

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