



Contract No.

**TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

**PARTNERSHIP AGREEMENT
FOR
INCOME-BASED FARE ELIGIBILITY VERIFICATION & PROGRAM REGISTRATION SERVICES
FOR THE TRANSIT ASSISTANCE PROGRAM**

This Contract is entered into between the Tri-County Metropolitan District of Oregon (TriMet) and **Enter_Contractor Name Here**. (hereinafter "Contractor") for services to be provided.

1. Term

This agreement will remain in effect until canceled by either party.

2. Compensation

The Contractor acknowledges that no fees or other payments are required under this Agreement and agrees that the mutual benefits and covenants exchanged, including the disclaimers and exclusions, set forth herein, constitute fair, reasonable and adequate consideration for this Agreement.

3. Scope of Services

TriMet is expanding its Honored Citizen program, which offers qualifying riders an opportunity to reduce their transportation costs. Individuals who qualify for Honored Citizen fare pay half the cost of a single ride or day pass and receive a 72% discount off month passes. Starting July 1, 2018, TriMet will add income as a qualifying factor for Honored Citizen fare. Those earning up to 200% of the federal poverty level will be eligible.

Contractor shall provide eligibility screening and registration services for applicants seeking registration in the Honored Citizen fare expansion (hereinafter the Income-based Fare (IbF) Program). **As an IbF Program Enrollment Partner, Contractor shall:**

- a. Attend TriMet registration training and review all program materials provided to Contractor;

- b. Provide eligibility screening and program registration services for current clients during the hours and at the location defined by the contractor;
- c. The contractor may perform eligibility screening and program registration services for non-clients with prior approval from TriMet;
- d. Inform clients who call or visit the agency for other services about the IbF Program, eligibility and process for registration when applicable;
- e. Accurately verify individual program eligibility and register eligible clients in the TriMet Registration System;
- f. As part of the broad public information campaign, sites may be asked to provide information about the IbF Program on their agency website;
- g. Coordinate and oversee the outreach, eligibility and registration processes with the partner agencies to ensure that they adhere to the rules and regulations for the program;
- h. Provide periodic reports to TriMet that highlight the activities and outline challenges and successes;
- i. Allow and assist TriMet with full access to documents and procedures related to the IbF Program as well as accommodate operational reviews in order to validate program integrity; and
- j. Develop and maintain documented eligibility procedures and training that meets all policies and requirements established by TriMet for the IbF Program.

The Request for Applications and Contractor's application are hereby incorporated by reference into this Contract. However, in the event of a conflict between the Request for Applications and this Contract, the terms of this Contract shall govern. If Contractor no longer maintains the services or facilities identified in its application, Contractor shall immediately notify TriMet and TriMet may terminate this Contract or renegotiate the service level provided by Contractor.

4. Correspondence/Communication

- a. Contractor shall designate and authorize a Program Administrator(s) to assist in implementation of these procedures, including authorizations necessary for the Program Administrator to access and utilize TriMet's Registration System on behalf of Contractor. Contractor assumes sole responsibility for ensuring that Program Administrator(s) are duly authorized to administer the Program on behalf of Contractor.
- b. TriMet's Representative and Contractor's Program Administrator shall be responsible for routine, day-to-day correspondence and communications regarding Contractor's implementation of the Program. Upon commencement of this Contract, TriMet and Contractor shall provide written notice to each other of the name and address of their respective designated Representative and Program Administrator, and shall provide prompt written notice of any change thereto.
- c. All notices required to be given by the terms of this Contract shall be provided in writing and signed by the person serving the notice, and shall be sufficient if given in person, emailed, mailed postage pre-paid certified return receipt or telefaxed (with confirmation record) to the persons at the signature addresses below, or to such other address as either party may notify the other of in

writing. Any notice given personally shall be deemed to have been given on the day that it is personally delivered, emailed or telefaxed (with confirmation record), and if mailed three (3) business days after the date of the postmark of such mailing.

5. Use of TriMet Registration System; Website Terms of Service

The Contractor's Program Administrator shall use the TriMet Registration System as a tool to administer and manage the Program. Program Administrators, pending approval by TriMet, shall be given secure login credentials to access the Program account using the TriMet Registration System. Program Administrators shall use the TriMet Registration System for the sole purpose of managing their Program, and only as provided in this Contract. Administrators are responsible for any activity that occurs under their account. Program Administrators shall keep usernames and passwords secure and shall not allow anyone else to use them to access the TriMet Registration System. TriMet is not responsible for any loss that results from the unauthorized use of Program Administrator's username and password, with or without Program Administrator's knowledge. Using the TriMet Registration System, Program Administrators shall be able to perform certain tasks including, but not limited to: register customers for the Transit Access Program; and manage and edit their Program account profile, such as maintaining Contractor information.

All content included in or through the TriMet Registration System, such as text (including blog posts, schedules, arrival information, fare information), graphics (including maps), designs, logos, presentations, videos, data, instructions, photos, and software (the "Materials"), is the property of TriMet or its licensors. The Materials are protected by copyright, trademark and other intellectual property laws. TRIMET®, WES®, TRANSITTRACKER™, HOP FASTPASS™ and other trademarks, service marks and logos that we use, are trademarks of TriMet. Third-party trademarks that appear in connection with the TriMet Registration System are the property of their respective owners. The trademarks displayed in connection with the TriMet Registration System may not be used without express written permission.

TriMet grants Contractor a personal, United States, royalty-free, non-assignable and non-exclusive license to use the Materials available as part of the TriMet Registration System. This license is for the sole purpose of using the TriMet Registration System for TriMet's intended purposes and is subject to the license restrictions below. Unless laws prohibit these restrictions or you have our written permission, Contractor may not:

- Copy, modify, distribute, sell, or lease any part of our TriMet Registration System or included software;
- Reverse engineer or attempt to extract the source code of our software or copy the scripts of the website;
- Download, print, copy, distribute or otherwise use Materials for commercial purposes, including commercial publication, sale or personal gain;
- Use any manual process or robot, spider, scraper, or other automated means to collect information or Materials from the TriMet Registration System or from users of the TriMet Registration System;
- Circumvent any of the technical limitations of the TriMet Registration System or interfere with the Services, including by preventing access to or use of the TriMet Registration System by our other users;
- Change or remove any copyright, trademark, or other proprietary notices, including without limitation attribution information, credits, and copyright notices that have been placed on or near the Materials;

- Impersonate any person or entity or misrepresent yourself or your entity in connection with the TriMet Registration System, or attempt to use another user’s account without the user’s permission; or
- Post or transmit through the TriMet Registration System any material that reasonably could be considered obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable to some or all users.

Feedback and participation are important to us. With respect to any content submitted or made available to TriMet (including through our “Contact Us” pages and social media channels), Contractor grants to TriMet a non-exclusive, perpetual, worldwide, fully paid and royalty-free, transferable license to use, copy, distribute, publicly display, modify, and create derivative works from such content, for the limited purpose of operating, promoting, and improving the Services, and to develop new Services. In the event that Contractor submits or posts any creative suggestions, proposals, or ideas about TriMet products and services, Contractor agrees that such submissions will be automatically treated as non-confidential and non-proprietary. TriMet may use Contractor’s Feedback without any obligation or credit to Contractor.

The TriMet Registration System and Materials are provided “as is,” “as available,” and without warranties of any kind. All use of the TriMet Registration System and Materials is at Contractor’s sole risk. To the fullest extent permitted by law, TriMet disclaims all warranties of any kind, whether express, implied or statutory, including without limitation implied warranties of title, quality, performance, merchantability, fitness for a particular purpose, accuracy, and non-infringement, as well as warranties implied from a course of dealing or course of performance. TriMet does not warrant that the TriMet Registration System will be continuous, prompt, secure, or error-free. TriMet assumes no liability for any errors or omissions, including the inaccuracy of content, or for any damages or losses that Contractor or any third party may incur as a result of the unavailability of the TriMet Registration System. TriMet assumes no responsibility, and shall not be liable for, any damages to Contractor’s equipment, devices or other property caused from use of the TriMet Registration System.

6. Insurance (08/16)

During the term of this Contract, Contractor shall purchase and maintain any insurance required by this Contract. Contractor shall furnish acceptable certificates of insurance and additional insured endorsements to TriMet within ten (10) days after award of this contract, and prior to commencement of any contract work. Contractor shall be responsible for the payment of all premiums and deductibles and shall indemnify TriMet for any liability or damages that TriMet may incur due to Contractor's failure to purchase or maintain any required insurance. Contractor shall maintain insurance of the types and in the amounts described below.

- a. Commercial General Liability Insurance: Commercial General Liability insurance, with coverage limits not less than:

\$2,000,000.00 per occurrence, bodily injury and property damage; and
 \$2,000,000.00 general aggregate, bodily injury and property damage.

Such coverage will be equivalent to or better than the Insurance Service Office (ISO) standard coverages, conditions, and extensions, and shall not contain limitations or exclusions for Blanket Contractual, Broad Form Property Damage, Personal Injury, Premises-Operations, Products and-Completed Operations, Independent Contractors, Fire Legal Liability, and Explosion, Collapse, and Underground (XCU).

The General Liability policy shall be endorsed with CG 2010 1185 or CG 2010 1001 and CG 2037 1001 or equivalent, naming TriMet and its directors, officers, representatives, agents, and employees as additional insured. If Contractor is working within 50' of railroad, the commercial general liability policy exclusion must be deleted.

- b. Business Auto Liability Insurance: Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:

Bodily injury: \$2,000,000.00 per person; \$2,000,000.00 per accident; and
Property damage: \$2,000,000.00 per accident.

The Automobile policy shall be endorsed with CA 20 48 02 99 or equivalent, naming TriMet and its directors, officers, representatives, agents, and employees as additional insured. If Contractor's work is within 50' of a railroad, the auto policy shall be endorsed with CA 20 70 10 01 or equivalent and this endorsement must be attached to the insurance certificate.

- c. Worker's Compensation Insurance: Oregon statutory workers' compensation and employer's liability coverage, including all states protection, if applicable, voluntary compensation and Federal endorsement. Contractor shall include U.S. Longshore and Harbor Workers Compensation Act and Maritime coverage ("Jones Act"). Employer's liability coverage shall have the following minimum limits:

Bodily Injury by Accident: \$1,000,000.00 each accident
Bodily Injury by Disease \$1,000,000.00 each employee
Bodily Injury by Disease: \$1,000,000.00 policy limit

Contractors who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing, stating the Contractor's qualification for exemption under ORS 656.027.

Failure of TriMet to demand certificates of insurance, additional insured endorsements or other evidence of full compliance with these insurance requirements or failure of TriMet to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The insurance required under this section shall:

- 1) Include (as evidenced by endorsement) TriMet and its directors, officers, representative, agents, and employees as additional insureds with respect to work or operations connected with the contract (excluding Professional Liability and Worker's Compensation policies);
- 2) Require Contractor to give TriMet not less than thirty (30) days written notice prior to termination, cancellation, or non-renewal of coverage;
- 3) Insurance policies shall be purchased only from insurance companies that meet TriMet's A.M. Best Rating criteria of "A-" or better (excluding SAIF) and are authorized to do insurance business in Oregon;
- 4) Contractor will cause its underwriters of insurance policies to waive their rights of subrogation arising from the work performed under this Contract.

- 5) Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

7. Hours of Labor – Personal Services Contracts (08/16)

In the case of contracts for personal services designated under ORS 279A.055, employees shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279B.020(1)(b)(B) to (G), and for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 219 from receiving overtime.

8. Contractor's Status and General Responsibilities (08/16)

Contractor is an independent Contractor for all purposes and is entitled to no compensation from TriMet other than that provided by this Contract. Contractor shall inform TriMet of

Contractor's Federal Internal Revenue Service Employer Identification Number, or, if Contractor is an individual with no employer identification number, Contractor's Social Security Number. The Contractor and its officers, employees, and agents are not officers, employees or agents of TriMet as those terms are used in ORS 30.265. The Contractor, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of TriMet for any purpose whatsoever, nor are they authorized to do so.

Contractor shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this Contract specifically provides otherwise. Contractor shall supervise and direct contract performance using its best skill, and shall be responsible for selecting the means of contract performance. If, during or after the term of this Contract, Contractor learns of any actual or potential defect in the services provided under this Contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this Contract or of Federal, state, or local law, Contractor shall inform TriMet immediately in writing with a full description of the defect, problem, or nonconformance.

9. Assignment and Subcontracting (08/16)

Contractor shall not assign any of its rights or subcontract any of its responsibilities under this Contract without the prior written consent of TriMet. Contractor shall include in each subcontract any provisions necessary to make all of the provisions of this Contract fully effective. Contractor shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

10. No Third Party Beneficiary

Contractor and TriMet are the only parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly or indirectly, or otherwise to third persons unless such third persons are individually identified by name herein and expressly described as an intended beneficiary of the terms of this Contract.

11. Indemnification (08/16)

- a. To the fullest extent permitted by law, Contractor agrees to fully indemnify, hold harmless, and defend TriMet, its directors, officers, and employees from and against all claims, demands, losses, suits, damages, losses, attorney fees, and costs of every kind and description and expenses incidental to the investigation and defense thereof, resulting from, based upon or arising out of, or incidental, or in any way connected with any act, omission, fault or negligence in whole or in part of Contractor, its agents, contractors, sub-contractors, or employees in the performance or nonperformance of Contractor's obligations under this Contract.
- b. The obligations of Contractor under this Section will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Contract. In no way shall the Contractor limit its liability under this Contract.
- c. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which TriMet and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, TriMet may in its sole discretion reserve, retain or apply any monies due to the Contractor under the contract for the purpose of resolving such claims; provided, however, that TriMet may release such funds if the Contractor provides TriMet with adequate assurance of the protection of TriMet's interests. TriMet shall be the sole judge of whether such assurances are adequate.

12. Prompt Payment (08/16)

Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract.

13. Payment of Claims by TriMet (08/16)

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as the claim becomes due, TriMet may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor pursuant to this Contract. TriMet's payment of a claim under this Paragraph shall not relieve Contractor or Contractor's surety from responsibility for such claims.

14. Income Tax Withholding (08/16)

Contractor shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

15. Compliance with Laws and Regulations (08/16)

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. The Contractor shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235, 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference.

Contractor acknowledges that the Oregon Government Standards and Practices laws (“Ethics Laws”), as set forth in ORS 244.010 et seq. are applicable to contractors when performing certain work on behalf of TriMet under contract and that the individual employees and agents of Contractor may be treated as public officials under ORS 244.020 (14). Contractor agrees to determine whether and under what circumstances it or its agents are subject to the Ethics Laws,

As referenced herein and incorporated by reference, and shall comply and ensure compliance by those subject to Contractor’s control when performing work under this Contract.

Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract; pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the contract; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. ORS 279B.220.

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. ORS 279B.230.

All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

16. Liens Prohibited (08/16)

Contractor shall not permit any lien or claim to be filed or prosecuted against TriMet, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Contractor’s sole expense.

17. Safety (08/16)

Notwithstanding any safety provisions elsewhere in this contract, and in addition to Contractor’s own safety procedures, Contractor shall implement and enforce all safety requirements that are standard in the industry and/or that are required by TriMet’s Safety Department.

18. Sensitive Security & Protected Personal Information Requirements (08/16)

- a. In addition to the requirements set forth in this Contract, Contractor acknowledges and agrees that this Contract may involve certain information that constitutes Sensitive Security Information under 49 CFR Part 1520, as may be amended, other security/safety related information or other protected information subject to restrictions on creation, access, dissemination, handling, safeguarding and use (hereinafter referred to as “Protected Information”): (1) as determined by TriMet in its sole discretion; (2) as determined by any legal authority or other governmental entity; or (3) as defined by or pursuant to any law, rule, regulation or policy. Contractor shall, at its own cost and expense, promptly and diligently observe and comply with all legal requirements applicable to such Protected Information, and any TriMet policies, procedures or directives as may be established by TriMet with respect to such Protected Information. Contractor agrees to promptly execute and provide all acknowledgements and other documentation under such terms as

required by TriMet with respect to such Protected Information, including but not limited to non-disclosure and other agreements relating to creation, access, dissemination, handling, and safeguarding of Protected Information, by Contractor, its employees and contractors.

- b. In performing this Contract, the parties specifically agree that Contractor will receive, maintain, process or otherwise have access to personal information ("Personal Information") of TriMet customers that may be collected, retrieved, stored, or that is otherwise accessed by Contractor. The term "Personal Information" includes the data defined as "Personal information" under SB 601 (Chapter 357, Oregon Laws 2015), the Oregon Consumer Identity Theft Protection Act (hereinafter "Act"), and any implementing regulations thereto, and any other personally identifying data protected or made confidential by other state or federal law, rule or regulation. "Personal Information" includes but is not limited to a financial account number, credit or debit card number, and/or access codes or passwords that would permit access to a financial account. "Personal Information" constitutes Protected Information under this Contract.
- c. Contractor is responsible for compliance with all provisions of the Act, including but not limited to breach of security notification requirements, and shall immediately notify TriMet's Project Manager upon discovery of a breach of security. Contractor shall develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the Personal Information, including disposal of the data.
- d. Contractor specifically agrees to keep all Personal Information confidential and will not disclose or otherwise make any part of Personal Information available, in any form, to any person other than Contractor's employees whose job performance requires such access. Contractor agrees to instruct all such employees on these contract obligations with respect to the confidentiality of Personal Information and to implement such security measures and procedures as necessary to ensure employee compliance. If Contractor wishes to have a subcontractor or consultant perform work under this Contract that involves access to Personal Information, prior to commencement of such work Contractor shall obtain a written confidentiality agreement from such subcontractor or consultant that contains at a minimum the conditions and requirements with respect to the Personal Information set forth in this Contract. If Contractor breaches any of its obligations with respect to the use or confidentiality of Personal Information, TriMet shall be entitled to equitable relief to protect its interests therein, including but not limited to preliminary and permanent injunctive relief as well as any other remedies at law. The obligations set forth in this Paragraph D are in addition to, and not in lieu of any requirements of state or federal laws, rules or regulations applicable to the performance of this Contract. Contractor's obligations under this Paragraph D shall survive the termination of this Contract.
- e. Contractor shall observe and comply with all legal requirements and all policies and procedures established by TriMet applicable to Sensitive Security Information, as defined by 49 CFR Part 1520, and to Personal Information as defined by ORS 646A.600, et seq., the Oregon Consumer Identity Theft Protection Act ("Protected Information"). Contractor shall maintain records in accordance with TriMet's records retention policy and shall implement and maintain reasonable safeguards, including encryption, to protect the security and confidentiality of the Protected Information, including when such information is to be disposed of and/or destroyed. Contractor shall promptly notify TriMet of any breach of these safeguards. Contractor, its employees, and subcontractors, shall keep confidential any part of the Protected Information except to those employees or subcontractors whose jobs require such access. If Contractor breaches any of its obligations with respect to the use or confidentiality of Personal Information, TriMet shall be entitled to equitable relief to protect its interests therein, including but not limited to preliminary and permanent injunctive relief as well as any other remedies at law.

19. Prohibited Interests (08/16)

- a. No TriMet Board member, officer, employee or agent who ceases to hold a position at TriMet shall have any direct beneficial financial interest in this Contract, if they authorized this Contract while acting in their official position at TriMet, for two years after the date the contract was authorized. This precludes working on this Contract as Contractor's employee. The term "authorize" in this provision means that the Board member, officer, employee or agent ("public official") performed a significant role in the selection of the Contractor or the execution of this Contract, including recommending approval or signing of the contract, serving on the selection committee or having the final authorizing authority for this Contract.
- b. No TriMet Board member, officer, employee, or agent (or any member of the immediate family or the partner of any of the aforementioned) shall solicit or accept, and Contractor (including any subcontractors) shall not offer or give to any TriMet Board member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned), any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and TriMet policy.

20. Integration, Modification, and Administrative Changes (08/16)

This Contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Contract may be modified in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. TriMet reserves the right to make administrative changes to the contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

21. Severability/Survivability (08/16)

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are affected. All provisions concerning indemnity survive the termination or expiration of this Contract for any cause.

22. Waiver and Nonwaiver (08/16)

- a. A waiver by one party of a right to a remedy for breach of this Contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. TriMet's acceptance of goods or services, or payment under this Contract, shall not preclude TriMet from recovering against Contractor or Contractor's surety for damages due to Contractor's failure to comply with this Contract.
- b. Both parties having had the opportunity to consult an attorney regarding the provisions of this Contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

23. Termination for Default

- a. TriMet may, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to (i) Deliver the goods or to perform the services within the time specified

in this Contract or any extension; (ii) Make progress, so as to endanger performance of this Contract; or (iii) Perform any of the other provisions of this Contract.

- b. TriMet's right to terminate this Contract under subdivision a. of this clause may only be exercised if the Contractor does not cure such failure within 10 calendar days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Contract Administrator specifying the failure. If it is later determined by TriMet that Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of, Contractor, TriMet may allow Contractor to continue work, or may treat the termination as a termination for convenience by TriMet.
- c. Upon termination for default, Contractor shall be paid the contract price only for completed goods or services delivered and accepted.
- d. The rights and remedies of TriMet in this Article are in addition to any other rights and remedies provided by law or under this Contract.

24. Termination for Convenience

Either party may terminate this Contract, in whole or in part, at any time by written notice to the other party when it is in their best interest. When terminated by TriMet, the Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. When terminated by Contractor, Contractor shall be paid the contract price only for completed goods or services delivered and accepted. TriMet will not be responsible for payment for any work performed after the time of termination. After termination, the Contractor shall promptly submit to TriMet its termination claim for payment. If the Contractor has any property in its possession belonging to TriMet, the Contractor will account for the same, and return it to TriMet in the manner that TriMet directs.

25. Intellectual Property (08/16)

Contractor shall hold harmless, defend and indemnify TriMet, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade-name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by TriMet as the result of the claim, including attorney fees and expert witness fees.

26. Work Product (08/16)

All work product of Contractor that results from this Agreement (the "Work Product") is the exclusive property of TriMet. Work Product shall include but not be limited to all data, information in any form, documents, research, analysis and other any work subject to intellectual property laws and doctrines. TriMet and Contractor intend that such Work Product be deemed "work for hire" of which TriMet shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to TriMet all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as TriMet may reasonably request in order to fully document such vested rights in TriMet. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17

USC Section 106A or any other rights of identification or authorship or rights of approval, restriction or limitation on use or subsequent modifications.

27. Paragraph Headings and Other Titles (08/16)

The parties agree that paragraph headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.

28. Audit and Inspection of Records

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

29. Mediation (08/16)

Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, 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 mediation shall take place in Portland, Oregon. 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. The mediator's fees and costs shall be borne equally by the parties.

30. Applicable Law and Jurisdiction (08/16)

This Contract shall be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this Contract shall be commenced and prosecuted in the courts of Multnomah County, Oregon or the U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

31. Nondiscrimination (08/16)

During the term of this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, disability, or national origin.

32. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIMET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICES PROVIDERS AND LICENSORS SHALL NOT BE LIABLE TO CONTRACTOR OR ANYONE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER

CAUSED, WHETHER BASED ON OR UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

33. Authority (08/16)

The representatives signing on behalf of the parties certify that they are duly authorized by the party for whom they sign to make this Contract.

CONTRACTOR

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT
OF OREGON**

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Telephone: _____

Email: _____

Contractor's Federal I.D. No.