

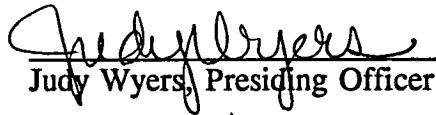
BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 94-2034
A DESIGN AND CONSTRUCTION)
AGREEMENT WITH TRI-MET FOR THE) Introduced by Rena Cusma,
WASHINGTON PARK PARKING LOT) Executive Officer

THE METRO COUNCIL RESOLVES THAT:

The Executive Officer is authorized to enter into a Design and Construction Agreement with Tri-Met for the Washington Park Parking Lot in a form substantially similar to attached Exhibit "A."

ADOPTED by the Metro Council this 13th day of October, 1994.



Judy Wyers, Presiding Officer

gl
1187

Contract No. _____

**TRI-MET/METRO WASHINGTON PARK PARKING LOT
DESIGN AND CONSTRUCTION AGREEMENT**

Date _____

THIS AGREEMENT is between the Tri-County Metropolitan Transportation District of Oregon ("Tri-Met"), and Metro, a metropolitan service district.

W I T N E S S E T H :**Article I - Recitals**

1. The Westside Light Rail Project (Project) will extend the existing MAX line from downtown Portland to Washington County.
2. The Project has been identified as the region's number one (1) priority transportation project.
3. Tri-Met has entered into a Full Funding Grant Agreement with the Federal Transit Administration (FTA) for a fixed budget of \$688 million for construction of a light rail connection between Portland and 185th Avenue in Hillsboro. The Project is subject to the budgetary limitations, terms and conditions included in the grant agreement.
4. Metro has committed in accordance with Metro Resolution No. 91-1449A to contribute \$2,000,000 toward the construction of the Westside Light Rail Project, and plans to issue revenue bonds or bond anticipation notes to pay this commitment.
5. Debt service on bonds could be paid from revenue generated from parking fees to be charged to users of the parking lot that serves the Metro Washington Park Zoo, Oregon Museum of Science and Industry (OMSI), and the World Forestry Center (WFC), hereinafter referred to as "Parking Lot."
6. Tri-Met has undertaken the design of the Project, including the tunnel segment (Line Section 5), which includes a three-mile double-bore tunnel through the West Hills with a station below and headhouse in the Parking Lot.

7. Metro, OMSI, and WFC have decided to reconfigure portions of the Parking Lot, including the realignment of Knight's Boulevard, which presently bisects the Parking Lot, so that Knight's Boulevard will become the western perimeter road for the Parking Lot, hereinafter referred to as "Parking Lot Reconfiguration" or "work." The Parking Lot Reconfiguration is preliminary to a change to fee parking at the Parking Lot.
8. This Agreement will allow Tri-Met's contractors to perform the design and construction work of both the Project and the Parking Lot Reconfiguration as a single project thereby avoiding potential conflicts in construction activity and providing for greater efficiency.
9. Metro, OMSI and WFC lease the Parking Lot from the City of Portland, and the Parking Lot is managed by a Parking Lot Committee created by Metro, OMSI and WFC pursuant to a Parking Lot Operating Agreement.

Article II - Tri-Met Obligations

1. Tri-Met shall perform all duties necessary to complete design and construction of the Parking Lot Reconfiguration subject to the requirements of this Agreement and shall act as the sole direct interface with the construction contractor.
2. Coordination of Work
 - a. Tri-Met's Design Team for the Parking Lot Reconfiguration shall be led by its Line Section 5 Project Engineer (P.E.). Tri-Met's Construction Group for the Parking Lot Reconfiguration shall be led by its Line Section 5 Resident Engineer (R.E.).
 - b. Tri-Met shall designate its P.E. and R.E. in writing.
 - c. Tri-Met shall conduct regular meetings with Metro's Project Representative. Metro's Project Representative shall invite the Project Representatives of WFC and OMSI to attend these meetings. Tri-Met shall provide Metro's Project Representative full information and access relating to the design and construction of the Parking Lot Reconfiguration. Metro's Project Representative shall provide this information to the WFC and OMSI Project Representatives.
 - d. The scheduling of work on the Parking Lot Reconfiguration shall be subject to the provisions of Paragraph 5 of the Agreement (Washington Park LRT Station/Parking Lot Project) dated March 14, 1994, between Tri-Met, Metro, OMSI, WFC, and the City of Portland. Tri-Met shall give 48 hours notice to

Metro's Project Representative prior to Tri-Met's issuance to its contractor of Notice to Proceed on the Parking Lot Reconfiguration.

3. Access to Work

a. Tri-Met shall provide access to Parking Lot Reconfiguration work areas, as follows:

- (1) Tri-Met shall provide Metro's Project Representative and the Project Representatives of WFC and OMSI with reasonable access to work areas. Metro's Project Representative and the Project Representatives of WFC and OMSI shall check in at any normal and usual access restriction points. Tri-Met may reasonably restrict and regulate such access as needed to avoid interference with construction work.
- (2) Tri-Met shall provide for reasonable visits by Metro's, OMSI's and WFC's "visitors" upon 48 hours notice. Tri-Met may reasonably restrict and regulate "visitors" as needed to avoid interference with construction work. All "visitors" shall check in at any normal and usual access restriction points.
- (3) Tri-Met shall provide emergency access as needed.

4. Scope of Work, Inspection, Quality Control, and Acceptance of Work

a. Tri-Met shall cooperate with Metro's Project Representative (or designee) and the Project Representatives of WFC and OMSI regarding construction of the Parking Lot as follows:

- (1) Tri-Met shall provide Metro's Project Representative and the Project Representatives of WFC and OMSI with the opportunity to review and comment on the Bid Documents, Contracts, Staging Area Plan, and other matters of concern having impact on Metro, OMSI and WFC. Tri-Met shall respond to Metro's Project Representative's input and the input of Project Representatives of WFC and OMSI on the Bid Documents and shall attempt to address any concerns identified by Metro's Project Representative and Project Representatives of WFC and OMSI in Tri-Met's response to the Contractor on matters of concern having impact on Metro, OMSI or WFC. The comments of Metro, OMSI and WFC shall be provided in a timely manner.

In the event Metro, OMSI and WFC's Project Representatives issue conflicting comments or responses to Tri-Met, Tri-Met need not respond to such comments until any conflicts are resolved by Metro,

OMSI and WFC. Any conflicts shall be resolved in a timely manner. On matters that are the sole concern of only one of Metro, OMSI and WFC, Tri-Met shall recognize and respond to the comments of the individual Project Representatives.

- (2) Tri-Met shall require its Contractor to correct each element of work not in conformance with the Contract Documents identified by Metro's Project Representative.
- (3) Tri-Met shall suspend its Contractor's work in the event it is so required by Metro's Project Representative.
- (4) Tri-Met shall not finally accept the Parking Lot Reconfiguration construction work until so authorized by Metro's Project Representative, who shall consult with the Project Representatives of WFC and OMSI before authorizing acceptance of the Parking Lot construction.
- (5) Tri-Met shall make warranty claims and require corrections for problems identified during the warranty period specified in technical specifications, as directed by Metro's Project Representative.
- (6) Tri-Met shall perform such verifications as are appropriate with respect to progress payment quantity and retainage amounts.
- (7) Tri-Met shall require its Contractor to execute such changes to the work and additional work as directed by Metro's Project Representative.

5. Record Drawing Mark-ups

Tri-Met's P.E. and/or R.E. shall provide Metro's Project Representative with three complete sets of full size as-built drawings showing the Parking Lot Reconfiguration as constructed. In addition, Metro's Project Representative shall also be provided three copies of computer-assisted design documents in digital form. Metro's Project Representative shall subsequently distribute a set of full size as-built drawings and a set of computer-assisted design documents in digital form to the Project Representatives of OMSI and WFC.

6. Tri-Met's Financial Participation

Tri-Met agrees that 20 percent of the out-of-pocket cost of the Parking Lot Reconfiguration is related to Tri-Met's construction of the station and headhouse. Tri-Met shall pay its consultants and contractors 100 percent of the reasonable and

appropriate costs for their work on the Parking Lot Reconfiguration and shall invoice Metro for Metro's 80 percent share of those paid costs. This general allocation of costs shall be subject to the more specific provisions of Article III.4, below. Tri-Met agrees that Metro shall be entitled to audit such expenses and payments upon reasonable request either prior to or after Metro's reimbursement hereunder, and Metro may withhold reimbursement for disputed items until the dispute is resolved.

Article III - Metro Obligations

1. Coordination of Work

- a. The Metro Project Representative has the responsibilities set forth in this Agreement and Tri-Met may rely on Metro's Project Representative for all decisions and instructions issued pursuant to this Agreement. OMSI and WFC shall also designate in writing their Project Representatives. The explicit references in this Agreement to OMSI and WFC and their Project Representatives reflect the existing contractual agreements between Metro, OMSI and WFC and do not create additional duties or obligations on the part of Tri-Met other than as expressly set forth in this Agreement.
- b. Metro's Project Representative shall be designated in writing. The Metro Project Representative shall serve as the single official point of contact between Tri-Met and Metro for the Parking Lot Reconfiguration Project. Metro may designate a replacement Project Representative by notifying Tri-Met's P.E. and R.E. in writing.
- c. Metro agrees that decisions regarding submittals, requests for information, change requests, and value engineering proposals which do not impact the scope or cost of work or materially change project components shall be within the sole discretion of Tri-Met's R.E.
- d. Tri-Met's R.E. shall consult Metro's Project Representative who in turn will consult with the Project Representatives of WFC and OMSI on all submittals, requests for information, change requests, and value engineering proposals which impact the scope or cost of work or materially change project components.
- e. Metro's Project Representative shall respond to submittals, requests for information, change requests, and value engineering proposals which impact the scope or cost of work or materially change the project components within 15 calendar days of receipt, unless otherwise agreed between Metro's Project Representative and Tri-Met's R.E. on a case-by-case basis.

- f. No action on any submittal, request for information, change request, or value engineering proposal which impacts the scope or cost of work or materially changes the project components shall be taken without Metro's Project Representative's consent. Where the approval of Metro's Project Representative has been requested, approval shall be deemed given if there is no response within the 15-day period, unless Tri-Met's R.E. has agreed to an extension as to the particular request.

2. Acceptance of Work

- a. Issues of contract significance, such as suspension of work or correction of work not in conformance with the Contract Documents, shall be coordinated through Tri-Met's R.E. (or designee).
- b. Metro's Project Representative, who shall consult with the Project Representatives of WFC and OMSI before authorizing acceptance of the Parking Lot construction, shall decide on final acceptance of the Parking Lot Reconfiguration construction once the construction is declared complete and technically acceptable by Tri-Met's R.E. Metro shall communicate this final acceptance in writing to Tri-Met's R.E.

3. Payment to Tri-Met

- a. Metro shall provide payment to Tri-Met for 80 percent of the out-of-pocket cost of the design, construction, and insurance costs under this Agreement. Tri-Met shall pay the contractor directly, and shall submit monthly bills based on contractor progress payments directly to Metro's Project Representative. The current estimate of design costs for the Parking Lot Reconfiguration is \$225,244. The current estimate of construction costs in year of expenditure dollars (including contractor's profit, but excluding mobilization) is \$1,351,221 for the Parking Lot Reconfiguration which is 5.7 percent of the entire WCO501 construction contract. The current estimate of mobilization costs for the entire WCO501 contract is \$1,263,447 in year of expenditure dollars. The portion of this mobilization related to the Parking Lot Reconfiguration is \$72,016 ($\$1,263,447 \times 5.7$ percent). Tri-Met will be providing the insurance for the project through an Owner Controlled Insurance Program (OCIP). The cost of change orders, additional work, contractor claims, and insurance is not included in the construction cost estimates and will not be included in the contractor's bid prices. The current estimate of insurance costs for the Parking Lot Reconfiguration portion of the WCO501 contract is \$122,786. The total cost of the Parking Lot Reconfiguration (design, construction, and insurance) totals \$1,771,267. This amount does not include the cost of change orders, additional work, and claims, if any. The cost of change orders, additional work, and claims, if any, relating to the Work caused by directions

issued to Tri-Met by Metro's Project Representative or delay in issuing directions shall be paid 100 percent by Metro, except that the cost of change orders and additional work approved by both Metro and Tri-Met shall be shared as agreed to in writing by Tri-Met's R.E. and Metro's Project Representative. The cost of contractor claims not caused by directions issued to Tri-Met by Metro shall be paid 20 percent by Tri-Met and 80 percent by Metro.

Table 1 (below) lists the design, construction, mobilization and insurance cost estimates, and apportions those out-of-pocket costs between Tri-Met and Metro. This estimate will be adjusted based on actual costs.

TABLE 1

	<u>Tri-Met (20%)</u>	<u>Metro (80%)</u>	<u>Total</u>
Design	\$ 45,049	\$ 180,195	\$ 225,244
Construction	270,244	1,080,977	1,351,221
Mobilization	14,403	57,613	72,016
OCIP	24,557	98,229	122,786
TOTAL	\$ 354,253	\$1,417,014	\$1,771,267

- b. Upon final acceptance by Metro's Project Representative on its behalf, Metro shall within sixty (60) days thereafter pay to Tri-Met any final payment due.

Article IV - General Provisions

1. Insurance

Tri-Met shall cause Metro, WFC, and OMSI to be added as additional insureds to its OCIP which covers all insured risks of the Project so that in the event any claims arise out of the performance of this Agreement, including but not limited to the construction of the Parking Lot Reconfiguration, they shall be covered by such policies to the limits of the coverage provided. There will also be a waiver of subrogation as to Tri-Met, Metro, WFC and OMSI. Tri-Met shall furnish Metro, OMSI and WFC with such certificates of insurance and prior notice of policy termination as they may reasonably require.

2. Federal Requirements

Tri-Met's portion of the Parking Lot Reconfiguration is being paid for utilizing federal funding. The federal grant which provides the funds requires that both Tri-Met and Metro incorporate the federal regulations listed in Exhibit A (attached) into

this Agreement as well as any construction contracts, and that a Disadvantaged Business Enterprise (DBE) goal of at least 10 percent be established in those construction contracts. Tri-Met currently anticipates that the goal for the construction contract which includes the Parking Lot Reconfiguration work covered by this Agreement will be 15 percent to 18 percent.

3. Duration

This Agreement shall be in force and effect upon the signatures of both parties to this Agreement until two years after final acceptance by Metro of the work authorized herein.

4. Maintenance and Inspection of Records

Tri-Met and the Metro shall maintain records as required in Exhibit A, Article 12. Tri-Met shall provide assistance to Metro in determining the FTA record-keeping requirements as necessary in order to assist Metro in complying with FTA requirements.

5. Documents

All records, reports, data, documents, systems, and concepts, whether in form of writings, figures, graphs, or models which are prepared or developed in connection with the Parking Lot Reconfiguration design and construction shall become public property. All design drawings and documents prepared under this Agreement shall be maintained and archived by Tri-Met.

6. Conflict Resolution Process

If during the course of carrying out this Agreement a dispute between Tri-Met, Metro, WFC and/or OMSI develops, Tri-Met's P.E. or R.E. and Metro's Project Representative shall submit in writing a summary of the issues and the recommended action to a resolution committee. The resolution committee shall be convened to quickly resolve the dispute so that the work can proceed in a timely manner. The dispute resolution committee shall consist of Tri-Met's Westside Project Director and a member of the Parking Lot Committee designated by the Parking Lot Committee.

The resolution committee's unanimous decision on a dispute shall bind Tri-Met and Metro.

7. Mediation

Should the dispute resolution committee be unable to resolve a dispute, it is agreed that it will be submitted to mediated negotiation prior to any party commencing

litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement, each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties.

Dated: _____, 1994.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON

METRO

By: _____
General Manager

By: _____

Title: _____

Approved:

Approved:

OREGON MUSEUM OF SCIENCE
AND INDUSTRY

WORLD FORESTRY CENTER

Approved as to Form:

Approved as to Form:

By: _____
Tri-Met Legal Services

By: _____
Daniel B. Cooper, General Counsel

Approved as to Form:

Approved as to Form:

By: _____
Lane Powell Spears Lubersky
Jean DeFond

By: _____
Miller, Nash, Wiener et al.
Dean DeChaine

gl1194F

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 94-2034 AUTHORIZING A DESIGN AND CONSTRUCTION AGREEMENT WITH TRI-MET FOR THE WASHINGTON PARK PARKING LOT

Date: September 26, 1994

Presented by Don Rocks
Dan Cooper
Doug Butler

FACTUAL BACKGROUND AND ANALYSIS

The construction of the Washington Park Light Rail Station is a Tri-Met project that began work in the parking lot in early September. Tri-Met acquired the station site from the property owner--the City of Portland--paying \$75,000 for the ground the station will occupy.,

Metro, World Forestry Center and OMSI previously entered into an agreement with Tri-Met which dealt with matters of site access, hours of work, and other practical and logistical concerns related to the construction of the station facility.

The Design and Construction Agreement is a document that relates specifically to the configuration of the parking lot, the realignment of Knights Boulevard through the property, the number and placement of parking spaces, drop-off zones, etc. The "plans" have been through a number of iterations and have been accepted by the institutions sharing the Washington Park parking lot.

Tri-Met will be responsible for the construction work. Metro shall name a project representative who will be the liaison between Tri-Met and the three institutions that share the parking lot and constitute the Parking Lot Committee. The cost of the work entailed is anticipated to be \$1,771,000. Costs are split 80% Metro and 20% Tri-Met which comes to 1,417,000 Metro and \$354,000 for Tri-Met. Design work to date has cost approximately \$250,000, which front end cost was borne by Tri-Met and will be reimbursed from the proceeds of the Metro Revenue Bonds on the same 80-20 split that pertains to construction costs.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 94-2034.

REGIONAL FACILITIES COMMITTEE REPORT

RESOLUTION NO. 94-2034, AUTHORIZING A DESIGN AND CONSTRUCTION AGREEMENT WITH TRI-MET FOR THE WASHINGTON PARK PARKING LOT

Date: October 6, 1994

Presented by: Councilor Gates

COMMITTEE RECOMMENDATION: At its October 5, 1994 meeting the Regional Facilities Committee voted 5-0 to recommend Council adoption of Resolution No. 94-2034. All committee members were present and voted in favor.

COMMITTEE DISCUSSION/ISSUES: Executive Assistant Don Rocks presented the staff report. In addition to discussing the written staff report, he said this agreement assumes some decisions that the Council has not yet formally made. Those include the establishment of a paid parking lot, and issuance of bonds to pay for parking lot construction and relocation of Knights Boulevard, in addition to Council's earlier commitment to pay \$2 million to Tri-Met for Metro's share of the Zoo station. He said the preliminary design for the parking lot has been approved by OMSI, World Forestry Center (WFC) and the City of Portland. Mr. Rocks said bonds are expected to be issued in about a year, in an amount not to exceed \$5.5 million. He said the Metro project representative discussed in the agreement would probably come from the General Services Department, but that is not stipulated in the agreement.

Council Analyst Casey Short said his concerns in reviewing the agreement related to its making policy statements that the Council had not otherwise formally considered. Those centered around how Metro will pay its share of the cost of the Zoo light rail station. The proposal to institute paid parking and issue bonds has been discussed for some time, but these issues have never had full Council review and have not become established Council policy. He said that if this agreement is adopted, it will take a large step toward establishing as Council policy that method of paying for the station. Mr. Short asked for clarification as to why the agreement is between only Metro and Tri-Met, but has signature blocks for OMSI and WFC as well. Mr. Rocks said this was primarily as a courtesy to the other facilities, acknowledging the partnership between the neighbors. Councilor McFarland asked how OMSI is involved in the parking issue since their move. Mr. Rocks said OMSI still owns the building and does use it and rent it out; he added that OMSI has indicated they plan to increase that use over time. General Counsel Dan Cooper said OMSI and WFC are signatories to this agreement because the operating agreement (see Resolution No. 94-2035) calls for them to approve it. Mr. Rocks added that the WFC Board has approved both agreements, and the OMSI Executive Committee has also approved them.

Councilor Hansen and Councilor Moore spoke to the issues in both agreements that gave clear Council policy direction, and encouraged that the committee report and discussion at Council point out those issues. They include the Council's direction, in adopting the agreements, that it intends to issue revenue bonds (or some other debt instrument) to pay Metro's \$2 million commitment to the Zoo station; that the parking lot will be reconfigured to turn it into a fee paid parking lot; that Knights Blvd. will be reconfigured in order to accomplish this; and that the bonds will be issued to pay for the parking lot project as well as the light rail station, with parking revenues pledged to pay for the bonds.