

**Appendix N**

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**Memorandum of Agreement  
and Programmatic  
Agreement for Historic  
and Archaeological  
Resources**



**Portland-Milwaukie  
Light Rail Project**

**MEMORANDUM OF AGREEMENT**

**AMONG  
THE FEDERAL TRANSIT ADMINISTRATION,  
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT (TRIMET), AND OREGON STATE  
HISTORIC PRESERVATION OFFICE (SHPO)**

**IMPLEMENTING  
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT  
REGARDING THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT**

**RECITALS:**

By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or others state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

By the authority granted in ORS 366.558, the State of Oregon may enter into cooperative agreements with the United States Federal Government for the performance of work on projects with the allocation of costs on terms and conditions and

**WHEREAS** the Portland-Milwaukie Light Rail project (Project) involves the development of light rail extending from Portland, Oregon, to the City of Milwaukie and north Clackamas County, and includes a new Willamette River Bridge and other facilities needed in support of the light rail system; and

**WHEREAS** the Project has involved the preparation of Draft, Supplemental and Final Environmental Impact Statements (DEIS, SDEIS and FEIS), in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), as amended, and pursuant to 23 Code of Federal Regulations (CFR) Part 771, for the development of light rail extending from Portland, Oregon, to the City of Milwaukie and north Clackamas County, and including a new Willamette River Bridge and other facilities needed in support of the light rail system; and

**WHEREAS** the Federal Transit Administration (FTA) is the NEPA lead agency for the Portland-Milwaukie Light Rail Project, located in Multnomah and Clackamas Counties, Oregon, with Metro and TriMet as local lead agencies; and

**WHEREAS**, FTA has determined that the Project is an undertaking, as defined in 36 CFR § 800.16(y), subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f and its implementing regulations, 36 CFR § 800; and

**WHEREAS**, FTA has determined that construction and operation of the Project will result in effects to historic properties and has consulted with the Oregon State Historic

Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Parts 800.6 and 800.14; and

**WHEREAS**, “Signatories” means the required and invited signatories (FTA, Oregon SHPO, TriMet); “Concurring Parties” means Consulting Parties that have signed this Memorandum of Agreement (Agreement); and “Consulting Parties” means Signatories, Concurring Parties, all interested and affected tribes, and other interested parties consulted on the Project, regardless of whether they agreed to sign the Agreement; and

**WHEREAS**, the Federal Transit Administration and the Oregon SHPO have agreed to be signatory parties to this Agreement; and

**WHEREAS**, federally recognized tribes including the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians, Confederated Tribes of the Warm Springs Reservation of Oregon, and Cowlitz Indian Tribe, and a non-federally recognized tribe, the Chinook Indian Tribe, have been consulted early in and throughout the Section 106 process and regarding this Agreement and invited to concur in the Agreement; and

**WHEREAS**, FTA has consulted with the above-listed Indian tribes for which the Area of Potential Effect (APE) has cultural significance, and have invited the tribes to sign this Agreement as concurring parties; and

**WHEREAS**, FTA in consultation with the Oregon SHPO and the interested tribes have defined the undertaking’s APE in accordance with 36 CFR 800.16(d) to cover all construction or operation activities associated with the undertaking as well as those areas needed for wetland mitigation, stormwater facilities, staging and casting yards; and

**WHEREAS**, the FTA, in conjunction with Metro and TriMet, and in consultation with the Oregon SHPO, conducted cultural resource studies in accordance with 36 CFR 800 as part of project planning and the preparation of the FEIS to identify and evaluate historic properties, which are resources listed on or eligible for listing in the National Register of Historic Places (National Register), that are located within the APE; including archaeological surveys to facilitate archaeological site evaluation and assessment of effects in the area where ground-disturbing activities might affect archaeological historic properties; and inventory, evaluation and assessment of effects to historic buildings and structures that are historic properties identified within the areas of potential effects; and

**WHEREAS**, research investigations for the FEIS, employing professional techniques defined in a research design agreed to by Oregon SHPO, determined the likely presence of archaeological historic properties and outlined their potential character (predictive assessment), providing reasonable estimates of the potential adverse effects (e.g., likelihood that potential resources would need to be protected in place, and that opportunities exist to avoid, minimize and/or mitigate impacts); and

**WHEREAS**, access to conduct archaeological investigations necessary to discover potential buried historic properties is restricted in portions of the Project due to the actively and intensively used urban landscapes, such as roadways, sidewalks, existing buildings, and parking lots, and conducting archaeological subsurface excavations in these areas is practically and logistically problematic or prevented; and

**WHEREAS**, some private properties within the direct effect area of the APE have not been surveyed due to access restrictions or are occupied by existing structures; and

**WHEREAS** execution and implementation of this Agreement satisfies the responsibilities the National Historic Preservation Act Section 106 process, as codified in 36 CFR 800 Subpart B; and

**WHEREAS**, FTA and the Oregon SHPO have agreed that the undertaking will have an adverse effect upon three historic properties and FTA has consulted with the Oregon SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations (36 CFR 800) to mitigate the Adverse Effect on these properties; and

**WHEREAS**, FTA has determined, and SHPO has concurred, that the undertaking will have no adverse effect upon certain other historic properties, as outlined in the FEIS and associated technical reports; and

**WHEREAS**, Metro and TriMet have participated in the consultation with tribes; and other information gathering has not identified any Traditional Cultural Properties in the Project area; and

**WHEREAS**, while background research and related archaeological investigations have not identified human remains in the APE, an Inadvertent Discovery Plan to address the potential discovery of human remains during construction has been negotiated among signatories and consulting parties and is in place for the Project; and

**WHEREAS**, in accordance with 36 CFR 800.6(a) (1), FTA has notified the ACHP of its adverse effect determination and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a) (1) (iii); and

**WHEREAS**, pursuant to 36 CFR 800.4(b)(2), 800.5(a)(3) and 800.6(c)(6), and because access to some areas is practically and logistically restricted due to factors such as property-owner consent, the presence of buildings, or due to the active use of roads that prevent or preclude full identification and evaluation of archaeological resources that may be historic properties prior to the approval of the undertaking, FTA, Metro, TriMet, and the Oregon SHPO, in consultation with consulting parties and the ACHP, have chosen to implement a phased process and have developed procedures in this Agreement to ensure that the identification and evaluation of archaeological historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to properties discovered during implementation of the undertaking are properly coordinated with all phases of the design, construction, and operation of the undertaking; and

**WHEREAS**, in accordance with 36 CFR 800.2(d)(3), FTA used procedures under the NEPA and NHPA to involve the public in the undertaking and solicit their views on historic properties and has distributed the SDEIS and FEIS to appropriate state and federal agencies as well as other stakeholders, partners, and the public; and

**WHEREAS**, pursuant to 36 CFR 800.13, FTA, TriMet, the Oregon SHPO and the ACHP have developed procedures in this Agreement to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to previously identified historic properties and/or properties discovered during implementation of the undertaking are properly coordinated with all phases of the design and construction of the undertaking; and

**WHEREAS**, the FTA will issue a Record of Decision (ROD) following the publication of the FEIS issued by the FTA, anticipated in Spring/Summer 2010; and

**NOW, THEREFORE**, FTA, TriMet and Oregon SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### **-STIPULATIONS-**

FTA, in cooperation with Metro and TriMet, will ensure that the following measures are carried out:

##### **I. GENERAL REQUIREMENTS**

A. As a condition of the award of any assistance under the Federal-Aid Highway and the New Starts 5309 Programs, FTA shall require that Metro and TriMet carry out the requirements of this Agreement, and all applicable laws.

B. Signatories and Consulting Parties shall keep sensitive cultural resources information confidential to the extent allowed by state and federal law. Information concerning archaeological sites is exempted from the Freedom of Information Act (FOIA) as per ORS 192.501(11) and should be excluded from all public documents and stipulations placed upon confidential documents that only approved personnel and/or qualified archaeologists [as defined by ORS 390.235(6)(b)] can access.

C. Activities carried out pursuant to this Agreement shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716 as revised) as well as existing standards and guidelines for historic preservation activities established by the Oregon SHPO.

D. FTA, Metro, and TriMet will ensure that all work carried out under this Agreement is conducted by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR 61).

E. All resource management documents as specified under this Agreement will be completed prior to any construction and within two months of the release of the 90% design documents for the Project. Nothing in this Agreement shall be construed as indicating acceptance by the Consulting Parties of the resource management documents, which have yet to be developed.

FTA shall in good faith attempt to reach a consensus on the contents of the resource management documents with the Consulting Parties.

The confidential resource management documents, available to approved personnel, pertain to the archaeological portion of the Project and include the following.

1. Monitoring Plan & Inadvertent Discovery Plan (Attachment A).
2. Documentation for archaeological investigations not yet completed.
  - a. High Probability Areas to be tested and archaeological sites that were not investigated prior to the FEIS completion due to access.
  - b. Archaeological sites found during construction monitoring. (This report would be done during or by the end of construction in 2015.)
3. Mitigation/treatment plans for significant archaeological sites.
  - a. For sites found during High Probability Area testing and archaeological sites that were not investigated prior to the FEIS completion due to access, if they are found to be significant resources.
  - b. Archaeological sites found during construction monitoring. (This report would be done during or by the end of construction in 2015.)

F. FTA shall retain ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes. Notwithstanding any other provision of this stipulation, FTA shall honor the request of any of the Indian tribes listed herein for direct government-to-government consultation regarding the Project.

G. Study of portions of the Project's APE have been sufficiently completed for Section 106 review prior to the publication of the FEIS and, notwithstanding the Project's need to comply with inadvertent discovery requirements, no further Section 106 activities are expected to be conducted in those areas where cultural resource studies have been completed and SHPO has concurred that no further archaeological investigations are necessary. Attachment A is based on the Section 106 Technical Report, including its inventory report, and defines those areas where additional steps, such as archaeological monitoring during construction, are needed.

H. Definitions in 36 CFR 800.16 will be used for purposes of this Agreement.

## **II. PUBLIC PARTICIPATION**

FTA, Metro, and TriMet have ensured that public participation in the Section 106 review process has been carried out in a manner that has also been integrated with FTA's public participation and review requirements pursuant to 23 CFR Part 771, leading to the publication of the FEIS. Documentation on historic and archaeological properties (some with locational information removed) have been made available for review to the general public offices as part of the SDEIS and FEIS publication and related public review. In accordance with Section 304 of the National Historic Preservation Act of 1966, as amended, the signatories and participating Concurring Parties to this Agreement will withhold from disclosure to the public, information about the location, character, or ownership of a historic property if it is determined that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to a historic property, or (3) impede the use of a traditional religious site by practitioners (4) contains archaeological site description or location information.

The views of the Metro, TriMet, interested parties, and the general public will be considered by FTA with respect to the terms of this Agreement. Should any member of the public raise a timely and substantive objection pertaining to the manner in which the terms of this Agreement are carried out, at any time during its implementation, the FTA shall take the objection into account by consulting with the objector to resolve the objection. When FTA responds to an objection, it shall notify Metro and TriMet of the objection and the manner in which it was resolved. FTA may request assistance of the Metro and TriMet to resolve objections.

### III. MITIGATING ADVERSE EFFECTS TO SPECIFIC HISTORIC PROPERTIES

#### A. Royal Foods Warehouse and Office, 2425 SE 8<sup>th</sup> Ave. Portland

The warehouse is eligible for the National Register of Historic Places (NRHP) and will be adversely affected by demolition. Mitigation measures include:

- a. Documentation shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
  1. Architectural description of the building: *Description should not be less than 500 words and use appropriate architectural terms.*
  2. Building history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
  3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
  4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as [topoquest.com](http://topoquest.com) and marked by hand.*
  5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
  6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each space should be labeled.*
  7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website: [http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp\\_documents.shtml](http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml)*
  8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*

#### B. Westmoreland Park, 7605 SE McLoughlin

Westmoreland Park has been determined eligible as a NRHP Historic District and will be adversely affected by converting the Duck Pond into a riparian area. Mitigation measures include:

- a. Documentation for Westmoreland Park shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
  1. Architectural description of the building [property]: *Description should not be less than 500 words and use appropriate architectural terms.*
  2. Building [property] history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building [property] or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
  3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
  4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as topoquest.com and marked by hand.*
  5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
  6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use or each space should be labeled.*
  7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website:  
[http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp\\_documents.shtml](http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml)*
  8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*
- b. Publish documentation, as described above, of the park's history on the City of Portland website for duration of not shorter than June 2013 to December 2015. The website will be professionally designed.
- c. As additional mitigation, the Project will develop an interpretive panel or display at the Bybee Station, describing the historic attributes and features of Westmoreland Park, including the Duck Pond and its relationship to WPA-era projects, and also the general timeline for development of Westmoreland Park and adjacent neighborhoods of the City by date of Project completion (December 2015). The Project will consult with a historian that meets Secretary of Interior Standards and will ask SHPO to comment to the design.
- d. The Project, with the City of Portland, will prepare National Register nomination materials for a different park within the City, and will formally submit these materials to the SHPO for approval. The Project will (i) consult with SHPO to determine whether the selected property is indeed eligible, (ii) provide draft documents to SHPO for comment, and (iii) make all

necessary revisions to meet the requirements of the National Park Service for National Register nominations. Nomination materials are to be completed within 24 months of the execution of this agreement. This stipulation will be considered complete once the SHPO has found the nomination to be complete and ready for submission to the Keeper of the National Register.

- e. TriMet will execute an interlocal agreement with the City of Portland incorporating the above conditions prior to providing funds for construction within Westmoreland Park.

**C. Derwey House, 2206 SE Washington, Milwaukie**

The R. Derwey House has been determined eligible for the NRHP and will be adversely affected by changing the setting and acquiring approximately 10 feet of land from the side yard near the railroad tracks. Mitigation measures include:

- a. Documentation shall be done according to the Oregon SHPO documentation standards by June 2013. Provide two complete sets of documentation to the Oregon SHPO, including photos, for deposit at the Oregon Historical Society and the Allied Arts and Architecture Library at the University of Oregon. Send a third set without photos to be archived at the SHPO office. Photos should be printed on proof sheets. A fourth full set may be required in cases where there is a local repository that is interested in receiving the materials. The following items are required for all state level documentation:
  1. Architectural description of the building: *Description should not be less than 500 words and use appropriate architectural terms.*
  2. Building history: *History of not less than 500 words discussing at least when the building was constructed and by whom, the building or structure's use over time, and any important persons or events associated with the resource. The project shall contact the Oregon SHPO for research suggestions.*
  3. Bibliography: *Include a bibliography of all resources used in the preparation of the document, including sources for appended archival materials described in item 8.*
  4. United States Geological Survey (USGS) Map with the location of the property marked: *A portion of the entire map may be printed for free from a website such as [topoquest.com](http://topoquest.com) and marked by hand.*
  5. Scale site plan of the subject building or structure and adjacent buildings and structures on the same tax lot: *Drawing may be done by hand as long as it reasonably to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use of each building, structure, object, and adjacent streets on the map should be labeled.*
  6. Scale Floor plans for each floor of the subject building or structure: *Drawing may be done by hand as long as it reasonable to scale. Include the name of the person completing the map, date the map was completed, map scale, and north arrow on the map. The name and/or use or each space should be labeled.*
  7. Photographs of the building or structure interior and exterior: *Photos may be taken as 35mm black-and-white 4x6 images or as color digital images. Digital and print images and prints must meet all aspects of the Oregon SHPO Digital Photo Checklist available at the SHPO website:*  
[http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp\\_documents.shtml](http://www.oregonheritage.org/OPRD/HCD/NATREG/nrhp_documents.shtml)

8. Archival materials: *If available, include original architectural drawings or maps, brochures, photos, newspaper clippings, or other archival items of interest relating to the history of the building or structure.*

**D. Other Historic Resources**

Some historic properties have been found to have “no adverse effect” by the Project and will be minimally affected. For those NRHP-eligible resources the following measures are included:

1) According to the Noise and Vibration Technical Report for the FEIS, projected increases in noise and vibration require mitigation for four (4) additional historic built environment resources at 1635 SE Rhone in Portland, and 2405 SE Harrison, 2326 SE Monroe, and 2313 SE Wren in Milwaukie. After mitigation, these impacts would be reduced to levels that have “no adverse effect.” The mitigation measures would not alter the characteristics for which the properties are considered eligible for the NRHP. However, because mitigation for the impacts may require residential sound insulation such as window replacement, the mitigation action could have adverse effects to the historic buildings if done inappropriately. This Agreement requires that all noise and vibration impacts meet the Secretary of the Interior Standards for Rehabilitation and be finished by December 2014. This includes:

- a) Replace in kind an entire window using the same sash and pane configuration and other design details.
- b) Retrofit the existing windows to meet noise mitigation criteria if possible.
- c) The property owner must be consulted
- d) SHPO must approve any mitigation measures.

2) For 2313 SE Wren in Milwaukie and 1635 SE Rhone in Portland where a small right of way acquisition is required, the property owners will be fully compensated in accordance with FTA policy and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Where landscaping will be removed from the properties due to construction, replacement landscaping shall be offered to mitigate the visual impact by December 2014.

**IV. MITIGATING ADVERSE EFFECTS TO SPECIFIC ARCHAEOLOGICAL SITES**

Identification of archaeological and historic archaeological properties and assessment of effect have been completed for areas within which investigations were allowed by landowners and access has been secured by the Project. No archaeological resources that are eligible for listing in the NRHP have yet been identified within the portion of the Project APE where there may be direct impacts. If any archaeological sites are discovered that may be eligible for listing on the National Register of Historic Place, then consultation with SHPO regarding documentation, evaluation, assessment, and mitigation measures, if necessary, will be necessary.

**V. PRINCIPLES TO COMPLETE ARCHAEOLOGICAL INVESTIGATIONS**

Archaeological excavations have not been completed for all areas of the Project where there may be construction activities within the APE. Some areas have been investigated and some areas contain archaeological resources that may require additional archaeological investigations. The preliminary field findings and recommendations to complete inventory, resource evaluations, and assessment of effect on archaeological historic properties are included in Attachment A.

Circumstances dictate that some of the activities needed to complete all steps of the Section 106 process will be carried out after the FEIS/ROD is issued, and will follow the protocols established in Attachment A.

## **VI. PROGRAMMATIC APPROACH FOR ARCHAEOLOGICAL RESOURCES**

A. FTA will ensure that if completion of any additional subsurface testing, inadvertent discovery, and site eligibility determinations result in additional findings of effect, these findings will be reviewed by the Oregon SHPO and consulting Tribes. The Oregon SHPO shall review all information regarding site eligibility. If SHPO concurs that there are no archaeological sites eligible for listing on NRHP and/or there are no effects or adverse effects to significant archaeological resources, then no further archaeological investigations will be necessary. If the findings reveal there may be an adverse effect to a significant archaeological resource, then the FTA will notify SHPO and the appropriate Tribes and continue consultation to resolve the adverse effects. FTA will review the effects and provide a mitigation plan with a range of solutions to be considered for implementation as well as the level of effort for the data recovery, analysis, curation, and interpretation options and provide this information to SHPO and the appropriate Tribes for concurrence.

B. The options to be considered will take into account whether the significance of the resource calls for preservation in place, data recovery, and documentation through monitoring, further research, or other mechanisms. All proposed mitigation options will be compatible with the historic qualities and characteristics that qualify the property as eligible for listing in the National Register, and will be developed in consultation with the Signatories to this Agreement.

C. Archaeological treatment plans will be developed for any sites that are determined eligible for listing on the National Register and that may be adversely affected by the Project. To minimize the adverse effect to eligible archaeological sites the plan will consider a variety of protective measures such as construction modifications, buffering, protective walls or fencing and construction monitoring. For those archaeological sites determined to be eligible and where adverse impacts are unavoidable, a mitigation plan is necessary. This plan may include a variety of measures such as data recovery plan or other alternatives.

D. Following the completion of the mitigation phase of the process, FTA will ensure that the applicable analysis, documentation, and report preparation and submittal is completed on the mitigation prior to the start or continuation of construction in affected locations. All cultural material recovered and data produced on public non-federal land as a result of the Project will be curated in a permanent curation facility approved by the Oregon SHPO in accordance with 36 CFR 79 and tribal consultation, as dictated by the SHPO permit. Artifacts collected on private land will be curated as dictated by the SHPO permit. All curation actions shall be completed by June 2015.

## **VII. REVIEW OF FUTURE DESIGN CHANGES**

If any design changes having the potential to cause effects to historic properties are made to the undertaking outside the current APE, including additional staging, construction access, wetland or stormwater mitigation sites, FTA, in consultation with Metro and TriMet, will conduct a

cultural resources assessment as required by 36 CFR 800, to identify and evaluate the effects upon historic properties, and will consult to resolve any additional adverse effects.

FTA will ensure that avoidance of adverse effects to historic properties is the preferred treatment during the design phase and will utilize all feasible, prudent and practicable measures to avoid adverse effects. All design enhancements that may affect historic properties in the Project corridor will be subject to review and concurrence by FTA, Metro and TriMet. The Project final mitigation plan will address potential design modifications and aesthetic treatments foreseen in final design.

### **VIII. ARCHAEOLOGICAL RESOURCES NOT PREVIOUSLY IDENTIFIED**

This section describes procedures to be followed by the construction contractors and Project engineers, which ensure appropriate consideration of archaeological resources if encountered during construction. The FTA and Project contractors shall:

- 1) Discuss pre-construction requirements, including:
  - a) Educational briefings by professional archaeologists,
  - b) Briefing materials for construction contractor personnel and FTA engineers and inspectors;
  - c) Protocol for inadvertent discovery, including contact telephone numbers for contractor personnel and FTA engineers and inspectors as per ORS 97.740-97.760 (Indian Graves and Protected Objects) and ORS 358.905-358.955 (Archaeological Objects and Sites).
- 2) Provide background information on the context of anticipated resources within the Project to the construction contractor;
- 3) Identify in lay terms the nature of primary archaeological resources indicators (e.g. high densities of fire modified rock; high density historical municipal or industrial middens) that may represent a significant resource and which require consideration by professional archaeologist and consideration by Consulting Parties;
- 4) Identify relevant procedures and contractor responsibilities for the inadvertent discovery of archaeological objects or sites (ORS 358.905-.955); including site protection and evaluation by a qualified archaeologist; and
- 5) Ensure that the Project plans and documents note the areas to be included in construction monitoring under the supervision of a qualified archaeologist and that all archaeological site locations are kept confidential.

### **IX. INADVERTENT DISCOVERY OF HUMAN REMAINS**

If human remains are encountered during the implementation of the Project activities, all activity in the vicinity of the discovery will cease and the appropriate authorities notified as outlined in the Inadvertent Discovery Plan as per ORS 97.740-.760

(Attachment A).

## **X. DISPUTE RESOLUTION**

Should any Signatory or Concurring Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the Signatory parties will consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:

Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP will provide FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. FTA will then proceed according to its final decision.

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FTA will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the Agreement, and provide them and the ACHP with a copy of such written response.

FTA's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **XI. AMENDMENTS**

This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

## **XII. DURATION AND TERMINATION**

This Agreement will take effect immediately upon execution by the Signatory parties. FTA will send a copy of the executed Agreement to the ACHP, regardless of ACHP participation in the process. The terms of this Agreement will be satisfactorily fulfilled upon completion of the Project. Prior to such time, FTA may consult with the other participating parties to reconsider the terms of the Agreement and propose its amendment. Unless terminated, this Agreement will be in effect until December 2015 or such time as FTA, in consultation with all Signatory and Concurring Parties, determines that all of its terms have been satisfactorily fulfilled, whichever is later.

If any Signatory to this Agreement determines that its terms will not or cannot be carried out, that party will ensure immediately consult with the other parties to attempt to develop an amendment per Stipulation XI above. If within thirty days (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other Signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, FTA must either (a) execute a Memorandum of Agreement pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. FTA will notify the Signatories as to the course of action it will pursue.

***XIII. Archeological Resources Retrieved and Preserved.***

If archeological resources are retrieved and deemed by the SHPO to be significant and worthy of preservation, any costs associated with such resource retention shall be the responsibility of TriMet.

***XIV. Compliance with Section 106.***

With the execution and implementation of this Agreement the responsibilities the National Historic Preservation Act Section 106 process, as codified in 36 CFR 800 Subpart B are deemed satisfied.

SIGNATORIES:

**Federal Transit Administration**

  
\_\_\_\_\_

Mr. Richard Krochalis, Region X Administrator

Date 6/17/10

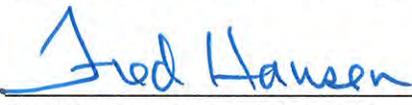
**Oregon State Historic Preservation Officer**

  
\_\_\_\_\_

Roger Roper, Assistant Director, Heritage Programs

Date 6/15/10

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

  
\_\_\_\_\_

Fred Hansen, General Manager

Date 6/14/10

MOA attachments regarding archaeological resources are privileged information not for public disclosure; complete documentation is on file with TriMet and FTA.