



RFP No.RS210061AB

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

REQUEST FOR PROPOSALS

FOR

Third Party Administrator for Drug and Alcohol Testing Services

1. The Tri-County Metropolitan Transportation District of Oregon (TriMet) invites sealed proposals for Third Party Administrator for Drug and Alcohol Testing Services 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 **October 23, 2020 at 4:00 PM**. Proposals will not be publicly opened.
3. A pre-proposal conference will not be conducted for this solicitation.
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. **Acknowledgment of addenda will be required.**

5. All questions regarding this procurement must be directed to Anthony Blackmon, Contract Administrator, via email at BlackmoA@trimet.org.

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

By: Anthony Blackmon
Contracts Administrator
Procurement & Contracts Department

Issue Date: October 16, 2020

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

**REQUEST FOR PROPOSALS
FOR**

Third Party Administrator for Drug and Alcohol Testing Services

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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 Supplier Attachment 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.**

SECTION 1.2 – PROPOSAL REQUIREMENTS

1.2.1 Request for Proposals – RFP (08/16)

The Tri-County Metropolitan Transportation District of Oregon (hereinafter "TriMet") requests proposals for providing good and services for Third Party Administrator for Drug and Alcohol Testing Services. 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 & Contracts Department. All communications pertaining to this RFP shall be directed to TriMet, Procurement & Contracts Department, 1800 SW 1st Ave., Suite 300, Portland, Oregon 97201; Attn: Anthony Blackmon via email at BlackmoA@trimet.org.

TriMet reserves the right to analyze, examine, and interpret any proposal for a period of not more than ninety (90) days, commencing from the proposal due date and time. Proposals shall not be conditioned to allow for less than a ninety (90) day acceptance period.

1.2.2 Questions and Changes to the RFP (REVISED)

TriMet reserves the right to make changes to the RFP. TriMet may elect to make changes to each step presented in the RFP prior to receipt of documentation. TriMet's Procurement System (TriP\$), can be accessed at <https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=TriMet>. Failure to acknowledge receipt of an addendum within each stage may cause the response to be rejected as non-responsive. Following receipt of a response, any changes to TriMet's RFP will be conveyed in writing to those Proposers determined to be in the competitive range.

Proposers may submit questions, request clarification, or request a change to the subsequent stage by submitting a written request to Anthony Blackmon at BlackmoA@trimet.org. The request shall specify the provision of in each stage in question, and, if a change is requested, contain an explanation for the requested change. Requests must be submitted by the deadline specified in TriP\$ for each stage.

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 proposal. Firms shall not include any such expenses as part of their proposal.

1.2.4 Multiple Proposals (08/16)

Multiple proposals from a single proposer will not be accepted.

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 (REVISED)

Proposers shall submit their response during each specified stage via TriMet's eProcurement System (TriP\$), at or before the time specified in this RFP. No responses 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.

Responses must be submitted electronically, via TriMet's eProcurement System (TriP\$), no later than the time and date specified for each subsequent stage.

At the technical proposal stage proposers shall submit their technical responses to the specified questions during that stage.

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 Proposal (08/16)

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 SEC Committee 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 Administrative Remedies (08/16)

A proposer or offeror may seek administrative remedies under Proposal/Proposal Protest Procedures of TriMet's Contracting Rules. Copies of TriMet's Proposal/Protest Procedures are available upon request from TriMet's Procurement and Contracts Department, 1800 SW First Avenue, Suite 300, Portland, Oregon 97201.

1.2.13 Anticipated Selection Schedule

The following schedule is subject to change:

Issue RFP	October 16, 2020
Pre-Proposal Conference	Not Applicable
Stage 1 Vendor Cloud Assessment Review	October 23, 2020
Stage 2 Request for Proposals Issue	November 13, 2020
Stage 2 Request for Proposals Due	December 2, 2020
Proposal Evaluation	Week of December 7, 2020
Product Demonstration	Week of December 14, 2020
Request for Best and Final Offers	January 11, 2021
Best and Final Offers Due	January 18, 2021
Notice of Intent to Award	January 25, 2021
Board of Directors Approval (if required)	Not applicable
Award of Contract	by February 1, 2021

END SECTION 1.2 – PROPOSAL REQUIREMENTS

***Proposers who submit a response to this Request for Proposal agree that the schedule is subject to change and shall be available for subsequent steps if determined within the competitive range.**

SECTION 1.3 – SPECIAL PROPOSAL CONDITIONS

1.3.1 One Award (08/16)

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 (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 option pricing; i.e., 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.

END OF SECTION 1.3 – SPECIAL PROPOSAL CONDITIONS

The description of each subsequent stage is presented below:

Stage 1: Vendor Cloud Assessment Form

Interested Proposers shall complete the vendor cloud assessment form located in the Buyer Attachments Section. Proposers shall submit the form by the deadline specified. Submissions shall be uploaded to TriP\$.

This shall be a pass/fail. No exceptions shall be made.

Proposers that do not pass will not move forward to the next competitive stage.

Interested proposers shall demonstrate adequate security controls in protecting TriMet sensitive data. This can be demonstrated by completing the cloud vendor questionnaire in enough detail demonstrating such protections are in place and/or providing certifications by third party audits such as SOC2, PCI or ISO 27001.

Stage 2: Request for Proposals

Proposers that receive a pass from the Vendor Cloud Assessment Form will be invited to participate to the Request for Proposals Stage. Proposers shall submit their proposal in accordance with the specifications specified in section 2.

Proposers shall submit their proposal via TriP\$. No exceptions or deviations shall be made.

Product Demonstration

Proposers who are within the competitive range from the Request for Proposal submission, Invited Proposers will be provided a product demonstration. Proposers shall acknowledge receipt of the product demonstration date, time and script via TriP\$.

Product demonstrations will be conducted remotely. Proposers will receive instructions with their specified time in reference to the Product demonstration.

Sealed Cost Proposal Submission:

Along with the proposal submission, Proposers shall submit their cost proposal submission. After completion of the Product Demonstration TriMet will open the top 3 scoring proposers within the competitive range.

****All subsequent steps identified in the schedule will determined after completion of the stages presented above.**

SECTION 1.4 – EVALUATION OF PROPOSALS

1.4.1 Evaluation Criteria (REVISED)

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 should be preceded by a blank page (not included in page limits).
- (4) **Proposal shall not exceed thirty (30) pages, not including Section 1.1 Forms and the Proposal Price Form, which are separate documents and are to be uploaded separately in TriP\$. Pages in excess of the limitation will be deleted and will be neither read nor evaluated.** Proposers shall use an 11-point or 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:

Introduction: 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.**

References: The Proposer shall provide, at a minimum, a list of three references for similar type of work performed by the Proposer or the Proposer's staff. The references shall give the name of a contact person with knowledge of the Proposer or their staff's work; that person's address, telephone number, email, and company; and a description of the type of work performed. References may be contacted by TriMet.

(1) Technical Proposal Section 1 – Qualifications and Diversity (40 Points)

- (a) Qualifications of the Proposer:** In this Section, the Proposer shall provide information on it and any key subcontractors regarding history, experience and past performance relevant to TriMet's needs during the last five (5) years, including but not limited to, a description of direct experience which is similar in size, scope and complexity to that required by this contract. Information regarding directly relevant experience shall include a list which provides dates, locations, character, cost of assignments, project managers, and names, addresses, contact persons and telephone numbers of clients.
- (b) Qualifications of Staff:** This Section shall contain the Proposer's Staffing and Organizational Plan, which shall identify the project manager and any other key personnel who will be assigned to the work under this contract.. Resumes shall be submitted for the project manager and project support staff. Resumes must be complete and concise, including, at a minimum, education, training, and degrees and certificates earned. Resumes should also provide experience directly relevant to the work to be performed under this contract.
- (c)** In addition proposers shall provide responses to the questions specified below with their proposal submission (this will be counted in their total page limit):
- (d) Workforce Diversity:** 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, Subcontracting, 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 MBE/WBE/ESB/SDVBE Subcontracting Opportunities and Workforce Utilization forms contained in Section 1.1 of the RFP to describe its current workforce and potential subcontractors.

(2) Technical Proposal Section 2 – Work Plan (40 Points)

The Proposer shall provide an approach to the work that describes how it will perform the Services described in Section 2. Points will be awarded based on the thoroughness of the Proposer's response and how well the proposal describes meeting the requirements of this RFP. The Proposer shall submit a detailed work plan that describes each step or task that it feels is necessary to provide the services described in the Scope of Work. Included with the work plan shall be a schedule of the work, with a proposed timeline for each phase, and a resource allocation plan to complete the services and deliverables.

(3) **Technical Proposal Section 3 – Exceptions or Deviations**

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 its Indemnification clause (see Section 7.4 – Indemnification). TriMet reserves the right to deny any and all submitted exceptions or deviations to 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.

(4) **Product Demonstration (100 points)**

(a) Points will be calculated based on the scoring criteria presented in the product demonstration script.

(5) **Price Proposal/Cost (20 Points)**

(a) Points will be mathematically calculated based upon the reasonableness of the proposed price for the work to be performed and the competitiveness of the price with other proposals received.

(b) The Proposal Pricing Form (1.1.1), shall be included as a separate attachment, separate and apart from the technical proposal document, and must be clearly named "Price Proposal."

1.4.2 Evaluation Procedure (08/16)

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 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.

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.
- D. Proposers that are within the competitive range will be invited to submit their cost proposal via TriP\$.
- E. 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.
- F. 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.
- 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

Glossary of Terms and Acronyms

ATF means Alcohol Testing Form

CFR means Code of Federal Regulation

Collection site means a facility where a qualified individual collects a urine specimen from donor for the purpose of a federally-mandated or employer-authorized drug test

DER means Designated Employer Representative

DAPA means TriMet Drug and Alcohol Program Administrator. The DAPA serves as the DER for TriMet.

DAPS means TriMet Drug and Alcohol Program Specialist

Donor means an applicant or employee donating a urine specimen that will be for the purpose of federally-mandated drug testing

DOT-qualified means a service agent who meets the qualification requirements in accordance with USDOT rule, 49 CFR Part 40, as amended.

FTA means Federal Transit Administration

DHHS means US Department of Health and Human Services

MFR means Memorandum for Record

MRO means Medical Review Officer

NON-DOT means employer authorized, non-federal drug and alcohol tests

ODAPC means the federal Office of Drug and Alcohol Policy and Compliance

POC means Point of Contact

TPA means Third Party Administrator

USDOT means United States Department of Transportation

SECTION 2 – BACKGROUND, PURPOSE, AND SCOPE OF WORK/SPECIFICATIONS

2.1 General Information

TriMet (The Agency) employs approximately 3,300 employees and operates a fleet of approximately 688 transit buses, 145 light rail vehicles, 3 diesel multiple-unit commuter rail vehicles, and nearly 300 support vehicles within the Portland, OR metropolitan area. The Agency is an Oregon municipal corporation created on October 14, 1969 pursuant to Oregon Revised Statutes Chapter 267.

The Agency currently employs approximately 2550 people in FTA- defined safety-sensitive positions and 13 people in FRA-defined safety-sensitive positions. The Designated Employer Representative (DER) for the company is also known as the Drug and Alcohol Testing Program Administrator (DAPA). A Drug and Alcohol Program Specialist (DAPS) also assists with Drug and Alcohol Testing Program Administration.

The Agency operates seven days a week, 24 hours a day. Testing is conducted as mandated by DOT/FTA Drug and Alcohol Guidelines (evenly throughout the day, month, and year) distributed over all hours of operation including weekends and holidays.

2.2 Purpose

The intent of this RFP is to establish a Third Party Administrator to provide services set forth in this RFP.

DOT and Non-DOT pre-employment drug tests are performed for each applicant applying for safety-sensitive positions. DOT pre-employment drug testing is currently performed by the Occupational Health Provider that the Agency has contracted with and will not be included in this scope of work. Drug and Alcohol testing is also conducted for post-accident, reasonable suspicion, random (minimum annual testing rates of 50% for drugs and 10% for alcohol), follow-up, and return to duty test types. Currently, pre-employment testing and reasonable suspicion testing are the only categories for which the Agency conducts Non-DOT tests, per policy. When the Agency conducts non-DOT drug and alcohol testing under its own authority, these collections are performed using the same protocols used for DOT collections and are documented using non-DOT collection forms.

Mobile and/or on-site collections are performed for post-accident, random, follow-up, and reasonable suspicion testing. Mobile and on-site collection volume for the Agency is currently at approximately 450 urine specimen collections and 200 breath alcohol tests per year. The DAPA and DAPS are responsible for scheduling on-site random and follow-up testing according to the Agency's needs and schedules, and Field Operations staff make requests for mobile collection services for post-accident and reasonable suspicion testing as needed. A separate RFP will be released for mobile and/or onsite collections services. In-Clinic collection volume is approximately 1,800 urine specimen collections and 500 breath alcohol tests per year. This includes an annual estimate of approximately 420 non-DOT pre-employment tests per year.

The agency currently utilizes a DHHS certified laboratory which analyzes approximately 2400 urine specimens for Agency annually. A qualified MRO then performs a review for all DOT testing, while the Agency-contracted Occupational Health Provider serves as an MRO and reviews the majority of non-DOT (pre-employment) tests. Thus, review of non-DOT pre-employment tests are not included in this scope of services.

2.2.1 Urine Specimen Collection Services:

The TPA must contract with service agent(s) which have DOT-qualified urine specimen collectors in the greater Portland Metropolitan area and that are regularly and actively engaged in the business of conducting urine specimen collections for DOT-covered employers.

The TPA must ensure that all urine specimen collectors are trained in accordance with 49 CFR Part 40.33 and are able to conduct specimen collections in accordance with 49 CFR Part 40, as amended, and the USDOT Specimen Collection Guidelines. All non-DOT testing performed under company authority will mirror the DOT collection standards and protocol.

The TPA must maintain training qualification documentation for all specimen collectors that are approved and assigned for use. The collector training qualification documentation must be provided to the Agency, a federal or state auditor, the DAPA, or another designated representative acting on behalf of the DAPA, upon request and within two business days.

The TPA must contract with and assign to the Agency a minimum of one "In-Clinic Collection Site" employing qualified urine specimen collectors and that meet the following criteria:

- Collections providers must meet the standards for privacy and security per 49 CFR Part 40.41 and 40.43.
- Collections providers must maintain the supplies and materials necessary to complete a DOT urine specimen collection per 49 CFR Part 40.45-40.51. Urine specimen collectors must use the most current Federal Custody and Control Form for all DOT collections
- All collectors assigned to perform work for the Agency must be willing and able to conduct direct observation collections in accordance with 49 CFR Part 40.67 throughout all hours the collection site operates and must employ a minimum of one male and one female urine specimen collector (or observer) for the purpose of conducting direct observation collections when required.

2.2.2 Collection Requirements

2.2.2.1 Specific Requirements for In-Clinic Collection Site

- Collection sites must be conveniently located, and in close proximity to, the Agency's primary location at:
4012 SE 17th Avenue
Portland, OR 97202
- Collection sites must operate a minimum of six days per week and 24 hours per day, M-F

The TPA must ensure that a non-fatal flaw occurring at the point of collection is promptly corrected and a memorandum for the record (MFR) is supplied in a timely manner so as not to create a fatal flaw.

The TPA must address and respond in writing, to all concerns of collection site non-compliance that are raised by agency, the DAPA, or another designated representative. The TPA must respond to the concerned party within two business days of the initial notification and must follow these procedures:

- To determine the validity of the concern raised, the TPA must review all associated testing documents to assess the collection site's compliance with 49 CFR Part 40 as amended, and the USDOT Specimen Collection Guidelines.
- As applicable, the TPA must deliver corrective action requirements to violating collectors and/or collection sites within five business days of the determination of non-compliance. The TPA must provide copy of the corrective action notice to the Agency and DAPA, or another designated representative.
- The TPA must provide the Agency with an alternative USDOT-qualified specimen collector when a collector or collection site fails to comply with the corrective action requirements imposed by the TPA.

The TPA must ensure that collectors receive error correction training following all fatal flaws that result in canceled tests and must maintain documentation of error correction training.

The TPA must supply the DAPA and/or DAPS with a quarterly report of all fatal flaws that includes:

- Collector name
- Collector address
- Collection date
- Specimen ID number
- Description of fatal flaw
- Date of error correction training
- Name of individual conducting error correction training

2.2.3 Collection Site Compliance Monitoring

On a quarterly basis, the TPA must perform on-site compliance monitoring inspections of at least one on-site collection facility assigned to agency.

The TPA must ensure that compliance monitoring is rotated amongst all assigned In-Clinic Collection Sites.

The DAPA must approve the inspection checklist to be used to determine collector compliance with the requirements of 49 CFR Part 40, as amended, and the USDOT Specimen Collection Guidelines. The TPA must submit the completed checklist report to the DAPA no later than ten days after the completion of the inspection.

The TPA must provide any necessary error correction training to bring a collection site into compliance when a collection site is determined to be non-compliant as a result of an on-site inspection or when a state or federal audit of the collection site results in one or more areas of concern or deficiencies. The TPA must provide the DAPA documentation of the notice of corrective action requirement and the error correction training delivered to the collection site by the TPA.

The TPA must ensure that alternative DOT-qualified collectors meeting the criteria outlined in Urine Specimen Collection Services of this Scope of Services are provided to the Agency when a collection site is deemed non-compliant and does not implement corrective action requirements.

The TPA will notify the DAPA when the Office of Drug and Alcohol Policy and Compliance (ODAPC) has issued a Public Interest Exclusion involving any collection site or collector being utilized by the agency and must assign an alternative qualified collection site or collector.

2.2.4 Urine Specimen Analysis

The TPA must ensure that all specimens are analyzed at a laboratory that is certified by the Department of Health and Human Services under the National Laboratory Certification Program (NLCP) for testing of urine specimens collected under the authority of the Department of Transportation.

The TPA must ensure that documentation of laboratory certifications is provided to the Agency, the DAPA, a federal or state auditor, or another designated representative acting on behalf of the DAPA, upon request and within two business days.

The TPA must ensure that the processing of incoming specimens, the analysis of specimens and the reporting of laboratory results is conducted in accordance with 49 CFR Part 40- Subpart F, as amended.

The TPA must ensure that at least one qualified forensic toxicologist is available upon request, to provide litigation assistance to include expert witness testimony and depositions.

The TPA must ensure that all Medical Review Officers assigned to review laboratory reports and verify lab confirmed results do not have, or will not enter into a relationship, partnership or affiliation with any laboratory that could create a conflict of interest or the appearance of a conflict of interest between the MRO and the laboratories.

The TPA must ensure that in the event of an issuance of a Public Interest Exclusion (PIE) involving a laboratory that analyzes specimens for the Agency, the DAPA will be notified, and an alternative laboratory will be immediately assigned.

2.2.5 Medical Review Officer Services

The TPA must ensure that the Agency is provided with the services of a Medical Review Officer (MRO) who has met the qualification requirements per 49 CFR Part 40.121.

The TPA must ensure that all laboratory results undergo a medical review verification process that is conducted in accordance with 49 CFR Part 40 - Subpart G, as amended.

The TPA must ensure that MRO staff are working directly under the supervision of a qualified and certified MRO.

The TPA must ensure that the MRO is accessible to the donor, by means of a toll- free telephone number, a minimum of twelve hours per day; seven days per week, excluding national holidays.

The TPA must ensure that a MRO or MRO staff member reports verified positive, adulterated or substituted drug test results verbally to the Agency's DER immediately following the MRO verification of the result and in accordance with 49 CFR Part 40.163, 165, 167.

The TPA must ensure that the MRO and MRO staff members implement a means of secure identification prior to communicating verified positive, adulterated or substituted drug test results to the Agency's DER, 49 CFR Part 167(b)(2).

The TPA must ensure that the MRO and MRO staff members are accessible to the Agency's DER to consult on topics such as a donor's shy bladder or shy lung medical evaluation, medication use, medical conditions, etc. Consultations of this type must be inclusive of the unit cost per test.

The TPA must ensure that Medical Review Officers address significant safety concerns regarding a donor's medication use or medical condition in accordance with 49 CFR Part 135 (e) and are available to speak with a prescribing physician up to five days following the interview with the donor.

The TPA must ensure that the Medical Review Officer is available to assist the Agency with expert testimony or depositions should an MRO verified result become the focus of litigation brought against the Agency. The Agency will only be responsible for reimbursing the Medical Review Officer for actual expenses incurred while performing these services.

The TPA must ensure that in the event of an issuance of a Public Interest Exclusion (PIE) involving an MRO whose services are assigned for use under this contract, the DAPA will be notified, and an alternative MRO will be immediately assigned.

2.2.6 Result Reporting and Record Maintenance

The TPA must ensure that the specific urine drug test result reporting procedures are performed in accordance with the requirements of 49 CFR Part 40.163.

The TPA must ensure that MRO verified negative results are reported to the Agency as soon as possible following verification. Non-flawed, lab-confirmed negative urine specimens should be MRO verified and reported to the Agency within approximately 24-48 hours of the specimen's arrival at laboratory.

The TPA must ensure that the MRO provides a written report following MRO verification of all results, that includes the following:

- Full name of donor (as indicated on CCF)
- Specimen identification number
- Donor identification number
- Reason for testing (test type)
- Date of the collection
- Date MRO received copy two of the CCF
- Result of the test
- Date result was verified by the MRO
- If canceled, the reason for cancellation
- If deemed a Refusal to Test, the reason for the refusal determination

The TPA must ensure that the Agency is provided the option to have results reported to the Agency's primary or secondary contact in all of the following ways:

- Via a secure, password protected website
- Via a secure and confidential electronic mail system

The TPA must ensure that all result reports and associated records are not released to, or cannot be accessed by, any party other than the Agency's DAPA and/or DAPS, where applicable.

The TPA must ensure that all reasonable procedures to protect personal data from unauthorized access, misuse, alteration or disclosure by unauthorized parties are executed at all times and must include the use of data encryption software and secure servers.

The TPA must ensure that all hard copy testing records are maintained in a secure location that is safeguarded against theft, damage and unauthorized access.

The TPA must ensure that all non-negative testing records, both electronic and hard copy are maintained and are accessible to the Agency, for a minimum of five years from date of collection.

The TPA must ensure that all negative testing records, both electronic and hard copy are maintained and are accessible to the Agency, for a minimum of three years from date of collection.

2.2.7 Alcohol Testing Services

The TPA must establish and maintain a contract with a USDOT-qualified Screening that are regularly and actively engaged in the business of conducting alcohol tests for DOT-covered employers. Alcohol testing must be conducted in accordance with 49 CFR Part 40, as amended.

The TPA must approve and assign to agency a minimum of one alcohol testing site that meets, at a minimum, the following criteria:

- Collection sites must be conveniently located, and in close proximity to, the Agency's primary location at:
- 4012 SE 17th Avenue
Portland, OR 97202
- Collection sites must operate a minimum of six days per week and 24 hours per day, M-F.
- Alcohol testing sites must be equipped to conduct DOT alcohol screening tests and confirmatory testing on site.
- Alcohol test technicians must utilize approved devices that are listed on the National Highway Traffic Safety Administration's conforming products list found on the ODAPC website.
- Breath Alcohol Technicians must ensure that routine calibration and maintenance of the Evidentiary Breath Testing devices is performed per manufacturer's instructions and demonstrate upon request that such calibration and maintenance was performed through documentation.
- Technicians must utilize the US Department of Transportation Alcohol Testing Form, as amended.

The TPA must maintain training qualification documentation for all alcohol test technicians that are approved and assigned for use. The training qualification documentation must be provided to the Agency, a federal or state auditor, the DAPA, or another designated representative acting on behalf of the DAPA upon request.

The TPA must ensure that alcohol test technicians maintain documentation of testing and all pertinent maintenance records, in accordance with 49 CFR Part 40, as amended.

The TPA must obtain, from the alcohol test technician, documentation of all completed alcohol tests for the purpose of maintaining accurate testing records and statistical reports for the Agency.

2.2.8 Random Testing Program Management

The TPA must generate random selections in accordance with DOT/FTA regulatory standards and at the appropriate rate to ensure that minimum annual random testing percentages are met. The TPA must use a scientifically valid method of determining the randomly selected employees. All covered employees must have an equal chance of being selected each time a draw is made, in accordance with 49 CFR Part 655.45, the TPA must not generate “alternate” or “replacement” selections within the testing period. All alternate selections must be included on the Agency’s selection list, per testing period.

The TPA must provide instruction to the DAPA and/or DAPS to facilitate the submission of the Agency’s list of safety-sensitive employees to be included in the random testing program.

The TPA must allow for the submission of updated employee lists up to five days prior to the first day of a new testing period. If the Agency has not submitted an updated list of current safety-sensitive employees five days prior to a new testing period, the TPA must generate selections using the employee database on record from the previous testing period.

The TPA must prepare and deliver random selections to the Agency’s DAPA or DAPS by the first business day of the new testing period by means of a secure and password protected website, secure electronic mail; whichever is the Agency’s preferred method.

The TPA must ensure that the transmission of the random selection lists to the Agency’s DAPA or DAPS must be conducted in a manner which will provide documentation of Agency’s receipt of the selection list to include the date and time the list was transmitted and received by the Agency. The TPA must provide, upon request by the DAPA and/or DAPS, the random testing selection lists for previous testing periods, for the purpose of compliance monitoring.

2.2.9 Electronic Records/Audit Support

2.2.9.1 Electronic Records Access

The TPA must provide and maintain a secure and password-protected, searchable web-based database from which the Agency may access testing data and results by the following parameters:

- Reason for test
- Testing authority (FTA)
- Specimen Type (Breath/Urine)
- Specimen collection Date
- MRO-verified Test Result
- Specimen ID
- Donor ID
- List of all testing conducted during a 12-month period

The TPA must provide access to the electronic database as described in Result Reporting and Record Maintenance (the DAPA and DAPS for the purpose of compliance oversight).

2.2.9.2 Audit Response and Support

In the event that the Agency’s testing program is subject to a drug and alcohol testing program compliance audit by a state or federal authority, the TPA must lend support to the Agency to include, at a minimum, the following functions:

- Gathering and/or producing copies of testing records, custody and control forms, alcohol testing forms, memorandums, result certificates, service provider qualifications, statistical reports, and all other documents requested by auditors for the purpose of evaluating compliance to drug and alcohol testing regulations
- Cooperation and coordination in responding to state and federal audit questionnaires directed at TPA approved and assigned collection sites and/or mobile collectors
- Cooperation and coordination in responding to state and federal audit questionnaires directed at the TPA
- Cooperation and coordination in responding to state and federal audit questionnaires directed at the Medical Review Officer
- Cooperation and coordination in responding to state and federal audit questionnaires directed at the laboratories used to analyze urine specimens
- Assistance in developing corrective action plans and responses to negative audit findings that are related to any of the services provided as part of this Scope of Services.

2.2.10 Program Consulting and Technical Assistance Contingency Tasks

The TPA must be able to provide to the Agency the following services, upon request, and with either an assigned hourly rate or flat-fee rate:

- Drug and Alcohol Policy Review
- 40.25 Drug and Alcohol History Applicant Screening Verifications
- Drug and Alcohol Program Form Review
- Annual DAMIS (MIS) Reporting Technical Assistance
- Safety-Sensitive Contractor Drug and Alcohol Program Oversight Technical Assistance
- Drug and Alcohol Program Technical Assistance

2.2.11 Designated Point of Contact

The TPA must designate a POC who must be able to demonstrate comprehensive knowledge of federally- mandated drug and alcohol testing regulations and be able to provide accurate technical assistance and regulatory guidance to the Agency.

The TPA's POC must be available to provide the agency DAPA and/or DAPS with training related to the use of the TPA's result reporting system, submittal of random pool updates and any other software or tools used in the administration of the testing program.

2.2.12 Invoicing Requirements

The unit cost per test for a urine drug test will include the urine specimen collection, specimen analysis, medical review and result reporting as well as all administrative functions as described within the Scope of Services.

The unit cost per test for an alcohol test will include the alcohol test technician's fee and all associated administrative functions as described within the Scope of Services

The invoices must include the date of collection, specimen ID number, donor ID number and test type for each test being invoiced.

2.2.13 Timely Payment to Service Agents

TPA must ensure timely payment to service agents who have provided services to the Agency under the terms of this contract. Payment to service agents providing any services to agency through the TPA's contact must be paid within 60 days, or earlier, if required by contract entered into by TPA and service agent.

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



SECTION 3 – SAMPLE CONTRACT

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

Contract No. RS210061AB

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

SERVICES CONTRACT FOR

Third Party Administrator for Drug and Alcohol Services

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

WHEREAS, TriMet solicited RFP No. RS210061AB for the 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; and

- F. Contractor's Proposal, to include all supplements, and as finally amended by the Contractor's Best and Final Offer (BAFO), if requested.

2.0 Federal Requirements (10/16) – Reserved

3.0 Term

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be from _____, 2020 through _____, 2025.

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 BAFO Price Proposal, which is attached as *Exhibit _____ – Contractor's BAFO Price Proposal*, and made a part of this Contract.

5.0 Scope of Work

WILL BE INSERTED FROM SECTION TWO OF THE RFP UPON EXECUTION OF CONTRACT.

6.0 Special Contract Conditions

6.1 Type of Contract

- A. This is a firm fixed unit price, requirements contract for the goods and services specified, and effective for the period stated in the RFP.
- B. The quantities of goods and/or services set forth herein are estimates only and are not purchased by this Contract. Except as this Contract may otherwise provide, quantity variance between "estimated" and actual goods and services required shall not constitute the basis for an equitable price adjustment.
- C. Except for any limitations on quantities that may be specified elsewhere in this Contract, there is no limit on the amount of goods and/or services that may be purchased.

6.2 Payments and Invoicing (08/20)

TriMet shall pay the Contractor, upon the submission of invoices, the prices stipulated in this Contract for services 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.sciquest.com/apps/Router/SupplierLogin?CustOrg=TriMet>

6.3 Travel Costs (08/16 – RESERVED)

6.4 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.

6.5 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.

6.6 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
ProjectManager@trimet.org

6.7 Audit and Records – Negotiation (08/16)

- A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- B. *Examination of costs.* The Contractor shall maintain and TriMet, or an authorized representative of TriMet, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times and places engaged in performing the contract.
- C. *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, TriMet, or an authorized representative of TriMet, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to –
- (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- D. *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs A, B, and C, of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition:
- (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
 - (2) Records relating to disputes, litigation or the settlement of claims arising under or relating to this contract shall be made available until such disputes, litigation, or claims are finally resolved.
- E. The Contractor shall insert a clause containing all the terms of this clause, in all subcontracts under this contract that exceed \$100,000.

6.8 Insurance (08/16)

During the term of this Contract, Contractor shall purchase and maintain any insurance required by this Contract. Contractor shall furnish acceptable certificates of insurance and additional insured endorsements to TriMet within ten (10) days after award of this contract, and prior to commencement of any contract work.

Contractor shall be responsible for the payment of all premiums and deductibles and shall indemnify TriMet for any liability or damages that TriMet may incur due to Contractor's failure to purchase or maintain any required insurance.

Contractor shall maintain insurance of the types and in the amounts described below.

(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) 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.

(3) **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.

(4) **Professional Liability Technology (including cyber liability insurance)**

This insurance shall provide coverage for professional services delivery and include protections for cyber liability, with coverage limits not less than:

- (a) \$1,000,000 per occurrence
- (b) \$5,000,000 per aggregate

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.

6.9 Notice to Proceed (08/16)-RESERVED

6.10 Allocation of Work (08/16) – RESERVED

6.11 Task Orders (08/16)- RESERVED

6.12 Task Order Pricing (08/16)- RESERVED

6.13 Time of Essence (08/16)

Time is of the essence in this Contract. Contractor's failure to deliver services on time shall be a material breach of this Contract. If Contractor fails to deliver services on time, TriMet, at its discretion, may procure those services from another source. If the price paid by TriMet for services procured from another source under this Paragraph is higher than the price under this Contract, Contractor shall pay TriMet the difference between those prices. TriMet may deduct that difference from any amount TriMet owes Contractor.

6.14 Warranties (08/16)

"Acceptance," as used in this clause, means the act of an authorized representative of TriMet by which TriMet approves specific services, as partial or complete performance of the contract. "Correction," as used in this clause, means the elimination of a defect.

The Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of the contract. TriMet shall give written notice of any defect or nonconformance to the Contractor within ninety (90) days of the date of acceptance of the services by TriMet. This notice shall state either (1) that the Contractor shall correct or reperform any defective or non-conforming services, or (2) that TriMet does not require correction or reperformance.

If the Contractor is required to correct or reperform, it shall at no cost to TriMet, and any services corrected or reperformed by the Contractor shall be subject to this clause to same extent as work initially performed. If the Contractor fails or refuse to correct or reperform, TriMet may correct or replace with similar services and charge Contractor the cost to TriMet, or make an equitable adjustment in the contract price. Contractor shall keep records on all reperformed work and the hours and cost associated with such work shall be segregated for accounting purposes.

If TriMet does not require corrections or reperformance, TriMet shall make an equitable adjustment in the contract price.

6.15 Rejection of Services (08/16)

Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or used in performing services.

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.

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.

6.16 Inspection of Goods/Services (08/16) -RESERVED

6.17 Title and Risk of Loss (08/16)

If this Contract is for the repair or servicing of TriMet owned goods, Contractor shall bear the risk of loss until the goods have been delivered to the site designated by TriMet and an authorized TriMet employee or agent has taken possession of them. Title to TriMet owned goods shall remain with TriMet while goods are in Contractor's possession. Contractor shall carry insurance to cover any losses/damages to TriMet's goods while in Contractor's possession.

6.18 Acceptance, Rejection, and Revocation of Acceptance (08/16)

If this Contract is for the supply of goods, then TriMet shall be deemed to have accepted goods only after the goods have been delivered by Contractor, and TriMet has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, TriMet may reject any goods that fail to conform to the requirements of this Contract. TriMet may revoke its acceptance of goods that fail to conform to this Contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if TriMet has started using the goods before discovering that they do not conform to the contract. Upon request by TriMet, Contractor shall replace or repair to TriMet's satisfaction any goods that have been rejected by TriMet or the acceptance of which has been revoked by TriMet under this Paragraph. Failure to replace or repair those goods within a reasonable time after TriMet's request shall be a material breach of this Contract.

6.19 Intergovernmental Cooperative Agreement (08/16)

Pursuant to ORS 279A and TriMet Contracting Rules, other public agencies may have the ability to purchase the awarded goods and services from the awarded Contractor(s) under terms and conditions of the resultant contract.

Any such purchases will be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to TriMet. Any estimated purchase volumes listed herein do not include other public agencies and TriMet makes no guarantee as to their participation.

Any bidder, by written notification included with their solicitation response, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

6.20 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 Offeror thereby represents that such person is duly authorized by the Company to execute this Contract on behalf of the Offeror and that the Company agrees to be bound by the provisions thereof.

6.21 Brand Names/Substitution of Specified Material (08/16)-RESERVED

6.22 Delivery (08/16)-RESERVED

6.23 Delivery Delays (08/16)-RESERVED

6.24 Delivery Dates, Milestones and Location (08/16)

6.25 Liquidated Damages (08/16) -RESERVED

6.26 Parts Reimbursement (08/16) -RESERVED

6.27 Parts Reimbursement, Equipment Rental, and Subcontractors (08/16)-RESERVED

6.28 Certified Small Business Reporting Requirements (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.

6.29 M/W/ESB/SDVBE Reporting Requirements (08/16)-RESERVED

6.30 Prevailing Wage Rates-RESERVED

6.31 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.

6.32 TriMet Facility Security (08/16)

In accordance with TriMet policy, attached as **Appendix A – TriMet Contractors Safety Guide**, and by this reference made a part of this Contract, 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.

6.33 Track Access Permit (08/16)-RESERVED

6.34 Payment Card Industry Data Security Standard (08/16)-RESERVED

6.35 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 acknowledgments 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.

6.36 Confidentiality

- A. Contractor hereby acknowledges and agrees that information retrieved and contained on hard drives (the "Information") may constitute and/or contain sensitive, personal information, valuable proprietary products and trade secrets of TriMet, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Contractor agrees to treat (and take precautions to ensure that its employees treat) the Information as confidential in accordance with the confidentiality requirements and conditions set forth below.
- B. Contractor agrees to keep confidential all Information disclosed to it by TriMet or discovered in Contractor's forensic analysis, in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information).
- C. Contractor will not disclose or otherwise make any part of the Information available, in any form, to any person other than Contractor's employees whose job performance requires such access, and to TriMet. Contractor agrees to instruct all such employees on these obligations with respect to use, copying, protection, and confidentiality of the Information.

- D. Notwithstanding the provisions of the foregoing subsection, if Contractor wishes to have a third party consultant or subcontractor perform work which involves access to the Information for the purposes of performing this Contract, Contractor shall obtain a written confidentiality agreement from such consultant or subcontractor, which contains conditions and obligations with respect to the Information no less restrictive than those set forth in this Contract.
- E. Contractor acknowledges that the unauthorized use, transfer or disclosure of the Information thereof will (i) substantially diminish the value to TriMet of the trade secrets and other proprietary interests; (ii) render TriMet's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Contractor breaches any of its obligations with respect to the use or confidentiality of the Information, TriMet shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.
- F. Contractor's obligations under this paragraph will survive the termination of this Contract.

6.37 HIPAA/HITECH Obligations

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.

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. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify TriMet and its officers, employees and agents, from all claims, demands, suits, legal actions, losses, damages, liabilities, judgments, costs and expenses of whatsoever nature, including attorney fees and costs, resulting or arising from the intentional wrongdoing, reckless, grossly negligent or negligent acts or omissions of Contractor and/or its officers, employees, or agents, including any intentional wrongdoing, reckless, grossly negligent or negligent acts or omissions of its subcontractors under this Contract. Contractor shall not be responsible for any damages to the extent caused by the negligent acts or omissions of TriMet, its officers, employees or agents.

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.

- B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which TriMet and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, TriMet may in its sole discretion reserve, retain or apply any monies due to the Contractor under the contract for the purpose of resolving such claims; provided, however, that TriMet may release such funds if the Contractor provides TriMet with adequate assurance of the protection of TriMet's interests. TriMet shall be the sole judge of whether such assurances are adequate.

7.5 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 shall 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.

7.6 Prompt Payment (08/19)

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. At a minimum, Contractor shall pay Subcontractors no later than thirty (30) days from receipt of payment from TriMet. Contractor shall not hold retainage from Subcontractors.

7.7 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.

7.8 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.

7.9 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.

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 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.

7.15 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.

7.16 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.

7.17 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.

7.18 Work Product (08/16)

All work product of Contractor that results from this Agreement (the "Work Product") is the exclusive property of TriMet. Work Product shall include but not be limited to all data, information in any form, documents, research, analysis and other any work subject to intellectual property laws and doctrines. TriMet and Contractor intend that such Work Product be deemed "work for hire" of which TriMet shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to TriMet all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as TriMet may reasonably request in order to fully document such vested rights in TriMet. Contractor forever waives any and

all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC Section 106A or any other rights of identification or authorship or rights of approval, restriction or limitation on use or subsequent modifications.

7.19 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.

7.20 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.

7.21 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.

7.22 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.

7.23 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.

7.24 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.

7.25 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.

7.26 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.

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.

CONTRACTOR

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

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

APPROVED AS TO FORM

Telephone: _____

Anthony Blackmon
Contract Administrator
Procurement & Supply Chain Mgmt.

Email: _____

Contractor's Federal I.D. No.