



Agreement No. _____

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

**GRANT AGREEMENT FOR
ELIGIBILITY VERIFICATION & PROGRAM REGISTRATION
SERVICES FOR THE TRANSIT ASSISTANCE PROGRAM**

This Agreement is entered into between the Tri-County Metropolitan District of Oregon (TriMet) and _____ (hereinafter “Sub-recipient”) for services to be provided at _____.

1. Term

Unless terminated sooner under the provisions of this Agreement, this Agreement shall be a 2 year fixed term agreement, with the option to extend for an additional 2 years at the end of each term.

2. Scope of Services

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

Sub-recipient shall submit a work plan detailing programmatic activities to provide outreach and education, eligibility screening, in-language support for people with limited English proficiency, and/or registration services for applicants seeking registration in the Honored Citizen fare expansion (hereinafter the Transit Assistance Program (TAP)). Sub-recipient shall preform TAP Enrollment Partner responsibilities as outlined in Exhibit A. A full list of eligible approved programmatic activities can be found in the grant award summary letter in Exhibit B.

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

3. Compensation

This is a firm fixed unit price Agreement for Enrollment services. In no event will the amount paid to Sub-recipient in the base term, and each annual period thereafter, exceed \$50,000 per organization. Sub-recipient will perform the programmatic activities that they identified and were approved for with the grant application. Sub-recipient will be compensated in accordance with approved work plan and associated grant award. An updated work plan must be submitted and approved each year.

For purposes of this Agreement, the "TriMet Registration System" includes the registration portal and all related databases and applications. TriMet may evaluate and amend the payment schedule as necessary to facilitate the objectives of the program. Any changes to the payment schedule will be incorporated into this agreement via a modification.

Extra charges must be agreed upon by the parties through a written modification of the Agreement. TriMet will not pay an extra charge that is not made a part of the Agreement through a written modification.

Sub-recipient 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 Sub-recipient extra for overtime needed to meet a delivery deadline.

Funding for this Agreement is made with Statewide Transportation Improvement Funds (STIF) as established under ORS 184.751. Sub-recipient shall assure that funds used under this Agreement are for the sole purpose of completing one or more projects specified in TriMet's approved STIF Plan. Funds shall be used solely for the LIF Program and shall not be used for any other purpose. Upon breach of this Agreement by Sub-recipient, TriMet may withhold future STIF Fund payments to Sub-recipient.

4. Payments and Invoicing

Sub-recipient shall invoice TriMet for the enrollment partner activities approved in the submitted work plan upon notification of grant award. Sub-recipient shall invoice TriMet upon completion of any other approved activities in the work plan upon completion of the activity. TriMet shall pay the Sub-recipient within thirty (30) days of the receipt of a properly completed and submitted invoice.

Notwithstanding any other additional requirements of this Agreement, invoices shall contain the agreement number, the date(s) services were furnished; a detailed description of the services furnished, and a price breakdown showing prices and units. All invoices shall be submitted to TriMet's Finance Department as follows:

TriMet Finance Department Attn:
Accounts Payable
One Main Place
101 SW Main St., Suite 700

Portland, OR 97201
accountspayable@trimet.org

Failure to strictly comply with this provision may result in a delay in payment.

TriMet no longer offers payment by check. In order to enter into this Agreement, Sub-recipient must be willing to accept payment via ACH (Automatic Clearing House).

5. Correspondence/Communication

- a. Sub-recipient shall designate and authorize a Program Administrator(s) to assist in implementation of these procedures, including authorizations necessary for the Program Administrator to access and utilize TriMet's Registration System on behalf of Sub-recipient assumes sole responsibility for ensuring that Program Administrator(s) are duly authorized to administer the Program on behalf of Sub-recipient.
- b. TriMet's Representative and Sub-recipient's Program Administrator shall be responsible for routine, day-to-day correspondence and communications regarding Sub-recipient's implementation of the Program. Upon commencement of this Agreement, TriMet and Sub-recipient shall provide written notice to each other of the name and address of their respective designated Representative and Program Administrator, and shall provide prompt written notice of any change thereto.
- c. All notices required to be given by the terms of this Agreement shall be provided in writing and signed by the person serving the notice, and shall be sufficient if given in person, emailed, mailed postage pre-paid certified return receipt or telefaxed (with confirmation record) to the persons at the signature addresses below, or to such other address as either party may notify the other of in writing. Any notice given personally shall be deemed to have been given on the day that it is personally delivered, emailed or telefaxed (with confirmation record), and if mailed three (3) business days after the date of the postmark of such mailing.

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

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

All content included in or through the TriMet Registration System, such as text (including blog posts, schedules, arrival information, fare information), graphics (including maps),

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

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

- Copy, modify, distribute, sell, or lease any part of our TriMet Registration System or included software;
- Reverse engineer or attempt to extract the source code of our software or copy the scripts of the website;
- Download, print, copy, distribute or otherwise use Materials for commercial purposes, including commercial publication, sale or personal gain;
- Use any manual process or robot, spider, scraper, or other automated means to collect information or Materials from the TriMet Registration System or from users of the TriMet Registration System;
- Circumvent any of the technical limitations of the TriMet Registration System or interfere with the Services, including by preventing access to or use of the TriMet Registration System by our other users;
- Change or remove any copyright, trademark, or other proprietary notices, including without limitation attribution information, credits, and copyright notices that have been placed on or near the Materials;
- Impersonate any person or entity or misrepresent yourself or your entity in connection with the TriMet Registration System, or attempt to use another user's account without the user's permission; or
- Post or transmit through the TriMet Registration System any material that reasonably could be considered obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable to some or all users.

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

The TriMet Registration System and Materials are provided "as is," "as available," and without warranties of any kind. All use of the TriMet Registration System and Materials is at Sub-recipient's sole risk. To the fullest extent permitted by law, TriMet disclaims all

warranties of any kind, whether express, implied or statutory, including without limitation implied warranties of title, quality, performance, merchantability, fitness for a particular purpose, accuracy, and non-infringement, as well as warranties implied from a course of dealing or course of performance. TriMet does not warrant that the TriMet Registration System will be continuous, prompt, secure, or error-free. TriMet assumes no liability for any errors or omissions, including the inaccuracy of content, or for any damages or losses that Sub-recipient or any third party may incur as a result of the unavailability of the TriMet Registration System. TriMet assumes no responsibility, and shall not be liable for, any damages to Sub-recipient's equipment, devices or other property caused from use of the TriMet Registration System.

7. Insurance

During the term of this Agreement, Sub-recipient shall purchase and maintain any insurance required by this Agreement. Sub-recipient shall furnish acceptable certificates of insurance and additional insured endorsements to TriMet within ten (10) days after award of this agreement, and prior to commencement of any work. Sub-recipient 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 Sub-recipient's failure to purchase or maintain any required insurance. Sub-recipient shall maintain insurance of the types and in the amounts described below.

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

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

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

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

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

Bodily injury: \$2,000,000.00 per person; \$2,000,000.00 per accident;
and Property damage: \$2,000,000.00 per accident. The Automobile policy shall be endorsed with CA 20 48 02 99 or equivalent, naming TriMet and its directors, officers, representatives, agents, and employees as additional insured. If Sub-recipient's work is within 50' of a railroad, the auto policy shall be endorsed with CA 20 70 10 01 or equivalent and this endorsement must be attached to the insurance certificate.

c. Worker's Compensation Insurance

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

Bodily Injury by Accident: \$500,000.00
each accident Bodily Injury by Disease
\$500,000.00
each employee Bodily Injury by Disease:
\$500,000.00
policy limit

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

The insurance required under this section shall:

- 1) Include (as evidenced by endorsement) TriMet and its directors, officers, representative, agents, and employees as additional insureds with respect to work or operations connected with the Agreement (excluding Professional Liability and Worker's Compensation policies);
- 2) Require Sub-recipient 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) Sub-recipient will cause its underwriters of insurance policies to waive their rights of subrogation arising from the work performed under this Agreement.
- 5) Sub-recipient'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.

8. Sub-recipient's Status and General Responsibilities (08/16)

Sub-recipient is an independent Sub-recipient for all purposes and is entitled to no compensation from TriMet other than that provided by this Agreement. Sub-recipient shall inform TriMet of Sub-recipient's Federal Internal Revenue Service Employer Identification Number, or, if Sub-recipient is an individual with no employer identification number, Sub-recipient's Social Security Number. The Sub-recipient and its officers, employees, and agents are not officers, employees or agents of TriMet as those terms are used in ORS 30.265. The Sub-recipient, 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.

Sub-recipient shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this Agreement specifically provides otherwise. Sub-recipient 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 Agreement, Sub-recipient learns of any actual or potential defect in the services provided under this Agreement, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this Agreement or of Federal, state, or local law, Sub-recipient shall inform TriMet immediately in writing with a full description of the defect, problem, or nonconformance.

9. Assignment and Subcontracting (08/16)

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

10. No Third Party Beneficiary

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

11. Indemnification (08/16)

- a. To the fullest extent permitted by law, Sub-recipient agrees to fully indemnify, hold harmless, and defend TriMet, its directors, officers, and employees from and against all claims, demands, losses, suits, damages, losses, attorney fees, and costs of every kind and description and expenses incidental to the investigation and defense thereof, resulting from, based upon or arising out of, or incidental, or in any way connected with any act, omission, fault or negligence in whole or in part of Sub-recipient, its agents, contractors, sub-contractors, or employees in the performance or nonperformance of Sub-recipient's obligations under this Agreement.
- b. The obligations of Sub-Sub-recipient 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 Agreement. In no way shall the Sub-recipient limit its liability under this Agreement.
- c. This indemnity shall survive the termination of this Agreement 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 Agreement. 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 Sub-recipient under the agreement for the purpose of resolving such claims; provided, however, that TriMet may release such funds if the Sub-recipient provides TriMet with adequate assurance of the protection of TriMet's interests. TriMet shall be the sole judge of whether such assurances are adequate.

12. Prompt Payment (Revised)

Sub-recipient shall make payment in a reasonable and timely manner, as due, to all persons supplying to the Sub-recipient labor or material for the performance of the work provided for in the agreement.

13. Payment of Claims by TriMet (Revised)

If Sub-recipient fails, neglects, or refuses to make payment in reasonable and timely manner of any claim for labor or services furnished to Sub-recipient or a subcontractor by any person in connection with this Agreement 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 Sub-recipient pursuant to this Agreement. TriMet's payment of a claim under this Paragraph shall not relieve Sub-recipient or Sub-recipient's surety from responsibility for such claims.

14. Income Tax Withholding (08/16)

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

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

Sub-recipient shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.

16. Liens Prohibited (08/16)

Sub-recipient 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 Agreement. If any lien shall be filed, Sub-recipient shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Sub-recipient's sole expense.

18. Safety (08/16)

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

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

a. In addition to the requirements set forth in this Agreement, Sub-recipient

acknowledges and agrees that this Agreement 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. Sub-recipient 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. Sub-recipient agrees to promptly execute and provide all acknowledgements and other documentation under such terms as required by TriMet with respect to such Protected Information, including but not limited to non-disclosure and other agreements relating to creation, access, dissemination, handling, and safeguarding of Protected Information, by Sub-recipient, its employees and contractors.

- d. In performing this Agreement, the parties specifically agree that Sub-Sub-recipient 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 Sub-recipient. 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 Agreement.
- e. Sub-recipient 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. Sub-recipient shall develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the Personal Information, including disposal of the data.
- f. Sub-recipient 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 Sub-recipient's employees whose job performance requires such access. Sub-recipient 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 Sub-recipient wishes to have a subcontractor or consultant perform work under this Agreement that involves access to Personal Information, prior to commencement of such work Sub-recipient 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 Agreement. If Sub-recipient 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 Agreement. Sub-recipient's obligations under this Paragraph D shall survive the termination of this Agreement.

- g. Sub-recipient 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"). Sub-recipient 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. Sub-recipient shall promptly notify TriMet of any breach of these safeguards. Sub-recipient, 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 Sub-recipient 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.

20. 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 Agreement, if they authorized this Agreement while acting in their official position at TriMet, for two years after the date the Agreement was authorized. This precludes working on this Agreement as Sub-recipient'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 Sub-recipient or the execution of this Agreement, including recommending approval or signing of the Agreement, serving on the selection committee or having the final authorizing authority for this Agreement.
- 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 Sub-recipient (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 Agreement, except to the extent permitted by applicable law and TriMet policy.

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

This Agreement includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Agreement 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

Agreement unilaterally. An administrative change means a written agreement change that does not affect the substantive rights of the parties. Sub-recipient will receive written notices of all changes.

22. 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 Agreement so that the purposes of this Agreement are affected. All provisions concerning indemnity survive the termination or expiration of this Agreement for any cause.

23. Waiver and Nonwaiver (08/16)

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

24. Termination for Default

- a. TriMet may, by written notice of default to the Sub-recipient, terminate this Agreement in whole or in part if the Sub-recipient fails to (i) Deliver the goods or to perform the services within the time specified in this Agreement or any extension; (ii) Make progress, so as to endanger performance of this Agreement; or (iii) Perform any of the other provisions of this Agreement.
- b. TriMet's right to terminate this Agreement under subdivision a. of this clause may only be exercised if the Sub-recipient does not cure such failure within 10 calendar days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Contract Administrator specifying the failure. If it is later determined by TriMet that Sub-recipient 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, Sub-recipient, TriMet may allow Sub-recipient to continue work, or may treat the termination as a termination for convenience by TriMet.
- c. Upon termination for default, Sub-recipient shall be paid the contract price only for completed goods or services delivered and accepted.
- d. The rights and remedies of TriMet in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

25. Termination for Convenience

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

26. Intellectual Property (08/16)

Sub-recipient 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.

27. Work Product (Reserved)

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

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

29. Audit and Inspection of Records

1. Sub-recipient shall maintain a complete set of records relating to this Agreement in accordance with generally accepted accounting procedures. Sub-recipient shall permit the authorized representatives of TriMet to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Sub-recipient relating to its performance under this Agreement until the expiration of six (6) years after final payment under this Agreement. TriMet shall provide written request for audit notice to Sub-recipient at least 72 hours prior to audit. Audit shall occur between the hours of 8:00 AM to 5:00 PM on Business Days. Audit shall not occur outside of these hours, unless approved by the Sub-recipient.
2. Sub-recipient shall be subject to periodic on-site compliance reviews, by TriMet as prescribed in Oregon Department of Transportation's (ODOT) STIF Formula Sub-recipient Oversight Compliance Guide. The purpose of the compliance site review is to ensure that Sub-recipient has appropriate and adequate internal controls and management procedures to meet the terms and conditions of agreements governing the use of STIF Formula Funds. Compliance reviews may include, but not limited to the following, as applicable: expense testing to ensure allowable use of funds, compliance with eligibility requirements, program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), compliance with FTA drug and alcohol regulations, charter and school bus, and safety and asset management,

as outlined in AOR 732, Division 40 and 42, in relation to STIF Funds..

3. Sub-recipient shall permit TriMet, ODOT, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to STIF Formula Funds received and to inspect the program financed with STIF Formula Funds including, but not limited to, the financial records, physical premises, and Capital Assets used to TAP program services.
4. TriMet reserves the right to request additional information as may be necessary to comply with State reporting requirements

30. 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.

31. Applicable Law and Jurisdiction (08/16)

This Agreement 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 Agreement 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.

32. Nondiscrimination (08/16)

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

33. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIMET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICES PROVIDERS AND LICENSORS SHALL NOT BE LIABLE TO SUB-RECIPIENT OR ANYONE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED, WHETHER BASED ON OR UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

(Remaining page intentionally left blank)

34. 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: _____

Email: _____