



RFP No.: RT210094ZC

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

**REQUEST FOR PROPOSALS
FOR**

**MOBILE ACCESS ROUTER (MAR), MAR-SE, MAR-CMI
PROCUREMENT, IMPLEMENTATION, INSTALLATION AND WARRANTY SERVICES**

1. The Tri-County Metropolitan Transportation District of Oregon (TriMet) invites sealed proposals to provide and install a mobile access router (MAR) for its fleet of approximately seven-hundred (700) buses. as described in this RFP.
2. TriMet will receive sealed Proposals from interested firms through its eProcurement System (TriP\$). Proposals must be submitted to TriMet through TriP\$ no later than **January 13, 2020 at 11:30 AM**. Proposals will not be publicly opened.
3. **A Pre-Proposal Conference will be held on December 21, 2020, from 10:00 a.m. to 11:00 a.m., (Local Time), via WebEx.** Potential proposers should contact Zach Cooper via email at cooperz@trimet.org to obtain the meeting link. Potential proposers shall limit attendance to a maximum of three (3) representatives. Attendees should sign-in via the meeting link no more than 5-minutes prior to the meeting's start.
4. Proposers must be registered on TriP\$ at:

<https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=TriMet>

In the event solicitation addenda are issued, only registered Proposers will be notified of the availability of addenda for download. **Acknowledgement of addenda will be required.**

5. All questions regarding this procurement must be directed to Zach Cooper, Contracts Manager, via email at cooperz@trimet.org.

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

BY: Zach Cooper
Contracts Manager
Procurement & Supply Chain Mgmt.

Issue Date: December 16, 2020

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DISTRICT OF OREGON**

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EXHIBIT 2B – REQUIREMENTS MATRIX (under separate file in TriP\$)

PROPOSAL FORMS (under separate file in TriP\$)

PROPOSAL PRICE FORM 1.1.1 (under separate file in TriP\$)

SECTION 1 – PROPOSAL FORMS, REQUIREMENTS, CONDITIONS, AND EVALUATION OF PROPOSALS

SECTION 1.1 – PROPOSAL FORMS

Under separate file. **All Proposal Forms, including the Proposal Price Form, must be submitted via upload into the Prerequisite section in TriP\$** (see Section 1.2.7 – Submission of Proposals for additional details). Emailed Proposals, Proposal Forms, and/or Proposal Price Forms directly to TriMet's Contract Administrator is not allowed and will not be accepted. **Proposals, Proposal Forms, and/or Proposal Price Forms not uploaded into TriP\$ will be deemed non-responsive, and rejected.**

END SECTION 1.1 – PROPOSAL FORMS

SECTION 1.2 – PROPOSAL REQUIREMENTS

1.2.1 Request for Proposals – RFP (08/20)

The Tri-County Metropolitan Transportation District of Oregon (hereinafter "TriMet") requests proposals to provide and install a mobile access router (MAR) on their fleet of approximately, 700 vehicles. As part of the solution, the Proposer will propose at least one CMI, preferably 2-3 unique CMI, and one MAR for each proposed CMI for TriMet's consideration. This RFP sets forth the minimum requirements that all proposals shall meet. Failure to submit proposals in accordance with this RFP may render the proposal unacceptable. This RFP is issued by the Procurement & Supply Chain Mgmt. Department. All communications pertaining to this RFP shall be directed to Zach Cooper via email at cooperz@trimet.org.

TriMet reserves the right to analyze, examine, and interpret any proposal for a period of not more than 270 days, commencing from the proposal due date and time. Proposals shall not be conditioned to allow for less than a 270 day acceptance period.

1.2.2 Questions and Changes to the RFP (08/16)

TriMet reserves the right to make changes to the RFP. All changes to the RFP, prior to receipt of proposals shall be electronically posted to TriMet's Procurement System (TriP\$), which can be accessed at <https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=TriMet>. Failure to acknowledge receipt of an addendum may cause a proposal to be rejected as non-responsive. Following receipt of proposals, any changes to TriMet's RFP will be conveyed in writing by TriMet to those Proposers determined to be in the competitive range.

Proposers may submit questions, request clarification, or request a change to the RFP by submitting a written request to Zach Cooper at cooperz@trimet.org. The request shall specify the provision of the RFP in question, and, if a change is requested, contain an explanation for the requested change. Requests must be submitted no later **than December 28, 2020 at 10:00 a.m.**

TriMet shall evaluate any question or request submitted, but reserves the right to determine whether to respond or accept the requested change.

Proposers shall not rely on oral or written representations regarding this RFP unless issued in writing as an addendum by the Procurement & Supply Chain Mgmt. Department.

1.2.3 Pre-Contractual Expenses (08/16)

Pre-contractual expenses are defined as expenses incurred by the firm in: 1) preparing its proposal in response to the RFP; 2) submitting that proposal to TriMet; 3) negotiating with TriMet any matter related to this proposal; and 4) any other expenses incurred by the firm prior to the effective date of award, if any, of a contract resulting from this solicitation.

TriMet shall not, in any event, be liable for any pre-contractual expenses incurred by firms in the preparation of their proposals. Firms shall not include any such expenses as part of their proposals.

1.2.4 No Multiple Proposals (08/20)

Multiple proposals from a single proposer will not be accepted. This restriction does not apply to implementation alternatives as defined in the scope.

1.2.5 Late Proposals (08/16)

A Proposal is late if TriMet receives it after the deadline stated in this RFP for delivery of Proposals. A Proposal shall be deemed received by TriMet when it is available to be viewed by TriMet in TriP\$.

1.2.6 Supplements to Proposals (08/16)

If any proposal indicates minor noncompliance or variance with the RFP, TriMet may, but need not, request that the proposal be supplemented.

If requested, the Proposer may submit a supplement to the proposal responsive to such a request, within the time period established in such request, which TriMet will receive and evaluate in conjunction with the proposal. Supplements shall not be considered to be Best and Final Offers.

1.2.7 Submission of Proposals (08/20)

Proposers shall submit their proposal via TriMet's eProcurement System (TriP\$), at or before the time specified in this RFP. No proposals shall be accepted by TriMet after the time specified. TriMet shall not be liable for delays in delivery of proposals. TriMet shall keep submitted proposals via its eProcurement System (TriP\$) unopened until the time fixed for the receipt of proposals. TriMet reserves the right to postpone the proposal due date/time for its own convenience.

Proposals must be submitted electronically, via TriMet's eProcurement System (TriP\$), no later than **January 13, 2020 at 11:30 a.m. (Local Time)**. **Any of the following: Technical Proposal, Requirements Matrix, Proposals Forms, and/or the Proposal Price Form not uploaded into TriP\$ will cause rejection of the proposal.**

Proposals must be submitted (uploaded) via TriP\$, as four (4) separate files as follows:

- A. **One (1) PDF version of the Technical Proposal**, including a cover letter.
- B. **One (1) Microsoft Excel version of the completed Exhibit 2B - Requirements Matrix.**
- C. **One (1) PDF version of all proposal forms except for Proposal Price Form 1.1.1.** This includes a copy of the Proposer's standard software license and/or subscription agreements.
- D. **One (1) Microsoft Excel version of Proposal Price Form 1.1.1.**

1.2.8 Cancellation of RFP (08/16)

TriMet reserves the right to cancel this RFP at any time without liability prior to execution of the contract by TriMet if cancellation is deemed to be in TriMet's best interest. In no event shall TriMet have any liability for the cancellation of award. The Proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

1.2.9 Confidentiality of Proposals (05/20)

Prior to Contract award, TriMet believes that the public interest will be harmed by disclosure of Proposals, Proposal supplements, and all communications made in the course of procurement negotiations, and will hold all such documentation in confidence, until after Contract award, pursuant to ORS 192.355(4).

After Contract award, TriMet will treat Proposals, Proposal supplements, and all communications made in the course of procurement negotiations a matter of public record, except to the extent they contain trade secrets, confidential information, or are otherwise exempt from disclosure under Oregon or federal law.

1.2.10 Trade Secrets and Other Confidential Information (05/20)

Proposers must clearly and specifically identify confidential or trade secret information in their Proposals and must cite statutory or regulatory authority for every asserted exemption from public disclosure. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed. The fact that a Proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. TriMet believes that Total and Annual price proposal amounts do not meet the qualifying criteria of ORS 192.345(2), and will not assert that this information is trade secret-protected in response to a request for its public disclosure. TriMet will make an independent determination regarding exemptions applicable to information that has been properly marked.

IF A PROPOSER DOES NOT PROPERLY MARK PURPORTEDLY TRADE SECRET AND CONFIDENTIAL INFORMATION IN A PROPOSAL, TRIMET MAY DISCLOSE SUCH INFORMATION IN RESPONSE TO A PUBLIC RECORDS REQUEST WITHOUT NOTICE TO THE PROPOSER.

TriMet disclaims liability for disclosure of trade secrets or other information entitled to confidential treatment if the Proposer fails to identify trade secrets or other confidential information clearly, has failed to cite statutory or regulatory authority for keeping such information confidential, or identifies an entire proposal or proposal supplement as confidential or exempt.

If, in response to a public records request, TriMet refuses to release the records in question due to such information being properly marked by the Proposer as trade secrets or other confidential information, the Proposer agrees to provide information sufficient to sustain TriMet's position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, TriMet will notify the Proposer in order for the Proposer to take whatever legal action the Proposer deems appropriate. The Proposer agrees to hold harmless, defend, and indemnify TriMet for all costs, expenses, and attorney fees that may be incurred by TriMet as a result of any legal proceeding regarding the disclosure of the Proposer's records.

1.2.11 Procurement Confidentiality (08/16)

Proposers are cautioned that until submission of their proposal, they may have contact concerning this RFP with only those District representatives, agents, or personnel designated in writing herein. Discussions or communications concerning this RFP with Source Selection Committee (SEC) Members, District Project Managers, District employees, its consultants, or members of the TriMet Board of Directors, are strictly prohibited. Any violation of this restriction may result in disqualification of the Proposer from further participation in this procurement and from award of any contract or subcontract under this solicitation.

1.2.12 Compliance with Tax Laws (08/16)

Each Proposer shall certify in writing, under penalty of perjury as provided in ORS 305.385(6), that the Proposer is, to the best of the Proposer's knowledge, not in violation of any Oregon tax laws set forth at ORS chapters 118, 314, 316 - 318, 321 and 323; under ORS 320.005-320.150; under ORS 403.200-403.250; and local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

1.2.13 Administrative Remedies (08/16)

A Proposer may seek administrative remedies under Bid /Proposal Protest Procedures of TriMet's Contracting Rules. Copies of TriMet's Proposal/Protest Procedures are available upon request from TriMet's Procurement & Supply Chain Mgmt. Department, 1800 SW First Avenue, Suite 300, Portland, Oregon 97201.

1.2.14 Anticipated Selection Schedule (08/20)

The following schedule is subject to change:

Issue RFP	16 December 2020
Proposals Due.....	13 January 2021
Proposal Evaluation Completed	27 January 2021
Discussions/Interviews/Demos	1 February 2021 thru 5 February 2021
Request for Best and Final Offers	8 February 2021
Best and Final Offers Due	19 February 2021
Notice of Intent to Award	5 March 2021
Board of Directors Approval	24 March 2021
Award of Contract.....	5 April 2021

END SECTION 1.2 – PROPOSAL REQUIREMENTS

SECTION 1.3 – SPECIAL PROPOSAL CONDITIONS

1.3.1 One Award (06/20)

One contract award is anticipated under this solicitation. Multiple contract awards will not be made.

1.3.2 Unnecessarily Elaborate Proposals (08/16)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the firm's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor required.

1.3.3 Materially Unbalanced Proposals (08/16)

TriMet reserves the right to reject proposals that are materially unbalanced, i.e., that contain unreasonably high unit prices for some items and/or unreasonably low prices for other items.

1.3.4 Detailed Description of Supplies/Services (08/16)

Firms are cautioned that the item descriptions on the price form are not intended as complete descriptions of the required supplies or services to be purchased under this solicitation. Each firm must consult the Specifications or Statement of Work sections of the solicitation document for complete descriptions of the required supplies or services.

1.3.5 Inclusion of Costs in Proposal (08/16)

The proposed billing rates must include any incidental expenses including, but not limited to indirect costs, overhead, insurance, and other ordinary expenses or incidental costs. Any other expenses or direct costs shall be included in Contractors proposed billing rates; no additional compensation will be allowed.

1.3.6 Inclusion of Option Pricing in Evaluation of Proposal (08/16)

TriMet shall evaluate proposals for award purposes by including the total price for the basic requirement together with any specified option pricing; i.e., specified option pricing will be included in the evaluation for award purposes. Optional items shall not necessarily be purchased under this solicitation.

1.3.7 Responsibility Determination (08/16)

Following evaluation of proposals, TriMet may meet with competitive finalists to ensure that the selected proposer is capable of meeting the requirements of the contract. The Proposer will be required to demonstrate that it has, or has readily available access to, adequate personnel and sufficient equipment necessary to perform the work and provide the deliverables of this contract as specified.

1.3.8 Organizational Conflict of Interest (08/16)

The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, or that the contractor has disclosed all such relevant information.

The contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the contractor will make a full disclosure in writing to TriMet. This disclosure shall include a description of actions which the contractor has taken or proposes to take, after consultation with TriMet, to avoid, mitigate, or neutralize the actual or potential conflict.

TriMet may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to TriMet, TriMet may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract.

The contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

1.3.9 Pre-Award Analysis (08/16)

TriMet intends to analyze all proposals and proposers to ensure specifications are met and products are authentic, prior to Contract award. More documentation may be required from the proposer and/or manufacturers of the products to satisfy this analysis, which proposers shall provide within three (3) business days of TriMet's request. Failure by any proposer to provide requested documentation, and within the timeframe stated in this Article, will cause their proposal to be rejected.

1.3.10 Minimum Qualifications of Proposer (08/20)

Proposer shall, at a minimum, provide proof of both of the following:

- A. The previous successful implementation of the proposed solution, in a project of similar scope and complexity, during last 2-years.

- B. Currently supporting same, or substantially similar to, proposed solution in two (2) or more companies with a total of 500 or more installed MARs.

END OF SECTION 1.3 – SPECIAL PROPOSAL CONDITIONS

SECTION 1.4 – EVALUATION OF PROPOSALS

1.4.1 Evaluation Criteria (08/20)

A. Format of Proposal

Proposal shall be prepared simply and economically, providing a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the RFP. Submission of technical literature, display charts, or other supplemental materials is the responsibility and within the discretion of the Proposer.

- (1) Proposers shall submit proposals as set forth in Paragraph 1.2.7, Submission of Proposals, above.
- (2) Proposers are cautioned not to minimize the importance of an adequate response in any area.
- (3) Technical proposal documents shall be sectionalized as described below. Each section shall be preceded by a blank page (not included in page limits).
- (4) **Technical proposal shall include:** one (1) Microsoft Excel version of the completed Exhibit 2B - Requirements Matrix; one (1) PDF version of all proposal forms (including a copy of the Proposer's standard software license and/or subscription agreements); and one (1) Microsoft Excel version of Proposal Price Form 1.1.1. Proposal forms shall use a 12-point font, single-spaced and one-inch page margins.

B. Content of Technical Proposal

At a minimum, the items described in each section below shall be addressed. Points will be awarded based on the Proposer's past performance for services relevant to TriMet's needs. Provide the following information:

1. **Technical Proposal Section 1 – Introductions and References (Not Scored)**
 - (a) **Introduction (Limit 5 pages):** Provide an introduction of the Proposer. Describe primary business experience of the Proposer, the Proposer's overall mission statement, length of time in business, ownership, the location of office(s), telephone number, email address, website address and other information Proposer might deem pertinent and introductory in nature. Company resumes are acceptable, as long as all information requested is provided. **A primary contact person for solicitation purposes with phone number and email address must be included.**

2. **Technical Proposal Section 2 – Qualifications of Proposer, Staff and Diversity**

(a) **Qualifications of the Proposer (Limit 10 pages)**: In this Section, the Proposer shall provide its history, experience and past performance relevant to TriMet's needs during the **last three (3) years**, including but not limited to, a description of the Proposer's direct experience which is similar in size, and/or scope, and/or complexity to that required by this contract. Proposer shall also describe the resources that your firm has available for successfully and satisfactorily performing the work under the contract resulting from this RFP. Proposal shall include a list of any Contractor company, including any/all sub-contractor company, certifications (e.g. ISO 9000) that are pertinent to this project.

(b) **Project References (Limit 10 pages)**: Describe history, experience past projects and performance of at least three (3) implementations similar to the solution being proposed herein. The roles and responsibilities of each member of the proposed team (suppliers, system integrators, installers, and subcontractors) shall be described. Each summary shall include:

1. Customer company/agency name
2. Fleet size
3. Contact information of customer having direct experience (e.g. Customer Project Manager) with project and dealings with Contractor.
4. A description of the scope of the project

TriMet reserves the right to contact any customer references to verify information and to investigate past performance.

(c) **Key Personnel (Limit 5 pages, excluding resumes)**: Proposal shall include a list of all proposed staff with a short biography paying specific attention to: citing any certifications (e.g. PMP) that are pertinent to their responsibilities on this project; work on similar projects, regardless of employer; and their tenure in their current position. TriMet prefers the majority of the project team to be long-term Contractor payroll staff. At a minimum, Proposers shall clearly identify and describe the qualifications of the key personnel listed below. Note that the Proposer may not substitute key personnel at any time without prior written consent by TriMet.

- 1 Project Manager
- 2 Project Engineer
- 3 Data Communications Lead
- 4 Installation Task Lead

(d) **Organizational Chart (Limit 5 pages)**: Provide an organizational chart for this project that clearly identifies the Key Personnel who are expected to participate in all project meetings between TriMet and

Contractor, other personnel who will be assigned to the work under this Contract, and their roles. Brief descriptions of additional personnel may be included.

- (e) **Availability and Location of Project Staff (Same page limit as 2(c) above)**: Indicate the primary work location(s) and percentage time commitment of the Project Manager and other key personnel for this project. Discuss how responsibilities of the Project Manager, key personnel and other project staff will be managed and balanced over the course of the project, and how support will be provided to TriMet
- (f) **Resumes**: Resumes shall be submitted for the Key Personnel defined in 2(c) above, which does not impact page limits. Resumes should be concise, limited to experience directly relevant to the work to be performed under this contract, and include at a minimum: education, training, degrees and certificates earned. Resumes shall be limited to two (2) pages per individual.
- (g) **Workforce Diversity (Limit 5 pages)**: TriMet values, encourages, and supports diversity in its workforce and in the workforce of those who contract with TriMet. To that end, this Section shall contain narratives for workforce diversity and any MBE/WBE/ESB/SDVBE utilization as more fully described below. The narratives should include identification of Proposer's certifications and/or nondiscrimination practices, and any historical MBE/WBE/ESB/SDVBE Joint Ventures, Sub Contracting, or Mentoring plan congruent with TriMet's diversity policies.

The Proposer shall provide a narrative description of how it is currently utilizing minorities and women throughout its workforce. Describe how opportunities have previously been provided for minorities and women to receive training and work within the firm. If the Proposer currently has an under-representation of minorities or women, describe how it might propose to remedy the underutilization over time. The Proposer shall complete the **Internal Workforce Utilization and Probable MBE/WBE/ESB/SDVBE Subcontracting Opportunities** forms contained in Section 1.1 (Proposal Forms) of the RFP to describe its current workforce and potential subcontractors.

- (h) **Project Subcontracting Plan (Limit 5 pages)**: The Proposer shall provide a detailed outreach program or plan for obtaining utilization of Certified Small Businesses (DBE/MBE/WBE/SDVBE/ESB) on this project. The outreach plan shall be realistic, and based on Proposer's successful past experience. Include in the plan documentation of the results achieved by Proposer's past Certified Small Business outreach efforts, a detailed schedule of events, and those steps that will or have been taken to support Certified Small Business participation.
The Proposer shall describe any plans, which shall be realistic and achievable, to provide innovative mentoring, technical or other

business development services to Certified Small Business team members needing or requesting such services. Possible elements of an expanded Certified Small Business Plan are shown below.

- Outreach efforts regarding announcement of subcontracting opportunities to minority, women and emerging small business organizations through pertinent organizations or channels.
- Commitment of staff and resources to provide administrative assistance, financial, technical or other support to the subcontracting team.
- If appropriate to the project, opportunities for one or more certified firms to develop small prime contracting skills under mentorship of the Proposer.
- If appropriate to the project, equipment sharing programs to reduce costs for Certified Small Business.
- Documented, successful experience at fostering DBE firms and minorities and women in the workforce; demonstration of success in working with Certified Small Businesses and minorities and women in the workforce; complete an innovative plan for accomplishing and supporting utilization of Certified Small Businesses.

- (i) **Resources Available:** The State of Oregon's Certification Office of Business Inclusion and Diversity (COBID) is the state agency responsible for federal DBE certification and state certification. Proposers are encouraged to use information available through COBID in preparing proposals pursuant to this RFP. COBID maintains a directory of all firms certified as DBE/MBE/WBE/SDVBE/ESB.

Copies of the directory may be obtained from:

State of Oregon, Certification Office of Business Inclusion and Diversity

775 Summer St. NE, Suite 200
Salem, Oregon 97301
PH: 503-986-0075
Website: <http://www.orcobid.com>

3. **Technical Proposal Section 3 – Project Understanding and Work Plan**

Points will be awarded based on Proposer's understanding of the Scope of Work relative to TriMet's operations and the appropriateness of the proposed approach/methodology to provide the required services as outlined in the Scope of Work. Proposals will be evaluated to ensure that the Proposer demonstrates an understanding of each of the following:

- (a) **Project Understanding (Limit 5 pages):** Describe Proposers understanding of the scope of services, and how the proposed solution and approach fulfills that scope including any major assumptions.

(b) **Project Management (Limit 5 pages):** Discuss the Proposers proposed management approach to ensure adequate technical and administrative oversight over the work and to manage project schedule and budget. Describe the proposed procedures for technical and administrative communications between the Proposer and TriMet. Discuss proposed Quality Control (QC)/Quality Assurance (QA) measures and procedures.

Proposals must also include the following within this section:

1. **Project Schedule:** The Proposer shall provide in its response a project schedule showing the major activities, primary sub-activities, milestones, and timelines required to implement the proposed solution. All project events and/or milestones, which the Proposer views as the responsibility of TriMet shall be clearly identified in the Project Schedule.
2. **Implementation Plan:** Provide an initial implementation plan describing the sequence of work and the proposed cut over from the current mobile access router to the proposed one. The plan shall, to the extent feasible, minimize or eliminate disruption to existing operations. If disruptions are expected, they shall be so noted and described in the proposal.
3. **Expectations of TriMet:** Identify any assumptions regarding work, services, information, facilities to be provided by TriMet or third-party providers of systems or services to TriMet.

(c) **Solution Description (Limit 10 pages for each proposed MAR/CMI):** Identify proposed hardware OEM and describe the functionality, capabilities, and overall design of the solution. Proposers shall propose no more than three (3) unique CMI, along with the proposed make/model of MAR for that CMI for TriMet's consideration. The solution description for each proposed MAR must provide sufficient understanding of the technical requirements specified in Exhibit 2A: Scope of Work of this RFP and provide a comprehensive solution description of the hardware, Central Management Interface (CMI) and Scripting Environment (SE).

For each proposed MAR/CMI, include the following information:

- List functionality provided with MAR-CMI.
- List functionality provided with MAR-SE, including list of API calls.
- List MAR-SE resources (e.g. Storage, RAM, and CPU) and explanation of how intense usage of those resources will not impact core (e.g. routing) MAR functionality.
- If MAR requires physical GPS connection to support MAR and/or MAR-CMI, instead of receiving NMEA GPS string, then describe how accurate coordinates are acquired when GPS is not available (e.g. in a tunnel).
- Explain level of effort required for TriMet to install 2nd modem

in the MAR at a future date, including level of effort to install/replace SIM cards.

- List any MAR using same MAR-CMI that meets additional LRV requirements defined in the scope of work.
- (d) **Documentation, Testing, Training, Installation, and Cutover (Limit 10 pages):** Provide a comprehensive description of the proposed documentation, testing, training, installation, and cutover plan and procedures. Note that on-site design, installation, testing, commissioning, and cutover activities of the Proposer shall pose minimal disruption to normal TriMet activities and in accordance with specific requirements outlined in this RFP.
- (e) **List of Spare Parts:** Provide comprehensive list of all spare parts specific to the TriMet retrofit project that will be provided to both TriMet and any OEM (Original Equipment Manufacturer, i.e. vehicle manufacturer) purchasing parts on behalf of TriMet. See Section 3.9 of the Scope of Work. Pricing for spare parts must be included in Form 1.1.1: Proposal Price Form and remain valid for the entire duration of this Contract.
- (f) TriMet will determine how many of each part (vehicle parts expected to be between 3% and 10%) to procure for this Contract during the BAFO. If costs for these initial parts are more generous to TriMet than the terms of the above requirements, then please note any differences.
- (g) **Cyber Security Solution (Limit 5 pages for each proposed MAR/CMI):** Cyber-Security is a big concern for this contract, and Proposer is encouraged to expand upon these aspects of their proposed solution, in addition to completing the Exhibit 2B - Requirements Matrix.

4. Technical Proposal Section 4 - Compliance with Technical Requirements

All text in Exhibit 2A: Scope of Work is included in Exhibit 2B - Requirements Matrix (SPD-A). All requirements that are not MAR-specific will be on a single spreadsheet tab, with an additional spreadsheet tab for each proposed MAR. If the paragraph does not have a reference letter/number, it is considered informational and Proposer must update the Requirements Matrix with a **Proposer Code** of "U" for Understood. If the paragraph has a reference letter/number, then it is a Requirement and Proposer must update the Requirements Matrix with a **Proposer Code** of any of the following:

- "E" for Exceed ... additional Comments are required, explaining why Proposer's offering is better than requirement. Proposer is expected to explain why they or their product is better than other offerings likely to be proposed from other proposers.
- "F" for Full Compliance ... additional Comments are not allowed. Proposer acknowledges that they or their proposed solution

currently meets the requirement with no exceptions.

- “P” for Partial Compliance ... additional Comments are required, explaining why Proposer’s offering is not fully compliant, and there is no intent to become fully compliant.
- “DP” for Development required for Partial Compliance ... additional Comments are required, explaining Proposer’s intent for compliance and scope of development.
- “DF” for Development required for Full Compliance ... additional Comments are required, explaining Proposer’s intent for compliance and scope of development.
- “N” for Not-Compliant ... additional Comments are not expected, but allowed. Proposer acknowledges that they or their proposed product does not meet this requirement, and there is no intent meet this requirement.
- “X” for Exception ... additional Comments are required. Proposer may ask that a requirement be waived for all Proposers, since most vendors or products cannot meet this requirement. TriMet will evaluate all requested exceptions on a case-by-case basis.

5. Technical Proposal Section 5 – Warranty (Limit 5 pages for each proposed MAR/CMI)

- (a) **Standard Warranty:** Provide a comprehensive description of Proposer’s standard warranty that is included at no additional cost to the agency.
- (b) **Supplemental Warranty:** Provide a comprehensive description of the warranty elements required to meet the requirements for this project. Briefly describe processes and procedures for:
 - Preventative and remedial maintenance, including assumptions regarding responsibilities of Proposer and TriMet.
 - Entity(s) responsible for performing warranty obligations and their location(s).
 - Any items proposed for exclusion from warranty.
 - Provisions for telephone and/or help desk support during the warranty.
 - Proposed software update, upgrade and support process during the warranty.
 - RMA process

6. Technical Proposal Section 6 – Exceptions or Deviations (Not Scored)

This Section shall contain any exceptions or deviations from the requirements set forth in the RFP. Technical exceptions or deviations shall be segregated from exceptions or deviations to the contractual terms and conditions. Where the Proposer wishes to propose alternative technical approaches, these alternatives shall be thoroughly explained.

Contractual terms and conditions exceptions or deviations will not be allowed and/or negotiated after the proposal due date/time. **Any**

exceptions or deviations to the contractual terms and conditions submitted after the proposal due date/time will be denied by TriMet. Contractual terms and conditions exceptions or deviations submitted by Proposer with their proposal are not accepted or approved by TriMet, but shall be used as a basis for negotiation with the awarded Proposer. **Under no circumstance will TriMet deviate with regards to any of its indemnification or indemnification-related clauses to any of the terms and conditions of this solicitation and/or the resulting contract(s); nor will we accept submitted requests for indemnification or indemnification-related additions to any of the terms and conditions of this solicitation and/or the resulting contract(s).**

TriMet reserves the right to deny any and all submitted exceptions or deviations to any or all contractual terms and conditions at its sole discretion.

By submission of a proposal, Proposer agrees to all contractual terms and conditions not requested to be excepted or deviated from at the time of proposal submission.

7. Price Proposal/Cost

- (a) Points will be mathematically calculated on a total cost of ownership basis based upon the reasonableness of the proposed price for the work to be performed and the competitiveness of the price with other proposals received. Any and all pricing shall be fully burdened.
- (b) The Price Proposals will be evaluated based on the fulfillment of the contract requirements, and the total cost of ownership assuming 700 vehicles and 7-year life-cycle costs. Costs will be summarized and evaluated using the information listed on Form 1.1.1: Proposal Price Form:
 - Vehicle installation parts and equipment cost * 700 vehicles.
 - Vehicle installation labor cost * 700 vehicles.
 - Vehicle soft costs (e.g. licensing, warranty, etc.) * 700 vehicles over 7 years.
 - Total central costs, including hardware and soft costs (e.g. software, licensing, warranty, etc.) over 7-years.
 - Total cost of spare parts, assuming 5% of 700 vehicles (=35 each).
 - Additional contract costs (e.g. Project Management, warranty, etc.) over 7-years.
- (c) The Proposal Price Form (1.1.1), **shall be submitted (uploaded) in Excel format using the Microsoft Excel template provided, separate and apart** from the Technical Proposal document and Proposal Forms in TriMet's eProcurement System (TriP\$). **A single Proposal Price Form in Microsoft Excel shall be submitted for**

with a separate tab for each alternative (MAR/CMI) being proposed.

Remainder of page left intentionally blank

1.4.2 Evaluation Procedure (08/16)

Evaluation Criteria	Maximum Possible Points
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Technical Proposal Section 1 – Introductions and References (not scored)	0
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Technical Proposal Section 2 – Qualifications of Proposer, Staff and Diversity		
A.	Qualifications and Performance of the Proposed Firm	100
B.	Qualifications of Project Staff	100
C.	Reference Projects	50
Total Technical Proposal Section 2 Possible Points . . .		250

Technical Proposal Section 3 – Understanding of the Work		
A.	Project Approach and Methodology	50
B.	Project Schedule	50
C.	Assessment of the Solution based on proposed MAR and compliance with technical requirements and the proposed warranties	350
Total Technical Proposal Section 3 Possible Points . . .		450

TOTAL POSSIBLE TECHNICAL PROPOSAL SCORE . . . 700

Cost/Price Proposal		
A.	Cost of hardware (700 * “spares”)	75
B.	Total Cost of project to implement and install system	150
C.	Total soft costs (Software, Licenses, Warranty) for 7 years * 700 vehicles	75

TOTAL POSSIBLE COST/PRICE PROPOSAL SCORE . . . 300

TOTAL MAXIMUM POINTS . . . 1000

- A. A Source Evaluation Committee (SEC) will be appointed to evaluate proposals. The SEC will employ only those evaluation criteria set forth in Section 1.4.1 of this RFP or in addenda that may be issued. An evaluation criterion is deemed to include any unstated "sub-criterion" that logically might be included within the scope of the

stated criterion. Possible sub-criterion may, but not be limited to, what is outlined in the table above.

- B. Only those proposals determined by the SEC to be within the competitive range will be considered for award. The SEC will determine which proposals are within the competitive range in accordance with the evaluation criteria and points set forth in Section 1.4.1 above.
- C. To determine the competitive range, the SEC shall evaluate and score technical proposals, and select those Proposers technically qualified to perform the work irrespective of price. TriMet shall then open the price proposals of only those Proposers technically qualified to perform the work, and each price proposal shall be evaluated and scored on the basis of a 300-point maximum for the price structure most advantageous to TriMet. The sum total points scored on both the technical and price will be considered in determining the final competitive range. After determination of the final competitive range, the SEC shall determine whether acceptance of the most favorable initial proposal(s) without discussion is appropriate, or whether discussion should be conducted with all Proposers submitting proposals within the competitive range.
- D. If award determination is made based upon the most favorable initial proposal(s), the SEC reserves the right to perform or have performed a cost analysis of the apparent successful proposal(s) before determining to proceed with a recommendation for award.
- E. TriMet reserves the right to make changes to the RFP during discussions/negotiations. Any changes to the RFP shall be distributed to all Proposers remaining within the competitive range at the time the change is made.
- F. TriMet will request demonstrations and/or interviews of Proposers for further evaluation purposes. Information gathered at these meetings shall be included as part of the proposals and evaluated as such. Such demonstrations or interviews shall be led by the Proposer's Project Manager and be performed by members of the proposed project implementation team. Software demonstrations shall not be conducted by software vendor pre-sales staff or other software vendor representatives unless they are proposed as an implementation team member. These demonstrations and/or interviews will be conducted in-person and/or via online meeting depending on CDC recommendations and local restrictions at the time of the demonstration/interviews.
- G. If the SEC elects to enter into discussions (including interviews) with Proposers, each Proposer remaining within the competitive range at the close of discussions/interviews will be allowed to submit a final supplement denominated the "Best and Final Offer (BAFO)." Any changes to the Proposer's initial technical or price proposal, including any issues addressed in discussions, must be submitted in writing in the BAFO in order to be considered by the SEC. The SEC will evaluate the BAFOs utilizing the evaluation criteria at Section 1.4.1 and make a recommendation for award.
- H. TriMet reserves the right to investigate the qualifications of all Proposers under consideration and to confirm any part of the information furnished by a Proposer,

or to require other evidence of managerial, financial or technical capabilities which are considered necessary for the successful performance of the work. TriMet reserves the right to visit sites where work of a similar nature has been performed by the Proposer and/or visit the Proposer's work facility during the evaluation period.

- I. TriMet's General Manager shall have full authority over TriMet's source selection and decision to award, subject to applicable Board policy.

1.4.3 Notice to Unsuccessful Firms (08/16)

Following contract award, TriMet may inform unsuccessful firms, who were within the competitive range at the time of contract award, of:

- (1) The number of proposals TriMet received;
- (2) The name and address of the successful firm; and
- (3) The total contract price, including descriptions of items, quantities, and unit prices, if practical.

TriMet will attempt to give the notice under this paragraph promptly after contract award. TriMet's failure to give that notice shall not be deemed to affect the validity of the contract.

1.4.4 Cost Analysis (08/16)

TriMet may perform a cost analysis upon receipt of proposals. Each Proposer must submit cost data in a format acceptable to TriMet. Allowability of costs will be determined in accordance with the Federal Acquisition Regulations Part 31.

1.4.5 Compensation (08/16)

TriMet will not enter into a contract where compensation is based upon cost plus a percentage of cost. Compensation will be at the prices set forth in the successful Proposer's initial proposal and/or best and final offer (BAFO).

1.4.6 Board Approval (10/17)

Approval by TriMet's Board of Directors is required at the following thresholds:

- a) \$500,000 for personal services contracts
- b) \$1,000,000 for goods and ordinary services contracts.

Revenue contracts and other contracts for routine operational expenses and ongoing services may be approved or delegated for approval by TriMet's General Manager.

1.4.7 Pre-Award Accounting System Review (08/16)

Prior to award of any contract as a result of this solicitation, TriMet, at its sole discretion, may perform, or have performed, a pre-award accounting system review to ascertain the contractor's ability to accurately accumulate and bill program costs under any resulting contract. TriMet shall be responsible for any costs associated with the pre-award accounting system review. The Contractor, by submission of a proposal, agrees to assist TriMet or its designated representative(s) in performing the pre-award accounting system review.

END SECTION 1.4 – EVALUATION OF PROPOSALS

SECTION 2 – BACKGROUND, PURPOSE AND SCOPE OF WORK

2.1 Background

Tri-County Metropolitan Transportation District of Oregon (TriMet) operates public transit services within the Portland, Oregon metropolitan area. Its boundaries are within the Multnomah, Clackamas and Washington counties. TriMet operates a fleet of approximately 714 transit buses, many of which connect with MAX Light Rail, WES Commuter Rail, Portland Streetcar and the Portland Aerial Tram. TriMet operates 145 MAX light rail vehicles, 6 diesel multiple-unit WES commuter rail vehicles, and 265 paratransit vehicles. TriMet is an Oregon municipal corporation created on October 14, 1969 pursuant to Oregon Revised Statutes Chapter 267.

2.2 Purpose

TriMet is seeking proposals from qualified Contractors to provide and install a mobile access router (MAR) for its fleet of approximately seven-hundred (700) buses. Contractors are encouraged to propose up to three (3) choices for the MAR and associated MAR-CMI for TriMet to consider. Contractor will complete the compliance matrix described in **Section 1.4: EVALUATION OF PROPOSALS** for each proposed MAR-CMI, and associated MAR, to allow TriMet to select the MAR/CMI that best meets their needs.

2.3 Scope of Work

See Exhibit 2A – Scope of Work (under separate file in TriP\$).

END OF SECTION 2 – BACKGROUND, PURPOSE AND SCOPE OF WORK



SECTION 3 – SAMPLE CONTRACT

****SAMPLE ONLY -- DO NOT INCLUDE WITH PROPOSAL****

Contract No. RT210094ZC

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

**GOODS AND SERVICES CONTRACT
FOR**

**MOBILE ACCESS ROUTER (MAR), MAR-SE, MAR-CMI
PROCUREMENT, IMPLEMENTATION, INSTALLATION AND WARRANTY SERVICES**

THIS CONTRACT is by and between Tri-County Metropolitan Transportation District of Oregon ("TriMet"), and _____ ("Contractor").

WHEREAS, TriMet solicited RFP No. RT210094ZC for Mobile Access Router (MAR), MAR-SE, MAR-CMI Procurement, Implementation, Installation and Warranty Services, and Contractor submitted a proposal in response to the RFP; and

WHEREAS, TriMet has determined that Contractor submitted the overall responsive and responsible "best value" proposal for those services;

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions set forth in this Contract, the parties agree as follows:

1.0 Contract Order of Precedence

Every provision of the documents listed below are incorporated in this Contract by this reference. Any conflict between or among any of the documents listed below shall be resolved in favor of the order of precedence listed below.

- A. Written contract modifications executed by the parties after contract execution;
- B. This Contract form;
- C. Addenda issued prior to receipt of proposals, as well as addenda issued during discussions;
- D. The Special Proposal Conditions (Section 1.3 of the RFP) set forth in TriMet's Request for Proposal for this Contract;

- E. The Proposal Requirements (Section 1.2 of the RFP) set forth in TriMet's Request for Proposal for this Contract;
- F. The Scope of Work (Exhibit 2A of the RFP) set forth in TriMet's Request for Proposal for this Contract;
- G. The TriMet Contractors Safety Guide (Appendix A of the RFP) set forth in TriMet's Request for Proposal for this Contract;
- H. The TriMet DBE Program (Appendix F of the RFP) set forth in TriMet's Request for Proposal for this Contract;
- I. Contractor's Proposal, all Proposal Forms, the Requirements Matrix, and all supplements, and as finally amended by the Contractor's Best and Final Offer (if requested).

2.0 Federal Requirements (02/19) - Reserved

3.0 Term

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from _____, 2021 through _____, 2031.

Perpetual licenses granted in this Agreement survive termination of this Contract.

4.0 Compensation

Total contract compensation shall not exceed \$_____ during the term of this **Contract**, payment of which shall be in accordance with Contractor's Price Proposal (and/or BAFO Price Proposal), which is attached as **Exhibit B – Contractor's (BAFO) Price Proposal**, and made a part of this Contract.

5.0 Scope of Work

See Attachment 5A – Scope of Work, attached hereto and made a part of this Contract.

6.0 Special Contract Conditions

6.1 Type of Contract (08/16)

This is a firm/fixed unit price contract Mobile Access Router (MAR), MAR-SE, MAR-CMI Procurement, Implementation, Installation and Warranty Services

6.2 Definitions (08/20)

As used throughout this Agreement:

- A. **Services** shall mean those activities provided by Contractor relating to this Contract that TriMet has elected to purchase from Contractor. Such services may include, but are not limited to, project management, planning, configuration, customization, interfacing, integration, testing, training, implementation, and/or the ongoing support and maintenance of the Solution.
- B. **Software** shall mean any programming code provided by Contractor to TriMet, including Contractor-supplied third party software, application interfaces, or open-source code including micro-code, firmware, support tools, and operating system software.
- C. **Solution** shall mean Contractor's Software and the related Services and support plans.

6.3 License Grant (08/20)

For purchases of an on premise solution with a perpetual license, Contractor grants to TriMet a non-exclusive, non-transferable, non-sublicensable and perpetual license to use, in object format, Contractor's Solution, subject to terms, conditions and restrictions set forth herein. TriMet may modify the Software and may combine such other programs, open-source, interfaces or materials to form a derivative work. License rights granted herein shall apply to all derivative works.

Unless otherwise agreed between the Contractor and TriMet, TriMet will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. TriMet may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. TriMet may use backup or archival copies of the software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s). TriMet may make these backup or archival copies available to the disaster recovery site(s)' employees who require use of the Software in order to assist TriMet with disaster recovery exercises. TriMet agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when TriMet's facilities, or any portion thereof, are inoperable due to emergency situations.

TriMet shall not make the Software available to unauthorized third parties. TriMet may not relicense, rent or lease the Software for third party training or commercial time-sharing. TriMet shall not distribute sell, sublicense or otherwise transfer copies of the Software or any portion thereof, and shall not use the Software except as expressly permitted hereunder. TriMet agrees not to translate, reverse engineer, decompile or otherwise derive the source code for the Software. Upon termination of the Contract and the non-renewal of annual maintenance and support, TriMet may continue the use of subject products and will not be entitled to additional product upgrades or support.

6.4 Payments and Invoicing (08/20)

TriMet shall pay the Contractor, upon the submission of invoices, the prices stipulated in this Contact for goods accepted or services rendered and accepted, less any deductions provided

in this Contract. TriMet shall pay the Contractor within thirty (30) days of the receipt of a properly completed and submitted invoice. The Contractor may submit no more than one invoice per month.

Notwithstanding any other additional requirements of this Contract, invoices shall contain the contract number, the date(s) supplies were delivered or services were furnished; a detailed description of the supplies or services furnished, and a price breakdown showing contract prices and units.

All invoices shall be submitted electronically to TriMet's Finance Department via email to accountspayable@trimet.org. Failure to strictly comply with this provision will result in a delay in payment.

TriMet no longer offers payment by check. In order to enter into this Contract, Contractor must be willing to accept payment via ACH (Automatic Clearing House). TriMet will not execute this Contract without receiving the required information from the Contractor via its eProcurement System (TriP\$), at <https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=TriMet>.

6.5 Travel Costs (06/19)

Contractor shall be reimbursed for the cost of airfare, lodging (up to allowable government rate), and TriMet's standard per diem costs, as determined in accordance with TriMet's Travel Policy in effect on the date of this Contract. All travel costs must be pre-approved by TriMet's Project Manager in order to be reimbursed. Travel charges shall reflect, where appropriate, any cost savings realized when Contractor is travelling to Portland on behalf of other clients. Contractor's time spent traveling to the Portland area, however, will **not** be reimbursed.

TriMet will reimburse Consultant for authorized local travel only when travel is essential to the normal performance of the work, as determined by TriMet's Project Manager. Local travel expenses shall be limited to mileage and parking costs. All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for TriMet.

6.6 Travel Arrangements (08/16)

Any travel arrangements necessary to perform the services required under this contract shall be made by and paid for by the Contractor.

6.7 Price Adjustments (06/20)

No price increases shall occur during the first year of this Contract. Thereafter, price increases shall be limited to one-year intervals. The effective date of the first price increase will establish the initial one-year interval.

Contractor may increase unit prices to TriMet by an amount not to exceed the change in Contractor's actual direct costs. Sixty (60) days prior to the effective date of contract extension, Contractor shall submit all data necessary to demonstrate to TriMet's satisfaction the actual changes in Contractor's cost of performing the Services since time of original bid submission. Price increases shall be effective upon the start of the one-year interval. In no event shall price increases be greater than the percentage listed in the yearly percentage change in the Consumer Price Index – All Urban Wage Earners and Clerical Workers (CPI-W), for the Portland-Salem area Western Region, Pacific Division – Class A. The applicable CPI-W shall be the most recently

published figure as of the anniversary date of this agreement. Any increase is at TriMet's discretion.

Should decreases in Contractor's direct costs occur, Contractor shall promptly notify TriMet and shall promptly decrease price to TriMet by the same amount. Price decreases shall occur on date effective to Contractor.

6.8 Extra Charges (08/16)

Extra charges must be agreed upon by the parties through a written modification of the contract. TriMet will pay no extra charge that is not made a part of the contract through a written modification. Contractor acts at its own risk in incurring an extra expense before an extra charge has been included in a fully-executed modification. TriMet will not pay Contractor extra for overtime needed to meet a delivery deadline.

6.9 Project Managers (08/16)

The Contractor's designated Project Manager shall be the Contractor's representative for the administration of the contract documents and the supervision of the work. In all matters relating to the performance of the work and payment therefore, and in all situations involving actual, recommended or, proposed changes, TriMet shall accept commitments and instructions of the Contractor only from the Project Manager or a duly authorized representative of the Project Manager so designated in writing. After initial approval by TriMet, the Contractor shall not change the Project Manager without the prior written approval of TriMet. TriMet shall appoint its own Project Manager for the work required by this Contract.

TriMet's Project Manager is:

Name (provided after award of Contract)

Title

503.962.xxxx

xxxx@trimet.org

6.10 Insurance (08/20)

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.

(1) Commercial General Liability Insurance

Commercial General Liability insurance, with coverage limits not less than:

- (a) \$2,000,000.00 per occurrence, bodily injury and property damage; and
- (b) \$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 a railroad, the commercial general liability policy exclusion must be deleted.

(2) Professional Technology and Cyber Liability Insurance

Contractor shall maintain at all times while services contemplated by this Contract are being completed, coverage for professional services delivery and include protections for cyber liability, with coverage limits not less than:

- (a) \$2,000,000 per occurrence; and
- (b) \$5,000,000 aggregate.

(3) 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:

- (a) Bodily injury: \$2,000,000.00 per person; \$2,000,000.00 per accident; and
- (b) 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.

(4) 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:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident
- (b) Bodily Injury by Disease \$1,000,000.00 each employee
- (c) 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 worker's compensation insurance. Any Contractor requesting an exemption from the worker's 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 Paragraph 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.
- (6) **Be uploaded into the Contractor's profile via TriP\$** (including an upload of the most current Certificate of Insurance (COI)). Insurance information and most current COI shall be uploaded and maintained by the Contractor, in the Contractor's TriP\$ profile at all times.

6.11 Notice to Proceed (08/16)

The Contractor shall not proceed with any work required under this Contract without a written Notice to Proceed from TriMet's Procurement Department or the authorized TriMet Project Manager. Any work performed or expenses incurred by the Contractor prior to the Contractor's receipt of Notice to Proceed shall be entirely at the Contractor's risk.

6.12 Hours of Labor – Goods and Services Contracts (08/16)

Pursuant to ORS 279B.235, persons employed under this contract shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

6.13 Warranties (08/16)

Contractor warrants that it will perform all services in a good and workmanlike manner and that all goods and services provided hereunder meet or exceed standards prevailing in the industry. If TriMet discovers a defect in the goods or services within one year of receipt of the final invoice under this Contract and provides prompt written notice to Contractor, then Contractor shall remedy the defect or begin to remedy the defect within a reasonable time after notice.

With respect to goods provided hereunder, Contractor warrants that they will perform substantially in accordance with the manufacturer's specifications. Goods provided under this Contract shall be covered by any additional warranties provided by the manufacturer. Contractor warrants that title to goods provided hereunder is free of encumbrances.

6.14 Rejection of Services (08/20)

- A. Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or used in performing services.
- B. If any of the services performed do not conform to contract requirements, TriMet may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, TriMet may: (1) require the Contractor to take necessary action to ensure that future performance conforms to the contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.
- C. If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, TriMet may: (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.
- D. Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the services will have, the unconditional and irrevocable right, power, and authority, including all permits and licenses required, to provide the Solution and grant and perform all rights and licenses granted or required to be granted by it under this Agreement;
- E. Neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Agreement does or at any time will: (i) conflict with or violate any applicable law, including any law relating to data privacy, data security, or personal information; (ii) require the consent, approval, or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by TriMet to any third party, and Contractor shall promptly notify TriMet in writing if it becomes aware of any change in any applicable law that would preclude Contractor's performance of its obligations hereunder;

- F. The Software, subscription services, documentation, and all other Services and materials provided by Contractor under this Agreement will not infringe, misappropriate, or otherwise violate any intellectual property right or other right of any third party;
- G. There is no settled, pending, or threatened action, and it has not received any written, oral, or other notice of any action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Solution does or would infringe, misappropriate, or otherwise violate any intellectual property right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance, accessing or use of the Solution, or alleging any adverse right, title, or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services or its other obligations under this Agreement, and it has no knowledge of any factual, legal, or other reasonable basis for any such litigation, claim, or proceeding;
- H. The Solution will conform to and perform in accordance with the specifications and all requirements of this Agreement;
- I. All specifications are, and will be continually updated and maintained so that they continue to be, current, complete, and accurate so that they do and will continue to fully describe the term of the Agreement in all respects such that at no time will the Solution have any undocumented feature;
- J. The Contractor's systems and services are and will remain free of harmful code; and
- K. Contractor will perform all services in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using Contractor personnel with the requisite skill, experience, and qualifications, and shall devote adequate resources to meet its obligations under this Agreement.

Contractor, at its expense, will (a) correct any defective work or other deliverables that do not substantially comply with Contractor's warranty; and if reasonably practicable and cost-effective, assist TriMet in restoring and recovering lost data that resulted directly from a defect in breach of an express warranty by Contractor and which was not due to any acts or omissions of TriMet or third-parties over whom Contractor had no control, management or contractual responsibility; or upon inability to correct defect(s) Contractor may refund as set forth in this Contract.

If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, TriMet may: (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

6.15 TriMet Facility Security (08/16)

In accordance with TriMet policy, attached as **Appendix A – TriMet Contractors Safety Guide**, all persons inside the perimeter of TriMet buildings and yards must display TriMet-issued badges

upon their person. Contractor employees who are required to access TriMet buildings or yards to perform the requirements of this Contract shall comply with this requirement.

If such access shall be occasional and during regular business hours, badges shall be "Visitor Pass" type, for which Contractor's employees shall check in and out at the site's reception desk for each visit to a site. Photo identification shall be required at check in.

If Contractor's employees shall need access frequently over an extended period, and/or consistently at times other than regular business hours, badges shall be "Contractor Badge" type, which TriMet's Project Manager shall obtain for Contractor's employees. Contractor shall coordinate TriMet-issued badge requirements with TriMet's Project Manager within ten (10) days of contract award. Contractor is responsible for ensuring compliance by each of Contractor's employees with all TriMet facility security access control procedures. Contractor is responsible for the return of all "Contractor Badges" at the time of contract expiration or termination. Contractor Badges are initially provided at no charge; however, any badges not returned as required will result in a \$100 per badge charge to Contractor. This charge will be deducted from the final payment invoice.

Contractor Badges are for identification and building/yard access only. If Contractor employees are required to ride transit as part of the contractual requirements, tickets or passes may be purchased for this purpose.

Contractors that require vehicular access to TriMet operations facilities shall comply with vehicle access control procedures in effect at the site. Any vehicular access to a TriMet operations facility by a non-TriMet vehicle is by permission only and via designated gates and roadways only. Contractor's vehicle drivers shall comply with site-specific vehicle access control procedures, including the Visitor Pass procedure or display of TriMet-issued Contractor Badges, for all vehicle occupants.

All Contractor employees not displaying a TriMet-issued Visitor Pass or Contractor Badge while inside a TriMet building or yard will be requested to leave the premises and obtain a Visitor Pass. Non-compliance by Contractor employees with these requirements may result in being barred from performing work on TriMet premises and removal of Contractor employees from TriMet buildings/yards.

Before TriMet grants Contractor employees access to TriMet property under this Agreement or at any time thereafter, in accordance with applicable laws and TriMet requirements, TriMet reserves the right to: (1) conduct or obtain, or require Contractor to conduct or obtain background checks on Contractor's employees; (2) have Contractor require its subcontractors to conduct or obtain background checks on their respective employees; and (3) require Contractor to provide written certification and documentation as determined by TriMet evidencing compliance with these requirements.

Criminal background information shall be evaluated to determine whether Contractor's employee will be granted building access. Convictions for crimes that impact public safety, property or life, and crimes against persons may be cause for denial of access to TriMet properties.

6.16 TriMet System Security (08/20)

Contractor acknowledges and understands that it may be required to access TriMet's computer networks in delivering or performing Services under this agreement. In providing access to

Contractor, TriMet places special confidence and trust in Contractor. Contractor acknowledges and understands that any access granted by TriMet to its computer network shall be limited, restricted, and conditioned upon Contractor's compliance with TriMet's security policies and practices related to such access which TriMet will provide to Contractor before execution of the contract. Contractor warrants that it will provide all products and perform all Services in full compliance with TriMet's applicable security policies and practices.

6.17 Reserved

6.18 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.

6.19 Reserved

6.20 HIPAA/HITECH Obligations (08/20)

- A. Each party and its respective staff shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the other party, regarding the confidentiality of patient information, to include, without limitation, HIPAA and HITECH. In addition, if necessary, the parties agree to resist any effort to obtain access to such records or information in judicial proceedings, except such access as is expressly permitted by federal/state regulations.
- B. The parties acknowledge and agree that the Services provided by Contractor hereunder constitute treatment, payment or healthcare operations as those terms are defined by HIPAA/HITECH and, therefore, the parties are not required to enter into a "business associate" agreement.

- C. Notwithstanding the foregoing, Contractor and all staff provided to TriMet hereunder shall comply with confidentiality, medical records and/or other applicable laws and regulations with regard to any and all information directly or indirectly accessed or used by Contractor and their personnel, including without limitation HIPAA and HITECH.

6.21 Service Level Commitments (08/20)

The objectives for Service Level Agreements (SLA) shall be documented in the attached and incorporated **Exhibit C** [supplied upon agreement between the parties].

6.22 Certified Small Business Program (10/20)

It is the policy of TriMet that Minority-owned Business Enterprises, Women-owned Business Enterprises, Service-Disabled Veteran-owned Business Enterprises, Emerging Small Businesses, and Disadvantaged Business Enterprises, certified by the State of Oregon as MBE/WBE/SDVBE/ESB/DBE (Certified Small Businesses) shall have an equal opportunity to participate in the performance of contracts financed with general funds.

By submitting its bid/proposal, bidder/proposer certifies that it will take all necessary and reasonable steps to ensure that Certified Small Businesses firms are given an equal opportunity to compete for and participate in the performance of this Contract.

Bidder/Proposer further certifies and agrees that it has not and will not discriminate on the basis of race, color, national origin, or sex in the award of subcontracts under this Contract or in performance of this Contract.

TriMet views adherence to **Appendix F** as an important mechanism for meeting this policy objective. TriMet's aspirational goal for utilization of Certified Small Businesses is 20%; TriMet strongly encourages bidder/proposers to do their best to meet this goal.

6.23 Certified Small Business Reporting Requirements (10/20)

The Contractor and any subcontractors with Minority-owned Business Enterprises, Women-owned Business Enterprises, Service-Disabled Veteran-owned Business Enterprises, Emerging Small Businesses, and Disadvantaged Business Enterprises, certified by the State of Oregon as MBE/WBE/SDVBE/ESB/DBE (hereafter referred to as "Certified Small Businesses" in this document) utilization must maintain records of all subcontracts entered into with Certified Small Businesses and records of materials purchased from any Certified Small Business suppliers. Records of Certified Small Business utilization shall be entered into TriMet's Diversity Compliance Reporting System developed by B2Gnow, which is an on-line database manager, more fully described below. Certified Small Business records must show the name and business address of each Certified Small Business subcontractor or vendor and the total dollar amount actually paid to each Certified Small Business subcontractor or vendor.

The participation of a Certified Small Business subcontractor will not be considered part of the prime contractor's Certified Small Business achievements until progress payments, as well as any retainage held by the prime contractor, has been paid to the certified firm. Prime Contractor's payment applications will not be approved, until all monthly data is entered into the Diversity Compliance Reporting System.

B2Gnow is an online, web based contract diversity compliance system intended to track Certified Small Business utilization. This system addresses public project reporting and monitors requirements set forth by state and federal laws. It is intended to reduce the reporting burden on contractors and subcontractors while at the same time easing administrative efforts placed on public agencies to monitor these compliance issues. For more information, go to <https://trimet.diversitycompliance.com/>

For construction and maintenance contracts, all Certified Payroll must be entered into LCP Tracker weekly. LCP Tracker is cloud-based solutions for certified payroll, prevailing wage compliance, and workforce diversity reporting. For more information, go to <https://lcptracker.com>.

TriMet will provide a training session at the start of the contract to introduce the Diversity Compliance Reporting System to the Contractor's and subcontractors' administrative teams.

6.24 Electronic Signatures (08/16)

This Contract and related documents may be executed by the parties separately in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument. Each will be considered signed when the signature of a party is delivered by electronic signature, or electronic (email) transmission to the other party, when it is delivered in a manner that reasonably identifies the signatory as the individual named. Such electronic signatures shall be treated in all respects as having the same effect as an original signature. If requested by either party, documents bearing original signature may be subsequently submitted to replace copies bearing electronic signatures. By signing this Contract, the representative of the Proposer thereby represents that such person is duly authorized by the Company to execute this Contract on behalf of the Proposer and that the Company agrees to be bound by the provisions thereof.

7.0 General Contract Conditions

7.1 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.

7.2 Notices and Communications (08/16)

All notices and other communications concerning this Contract shall be written in English and shall bear the contract number assigned by TriMet. Notices and other communications may be delivered personally, by facsimile, by email, by regular, certified or registered mail or other commercial delivery service.

A notice to TriMet will be effective only if it is delivered to that person designated in writing in either (a) the Notice of Award of this Contract, (b) the Notice to Proceed under this Contract, or (c) to another individual specifically designated by this Contract. A notice to the Contractor shall be effective if it is delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated in writing by the Contractor in the contract or in a written notice to TriMet.

7.3 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.

7.4 Indemnification (08/20)

- A. Except as otherwise provided, 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. The foregoing remedies are the exclusive remedies for any indemnification claim related to claims based on patent, copyright, trade secret or trademark claims:
 - 1. Contractor, at its expense, shall defend, indemnify, and save TriMet harmless from and against any service or product that infringes any valid patent, copyright, trade secret or trade mark asserted by third party actions, suits or proceedings brought against TriMet (each, a "Claim") to the extent it is based on a claim that the services or product, used in accordance with the terms of this Contract, infringes any patent, copyright,

utility model, industrial design, mask work, trade secret, or trademark of a third party worldwide.

2. Contractor's indemnification obligations apply only if TriMet: Promptly notifies Contractor in writing of the claim, but TriMet's failure to provide timely notice shall only relieve Contractor from its indemnification obligations (i) if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor, or (ii) upon obtaining knowledge of infringement TriMet delays by more than sixty (60) days giving written notice to Contractor of the claim.
3. If such claim has occurred, TriMet agrees to permit Contractor, at its option and expense, either to procure for TriMet the right to continue using the Solution or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Solution or any part thereof is enjoined by a court and TriMet determines that none of these alternatives is reasonably available, TriMet may terminate the contract. Following such a termination, Contractor agrees to refund to TriMet any prepaid, unused fees paid to Contractor.
4. The indemnifying party shall not enter into any settlement that imposes liability or obligations on the indemnified party without obtaining the indemnified party's prior written consent of the settlement.

7.5 Indemnity Survival (08/20)

The indemnity provisions in Section 7.4 and 7.5 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.

7.6 Force Majeure (05/20)

Neither party is liable for delay or default if such delay or default is the result of an event of Force Majeure, meaning acts of God, acts of the public enemy, acts of the government in its sovereign capacity, fires, floods, earthquake, epidemics, pandemics, quarantine restrictions, or freight embargoes. Force majeure shall not include the following: an event which, in whole or in part (a) is the result of a labor strike, work stoppage or slowdown, or other labor related issue caused by employees either of the Contractor, its subcontractor or supplier, or an affiliate; (b) is the result of a change in the federal revenue or income tax laws; or (c) is or was reasonably within the control of or was caused by the fault or negligence of, the party claiming Force Majeure as an excuse for delay or default.

A party asserting Force Majeure as an excuse for delay or default notify the other party within 24 hours after commencement of the delay or default, take reasonable steps to minimize any delay or damages, and continue to perform all non-excused obligations.

7.7 Prompt Payment (08/19)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) working days from the receipt of each payment the prime contractor receives from TriMet. The prime contractor agrees further to return retainage payments to each subcontractor within 10 working days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TriMet. This clause applies to both DBE and non-DBE subcontractors.

Compliance with the prompt payment contract requirement will be part of the Project Managers project meeting with the Prime Contractor and will be monitored on an on- going basis by the DBE Liaison Officer (DBELO).

The contractor must maintain records of all subcontracts entered into with DBEs and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid to each DBE subcontractor or vendor.

The contractor must also submit to the Project Manager's office an affidavit certifying that payment was made to the DBE subcontractor or supplier, to be signed by both the prime contractor and DBE. Such an affidavit must be submitted during the project any time a progress or final payment is made to a DBE, and when any retainage held is returned. A summary certification affidavit must be submitted at the completion of the project.

The participation of a DBE Subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall aspirational goal, until the amount being counted toward the aspirational goal, and any retainage held by the prime contractor has been paid to the DBE

7.8 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.

7.9 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.

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 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.

7.15 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.

7.16 Termination for Default (08/16)

- 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.
- C. If TriMet terminates this Contract in whole or in part under the default provisions, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, goods or services similar to those terminated, and the Contractor will be liable to TriMet for any excess costs for those goods or services. However, the Contractor shall continue the work not terminated.
- D. Contractor shall be paid the contract price only for completed goods or services delivered and accepted. 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.
- E. 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.

7.17 Termination for Convenience (08/16)

TriMet may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in TriMet's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. 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.

7.18 Termination Following Bankruptcy (08/20)

TriMet may terminate any and all of this Agreement and any Task Order(s), effective immediately, by written notice to Contractor if Contractor: (A) is dissolved or liquidated or takes any corporate action for such purpose; (B) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (C) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (D) makes or seeks to make a general assignment for the benefit of its creditors; or (E) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Agreement are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement is and shall be deemed to be "embodiment[s]" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n)).

TriMet shall have the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency, and similar laws with respect to this Agreement. Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (A) subject to TriMet's rights of election, all rights and licenses granted to TriMet under this Agreement will continue subject to the respective terms and conditions hereof and thereof, and will not be affected, even by Contractor's rejection of this Agreement; and (B) TriMet shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in TriMet's possession, shall be promptly delivered to TriMet, unless Contractor elects to and does in fact continue to perform all of its obligations under this Agreement.

7.19 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.

7.20 Work Product (08/20)

Contractor shall own and retain all title, copyright, patents, trademarks, trade secrets, and other proprietary rights in the Software, documentation and deliverables, including but not limited to bug patches, fixes, updates, upgrades, enhancements, modifications and all derivatives and all other manifestations of Contractor's intellectual property. Aside from the license granted hereunder, TriMet nor any third party, acquire any right, express or implied, in any Contractor's intellectual property.

Contractor warrants that it owns the Software and has title to and all rights necessary to deliver the software to TriMet, and has obtained rights to deliver other software to TriMet from any third party software included in Contractor's Solution. No title, ownership or interest in Contractor's Software or any of its parts, in any third party software incorporated into Contractor's Solution, or applicable rights therein such as patents, copyrights and trade secrets, shall be transferred to TriMet.

With respect to Contractor owned intellectual property under this contract or included in a deliverable under a SOW, Contractor grants the TriMet a non-exclusive, non-transferable, irrevocable, perpetual license for the sole purpose of allowing TriMet to make use of thereof for its own internal purposes in the manner contemplated in the applicable SOW. Such license is subject to the TriMet's payment of all fees and expenses under the related SOW.

TriMet and Contractor agree that all custom software developed for TriMet (if any) produced pursuant to this Contract ("Custom Content") shall not be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq., but shall be covered by the license provisions of this Contract.

TriMet and Contractor agree that all Custom Content created pursuant to this Agreement shall be owned by Contractor. Contractor shall provide TriMet with a non-exclusive, non-transferable, non-sub licensable perpetual license to use such Custom Content.

TriMet shall retain ownership, custody, and control of all TriMet Content. "TriMet Content" means any and all information, trademarks, service marks, logos, files, images, text, files data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of TriMet for processing by or through the services provide by this contract, or (b) collected, downloaded, or otherwise received by TriMet or any authorized user pursuant to this Agreement. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any TriMet Content are themselves also TriMet Content. For the avoidance of doubt, TriMet Content includes all user data and personal information

Contractor shall use TriMet Content only to provide and maintain the services provided under this Contract. Contractor will not capture, maintain, scan, index, share or use TriMet Content stored or transmitted by such Services, or otherwise use any data-mining technology, except as authorized or required by this Contract. Contractor shall not use TriMet Content stored or transmitted by such Services for any advertising or other commercial purpose of Contractor or any third party.

Each party is and shall remain the owner of all right, title and interest in and to any and all data that it owned prior to the effective date of this agreement, and in and to any data to which it may hereafter acquire ownership. Without limiting the generality of the foregoing, TriMet shall own all right, title and interest in and to TriMet Content. Except as otherwise provided in this Contract, no party shall be obligated to convey any right, title and/or interest in any data to the other. Subject to the terms of Contract, including the license rights granted to TriMet, each party, upon request of the other, promptly shall return to the other any data owned by the other that may have been disclosed.

7.21 Inspection of Goods/Services (08/16)

- A. TriMet has the right to inspect and test all goods/services called for under the contract, to the extent practicable, at all times and places during the term of the contract. TriMet shall perform inspections and tests in a manner that will not unduly delay the work.
- B. If any of the goods or services do not conform with contract requirements, TriMet may require the Contractor to replace the goods or perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in goods or services cannot be corrected by re-performance, TriMet may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the goods/services performed.
- C. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, TriMet may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by TriMet or (2) terminate the contract for default.

7.22 Reserved

7.23 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.

7.24 Audit and Inspection of Records (08/16)

- A. 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, the U.S. Department of Transportation, the Oregon Secretary of State and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment under this Contract.
- B. Contractor further agrees to include in all of its subcontracts under this Contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Transportation, the Oregon Secretary of State and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Section excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The periods of access and examination described in subparagraphs A and B of this Section for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

7.25 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.

7.26 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.

7.27 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.

7.28 Changes (08/16)

- A. TriMet may at any time, by written order, make changes within the general scope of this Contract in any one or more of the following:
 - 1. Description of services to be performed.
 - 2. Time of performance (i.e., hours of the day, days of the week, etc.).
 - 3. Place of performance of the services.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, TriMet shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to any adjustment under this clause within 30 days from the date of receipt of the written order. However, if TriMet decides that the facts justify it, TriMet may receive and act upon a proposal submitted before final payment of the contract.

7.29 Advertising or Publicity (08/16)

Contractor shall not disclose, use or refer to this Agreement or any of its terms, or the name of TriMet in any advertising, publicity release, promotional materials or materials distributed to existing or prospective customers, without the prior written consent of TriMet.

7.30 Confidentiality (08/16)

All information, written or oral, disclosed or made available to the Contractor, directly or indirectly, through any means of communication or observation by the Contractor or any of its affiliates or representatives to or for the benefit of the Contractor shall remain confidential between Contractor and TriMet. The Contractor shall hold all Confidential Information in confidence in accordance with the terms of this agreement and use only for the purpose of providing the Services hereunder.

8.0 Drug and Alcohol Program Requirements (08/16) – Reserved

9.0 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.

10.0 Certificate of Oregon Tax Law Compliance (08/16)

By execution of this Contract, Contractor certifies under penalty of perjury as provided in ORS 305.385(6), that it is, to the best of its knowledge, not in violation of any Oregon tax law. For purposes of this Certificate, "Oregon Tax Laws" are state taxes imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323, and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

CONTRACTOR

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

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

APPROVED AS TO FORM

Telephone: _____

Linda Joy
Contract Administrator
Procurement & Supply Chain Mgmt.

Email: _____

Contractor's Federal I.D. No.