

**AGREEMENT BETWEEN THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON AND THE CLARK COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA FOR OPERATIONS AND MAINTENANCE OF
THE COLUMBIA RIVER CROSSING LIGHT RAIL PROJECT**

This Agreement is entered into between the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) and the Clark County Public Transportation Benefit Area (“C-TRAN”), and will become effective on the date of the last signature hereto.

RECITALS

- A The Columbia River Crossing Project (“Project”) is a multi-modal transportation project that will construct a new bridge over the Columbia River between Oregon and Washington and will include new automobile, transit, bicycle, and pedestrian facilities.
- B TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system, including the extension commonly known as the Yellow Line, which terminates at the Expo Center in North Portland.
- C C-TRAN owns and operates the public mass transit system serving Clark County, Washington. C-TRAN would own and operate the proposed light rail system in Clark County, Washington.
- D The Regional Transportation Plan for the Portland metropolitan region was approved by Metro (the Portland area metropolitan service district) and the Metropolitan Transportation Plan for Clark County was approved by the Southwest Washington Regional Transportation Council (“RTC”).
- E Metro adopted the Locally Preferred Alternative (“LPA”) for the Project in July 2008 and the Land Use Final Order (“LUFO”) for the Project in August 2011. RTC and C-TRAN adopted the LPA for the Project in July 2008.
- F In December 2009, the FTA authorized the Project’s entry into the Preliminary Engineering (“PE”) stage of project development. In April of 2013 the FTA authorized the Project’s entry into the Engineering stage of project development.
- G In December 2011, the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”) issued a Record of Decision (“ROD”) for the Project, in compliance with FTA, FHWA and National Environmental Protection Act (“NEPA”) requirements.
- H The Parties desire to enter into this Agreement (the “Agreement”) to set out the rights and obligations of the Parties on the matters set out herein, including funding the operations and maintenance of the portion of the light rail transit between the Expo Center and the Clark Park and Ride in Vancouver.

Therefore, in consideration of the mutual promises and covenants contained herein and by the incorporation of the Recitals above, the Parties hereto agree as follows:

ARTICLE I - GENERAL MATTERS

- 1.1 Scope.** This Agreement sets forth the rights and obligations of C-TRAN and TriMet with respect to developing, procuring, operating, maintaining, repairing, and rehabilitating the CRC Light Rail extension.
- 1.2 Operations Term.** This Agreement is binding on the Parties as of the date on which it is executed by C-TRAN and TriMet (“Effective Date”). This Agreement shall remain in full force and effect from the Effective Date until terminated under its terms (“Operations Term”).
- 1.3 Conditions Precedent.** The obligations set forth herein represent an absolute and irrevocable commitment, subject to 3.4.1 below, from each Party to the other as of the Effective Date; provided however certain obligations of TriMet or C-TRAN to perform under this Agreement are subject to the conditions precedent set forth in this Section 1.3. The following conditions precedent shall be satisfied to the mutual satisfaction of C-TRAN and TriMet, unless a condition is expressly waived in writing by C-TRAN and TriMet.
- (a) With respect to C-TRAN’s obligation to perform right-of-way acquisition services under Section 1.10, the Oregon legislature shall have approved a bill authorizing ODOT’s contribution to the CRC Project capital funding plan.
 - (b) With respect to TriMet’s and C-TRAN’s obligation to perform and fund the operations and maintenance activities set forth in Section 2.4 through 2.10, inclusive, and provide fare inspection and enforcement under Section 1.7.3 TriMet shall have substantially completed the construction of the CRC LRT extension so that it can be used for the purpose for which it was intended.; provided however, that C-TRAN shall participate in pre-revenue service start-up activities in accordance with TriMet’s start-up plan that occur prior to substantial completion of the CRC LRT extension.
 - (c) With respect to TriMet’s obligation to design and construct the CRC LRT under Section 1.10, FTA shall have executed a Full Funding Grant Agreement (“FFGA”) for the CRC LRT extension.
- 1.4 Defined Terms.** Capitalized words, which are not the first word of a sentence, are defined terms. Some defined terms are defined in the attached Exhibit A to this Agreement and others are defined in the text of this Agreement and indexed in Exhibit A.
- 1.5 Standard for Consent or Approval.** Wherever this Agreement provides that a Party’s consent, approval, or concurrence is required, or where a document or action must be acceptable to a Party, or words of similar import, the standard against which the Party exercises its judgment shall be “reasonable” unless this Agreement specifies a different standard (i.e., sole discretion) and in that circumstance the specified standard shall control. The criteria described for cooperation in Section 1.6 shall be considered when determining if an action or inaction by a Party is ‘reasonable.’ “Consent,” “approval,”

“acceptance” or “concurrence” of C-TRAN or TriMet required or allowed by this Agreement may be given by the respective Board of Directors or General Manager (or his/her designee) as determined to be appropriate by each Party.

1.6 Cooperation. Each Party shall use its best efforts to ensure that the CRC LRT extension is developed and operated in accordance with the terms, budget, and schedule set forth in the Full Funding Grant Agreement for the CRC LRT Project, and is operated, maintained, repaired, refurbished, and replaced as necessary to keep all CRC LRT components in first-class condition and functioning in an efficient manner. Each Party shall take all reasonable actions necessary or advantageous to successfully and cost-effectively implement its obligations under this Agreement. The activities, schedule, and budgets prepared or undertaken under this Agreement shall reflect the then prevailing standards for similar light rail facilities in the United States, any additional requirements in the Full Funding Grant Agreement or bond covenants issued by TriMet or Oregon in connection with the CRC Project, TriMet’s practices and procedures with respect to its light rail system, and any additional factors agreed upon in writing by C-TRAN and TriMet.

1.7 Engagement of TriMet

1.7.1. Subject to the terms and conditions in this Agreement and the applicable laws of Washington and Oregon, TriMet shall have the irrevocable right to develop, operate, and maintain the CRC LRT in the C-TRAN district. TriMet and C-TRAN shall have the irrevocable right to seek reimbursement from C-TRAN and TriMet, respectively, for those expenses and those revenues it is entitled to receive under this Agreement.

1.7.2. Pursuant to Ch. 39.34 RCW TriMet is hereby granted the full authority to construct, acquire, maintain, operate, extend, alter, repair, control, and manage the CRC LRT within the C-TRAN district, and to enter into agreements with third parties to perform such functions as TriMet may determine are necessary or advantageous to perform its responsibilities or fulfill its obligations under this Agreement and the FFGA.

1.7.3. C-TRAN hereby engages TriMet to perform fare inspection, on-board security, and to issue C-TRAN citations for non-payment of fares in the C-TRAN district on behalf of C-TRAN, as described in Section 2.9.5. With respect to citations issued by TriMet on behalf of C-TRAN, C-TRAN agrees to take all commercially reasonable actions to collect unpaid fares, including any additional fees and penalties, and to diligently prosecute any person issued a lawful citation. TriMet agrees that it will cooperate in all necessary ways to support such enforcement and prosecution actions.

1.8 General Authority. C-TRAN and TriMet shall each employ and contract for the services of such governmental entities, persons, or firms as may be necessary or advantageous to discharge their respective duties under this Agreement.

- 1.8.1. In no event shall C-TRAN have any liability or obligation with respect to any employees employed by or Retained Parties engaged by TriMet, unless C-TRAN otherwise elects in writing, and all bids or contracts shall so provide. In no event shall TriMet have any liability or obligation with respect to any employees employed by or Retained Parties engaged by C-TRAN, unless TriMet otherwise elects in writing, and all bids or contracts shall so provide.
- 1.8.2. Unless otherwise expressly agreed to by C-TRAN and TriMet, each Party may select Retained Parties and enter Retained Party Contracts without the prior approval of the other Party; provided such selections and contracts comply with all applicable terms and conditions herein.
- 1.8.3. All Retained Party Contracts shall:
 - (a) Comply with all applicable requirements under this Agreement, and all FTA requirements;
 - (b) Be in the name of Contracting Party, unless the other Party elects in writing to also enter into the agreement in the name of the other Party; and
 - (c) Expressly provide that the other, non-contracting, Party shall have no liability with respect to any service performed or any materials furnished.

1.9 Further Agreements.

- 1.9.1. In addition to this Agreement, the Parties also agree to prepare, negotiate in good faith, and execute other agreements which may be required or advantageous to construction, operation, or maintenance of the CRC LRT, including without limitation the following:
 - (a) Project development and construction agreements describing the roles, responsibilities, and budgets of C-TRAN and TriMet for preliminary engineering, final design, and construction. These agreements will be consistent with the Project Management Plan.
 - (b) Transfer agreement describing the assignment of ownership of light rail assets and other on-going obligations of C-TRAN and TriMet, including obligations imposed by the FFGA.
- 1.9.2. C-TRAN agrees to prepare, negotiate in good faith, and execute agreements with other parties that may be required or advantageous to construction, operation, or maintenance of the CRC LRT, including without limitation the following:
 - (a) Project development and operations agreement with City of Vancouver describing the rights and obligations of C-TRAN and the City of Vancouver regarding the design, construction, operations, and maintenance of CRC LRT.
 - (b) Continuing control agreements with City of Vancouver and State of Washington, as may be required by FTA.

- (c) Facility maintenance agreements with City of Vancouver and State of Washington to clarify maintenance responsibilities related to CRC LRT elements as may be required by law.

1.10 Project Development, Right of Way Acquisition

1.10.1 TriMet shall be the lead agency with regard to developing, operating, and maintaining the CRC LRT and, subject to the terms of this Agreement, shall have full authority to undertake or cause to be undertaken all actions necessary or advantageous to perform these functions.

1.10.2 The Parties acknowledge that property interests will need to be acquired in order to construct the CRC LRT project. Except as set forth in Section 1.10.3, TriMet shall be responsible for acquiring or causing to be acquired all property for the CRC LRT. TriMet's obligations may include, but not be limited to, making an offer to the property owner, relocating the owner or tenant as required, and purchasing the property through negotiation.

1.10.3 In the event that TriMet is unable through negotiation to acquire property interests located in the State of Washington required for the CRC LRT project and determines that condemnation of such property interests is required, C-TRAN shall use its eminent domain powers to acquire the required property interests. In such event, TriMet shall provide written notice to C-TRAN and C-TRAN shall, within thirty (30) days of receipt of such notice from TriMet (or, if 30 days is not sufficient to do so, expeditiously but within not more than 60 days), undertake all actions required by Washington state law to initiate a condemnation proceeding in a court of competent jurisdiction, and thereafter diligently request possession and use of the property interests and promptly provide to TriMet use of such property interests for construction. Thereafter, C-TRAN shall, upon request from TriMet, transfer ownership of such property interests to TriMet. C-TRAN shall employ its best efforts to fulfill its obligations under this Section 1.10.3 in accordance with the CRC LRT project schedule maintained by TriMet, as it may be amended from time to time. TriMet shall pay all reasonable C-TRAN costs associated with acquiring property through the condemnation process, including attorney fees.

ARTICLE II PROJECT CONSTRUCTION AND OPERATION

2.1 Service and O&M Policies

2.1.1 Setting CRC LRT Service and O&M Policies. C-TRAN and TriMet will cooperatively set Service Policies and O&M Policies for the CRC LRT as follows:

- (a) CRC LRT Service Policies will be set through coordinated annual/bi-annual budget approvals of C-TRAN and TriMet, as described in Section 2.5.

- (b) C-TRAN and TriMet shall agree on a Five-Year CRC LRT Plan, as described in Subsection 2.2; the Service Policies in the Five-Year Plan shall be a basis for setting service levels and O&M budgets in the annual/bi-annual budgets of each district approved by its respective Board of Directors.
- (c) O&M Policies for District O&M Functions shall be set by the responsible transit district; except that if the Five-Year Plan sets minimum criteria for any District O&M Function, each transit district shall comply with such criteria.
- (d) O&M Policies for Mutual O&M Functions shall be set by the transit district responsible for providing such function, except that if the Five-Year Plan sets minimum criteria for any Mutual O&M Function, the responsible transit district shall comply with such criteria. For example, because TriMet will operate trains and maintain vehicles on behalf of both transit districts, TriMet's policies regarding its operators and vehicle maintenance programs will apply to the CRC LRT.

2.2 Instituting and Administering the Five-Year Plan for the CRC LRT.

2.2.1 The Five-Year Plan for the CRC LRT shall be prepared and administered as follows:

- (a) No later than two years before the fiscal year in which CRC LRT operations are scheduled to start, TriMet shall prepare a review draft of the initial Five-Year CRC LRT Plan describing the anticipated service hours, headways, hours of operation, vehicle miles and hours of operation, and other pertinent information for CRC LRT O&M Service Policies, Mutual O&M Costs, and District O&M Costs for each district on both a TriMet and C-TRAN fiscal year basis. The TriMet and C-TRAN shares of Mutual O&M Costs shall be calculated as set forth in Section 2.9 and Section 2.10.
- (b) The Service Policies in the initial Five-Year CRC LRT Plan shall be consistent with the service levels provided to FTA in support of securing the FFGA, as those service levels may be adjusted subject to FTA approval, if required under the FFGA, and by mutual agreement of C-TRAN and TriMet.
- (c) C-TRAN and TriMet shall work cooperatively to resolve issues and reach agreement on the initial Five-Year Plan.
- (d) To be effective, the Five-Year Plan must be approved by C-TRAN and TriMet. C-TRAN and TriMet shall each determine for itself the appropriate process for granting its approval to the Five-Year Plan.

2.2.2 The Five-Year Plan shall be updated by C-TRAN and TriMet on a five-year cycle; provided that C-TRAN and TriMet may agree to revisions to the Five Year

Plan at any time. Any amendment of the Five-Year Plan shall require approval by C-TRAN and TriMet to be effective.

2.2.3 Notwithstanding anything to the contrary in Section 2.1 or 2.2, if at any time prior to the Post Increase Year it is forecasted that the amount owed by TriMet for Mutual O&M Costs would include an amount to fund the difference between (i) the amount C-TRAN would owe for Mutual O&M Costs under Section 2.9 (assuming the Pre-Increase C-TRAN Funding Share limits in Exhibit B were not applicable) minus (ii) the amount C-TRAN owes for Mutual O&M Costs with the Pre-Increase C-TRAN Funding Share limits under Section 2.10 and Exhibit B being applicable (the "Flex Share"), TriMet shall have the right, upon thirty (30) days written notice to C-TRAN, to direct that Service Levels in the Five-Year Plan, as it may be amended from time to time, be reduced so as to lower or eliminate such Flex Share; TriMet may not unilaterally direct service reductions in excess of that which is required to eliminate its Flex Share.

2.3 Integration of Bus Service and Park-and-Ride Facilities with LRT Service. Unless otherwise agreed by mutual consent and, when required, by FTA, each transit district will:

2.3.1 Take into account the feeder bus needs of the CRC LRT, including without limitation the levels of bus service underlying the New Starts submissions to FTA, in setting and implementing bus Service Policies within its district.

2.3.2 Set its own fares for bus service.

2.3.3 Provide for inter-system transfers.

2.3.4 Not charge riders for using CRC LRT park-and-ride spaces, except as provided in Section 2.10.2.

2.4 Sale and Collection of Fares and Allocation of Farebox Revenues

2.4.1 No later than two years before the fiscal year in which CRC LRT operations are scheduled to start, C-TRAN and TriMet shall set by mutual agreement transit fares for individual trips and discounted passes that will apply to trips on the CRC LRT; such agreement may allow for each district to maintain its regular fare structure for trips on CRC LRT or may establish a special fare structure for use by both districts for bi-state trips on CRC LRT. C-TRAN and TriMet will work cooperatively to structure fares in a way that minimizes or eliminates any potential tax obligations for either Party.

2.4.2 C-TRAN and TriMet shall (i) each sell fare instruments for interstate trips, and (ii) provide an accounting of the Farebox Revenues it collects from CRC LRT riders; such accounting shall be in a form acceptable to both Parties and in accordance with Section 2.4.3.

2.4.3 Calculation of Farebox (Passenger) Revenues for Purpose of this Agreement

- (a) The Farebox (passenger) Revenues of C-TRAN and TriMet attributable to the CRC LRT extension under this Agreement shall be calculated throughout the Operations Term as set forth in this Section 2.4.3.
- (b) The calculation of Farebox Revenue shall be based on trips from the Automatic Passenger Counter data and E-fare system data, if available, from the CRC LRT extension North of Expo Station to the end of the CRC LRT line.
- (c) For each trip on the CRC LRT extension, the fare attributed to such trip shall be the Effective Fare for the trip as described in Sections 2.4.3(d) through 2.4.3(g), below.
- (d) With regard to CRC LRT, riders that use a TriMet fare instrument to pay for the trip, the following shall be the Effective Fare for such trip:
 - If the CRC LRT rider uses a TriMet monthly pass, the Effective Fare shall be the cost of the TriMet monthly pass divided by 44;
 - If the CRC LRT rider uses a TriMet 7-Day Pass, the Effective Fare shall be the cost of the TriMet 7-Day pass divided by 14;
 - If the CRC LRT rider uses a TriMet 14-Day Pass, the Effective Fare shall be the cost of the TriMet 14-Day pass divided by 28;
 - If the CRC LRT rider uses a TriMet 1-Day Pass, the Effective Fare shall be the cost of the TriMet 1-Day pass divided by 2;
 - If the CRC LRT rider uses a TriMet Single Ride Ticket, the Effective Fare shall be the cost of the Single Ride Ticket; and
 - If the CRC LRT rider is exempt from paying a fare (such as young children or C-TRAN or TriMet employees or former employees that are entitled to ride on their respective transit systems at no charge), the Effective Fare shall be zero.
- (e) With regard to CRC LRT, riders that use a C-TRAN fare instrument to pay for the trip, the following shall be the Effective Fare for such trip:
 - If the CRC LRT rider uses a C-TRAN Monthly all-zone Pass, the Effective Fare shall be the cost of the C-TRAN all-zone monthly pass divided by 44;
 - If the CRC LRT rider uses a C-TRAN all-zone day Pass, the Effective Fare shall be the cost of the C-TRAN all-zone day pass divided by 2;
 - If the CRC LRT rider uses a C-TRAN all-zone single-trip fare instrument, the Effective Fare shall be the cost of such C-TRAN single-trip fare instrument; and

- If the CRC LRT rider is exempt from paying a fare (such as young children or C-TRAN or TriMet employees or former employees that are entitled to ride on their respective transit systems at no charge), the Effective Fare shall be zero.
- (f) The Effective Fares described in Sections 2.4.3(d) and 2.4.3(e) shall take into account any discounts that are applicable for the trip maker or the trip, such as Honored Citizen, Youth, Students, Employer-based Discount Programs, Reduced (i.e.; Low-Income), and Medicare discounted rates.
- (g) The Parties acknowledge and agree that each Party may, from time to time during the Operations Term, offer different fare instruments from those described in Sections 2.4.3(d) and 2.4.3(e). In such case the Parties shall establish an Effective Fare for the new fare instrument that is consistent with the basic relationships exhibited by the Effective Fares shown in Sections 2.4.3(d) and 2.4.3(e). The Parties shall agree in writing on the Effective Fare of such new fare instruments prior to their use for travel on the CRC LRT.
- (h) Each Party shall calculate its total Farebox Revenues attributable to the CRC LRT for a given period of time, for each type of fare instrument in use, multiplying the number of riders on CRC LRT using (or estimated to be using) the specific fare instrument by the Effective Fare for the instrument, and then summing the amounts so calculated for all its fare instruments.
- (i) The Parties acknowledge and agree that they intend in the future to enter an agreement regarding the coordinated implementation of electronic fares and the sharing of Farebox Revenues for trips using both systems. If at that time the Parties agree to address Farebox Revenue sharing for the CRC LRT differently than described in this Section, the Parties shall so stipulate in such future agreement and the terms of such future agreement shall supersede the provisions set forth in this Section.
- 2.4.4 Each year throughout the Operations Term, all Farebox Revenues, whether collected by C-TRAN or TriMet, shall be used to pay Mutual O&M Costs; provided however, that if annual Farebox Revenue collections exceed the amount of Mutual O&M Costs in such year the residual amount of Farebox Revenue remaining after payment of Mutual O&M Costs shall be equally divided between C-TRAN and TriMet.
- 2.4.5 Each year on or before February 15th, May 15th, August 15th, and November 15th, C-TRAN shall pay to TriMet one-quarter (25%) of the amount it budgeted for anticipated Farebox Revenues for the year as preliminary payment to TriMet, for TriMet's use to pay Mutual O&M Costs. These preliminary estimated payments of Farebox Revenues shall be reconciled as described in Sections 2.4.6 and 2.4.7.

Late payments shall be subject to an interest rate of 9 percent per annum, charged from the date on which the payment is due through the date on which payment in full is made.

2.4.6 Each year C-TRAN and TriMet shall reconcile the amount of Farebox Revenues each transit district budgeted (and, in the case of C-TRAN the amount transferred in estimated quarterly payments to TriMet), with the actual amounts of Farebox Revenues collected by each transit district during the subject time period. Within thirty (30) days from the end of its fiscal year or at such other times as mutually agreed to by the Parties, each Party shall prepare and transmit to the other Party a final accounting of the amount of Farebox Revenue it collected, as determined under this Section 2.4, and the amount of Farebox Revenues it owes to the other Party or the amount it is owed from the other Party for the subject time period.

2.4.7 If the accounting prepared by C-TRAN subject to Section 2.4.6 determines that the cumulative sum of quarterly payments of estimated Farebox Revenues it paid to TriMet during the subject time period is less than the amount of actual Farebox Revenues it collected pursuant to this Section 2.4, C-TRAN shall owe TriMet the difference. If the accounting determines that the cumulative sum of quarterly payments of estimated Farebox Revenues it paid to TriMet during the subject time period is greater than the amount of actual Farebox Revenues it collected pursuant to this Section 2.4, TriMet shall owe C-TRAN the difference.

2.4.8 Each Party shall have fifteen (15) days from the later of the date described in Section 2.4.6 or the date on which the Party receives from the other Party the accounting of Farebox Revenues described in Section 2.4.6 to either agree in writing with such accounting or to dispute such accounting. If the Parties agree on the accounting, the Party owing monies to the other Party shall make such payment in full within thirty (30) days from the date on which notice of agreement with such amount is given.

2.4.9 If a dispute arises between C-TRAN and TriMet regarding any of the amounts calculated under this Section 2.4, the disputing party shall promptly notify the other party. The notice shall explain the details of the dispute, including any data supporting its position. Within fifteen (15) calendar days of such notification, the Parties shall meet and negotiate in good faith to resolve the dispute. If the dispute is not resolved within fifteen (15) days from the date on which such negotiations begin, either Party may initiate formal Dispute Resolution as set forth in Section 3.21.

2.5 CRC LRT Service Level and O&M Budget Approvals

2.5.1 Each year C-TRAN and TriMet shall agree on the CRC LRT Service Levels and, to the extent set forth in the Five Year Plan, the feeder bus service levels. The agreed upon Service Levels shall be consistent with any applicable requirements

set forth in the FFGA for CRC LRT and, except as described in Section 2.5.1.1, the Five Year Plan.

2.5.1.1 For the purpose of establishing annual or bi-annual CRC LRT O&M budgets for C-TRAN and TriMet, if at any time it is anticipated that at initially planned Service Levels TriMet would be required to make Flex Share payments in the upcoming year, TriMet shall have the right to direct that Service Levels planned for such year be set at such levels as to eliminate or lower the estimated Flex Share that TriMet would have to fund in such year.

2.5.2 The Board of Directors for each transit district shall approve for each budget cycle the (a) CRC LRT service levels, (b) budget for District O&M costs for which it is responsible, and (c) budget for the Mutual O&M costs. Approval by both Boards of Directors is required for approval of the budget for Mutual O&M costs.

(a) The Parties acknowledge that (a) the fiscal years of C-TRAN (January 1 – December 30) and TriMet (July 1 – June 30) differ, (b) the budget cycles of C-TRAN (primarily bi-annual) and TriMet (primarily annual) differ, and (c) the final transit operations agreement will further detail the timing coordination of the budget approvals described in this Section 2.5.

2.5.3 Each budget cycle, starting two years prior to the scheduled start of operations of the CRC LRT, the staffs of C-TRAN and TriMet shall prepare a comprehensive budget for CRC LRT and agency budgets, consistent with the comprehensive budget, for adoption by the applicable transit district. The budgets shall be prepared in a coordinated manner as follows:

(a) C-TRAN and TriMet shall seek to reach agreement on the estimated ridership, service hours, rail miles, and other data to be used in determining service levels and O&M costs; the Parties agree to use the best and most recent available data.

(b) Each transit district shall prepare a preliminary budget for the District O&M Costs for which it is responsible; such preliminary budgets shall be based on the data described in Section 2.5.3(a) and consistent with any applicable policies or criteria in the then-current Five-Year Plan.

(c) TriMet shall prepare a preliminary budget of Mutual O&M Costs for which it is responsible; such preliminary budget shall be based on the data described in Section 2.5.3(a) and consistent with any applicable policies or criteria in the then-current Five-Year Plan.

(d) C-TRAN and TriMet shall (a) work cooperatively to ensure that the budgets are consistent with each other, (b) make adjustments to service

levels and budgets required to match anticipated costs with revenues, and (c) use best efforts to reach agreement on coordinated budgets to be recommended to their respective Boards of Directors.

- (f) Within 45 days of receipt of the budget recommendation, each transit district shall notify the other transit district of either (i) the Board's intent to incorporate the recommended CRC LRT budget in the agency's budget or (ii) the Board's intent to reject the budget recommendation. Any notice of intent to reject the budget recommendation shall provide a detailed description of the reasons for the Board's rejection and any proposed revisions it would find acceptable. The Parties shall proceed as follows:
 - (i) If the transit districts each notify the other of their Board's intent to approve the recommended CRC LRT budget, then each Board shall incorporate its portion of the recommended budget in its agency's budget and follow its regular budget process to finalize its approval.
 - (ii) If one or both transit districts notify the other transit district of its Board's intent to reject the budget recommendation, the Parties shall meet within seven calendar days from the day on which the earliest notification was provided and negotiate in good faith to resolve the issues.
- (g) If agreement cannot be reached on a recommended budget within 15 calendar days from the start of the negotiations under Subsection 2.5.3(f)(ii), the C-TRAN and TriMet budgets for CRC LRT O&M Costs and revenues shall be set at the amounts in their respective most recently adopted budget multiplied by 1.04. Budgeted Service Levels shall be adjusted to fit within such budgeted amounts.

2.6 Payment of O&M Costs

- 2.6.1 The costs of the District O&M Functions shall be paid when due by the responsible transit district in accordance with its regular procedures and protocols.
- 2.6.2 TriMet shall pay when due, in accordance with its regular procedures and protocols, the costs of the Mutual O&M Functions for which it is responsible.
- 2.6.3 Each year on or before February 15th, May 15th, August 15th, and November 15th, C-TRAN shall pay to TriMet one-quarter (25%) of the amount it budgeted as its share of Mutual O&M Costs for the year as a preliminary estimated payment of its share of Mutual O&M Costs for the fiscal year quarter within which payment is made. These preliminary estimated payments shall be reconciled as described in Section 2.7. Late payments will be subject to interest at the rate of 9 percent per annum.

2.7 Reconciliation of Estimated CRC LRT O&M Payments with Audited Results

2.7.1 Each year C-TRAN and TriMet shall reconcile the amounts each transit district: paid for Mutual O&M Costs with the actual amounts owed by each transit district, taking into account the estimated quarterly payments made in Section 2.6.3, the federal formula grants for the CRC LRT discussed in Section 2.12.1, and the reconciled Farebox Revenues under Section 2.4..

- (a) Within ninety (90) days from the end of its fiscal year, TriMet shall prepare and transmit to C-TRAN a final report on its past fiscal year expenditures for Mutual O&M Functions.
- (b) The report shall contain an accounting of the apportionment of these expenditures between TriMet and C-TRAN in accordance with Section 2.9, and a reconciliation of accounts between C-TRAN and TriMet in accordance with Subsection 2.7.2.

2.7.2. The reconciliation process shall proceed as follows:

- (a) The Preliminary Amount of Mutual O&M Costs Paid by C-TRAN during a subject year shall be calculated by summing the preliminary estimated quarterly payments made to TriMet by C-TRAN during the year.
- (b) The Final Amount of Annual Operating Subsidy owed by C-TRAN in a subject year shall be the amount calculated as the product of: the Mutual O&M Cost Factor multiplied by the difference between (i) the total amount of actual Mutual O&M costs paid in the year by TriMet and C-TRAN, (ii) minus the sum of the actual amount of State of Good Repair Grant Funds used to fund CRC LRT O&M Costs pursuant to Section 2.12.1 and the reconciled amount of Farebox Revenues used for Mutual O&M Costs pursuant to Section 2.4.
- (c) The Reconciliation Amount in a subject year shall be the amount calculated as the difference between (i) the Final Amount of Annual Operating Subsidy owed by C-TRAN for the subject year minus (ii) the Preliminary Amount of Mutual O&M Costs Paid by C-TRAN in the subject year. If the Reconciliation Amount is a positive value, that amount shall be paid by C-TRAN to TriMet. If the Reconciliation Amount is a negative value, that amount shall be paid by TriMet to C-TRAN.

2.7.3 If a dispute arises between C-TRAN and TriMet regarding any of the amounts calculated under Subsection 2.7.2, the disputing party shall promptly notify the other party. The notice shall explain the details of the dispute, including any data supporting its position. Within fifteen (15) calendar days of such notification, the Parties shall meet and negotiate in good faith to resolve the dispute. If the dispute is not resolved within fifteen (15) days from the date on which such negotiations begin,

either Party may initiate the formal Dispute Resolution process as set forth in Section 3.21.

2.8 District O&M Functions and Costs

2.8.1 General

- (a) Each transit district shall be responsible for performing District O&M Functions within its district, except as otherwise provided in this Section 2.8.
- (b) All District O&M Functions shall be performed in accordance with the standard practices of the transit district performing the function and in accordance with any applicable policies in the Five-Year Plan or any other agreement between the Parties.
- (c) The costs of District O&M Functions shall be paid by the transit district within which such activities occur. Prior to the Post Increase Year, the costs of District O&M Functions in the C-TRAN District shall be paid as part of its maximum Pre Increase C-TRAN Funding Share shown in Exhibit B, except as set forth in Section 2.10.1. Beginning in the Post Increase Year and each year thereafter, the costs of the C-TRAN District O&M Functions shall be paid in accordance with Section 2.9, and the maximum limits in Exhibit B shall not apply.
- (d) Both Parties agree to perform District O&M Functions within the budget set forth in the Five Year Plan, and shall provide reports on budgetary status at intervals agreed upon by the Parties, but no less than quarterly. If it appears that either Party will be more than 5 percent over budget for its District O&M Costs, the Parties shall meet and determine a solution, which may include reductions in District O&M services. If a Party fails to advise of a District O&M budget overrun of more than 5 percent, that Party shall be responsible for paying the difference between the District O&M budget and the District O&M costs actually incurred. Disputes under this Section shall be settled in accordance with the Dispute Resolution provision in Section 3.21.
- (e) District O&M Functions and Costs exclude any Mutual O&M Functions and costs described in Section 2.9 that may otherwise be considered a component of a responsibility described in this Section 2.8.

2.8.2 Routine (Non-Specialized) Maintenance-of-Way Excluding the Main River Crossing

- (a) This Section 2.8.2 addresses routine maintenance-of-way and specifically excludes any specialized maintenance activities that may otherwise be considered maintenance-of-way, such as catenary wire repair; all LRT Capital Maintenance, such as rail grinding; and all maintenance-of-way on the main river crossing. Specialized maintenance-of-way activities and maintenance-of-

way activities on the main bridge crossing are Mutual O&M activities and are addressed in Section 2.9. Capital Maintenance and Replacement are capital costs that are addressed in Section 2.9.7.

- (b) Each transit district shall undertake or cause to be undertaken all actions required for routine maintenance-of-way within its district. Routine maintenance-of-way includes such activities as cleaning, replacing lighting bulbs, landscaping, repairing right-of-way barriers, and any street maintenance for which a transit district's light rail operations is responsible, including any general maintenance obligations resulting from continuing control or other agreements with local jurisdictions within its district.
- (c) Each transit district is individually responsible for paying the cost of routine maintenance-of-way activities described in this Subsection 2.8.2 within its district.

2.8.3 Operations and Maintenance of Light Rail Park-and-Rides

- (a) Each transit district shall undertake or cause to be undertaken all actions required to operate and maintain light rail park-and-ride facilities within its district, provided however, that Capital Maintenance and Replacement of light rail park-and-ride facilities shall be a Mutual O&M cost as addressed in Subsection 2.9.7.
 - (i) Light Rail park-and-ride facilities include all components of such facilities including without limitation the parking areas, structures, grounds, lighting, accessways, signs, elevators, amenities, systems, utility connections, and any commercial spaces within the facility.
 - (ii) Except for Capital Maintenance and Replacement, as provided in Section 2.9.7, the operations and maintenance of the park-and-ride facilities includes all aspects of operating and maintaining the facilities, including without limitation security, cleaning, landscaping, resurfacing of parking areas, repair and replacement of building elements and systems, facility marketing and public information, and payment of utilities and any applicable fees or taxes.
- (b) Except as otherwise permitted by this Agreement, or unless otherwise agreed by C-TRAN and TriMet, there shall be no charge for park-and-riders to park in a CRC LRT park-and-ride facility; provided that the transit district may require the park-and-rider to have a valid fare instrument.
- (c) To the extent permitted by FTA, if commercial space is included in a park-and-ride facility, the applicable transit district shall be responsible for all activities, permits, liabilities, and costs associated with leasing or using such space and may, to the extent permitted by FTA, retain any net revenues from

such leases or commercial uses. As set forth in Section 2.8.3(e), a transit district may contract with a city to perform these functions and pay such costs.

- (d) To the extent permitted by FTA, the applicable transit district may sell advertising space within station or park-and-ride facilities located within its district and retain all net revenues from any such advertising contracts. C-TRAN and TriMet shall determine a way to share the additional advertising revenues, if any, received by TriMet for selling advertising on or in light rail vehicles operating on the CRC LRT extension. C-TRAN and TriMet shall coordinate their advertising activities on the CRC LRT extension.
- (e) Each transit district may enter into an agreement with a city in its district wherein the city agrees to meet all or a portion of the obligations of the transit district under this section 2.8.3(e), provided that:
 - (i) If required by FTA, FTA approves the agreement between the city and transit district in advance of its execution; and
 - (ii) The assigning transit district remains liable for its obligations for the park-and-ride facilities under this Section 2.8.3 to the other transit district and FTA, unless the release of such obligations is expressly approved by the other transit district and, if required, FTA.

2.8.4 Operations and Maintenance of Light Rail Stations

- (a) Except as provided in Subsections 2.8.4(d), 2.9.3 and 2.9.4, each transit district shall undertake or cause to be undertaken all actions required to operate and maintain light rail stations within its district; provided however, that Capital Maintenance and Replacement of light rail stations shall be a Mutual O&M Cost as addressed in Subsection 2.9.7.
- (b) As used in this Agreement, light rail stations include all applicable access and transition areas (such as quick drop zones, plazas, stairwells, and elevators), platforms, amenities (such as ticket vending machines, reader board displays, CCTV systems, etc.) and furnishings (such as seating, public art, trash receptacles, signage, and landscaping), lighting, utilities and drainage, and shelters and coverings. The track and system components located within station areas are included in the general provisions for track and traction electrification systems set forth in Subsections 2.9.3 and 2.9.4, respectively, and are not light rail station functions or costs for purposes of this Agreement.
- (c) Except as otherwise provided in this Agreement, the operations and maintenance of the light rail stations includes all aspects of operating and maintaining the station, including without limitation cleaning, trash removal, general maintenance, removal of hazardous substances, managing stormwater

drainage from station areas, operating and maintaining any station impact mitigation measures, and payment of station utilities. Operations and maintenance of a light rail station does not include Capital Maintenance and Replacement of the station.

- (d) C-TRAN and TriMet shall work cooperatively to determine the functional and financial responsibilities for fare vending machines, reader boards, and security systems, and the coordination of such activities and financial responsibilities between CRC LRT and C-TRAN's planned BRT system.

2.8.5 Marketing, Public Information, and Community Outreach

- (a) Unless otherwise agreed by C-TRAN and TriMet as described in Subsection 2.8.5(c), each transit district shall undertake or cause to be undertaken all actions to market, provide public information, and respond to media or public inquiries that relate to the CRC LRT extension within its district.
- (b) Except as provided in Subsection 2.8.5(c), each transit district shall pay the cost of actions it undertakes or causes to be undertaken pursuant to Subsection 2.8.5(a), including the costs of any brochures, schedules, media, advertising, information centers, or special events or programs associated with such actions.
- (c) In performing the functions described in this Subsection 2.8.5(c), C-TRAN and TriMet shall, to the extent practical, seek to coordinate such activities and, when efficient, share such costs. Such coordination may include, without limitation, assigning one transit district the responsibility to perform certain functions on behalf of both districts on an on-going or case-by-case basis. It may also include having one transit district prepare materials (such as brochures and public information materials) for use by both transit districts. Any such arrangements shall be agreed to by C-TRAN and TriMet and may include sharing in related costs.

2.8.6 Betterments and Supplementary Services

- (a) Unless otherwise agreed by C-TRAN and TriMet, each transit district shall be responsible for undertaking and paying the full cost of any Betterment located within its district or Supplementary Service provided in its district.
- (b) Any Betterment or Supplementary Services in a district must be approved by the other transit district prior to implementation of the Betterment or Supplementary Service; such approval may not be unreasonably withheld.
- (c) Unless otherwise agreed by the Parties, the cost of any Betterment or Supplementary Service shall be the sole responsibility of the transit agency responsible for the Betterment or Supplementary Service. Such costs shall not

be funded as part of maximum amounts shown in Exhibit B for the Pre-Increase C-TRAN Funding Share; C-TRAN shall pay such amounts for which it is responsible in addition to the Pre-Increase C-TRAN Funding Share for such year (if such maximum amount is applicable).

2.8.7 Utility Costs

- (a) Each transit district shall be responsible for paying as a District O&M Cost the cost of all utilities metered in its district, including without limitation water, stormwater, and electricity (including cost of purchasing electricity for light rail propulsion).

2.9 **Mutual O&M Functions and Costs**

2.9.1 General

- (a) This Agreement assumes that all Mutual O&M Functions will be performed by TriMet. If at any time the Parties agree that C-TRAN will assume responsibility for a Mutual O&M function, the provisions of this Agreement shall be amended and the terms applicable to C-TRAN's performance and payment of Mutual O&M Functions shall be the same as those previously applicable to TriMet.
- (b) All Mutual O&M Functions shall be performed in accordance with the standard practices of the transit district performing the function and in accordance with any applicable policies in the Five-Year Plan or any other agreement between the Parties. In the event the Parties are unable to agree upon the standard practices of the district performing the function, the function shall be performed in a way that is consistent with the then prevailing standards for similar light rail facilities in the United States.
- (c) General and Administrative (or "G&A") Cost is a District O&M Cost, and shall be excluded from all calculations of Mutual O&M Cost.
 - (i) G&A Cost includes all management, financial, administrative and other overhead expenses incurred by a transit district for the general, day-to-day management and administration of the transit district as a whole, including without limitation the cost of executive management, accounting, general legal counsel (provided that legal fees and expenses, whether in-house or third-party, that are specific to CRC LRT and are not a general expense are not a G&A Cost), Board functions, government affairs, communications, office space, utilities, supplies, and other expenses related to such functions.

- (ii) G&A Cost does not include those management expenses with a direct or causal relationship to the operations and maintenance of CRC LRT.
- (d) The Parties acknowledge that under current law in the State of Washington, TriMet may be required to pay certain state taxes when operating within the State of Washington. The Parties shall cooperatively seek an exemption from such taxes. Unless and until such exemption is obtained, the cost of any taxes paid by TriMet as a result of operating and maintaining the CRC LRT in the State of Washington shall be a Mutual O&M Cost that is shared between the Parties as described in Section 2.9.8.
- (e) The Parties shall cooperatively determine the types, amounts, deductibles, and cost of any property, casualty, and liability insurance to be carried on the tangible assets and operations of the CRC LRT. At a minimum, insurance related to CRC assets will be consistent with insurance levels currently in place for all capital assets. The annual premium cost of any liability insurance policy and the payment of any deductibles or claims not paid by such insurance shall be a Mutual O&M Cost that is shared by C-TRAN and TriMet. The Parties may determine that certain insurance coverage, such as property insurance, should be purchased on a District basis rather as a Mutual O&M Cost. The Parties shall negotiate in good faith any cost sharing formulas that may be required.
- (f) Not Used
- (g) The Parties acknowledge that TriMet has unfunded pension legacy costs and unfunded medical benefit legacy costs (“Legacy Costs”) that it will have to fund in the future. Any payments of such Legacy Costs shall be excluded from any calculation of Mutual O&M costs as they relate to C-TRAN’s cost sharing obligations. However, the costs of pension and medical benefits provided to current employees performing CRC LRT O&M Functions or Capital Maintenance and Replacement shall be Mutual O&M costs
- (h) C-TRAN and TriMet shall each pay a share of start-up (or pre-revenue service) operations and maintenance costs, including training and testing expenses, which are Mutual O&M Costs under this Agreement.
 - (i) Start-up costs shall be paid with New Start funds to the extent possible; up to the amount such funds are available under the FFGA.
 - (ii) Start-up costs not paid with New Start funds shall be shared between C-TRAN and TriMet. The amount owed by each transit district shall be the amount of start-up costs not paid with New

Start Funds multiplied by the Mutual O&M Cost Factor for the transit district as set forth in Subsection 2.9.8.

- (iii) Start up costs will be expended prior to the start of revenue operations and C-TRAN's share of these costs is not included in the Pre-Increase C-TRAN Funding Share shown in Exhibit B.

2.9.2 Maintenance of Light Rail Vehicles:

- (a) TriMet shall undertake or cause to be undertaken all actions required to maintain light rail vehicles used for the CRC LRT extension including, without limitation, cleaning, general maintenance, and routine parts replacement. TriMet shall also maintain a light rail fleet management plan for its entire fleet, including CRC LRT, which meets FTA requirements.
- (b) TriMet shall pay when due all costs of performing or procuring light rail vehicle maintenance, including the costs of all associated supplies, equipment, parts, and other expenses.
- (c) TriMet and C-TRAN have agreed to include a 10 percent LRV Maintenance Discount Factor (i.e.; the cost of LRV maintenance shall be the amount calculated without any discount factor multiplied by 0.9) in the calculation of shared light rail vehicle maintenance costs for the first five years of CRC LRT revenue operation to reflect the anticipated lower costs of the new vehicles procured for the CRC Project.
- (d) The annual cost of maintaining light rail vehicles apportioned to the CRC LRT shall be calculated as: (i) the total cost of maintaining all light rail vehicles in the TriMet fleet during the year, (ii) multiplied by the Car Miles Ratio for the year, (iii) multiplied during the applicable time period by the LRV Maintenance Discount Factor.

2.9.3 Track Maintenance:

- (a) TriMet shall undertake or cause to be undertaken all actions required to maintain the track for the full length of the CRC LRT extension, including without limitation such activities as lubricating and adjusting switches and switch heaters, tightening loose track components, inspections, and replacing track parts. Track maintenance shall include maintenance of track bed, track drains and the maintenance of any structures on which track is laid. Track maintenance shall also include performing any mitigation measures regarding track noise, vibration, and/or electrolytic corrosion.
- (b) TriMet shall pay when due all costs of performing or procuring such track and maintenance, including the costs of all associated supplies, equipment, parts, and other expenses.

- (c) The annual cost of track maintenance apportioned to the CRC LRT shall be calculated as (i) the total cost of track maintenance throughout the TriMet system (including CRC LRT) during the year, multiplied by (ii) the Route Miles Ratio.

2.9.4 Operations and Maintenance of Electrification, Communications, Signal, and Security Systems:

- (a) Except as otherwise provided in this Agreement, TriMet shall undertake or cause to be undertaken all actions required to operate and maintain the systems required for the safe and efficient operations of CRC LRT, including:
 - (i) The traction electrification system, including without limitation power substations; traction power feeder systems, including the cables, conduit, and ductbanks; the overhead contact system, including catenary wires and poles, and any redundant (back-up) electrification systems. The cost of purchasing electricity for the traction electrification system is addressed in Subsection 2.9.5(d), and is not considered a systems cost under this Section.
 - (ii) The light rail communications system, including without limitation the central/operational control center; supervisory, control and data acquisition system; train-wayside communications system; radio systems; vehicle locator systems; and related central dispatch equipment and facilities.
 - (iii) The light rail signal system, including without limitation the automatic block system, street-crossing warning devices, logic control systems, and on-board traffic signal pre-emption systems.
 - (iv) The light rail security systems including without limitation emergency warning systems, video surveillance systems, and fire protection and suppression systems. The responsibility and cost of security operations at stations and park-and-rides is described in Subsections 2.8.4(d) and 2.8.3(a)(ii), respectively; and the costs of on-train security operations is described in Subsection 2.9.5(a), and are not part of the system activities or costs described in this Subsection 2.9.4.
- (b) Except as otherwise described herein, TriMet shall pay when due all costs of performing or procuring the operations and maintenance of the systems described in Subsection 2.9.4(a), including the costs of all associated supplies, equipment, parts, software, and other expenses.

- (c) The annual cost of operating and maintaining the traction electrification (excluding the power costs described in Subsection 2.9.5(d)), communications, and signal systems to be apportioned to the CRC LRT shall be calculated as the (i) total cost of operating and maintaining the systems described in Section 2.9.4(a) throughout the TriMet system (including CRC LRT) during the year multiplied by (ii) the Car Miles Ratio for the year.

2.9.5 Light Rail Operations Costs:

- (a) Except as provided in Subsections 2.9.5(d) and 2.9.5(e), TriMet shall undertake all actions required to operate light rail service for the CRC LRT extension including without limitation vehicle training and provision of operators, supervisors, fare inspectors, and on-train security. C-TRAN is not precluded from providing additional fare inspectors and on-train security in its district (beyond those provided by TriMet that are Mutual O&M Costs), provided that the cost of such additional on-board security or fare inspectors provided by C-TRAN shall be a C-TRAN Supplementary Service that is not shared by TriMet and that is not included in the maximum Pre-Increase C-TRAN Funding Shares shown in Exhibit B (when applicable).
- (b) TriMet shall pay when due all costs of performing or procuring such light rail operations, including the costs of all associated supplies, equipment, parts, and other expenses.
- (c) The annual cost of light rail operations apportioned to the CRC LRT shall be calculated as the total cost of light rail operations throughout the TriMet system (including CRC LRT) during the year multiplied by the Train Miles Ratio for the year.
- (d) As described in Subsection 2.8.7, the cost of purchasing electricity for light rail propulsion shall be a District O&M Cost; each transit district shall be responsible for paying the cost of electricity provided to power substations located within its district. This cost shall be excluded from all calculations of Mutual O&M Cost.
- (e) The Parties acknowledge and agree that from time to time, light rail service on all or a portion of the CRC LRT extension may be disrupted due to breakdowns, accidents, power outages, weather, or other incidents on the CRC LRT extension or elsewhere on the LRT system, and that temporary bus service to bridge the disruption shall be provided to mitigate impact of the light rail service on light rail patrons. The Parties agree to cooperatively prepare and implement a temporary bus bridge service plan to respond to disruptions in light rail service; the plan shall specify if and how the cost of such temporary bus bridge services will be shared between C-TRAN and TriMet.

2.9.6 Maintenance-of-Way on the Main Bridge Crossing:

- (a) This Subsection 2.9.6 addresses maintenance-of-way on the main bridge crossing of the Columbia River. For purposes of this subsection, the main bridge crossing is defined as the structure bounded on the south end by the north most edge of the Hayden Island station and on the north end by the point at which the light rail alignment first touches down at street level in the City of Vancouver.
- (b) TriMet shall undertake or cause to be undertaken all maintenance of the light rail right of way on the main bridge crossing.
- (c) TriMet shall pay when due all costs of performing or procuring maintenance-of-way on the main bridge crossing, including the costs of all associated supplies, equipment, parts, and other expenses. TriMet shall also pay when due any amounts due to ODOT and/or WSDOT for maintaining the main bridge crossing under any agreement between TriMet and/or C-TRAN and ODOT and/or WSDOT. Such costs shall be Mutual O&M Costs that are shared between C-TRAN and TriMet pursuant to this Section 2.9.

2.9.7 Capital Maintenance and Replacement:

- (a) TriMet shall undertake or cause to be undertaken all Capital Maintenance and Replacement for the full length of the CRC LRT extension, including without limitation such activities as rail grinding, and the rehabilitation or replacement of outdated or damaged track, equipment, vehicles, and systems. The Five Year Plan shall incorporate a Capital Maintenance and Replacement Plan and budget. Unless otherwise caused by unanticipated events, the Capital Maintenance and Replacement in a given year shall be consistent with that programmed in the Five Year Plan for the year.
- (b) TriMet shall pay when due all costs of performing or procuring Capital Maintenance and Replacement, including the costs of all associated supplies, equipment, parts, and other expenses.
- (c) The costs of Capital Maintenance and Replacement are not O&M costs and are not included in or subject to the Pre-Increase C-TRAN Funding Share in Exhibit B; C-TRAN shall fund the costs of Capital Maintenance and Replacement with additional revenues beyond those shown in Exhibit B (when Exhibit B is applicable). Capital Maintenance and Replacement shall be budgeted and charged on a direct basis. The annual cost of Capital Maintenance shall be those costs actually and directly incurred due to Capital Maintenance of the CRC LRT Extension. Capital Maintenance and Replacement costs shall be reduced by the amount of insurance proceeds available, if any.

- (d) Capital Maintenance or Replacement of CRC LRT assets shall be conducted in a way that meets all applicable FTA requirements.

2.9.8 Calculation of Shared Cost Responsibility:

- (a) The annual amount of Mutual O&M Costs shall be the sum of the following:
 - 1) The cost of maintaining light rail vehicles as set forth in Subsection 2.9.2(c);
 - 2) The cost of track maintenance as set forth in Subsection 2.9.3(c);
 - 3) The operations and maintenance costs of electrification, communications, signal, and security systems as set forth in Subsection 2.9.4(c);
 - 4) The light rail operations costs set forth in Subsection 2.9.5(c);
 - 5) The cost to be shared, if any, of temporary bus bridge services as set forth in Subsection 2.9.5(e);
 - 6) The cost to be shared of insurance as set forth in Subsection 2.9.1(e);
 - 7) When applicable, the Start-up costs not paid with New Start funds as set forth in Subsection 2.9.1(g);
 - 8) The shared cost of operating and maintaining fare vending machines, security systems, and reader boards, if any, depending on the conclusions from Subsection 2.8.4(d);
 - 9) The amount of bridge maintenance-of-way costs pursuant to Subsection 2.9.6(d);
 - 10) If applicable, the state taxes paid by TriMet as set forth in Subsection 2.9.1(d); and
 - (11) While not an O&M Costs, the cost of Capital Maintenance and Replacement shall be added into the Mutual O&M Cost total.
- (b) The Mutual O&M Cost Factor to be used to apportion Mutual O&M Costs between C-TRAN and TriMet shall apportion 63.2% of Mutual O&M Costs to C-TRAN and 36.8% to TriMet.
- (c) For each year, the Annual Operating Subsidy for CRC LRT shall be the annual amount of Mutual O&M Costs set forth in Section 2.9.8(a) minus the Farebox Revenues for such year as set forth in Section 2.4 minus the amount of State of Good Repair Grant Funds applied to Mutual O&M Costs for such year as set forth in Section 2.12.1.
- (d) For each year, the amount to be paid by each transit district for the Annual Operating Subsidy shall be the amount calculated as the Annual Operating Subsidy, as set forth in Subsection 2.9.8(c), multiplied by the applicable Mutual O&M Cost Factor for the transit district. Except as set forth in Section 2.10.1, prior to the Post Increase Year, the maximum annual amount owed by C-TRAN for Mutual O&M Costs shall be the Pre-

Increase C-TRAN Funding Share (as shown in Exhibit B) minus the amount paid by C-TRAN for its District O&M costs for such year. Beginning in the Post Increase Year and each year thereafter, the C-TRAN share of Mutual O&M Costs shall not be limited by the maximum amounts shown in Exhibit B.

- (e) Except as adjusted in Section 2.10, the calculations described in Subsections 2.9.8(a) through 2.9.8(d) shall be used to estimate Mutual O&M Costs and Annual Operating Subsidy for budgeting and for determining the actual amounts owed when final costs for the year are available.
- (f) In addition to the respective shares of Mutual O&M Costs resulting from the calculations described in this Subsection 2.9.8, each transit district shall be responsible for paying its share of Betterment and Supplementary Services costs under Section 2.8.6, as well as its District O&M costs under other subsections of Section 2.8.

2.10 ADJUSTMENTS TO FUNDING SHARE

2.10.1 The following provisions shall apply to the C-TRAN Annual Operating Subsidy described in Section 2.9.8(d).

2.10.1 For each year during which CRC LRT is in revenue operation that is prior to the Post Increase Year, C-TRAN shall budget the Pre Increase C-TRAN Funding Share shown in Exhibit B for such year. For each year during which CRC LRT is in revenue operation that is prior to the Post Increase Year, C-TRAN shall pay for CRC LRT O&M Costs (District and Mutual) the lesser of the maximum Pre-Increase C-TRAN Funding Share shown in Exhibit B for such year or the C-TRAN share of the Annual Operating Subsidy for such year as calculated pursuant to Section 2.9.8(d). Beginning in the Post Increase Year and each year thereafter, C-TRAN shall budget and pay to TriMet the amount of Annual Operating Subsidy for such year as calculated pursuant to Section 2.9.8(d) and such amount shall not be limited by the amounts shown in Exhibit B. In addition, the following shall apply:

- (a) The Pre-Increase C-TRAN Funding Share does not include any amounts C-TRAN is obligated to pay for Farebox Revenues pursuant to Section 2.4, Capital Maintenance and Replacement pursuant to Section 2.9.7, Betterments and Supplementary Services pursuant to Section 2.8.6, and Supplementary Revenues pursuant to 2.10.2. Each year these additional funding obligations shall be budgeted and paid in addition to the amounts described in Section 2.10.1.

- (b) The maximum amounts of Pre-Increase C-TRAN Funding Share shown in Exhibit B assume that a third party will participate in funding CRC LRT O&M Costs in the amount of \$400,000 in 2019, increasing at four percent (4%) each year thereafter. If the annual funding participation of the third party is less than the assumed amount, the fixed amounts shown in Exhibit B shall be reduced by one half of the difference between the amount assumed for such year and the amount contributed (whether as cash or in-kind services) by the third party for such year (the “Third Party Adjustment”). When the Third Party Adjustment is applicable, any reference to the Pre-Increase C-TRAN Funding Share shown in Exhibit B shall be read to include the Third Party Adjustment.

2.10.2

If the Pre-Increase C-TRAN Funding Share limits are still applicable in the year 2031, C-TRAN shall impose a charge for use of the park-and-ride spaces developed as part of the CRC LRT extension and/or a fare surcharge for bi-state travel on the CRC LRT. Such parking charge or fare surcharge shall be mutually agreed to by C-TRAN and TriMet and shall begin no later than January 1, 2032. The net amount of receipts from these charges after payment of reasonable expenses directly incurred to collect such revenues (“Supplementary Revenues”) shall be added to the Pre-Increase C-TRAN Funding Share limits in Exhibit B. Each year such additional amounts shall be budgeted by C-TRAN and paid to TriMet as required under this Agreement.

If C-TRAN has not imposed such a parking charge or fare surcharge by January 1, 2032, TriMet may at any time thereafter impose a charge for parking at park-and-ride facilities developed as part of the CRC LRT, and TriMet shall retain such revenues to pay for Mutual O&M Costs. The revenues from such TriMet imposed parking charges shall be used by TriMet, to the maximum extent possible, to eliminate entirely the Flex Share amount to be paid by TriMet. In the event the annual amount of the proceeds from a parking charge imposed by TriMet exceeds the amount needed to eliminate entirely the Flex Share amount to be paid by TriMet in such year, the annual residual amount of proceeds from the parking charge remaining after applying such funds to pay the entire Flex Share amount shall be considered revenue for the CRC LRT similar to Farebox Revenue.

2.10.3

Unless otherwise determined pursuant to Section 2.10.1, for each year of revenue operations prior to the Post Increase Year, the annual C-TRAN funding obligation for Mutual O&M Costs shall be: (a) the Pre-Increase C-TRAN Funding Share shown in Exhibit B for such year (including, when applicable, the Third Party Adjustment and Supplementary Revenues) (b) plus the amounts owed by C-TRAN for Capital Maintenance and Replacement, Betterments, and Supplementary Services, (c) minus the amount paid by C-TRAN for District O&M Functions.

- 2.10.4 If at any time during the Operations Term C-TRAN secures approval of an increase in its sales and use tax rate above the rate in effect on the Effective Date of this Agreement (regardless of the statutory provisions under which the additional tax rate is approved) or has secured approval of any new tax revenue source (regardless of the statutory provisions under which the additional tax rate is approved), the C-TRAN share of District O&M Costs and Mutual O&M Costs shall not be limited by the Pre-Increase C-TRAN Funding Share amounts set forth in Exhibit B, as they may be adjusted under this Agreement; beginning on January 1 of the Post Increase Year and each year thereafter C-TRAN shall fund its full share of Mutual O&M Costs as described in Section 2.9.8(d).

2.11 Compliance with FTA Requirements

- 2.11.1 Compliance with Law: The parties recognize that funds provided by the Federal Transit Administration (“FTA”) will be used to pay for a portion of the CRC LRT Project. Each party agrees to comply with all local, state, and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing the work of FTA and contractors.
- 2.11.2 Each Party shall comply with all FTA regulations, rules, and procedures applicable to the operation and maintenance of CRC LRT.
- 2.11.3 Each Party is responsible for complying with all FTA reporting requirements for the expenditures for which it is responsible for under this Agreement, and for the physical assets under its control. The Parties shall cooperate as necessary to ensure compliance with such reporting requirements; each Party shall promptly provide to the other Party all information in its possession that is necessary for the other party to comply with such reporting requirements.
- 2.11.4 Each Party is responsible for complying with any on-going requirements of the FFGA for CRC LRT for which it is assigned responsibility. The Parties shall cooperate as necessary to ensure compliance with such requirements; each Party shall promptly provide to the other Party all information in its possession that is necessary for the other party to comply with such requirements.
- 2.11.5 Any liability to FTA arising from the breach of any obligation under this Agreement, and any damages imposed by FTA on either Party related to such breach, will be the obligation of the breaching Party to the extent of its sole or proportionate concurrent negligence or its proximate causal failure to perform this Agreement or FTA requirements.

2.12 Grant Funds and Other Non-Fare Revenues

- 2.12.1 FTA State of Good Repair Grant Funds:

- (a) The Parties acknowledge that under current federal statutes CRC LRT would receive a formula allocation of State of Good Repair Grant Funds (or such successor program grant funds) beginning in the eighth year of operations of CRC LRT. Such grant funds would be provided to CRC LRT on the basis of a formula set forth in federal statute.
- (b) For federal grant processing purposes, all such grant funds shall be awarded to TriMet as part of its larger system-wide apportionment. TriMet may use its full apportionment of State of Good Repair Grant Funds, including the amount apportioned to CRC LRT under Subsection 2.12.1(a) of this Agreement, in whatever manner TriMet determines, provided that the manner in which such grant funds are used may not affect the apportionment provisions in Subsection 2.12.1(d).
- (c) Each year starting when CRC LRT becomes eligible to receive State of Good Repair Grant Funds, TriMet shall calculate the amount of such grant funds resulting from CRC LRT by proportioning its total (systemwide) grant award between CRC LRT and the remainder of its system based on the federal formula used to apportion such grant funds nationally.
- (d) Each year the amount of State of Good Repair Grant Funds apportioned to CRC LRT pursuant to Subsection 2.12.1(c) shall be applied toward the Mutual O&M cost of CRC LRT for the year to the maximum extent possible under FTA rules.

2.12.2 Formula Grant Funds: In allocating the Section 5307 transit funds apportioned to the Portland-Vancouver region among C-TRAN, TriMet, and SMART, the operating statistics and ridership due to the CRC LRT included in the intra-region allocation formula for TriMet and C-TRAN shall be the applicable ridership and operating statistics for CRC LRT multiplied by the Mutual O&M Cost Factor for the subject transit district.

2.12.3 Special Grant Funds: The Parties acknowledge that from time to time, C-TRAN and/or TriMet may seek supplemental federal, state, or regional grant funding for the CRC LRT. The use of supplemental grant funds secured by one transit district shall be determined by such district. If supplemental grant funds are sought jointly by C-TRAN and TriMet, the use of such supplemental grant funds shall be agreed upon by C-TRAN and TriMet on a case-by-case basis.

ARTICLE III - GENERAL PROVISIONS

3.1 Relationship of the Parties. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. Each of the Parties possess substantial taxing, eminent domain and police powers so that Parties are not considered part of the same “controlled group” as defined in 26 CFR §1.150-1(e). No representative, agent, employee, or contractor of one Party shall be deemed to be

an employee, agent, representative, or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship. Each Party represents and warrants that, except for the representations as set forth in Section 3.2 below, it has not relied upon any acts, omissions, representations or statements of, or information provided by, the other Party in deciding to enter into and perform its obligations under this Agreement. This Agreement is the result of an arms-length negotiation between the Parties in which each Party has been exclusively responsible for advancing its own interest, and each Party has had full opportunity to consult with its own attorneys and advisors, perform its own due diligence, and fully inform itself concerning the risks and benefits of the transactions contemplated by this Agreement.

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

3.3 Liability. Within the limits of the applicable state law (Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, for TriMet and Ch. 4.22 RCW; Ch. 4.24 RCW and Ch. 4.96 RCW for C-TRAN) each of the Parties shall indemnify and defend the other and its officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the sole or proportionate concurrent negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.

3.4 Termination and Material Breach.

3.4.1 This Agreement shall terminate if the Parties sign a written agreement terminating this Agreement.

3.4.2 Termination for Material Breach: This Agreement may be terminated by a Party as a result of a material breach of an obligation of the other Party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the other party sixty (60) calendar days written notice of the material breach, including a detailed explanation of the breach, during which period the breaching party may cure or materially commence, as set forth below, cure of the material breach (“Cure Period”). If at the end of the Cure Period the breaching party has not cured or materially commenced, as set forth

below, cure of the default, the terminating party may terminate this Agreement for default and seek all remedies available at law or in equity. If the breach is one that, despite reasonable efforts, the breaching party is unable to cure within the Cure Period, such obligation shall be met if the breaching party begins to take action to cure the breach during the Cure Period and thereafter continues to work diligently to cure the breach in a reasonable time.

- 3.4.3 **Disputes Related to Termination:** Disputes regarding termination are not subject to the Dispute Resolution process set forth in Section 3.21 of this Agreement.
- 3.4.4 **Remedies for Material Breach:** Termination is not the only remedy available for material breach of the Agreement. In the case of a material breach of contract, the non-breaching party shall be entitled to any remedy available under law or equity, provided that the breaching party is entitled to cure its breach in the manner described in Section 3.4.2. Unless agreed otherwise by the Parties, disputes related to material breach of contract are not subject to the Dispute Resolution process set forth in Section 3.21 of this Agreement.
- 3.5 Inspection of Records.** Each of the Parties shall have the right to inspect, at any reasonable time, such records in the possession, custody, or control of the other Party as it deems necessary for review of the other Party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting Party.
- 3.6 Successors; No Assignment.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party, which shall not be unreasonably withheld.
- 3.7 Time is of the Essence.** Time is of the essence of each and every provision and covenant of this Agreement.
- 3.8 Amendments.** This Agreement (including the exhibits hereto) may only be amended by means of a writing signed by an authorized representative of each of the Parties hereto. No amendment to any provision of this Agreement shall be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to the other Party's performance or failure to perform, or any failure or delay by either Party to enforce its rights hereunder.
- 3.9 Integration.** This document constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement.
- 3.10 Interpretation of Agreement.** This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision.

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

3.12 Laws and Regulations.

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

3.12.2 This Agreement will be governed by the laws of the State of Oregon or State of Washington, to be determined by the court having jurisdiction in accordance with standard conflicts of law principles.

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

3.14 Audit and Inspection of Records. Both Parties shall maintain a complete set of records relating to this Agreement in accordance with generally accepted accounting procedures, and shall permit the authorized representatives of each party, the U.S. Department of Transportation, the Oregon and Washington Secretaries of State and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records relating to its performance under this Agreement. Records must be retained in accordance with the requirements of applicable law.

3.15 Notice.

3.15.1 Any notice under this Agreement shall be deemed received by the addressee on the earliest to occur of:

(a) The date such notice is hand-delivered to the notice address of the addressee; or

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

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

If to TriMet:

Tri-County Metropolitan Transportation District
1800 SW First Avenue, Ste. 300

Portland OR 97201
Attn: Dan Blocher
blocherd@trimet.org

With copy to:

TriMet Legal Department
1800 SW First Avenue, Ste. 300
Portland OR 97201
Attn: Lance Erz
erzl@trimet.org

If to C-TRAN:

C-Tran
2425 NE 65th Avenue
Vancouver, WA 98661
Attn: Jeff Hamm
jeffh@c-tran.org

With a copy to:

Thomas H. Wolfendale
K&L Gates
925 4th Avenue, Ste. 2900
Seattle, WA 98104
thomas.wolfendale@klgates.com

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

- 3.16 Headings.** Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 3.17 No Third Party Beneficiaries.** The Parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement, either express or implied.
- 3.18 Not Used.**
- 3.19 Liens.** The Parties shall not allow or suffer any encumbrance, charge, or other lien against or in any way applicable to all or any part of CRC LRT or any of the receipts, income, proceeds, or revenues derived or to be derived from CRC LRT. If any such lien or claim shall be allowed or suffered to exist, the Party that caused or alleged to have caused the lien or claim to be suffered shall cause such lien or claim to be discharged or bonded within fifteen (15) days following the filing or other assertion of such lien. If such Party fails to cause the discharge of such lien or claim to the satisfaction of the other Party within this period, such other Party may (but shall not be obligated to), in addition to any other right or remedy available to it under this Agreement or applicable

law, discharge such lien or claim in any manner it determines. Any amount paid by such other Party to discharge any such lien or claim, as well as all costs and expenses incurred by such other Party in connection with such discharge, shall be payable on demand to the other Party by the Party that caused or alleged to have caused the lien or claim to be suffered.

3.20 Liquidated Damages

The Parties acknowledge and agree that the success and schedule to receive legislative approval of state funding amounts, the availability of such state funding contributions to maintain project schedule, the success and schedule to receive federal funding grant agreements and loan agreements, and the schedule for awarding and performance of construction-related contracts all rely on each Party's continuous satisfactory performance under this Agreement from the Effective Date of this Agreement through the award of the FFGA. The Parties further agree that any non-performance under this Agreement will have substantial schedule and budgetary impacts, cause financial damage to the non-breaching party, jeopardize the successful implementation of the CRC LRT project, and cause waste to the monies expended in project development prior to the date of the breach.

The Parties also agree that the actual amount of these damages will be difficult to determine, and that other remedies are insufficient or unavailable. Therefore, in the event of any breach of this contract during the period starting on the Effective Date and ending on the date on which TriMet executes an FFGA with the Federal Transit Administration, subject to a fifteen (15) day period to cure such a breach from the day on which the non-breaching Party provides notice to the other Party of such breach, the breaching Party shall pay to the other Party \$5,000,000, as liquidated damages and not as a penalty. Such payment shall be made into an account held by TriMet and shall be used for the purposes of paying capital costs of the CRC LRT project. Such liquidated damages shall be paid no later than thirty (30) days from the date on which the period to cure the breach expires. If payment of such liquidated damages is not made in full when due, the outstanding amount shall pay interest at the annual rate of nine percent (9%) starting on the date when such payment was initially due through the day prior to date on which such outstanding balance is paid in full with interest.

This clause in no way limits the non-breaching party's ability to seek specific performance from the breaching Party.

3.21 Dispute Resolution. In the event of a dispute under this Agreement that involves a material breach of this Agreement by either Party, this Dispute Resolution clause does not apply, unless the Parties agree otherwise.

In the event of a dispute under this Agreement that does not involve a material breach of this Agreement by either Party, the Parties may agree to any method of dispute resolution available, including mediation or litigation. However, in the event of a dispute under this Agreement that does not involve a material breach of this Agreement

by either Party, if the Parties fail to agree on a method of dispute resolution, they shall resolve the dispute through arbitration under the terms of this Section 3.21. Examples of disputes that do not involve a material breach and are subject to arbitration under this Section include, but are not limited to, the following: disputes regarding the preparation and administration of the Five Year Plan; Service Levels; O&M Policies; whether an item is a Capital Maintenance activity, District O&M activity, or a Mutual O&M activity; and calculation of Farebox Revenue. Examples of disputes that are material breaches of the Agreement and are not subject to arbitration include, but are not limited to, failure to make a payment required by this Agreement, and failure to perform an obligation required by this Agreement when such failure is reasonably likely to jeopardize the development, funding, or operation of the CRC LRT.

Arbitration under this Section shall be initiated by written notice to the other Party that sets out the dispute with reasonable specificity.

All arbitrations shall be conducted before a three-person Arbitration Panel appointed as follows: The Party initiating arbitration shall name its appointed arbitrator in its notice of arbitration. Within 10 days of receipt of a notice of arbitration, the party receiving the notice shall appoint an arbitrator. Thereafter, the two appointed arbitrators shall, within 30 days of the appointment of the second arbitrator, appoint a third arbitrator. If either party fails to appoint an arbitrator as set forth herein, the initiating party may appoint both arbitrators, who shall then promptly meet and confer to appoint a third neutral arbitrator. Should the appointed arbitrators fail to appoint a third arbitrator within 30 days after meeting, the initiating party may select the third arbitrator. The arbitrators shall be lawyers, engineers, or public transit industry professionals with at least 10 years experience in the public transit field. The three arbitrators shall make up the Arbitration Panel. The arbitrators shall not be under the control of either party, and shall have no financial interest in the outcome of the arbitration. All arbitration proceedings shall be conducted in Portland, Oregon or in such other location as the Parties may agree.

The Arbitration Panel shall interpret this Agreement as an honorable engagement, and shall not be obligated to follow the strict rules of law or evidence. In making its decision, the Arbitration Panel shall apply the custom and practice of the industry, where appropriate, with a view to effecting the general purpose of the Agreement.

The Arbitration Panel shall have no power to award consequential or punitive damages or to terminate this Agreement. The Arbitration Panel shall furnish the Parties with a written decision within thirty (30) days after the date the final arbitrator is appointed, unless the Arbitration Panel determines that a longer period of time is required for a fair hearing to be held and a reasoned decision to be rendered. The decision of a majority of the Arbitration Panel shall be final and binding. The Arbitration Panel shall render its award in writing. Judgment upon the award may be entered in any court having jurisdiction. Unless the Arbitration Panel orders otherwise, each party shall pay: (1) the fees and expenses of its own arbitrator; and (2) an equal share of the fees and expenses of the third arbitrator and of the other expenses of the arbitration.

3.22 Forum Selection. Any litigation between the Parties arising under this Agreement shall occur in the court where such forum is available by law.

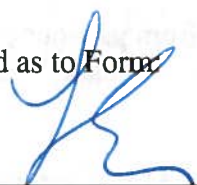
3.23 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT
OF OREGON (TRIMET)**

By: 
Neil McFarlane, General Manager

Date: Sept 27, 2013

Approved as to Form:

By: 
Lance Erz
TriMet Deputy General Counsel

**CLARK COUNTY PUBLIC
TRANSPORTATION BENEFIT
AREA (C-TRAN)**

By: 
Jeff Hamm, Executive Director/CEO

Date: September 27, 2013

Approved as to Form:


By: 
Thomas H. Wolfendale
C-Tran Legal Counsel

EXHIBIT A: DEFINITIONS

- A. **Annual Operating Subsidy** is defined in Section 2.9.8(c) of this Agreement.
- B. **Betterment** means an improvement to or in conjunction with a light rail station or an appurtenance to the CRC LRT system that may supplement or leverage the benefits of CRC LRT but is not fundamentally required for the operations of CRC LRT. An improvement to a component of the CRC LRT that is a Mutual O&M Function is not a Betterment.
- C. **Boarding Trip** means a one-way transit trip that uses the CRC LRT for at least a portion of the one-way trip. For example, a walk-on passenger to CRC LRT, a passenger transferring from a bus to CRC LRT, and a passenger transferring to a bus from CRC LRT is each a Boarding Trip.
- D. **Bridge Maintenance-of-Way Cost Ratio** means that fraction by which the annual total maintenance-of-way costs on the main bridge crossing are multiplied to determine C-TRAN's share of such costs.
- E. **Capital Maintenance and Replacement** means the periodic rehabilitation and replacement of CRC LRT elements, such as track lining, surfacing, and grinding, worn rail replacement, grade crossing reconstruction, replacement of outdated system components, etc. that are not part of routine maintenance and are carried as capital costs in the budget. The Pre-Increase C-TRAN Funding Shares described in Section 2.9 and 2.10 (and Exhibit B) do not include funds to fulfill C-TRAN's obligation to fund a share of Capital Maintenance and Replacement Costs. Such amounts shall be funded with additional revenues not included in the fixed contributions set forth in Exhibit B.
- F. **Capital Maintenance and Replacement Costs** means the costs and expenses of Capital Maintenance and Replacement activities.
- G. **Car Miles** means the annual total miles traveled by light rail cars from pull-out (leaving the garage) to pull-in (returning to garage). A two-car train has twice as many Car Miles as Train Miles.
- H. **Car Miles Ratio** means the fraction calculated by dividing the Car Miles on the CRC LRT extension during the year by the total of all Car Miles on the TriMet light rail system (including CRC LRT) during the year.
- I. **CRC LRT** means the light rail extension between the Expo Center and the Clark Park-and-Ride developed as part of the Columbia River Crossing (CRC) Project.
- J. **CRC LRT O&M Costs** means the sum of District O&M Costs and Mutual O&M Costs for each Party.

- K. **District O&M Functions** means those operations and maintenance functions that each transit district performs on its own behalf, within its district, and pays for with its own funds (which are “District O&M Costs”).
- L. **Farebox Revenues** means the total of fares collected by either C-TRAN or TriMet for travel on CRC LRT, which shall be calculated as set forth in Section 2.4.
- M. **Final Amount of Annual Operating Subsidy** means the final annual amount of Mutual O&M Costs to be paid by a transit district for a given year after actual costs, Farebox Revenues, and federal grant amounts are known, as set forth in Subsection 2.7.2 (b)
- N. **Five-Year CRC LRT Plan (or “Five-Year Plan”)** means the plan described in Section 2.2 of this Agreement that describes the anticipated Service Policies and other policies for the CRC LRT that serve as a starting point for preparing annual service levels and budgets for the CRC LRT over the five year period. The Five Year Plan provides a strategic direction for the operations of CRC LRT, the actual service levels and costs of the CRC LRT are set in the budget process and may differ from those in the Five Year Plan.
- O. **Flex Share** is defined in Section 2.2.3.
- P. **Full Funding Grant Agreement (or “FFGA”)** means the grant agreement between the FTA and TriMet regarding the development and federal funding of the CRC LRT.
- Q. **General and Administrative Cost (or “G&A Cost”)** is defined in Section 2.9.1.c.
- R. **Legacy Costs** means any pension and other post-employment benefits (OPEB) earned by current and former employees in previous fiscal years. Legacy Costs also include any pension and OPEB trust funding related to unfunded actuarial accrued liabilities (UAAL) outstanding at the end of the previous fiscal year.
- S. **LRV Maintenance Discount Factor** means that factor included in the calculation of shared light rail vehicle maintenance costs for an agreed-upon number of years of operation to reflect lower initial costs of vehicle maintenance for the CRC Project resulting from the progressive overhaul program and possibly other quantifiable factors. As set forth in Section 2.9.2(c), the LRV Maintenance Discount Factor is agreed to be 10 percent for the first five years of CRC LRT operation.
- T. **Mutual O&M Costs** means the cost of performing Mutual O&M Functions.
- U. **Mutual O&M Functions** means those operations and maintenance functions performed by one transit district on behalf of both districts, such as when TriMet operates trains and maintains vehicles for the entire CRC LRT extension; the costs of which are paid by both transit districts based on an allocation formula.
- V. **O&M Policies** means those policies of a transit district regarding: (a) how a transit district manages its labor force, vehicles, systems, equipment, and other assets to achieve its Service Policies, such as: deployment of vehicles, assignment of operators, on-board

security, operator instructions and protocols, operator pay and benefits, and other operations factors other than Service Policies, and (b) how the district maintains, refurbishes, and replaces its vehicles, systems, equipment, other physical assets, and real property, such as: vehicle cleaning, vehicle maintenance, station cleaning and maintenance, vehicle and equipment repair, replacement of vehicles and equipment, hardware and software repair and replacement, and other maintenance factors.

- W. **Mutual O&M Cost Factor** means the fraction applied to the total of all Mutual O&M costs apportioned to CRC LRT to determine the funding obligation of a specific transit district. For example, the C-TRAN Mutual O&M Factor represents the percentage share of Mutual O&M costs to be paid by C-TRAN. The Mutual O&M Cost Factor is used to apportion all Mutual O&M Costs. The Mutual O&M Cost Factor is set forth in Section 2.9.8(b).
- X. **Party** means either TriMet or C-TRAN. Parties mean C-TRAN and TriMet.
- Y. **Post Increase Year** means the first year, beginning on January 1, following the date that C-TRAN obtains a tax increase as described in Section 2.10.4.
- Z. **Pre Increase Funding Share** means the C-TRAN maximum contribution shown in Exhibit B for each particular year.
- AA. **Preliminary Amount of Mutual O&M Costs Paid** means the annual amount paid by a transit district, in part based on estimated payments before actual costs and reconciled amounts are known, as set forth in Subsection 2.7.2(a).
- BB. **Project Management Plan** (or PMP) means the project management plan, including all of its attachments, submitted to FTA as part of the application for a FFGA.
- CC. **Reconciliation Amount** means the annual amount to be paid by a transit district to the other transit district to reconcile the Preliminary Amount of Mutual O&M Costs Paid with the actual amount owed. For example, after final accounting C-TRAN overpaid its share of Mutual O&M Cost by \$10, the \$10 TriMet must pay to C-TRAN to reconcile shares is the Reconciliation Amount. The Reconciliation Amount is further described in Section 2.7.2(c).
- DD. **Retained Parties** means consultants or contractors engaged by C-TRAN or TriMet to provide services or materials pertaining to the development, procurement, operations, maintenance, repair, refurbishment, or replacement of the CRC LRT extension.]
- EE. **Route Miles Ratio** means that fraction calculated as the total amount of route miles on the CRC LRT extension divided by the total amount of route miles on TriMet's light rail system including the CRC LRT extension.

- FF. **Service Levels** means the quantity, quality, and type of transit services, such as: days and hours of service, frequency of service, scheduling, miles of service, capacity, transfer policies, and other service-related factors.
- GG. **Service Policies** means those policies of a transit district regarding Service Levels, type of service transfer policies, other service-related factors and applicable fare policies.
- HH. **State of Good Repair Grant Funds** means the formula federal funds provided to TriMet for operating the CRC LRT extension under FTA's State of Good Repair Program under MAP-21, or such successor grant program in futures federal transportation authorization acts.
- II. **Supplementary Revenues** is defined in Section 2.10.2.
- JJ. **Supplementary Services** means additional services provided by a transit district in its district pursuant to Section 2.8.6.
- KK. **Third Party Adjustment** is defined in Section 2.10.1(b).
- LL. **Train Miles** means the annual total miles traveled by light rail trains from pull-out (leaving the garage) to pull-in (returning to garage). Train miles are the same whether the train has one or two cars.
- MM. **Train Miles Ratio** means the fraction calculated by dividing the Train Miles on the CRC LRT extension during the year by the total of all Train Miles on the TriMet light rail system (including CRC LRT) during the year.

Exhibit B
Pre-Increase C-TRAN Funding Contribution (1) (2) (3) (4)

Year	Maximum Contribution	Year	Maximum Contribution
2019 (5)	\$2,300,000	2030	\$3,021,000
2020	\$2,470,000	2031	\$3,149,000
2021	\$2,652,000	2032	\$3,283,000
2022	\$2,624,000	2033	\$3,422,000
2023	\$2,817,000	2034	\$3,567,000
2024	\$3,026,000	2035	\$3,719,000
2025	\$3,253,000	2036	\$3,877,000
2026	\$3,206,000	2037	\$4,041,000
2027	\$2,988,000	2038	\$4,213,000
2028	\$2,781,000	2039	\$4,392,000
2029	\$2,899,000	2040	\$4,579,000
		2041 and after	(6)

(1) Maximum funding amount paid by C-TRAN for CRC LRT O&M Costs; this maximum amount only applicable prior to Post Increase Year.

(2) Maximum contributions shown in this Exhibit B do not include additional amounts payable by C-TRAN for Capital Maintenance and Replacement, Supplementary Services, and, if applicable, other items specifically excluded from the maximum amount by the Agreement.

(3) The maximum amounts shown in this Exhibit B do not include Supplementary Revenues, if any. If Supplementary Revenues are approved, the net amount of Supplementary Revenues shall be added to the amounts shown in this Exhibit B.

(4) If the Third Party Adjustment is applicable, the maximum amounts shown in Exhibit B for a subject year shall be reduced by an amount calculated as one-half \$400,000 inflated at 4% per year from 2019 to the subject year.

(5) The 2019 maximum amount assumes a full year of CRC LRT operations; if less than a full year, the maximum amount due is the amount calculated as the amount shown in Exhibit B multiplied by the ratio of the number of calendar days during the year on which CRC LRT revenue service is provided divided by 365. If revenue service does not begin until 2020, no payment would be required in 2019, and the amount due from C-TRAN in 2020 would be prorated as described for 2019.

(6) Beginning in 2041 and each year thereafter, the maximum amount payable by C-TRAN shall be the amount payable by C-TRAN in the immediately prior year multiplied by 1.04.