Street
- Greenway Access
- Potential Pedestrian/Bike Access
- ↔ Potential Pedestrian Link
- (P) District Portal
- * Gateway
- Special Design Area

0 100 200 400 500 Feet
May 2009
City of Portland
PORTLAND TRANSPORTATION



Portland - Milawaukie Light Rail

Greenway Trail Connections near the Willamette River Bridge - West Bank
Summary of Quantities within each area

185220

Summary by Area		ZRZ North of SW Porter		ZRZ South of SW Porter		OHSU		TriMet Fee Parcel		All Areas		Math Check
	Unit	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount	
Items from Prior Estimate updated from 2010 Design Review Design												
1 Benches	EA	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	\$0.00
2 Clearing & Grubbing	AC	0.04	\$349.50	0.19	\$1,517.93	0.28	\$2,276.99	0.21	\$1,708.39	0.72	\$5,852.81	\$0.00
3 Concrete Sidewalk	SY	9.33	\$623.01	48.33	\$3,228.28	37.22	\$2,484.61	6.67	\$445.00	101.56	\$6,778.89	\$0.00
4 6" Concrete Multi Use Path	SY	29.78	\$1,967.68	278.67	\$18,601.17	470.44	\$31,402.45	0.00	\$0.00	778.89	\$51,991.30	\$0.00
5 Conduit	LF	0.00	\$0.00	210.00	\$6,926.54	300.00	\$9,895.05	0.00	\$0.00	510.00	\$16,821.59	\$0.00
6 Earthwork Grading - Finish	SF	1868.00	\$5,265.52	8113.00	\$22,868.92	12170.00	\$34,304.80	9131.00	\$25,738.45	31282.00	\$88,177.70	\$0.00
7 Earthwork Grading - Rough	SF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	\$0.00
8 Earthwork Select Backfill	CY	169.00	\$11,052.50	3198.00	\$209,147.28	3743.00	\$244,789.95	533.33	\$34,879.68	7643.33	\$499,869.41	\$0.00
9 Erosion Control Silt Fence	LF	0.00	\$0.00	130.00	\$850.82	100.00	\$654.48	250.00	\$1,636.20	480.00	\$3,141.50	\$0.00
10 Landscape Irrigation	SF	1011.00	\$4,943.79	4120.00	\$20,146.80	7586.00	\$37,095.54	533.00	\$2,606.37	13250.00	\$64,792.50	\$0.00
11 Landscaping Planting Area	SF	1011.00	\$13,183.44	4120.00	\$53,724.80	7586.00	\$98,821.44	533.00	\$6,950.32	13250.00	\$172,780.00	\$0.00
12 Lighting Street light Hado	EA	0.00	\$0.00	0.00	\$0.00	2.00	\$17,056.00	0.00	\$0.00	2.00	\$17,056.00	\$0.00
13 Lighting Streetlight Pole Foundation (standard for single ornamental)	EA	0.00	\$0.00	0.00	\$0.00	2.00	\$4,920.00	0.00	\$0.00	2.00	\$4,920.00	\$0.00
14 Sign Striping Permanent Striping - Thermoplastic 4"	LF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	\$0.00
15 Stairs	VF	7.00	\$9,921.32	15.00	\$21,259.97	8.00	\$11,338.65	0.00	\$0.00	30.00	\$42,519.94	\$0.00
16 Wall Retaining Fill 0-5'	SF	19.00	\$1,575.65	190.00	\$15,756.51	93.00	\$7,712.40	16.00	\$1,326.86	318.00	\$26,371.42	\$0.00
17 Wall Retaining Fill 5-10'	SF	0.00	\$0.00	132.00	\$11,347.38	132.00	\$11,347.38	0.00	\$0.00	264.00	\$22,694.76	\$0.00
18 Wall Retaining Fill 10-15'	SF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	\$0.00
New Line Items from 2010 Design Review Design												
19 Remove and recycle temp metal enclosure	LS	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1.00	\$20,125.00	1.00	\$20,125.00	\$0.00
20 Earthwork/Grading-regrade gravel cap for paving	SF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1093.33	\$3,081.88	1093.33	\$3,081.88	\$0.00
21 Over excavation and haul	CY	56.33	\$1,561.00	1066.00	\$29,538.86	1247.67	\$34,572.84	177.78	\$4,926.22	2547.78	\$70,598.92	\$0.00
22 Lightweight fill (overex volume)	CY	56.33	\$5,968.52	1066.00	\$112,942.70	1247.67	\$132,190.28	177.78	\$18,835.56	2547.78	\$269,937.06	\$0.00
23 Lightweight fill (premium)	CY	111.54	\$4,477.99	2110.68	\$84,737.26	2470.38	\$99,178.10	352.00	\$14,131.71	5044.60	\$202,525.05	\$0.00
24 Storm sewer lift station/piping	EA	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	2.00	\$24,450.00	2.00	\$24,450.00	\$0.00
25 WRTB Paving	SY	0.00	\$0.00	85.56	\$5,852.77	93.33	\$6,384.84	15.56	\$1,064.14	194.44	\$13,301.75	\$0.00
26 WRTB Plaza Paving	SY	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1093.33	\$101,024.00	1093.33	\$101,024.00	\$0.00
27 Lighting SWF Bollard	EA	0.00	\$0.00	3.00	\$13,860.00	4.00	\$16,480.00	0.00	\$0.00	7.00	\$32,340.00	\$0.00
28 WRTB Guardrail "A"	LF	20.00	\$7,524.00	85.00	\$31,977.00	60.00	\$22,572.00	0.00	\$0.00	165.00	\$62,073.00	\$0.00
29 Standard Guardrail	LF	35.00	\$11,203.50	110.00	\$35,211.00	70.00	\$22,407.00	0.00	\$0.00	215.00	\$68,821.50	\$0.00
30 Water Quality drainage features	SF	249.00	\$739.53	159.00	\$472.23	5.00	\$14.85	0.00	\$0.00	413.00	\$1,226.61	\$0.00
31 Concrete Seat Wall	LF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	130.00	\$22,020.57	130.00	\$22,020.57	\$0.00
32 Weathering steel planter edge	LF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	60.00	\$19,126.80	60.00	\$19,126.80	\$0.00
33 Decorative Drain	LF	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	90.00	\$16,899.30	90.00	\$16,899.30	\$0.00
34 Trees	EA	0.00	\$0.00	3.00	\$1,732.50	3.00	\$1,732.50	0.00	\$0.00	6.00	\$3,465.00	\$0.00
35 Signage Allowance (Bikes Slow Signs)	EA	0.00	\$0.00	2.00	\$255.75	2.00	\$255.75	2.00	\$255.75	6.00	\$767.25	\$0.00
TriMet Total			\$80,377		\$701,954		\$851,988		\$321,232		\$1,955,552	\$0

Cost Allocation by Area		ZRZ		OHSU		TriMet		City		Total	
	Total Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount
ZRZ Property north of SW Porter	\$80,377	25.0%	\$20,094.23	0.0%	\$0	50.0%	\$40,188.47	25.0%	\$20,094.23	100.0%	\$80,376.94
ZRZ Property south of SW Porter	\$701,954	25.0%	\$175,488.62	0.0%	\$0	50.0%	\$350,977.23	25.0%	\$175,488.62	100.0%	\$701,954.47
OHSU Property north of SW Porter	\$851,988	0.0%	\$0.00	25.0%	\$212,997	50.0%	\$425,993.95	25.0%	\$212,996.97	100.0%	\$851,987.89
TriMet Fee Parcel	\$321,232	0.0%	\$0.00	0.0%	\$0	100.0%	\$321,232.22	0.0%	\$0.00	100.0%	\$321,232.22
Transition Trail Concept Design Consultant Fee	\$65,589	0.0%	\$0.00	0.0%	\$0	100.0%	\$65,589.00	0.0%	\$0.00	100.0%	\$65,589.00
Transition Trail Design Review Design Consultant Fee	\$64,200	0.0%	\$0.00	0.0%	\$0	100.0%	\$64,200.00	0.0%	\$0.00	100.0%	\$64,200.00
Art at Abutment No. 1	\$252,137	0.0%	\$0.00	0.0%	\$0	100.0%	\$252,137.00	0.0%	\$0.00	100.0%	\$252,137.00
Total Amount All Items	\$2,337,478		\$195,583		\$212,997		\$1,520,318		\$408,580		\$2,337,478
Percentage of Total for All Items			8%		9%		65%		17%		
Total Amount of the trail connections to greenway	\$1,634,319		\$195,583		\$212,997		\$817,160		\$408,580		\$1,634,319
Percentage of trail connections to greenway			12%		13%		50%		25%		

DRAFT — Footnotes

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Costs above are based on Tri-Met project unit costs for the purpose of determining the exact TriMet contribution dollar amount. The costs include TriMet's soft costs, including but not limited to contingencies, insurance, bonding, contractor overhead & profit, design services, and TriMet staff project management and construction management expenses. The costs are different than City of Portland project costs and private developer costs. Final actual costs will depend on which entity builds the bridge-to-trail connections to City standards and requirements.

2 Inflation costs are not included. TriMet's 2011 contribution will be placed in an interest-bearing or invested account to compensate for inflation.

3 Costs of landscaping, of any site improvements that may become an extension of the trail connectors, and costs of retaining walls for any proposed structures beyond the trail connectors approved Design Review plans are not included and will be borne solely by the private property owners.

EXHIBIT E - FEDERAL REQUIREMENTS (10/10)**1. No Government Obligation To Third Parties**

TriMet and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statement and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C 3801 et seq. And U.S. DOT regulations, "Program Fraud civil Remedies, " 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Audit and Inspection of Records

A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment

under this contract.

B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4. Federal Changes (10/10)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (*Form FTA MA(17) dated October 1, 2010*) between TriMet and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal

policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of Federal Transit Administration Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TriMet requests which would cause TriMet to be in violation of the FTA terms and conditions.

7. Disadvantaged Business Enterprise

A. Policy. TriMet has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TriMet has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TriMet has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of TriMet to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

B. Contractor and Subcontractor Obligation. Contractor and/or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry

out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

8. Debarment and Suspension (10/04)

The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Lobbying

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- (1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or

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regulation, and any other requirements in the actual award documents.

- (d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or

regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer

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agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

10. Clean Air

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. 7401 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirement in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Clean Water Requirements

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

12. Environmental Violations

For all contracts and subcontracts in excess of \$100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

13. Energy Conservation

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

14. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. Cargo Preference

Contractor agrees:

- A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration,

Washington, DC 20590, and to TriMet (through the contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.

- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. Fly America

If this contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in subcontracts at every tier. The Contractor shall submit, if a foreign carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event provide a certificate of compliance with Fly America Requirements. 41 CFR Part 301-10.

17. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

18. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

19. Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section

1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officers shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to

paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding – TriMet shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, TriMet may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to TriMet for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

20. Contract Work Hours and Safety Standards Act

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the

Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

21. Buy America (03/06)

If this contract is for Construction and/or the Acquisition of Goods or Rolling Stock (valued at more than \$100,000), the Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661 as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. and include, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

END OF EXHIBIT -A – FEDERAL REQUIREMENTS