



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

**EMPLOYER CONTRACT
FOR**

TRIMET UNIVERSAL ANNUAL PASS FARE PROGRAM

This contract is entered into September 1st, 2008 by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") and **THE CITY OF PORTLAND OFFICE OF SUSTAINABLE DEVELOPMENT** ("Employer") located at 721 NW 9th Avenue, Suite 350, Portland, OR 97209.

1. Universal Annual Pass Program
Employer shall implement the Universal Annual Pass Program at Employer's work site(s) in accordance with the Administrative Program Requirements, attached and incorporated as Exhibit A, which may be amended by TriMet.
2. Term
This Contract shall be in effect from the date listed above through August 31, 2009, unless terminated sooner by TriMet as provided in the Program Requirements. TriMet also may terminate this Contract upon 30 days advance written notice to Employer, and in such event where Employer is in compliance with this Contract, TriMet will reimburse Employer for all returned Universal Annual Pass validation stickers based on the number of days remaining in the Contract term.
3. Employer Payment
Employer's total payment due under this Contract is **\$15,960.91**. Refer to Exhibit C for calculation of Universal Annual Pass price. Employer's Universal Annual Pass price per employee per year under this Contract is \$420.02. Additional stickers purchased during the contract year will be prorated based on this price, as set forth in section E.2) of Exhibit A of this contract.
4. Universal Annual Pass Qualified Employees
The total number of Employer's qualified employees, as defined in Exhibit A, Paragraph B, is **38**. The Employee Commute Options survey was performed in April of 2007, the results of which are contained in the attached and incorporated Exhibit B.

5. Correspondence/Communications

TriMet's Marketing Representative and Employer's Transportation Coordinator shall be responsible for routine, day-to-day correspondence regarding Employer's implementation of the Universal Annual Pass program. Upon commencement of this Contract, TriMet and Employer shall provide written notice to each other of the name and address of their respective designated Marketing Representative and Transportation Coordinator, and shall provide prompt written notice of any change thereto. All other correspondence and communications pertaining to this Contract shall be provided to the individuals signing on behalf of the parties at the addresses indicated below the signature line.

6. No Third Party Beneficiary

Employer and TriMet are the only parties to this Contract and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein with the express and stated designation as an intended beneficiary of the terms of this Agreement.

7. Authority

Employer agrees to comply with the requirements set forth in this Contract. The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this Contract.

THE CITY OF PORTLAND OFFICE OF SUSTAINABLE DEVELOPMENT

THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

By: _____
signature

By: _____
signature

Date: _____

Date: _____

Name: _____
please print

Name: Carolyn Young

Title: _____

Title: Executive Director
Communications & Technology

Address: _____

Telephone Number: _____

Federal Employer ID Number: _____

APPROVED AS TO FORM

Amela Menezes
CITY ATTORNEY

Exhibit A

TriMet Universal Annual Pass Fare Program
ADMINISTRATIVE PROGRAM REQUIREMENTS
Effective September 1, 2008

As part of a regional employer transportation program, TriMet offers the Universal Annual Pass Program (Program) to employers within the TriMet service district. Employers shall implement and maintain the Program at their worksite(s) according to the following program requirements:

A. Definition Of A Worksite

- 1) A "worksite" is a building or group of buildings located at one physical location within the TriMet service district and under the control of an employer.
- 2) An employer with multiple worksites in the district may include out-of-district worksites, provided that the out-of-district worksite represents less than 25% of the employer's total number of enrolled employees within the TriMet district.

B. Definition Of A Qualified Employee

- 1) Participating employers must purchase a pass (validation sticker) for each qualified employee (100% participation) at each participating worksite regardless of whether the employee uses transit at the time of purchase.
- 2) For the purposes of the Program, a "qualified" employee is defined as any person on, or expected to be on, the employer's payroll, full or part-time, for at least six consecutive months, including business owners, associates, partners, and partners classified as professional corporations. Part-time is defined as 80 or more hours per 28-day period.
- 3) An employee who works at multiple worksites is considered a qualified employee at the worksite of his/her cost center. A cost center is the department through which the employee's salary is paid.
- 4) Contract employees, per-diem employees, and/or temporary employees are considered qualified employees only if they are covered under the employer's benefits package and have been included in the employee commute options survey.
- 5) Exempted from the Program are:
 - Part-time volunteers (defined as less than 80 hours per 28-day period);
 - Full-time volunteers (defined as 80 or more hours per 28-day period);
 - Employees working less than part-time (less than 80 hours per 28-day period);
 - Field personnel required to use their personal vehicle as a condition of their job;
 - Employees whose regular work commute has either a start or an end time outside of TriMet's service hours (service hours are 5:00 A.M through 1:00 A.M.);
 - Residents of the State of Washington;
 - Independent contractors;
 - Temporary or seasonal employees hired for a term of less than six (6) months;
 - Employees exempted by the Department of Environmental Quality (DEQ) for Employee Commute Option (ECO) rule purposes; and
 - Employees who have an annual transit pass from another source (i.e., employee is a TriMet dependent or works for two employers and has received a validation sticker through the other employer).
- 6) Subject to the following subparagraph (7), categories of employees and volunteers who are exempted from the Program, as defined in B.5) above, also must be excluded from the employee commute options survey. The total number of employee exemptions shall not exceed 50% of the employer's total employee population.
- 7) If an employer wishes to include categories of exempted employees and/or volunteers in the Program, as defined in B.5) above, the exempted personnel to be included must have photo identification issued by the contracting employer and must be included in the employee commute options survey.
 - An employer must purchase a validation sticker for 100% of the category(s) of exempted personnel.
 - The exempted personnel must be surveyed prior to receiving validation stickers.
 - If the category(s) of exempted personnel has been surveyed after the original survey, the company mode split will be recalculated based on the new, additional survey results, and the employer's price per employee for the remainder of the contract year will be based on the new transit mode split.

C. Definition of Transit Mode Split

- 1) The transit mode split is defined as follows:
(Total number of transit trips to the worksite by qualified employees) divided by (Total number of trips to the worksite by qualified employees).
- 2) If more than one commute mode is used to travel to a worksite, the commute mode for the longest portion of the trip constitutes the commute mode for the purposes of the Program.

D. Survey Requirements

- 1) The Program's pricing structure is dependent on an accurate determination of the employer's transit mode split. To determine the transit mode split, employers must survey their qualified employees (and categories of exempted employees, if included in the Program) using an employee commute options survey or similar survey approved by TriMet (hereinafter "survey").
- 2) Surveys must be conducted on the following schedule:
 - a. For the first year of participation:
 - i. A pre-program survey, within twelve months prior to the start date of the first year contract, of all qualified employees to determine transit mode split and first year contract pricing; and
 - ii. A follow-up survey before the date on which the next year's contract will take effect, to determine the next year's contract pricing and the effectiveness of the program; and
 - b. For all subsequent years:
 - i. A follow-up survey at least every other year after the first follow-up survey. Each subsequent follow-up survey must be conducted within twelve months prior to the date on which the next contract will take effect.
 - ii. The most recent survey data available will be used to determine the pass price, even if the survey conducted is for reasons other than to meet the minimum survey requirements for the Program.
 - iii. Employers that demonstrate a 0% transit mode split in their second year of participation and beyond are prohibited from participating in the Program.
- 3) The survey instrument must be approved by TriMet; and
 - a. The survey must be distributed to all employees and achieve a return rate of a minimum of 75%; or
 - b. Companies with 400 or more employees at a worksite may use a statistically valid sampling methodology with the prior approval of DEQ or TriMet's Marketing Information Department and achieve a return rate of a minimum of 75%.
- 4) Surveys must be distributed during the week following a typical workweek for the worksite and not bordering on a holiday.
- 5) If an employer moves a worksite to a different location during a contract year, the original contract price remains valid until the expiration of the contract. In the event that the new location results in a significant change in transit service from the previous location, the employer must re-survey its qualified employees before the date on which the next contract will take effect to identify the transit mode split at the new worksite. The next contract price will be calculated according to the transit mode split at the new worksite location. The survey schedule for subsequent contract years will be determined as set forth above in D.2)b.
- 6) An employer may participate at individual worksites, or all worksites. If an employer wishes to participate in the Program at more than one worksite, the employer must survey qualified employees at each worksite separately to determine the transit mode split at each worksite. Each worksite's price per pass is based on the transit mode split at that site.
 - a. If an employer adds a worksite(s) during the term of a contract, the new worksite(s) must survey as specified in D.2)a. above and the contract price will be amended to reflect the additional worksite. After the first full contract term, the survey schedule for the new worksite(s) will follow according to the schedule established by the contract that is in effect.
 - b. If an employer wishes to purchase the Program for employees at an out-of-district worksite, it is not necessary to survey those employees and if they are surveyed, the resulting information cannot be used to determine overall transit mode split.

E. Fare Requirements; General

- 1) The price of the fare shall be calculated based on an annual contract term of September 1 through August 31 in accordance with Paragraph F below. For employers joining the Program mid-year, the price of the fare shall be prorated based on the number of months remaining in the annual term (September 1 through August 31).
- 2) TriMet will issue validation stickers for all qualified employees at the employer's contract price. If the employer hires additional qualified employees during the contract term, the employer shall purchase additional validation stickers, at a prorated cost based on the number of months remaining in the contract term (September 1 through August 31) for these additional new hires. Additional stickers are intended for new hires only. Employers must sign a statement verifying that additional stickers are for new hires.
- 3) TriMet does not prohibit employers from re-selling the validation stickers to their employees; however, the validation sticker price shall not exceed the employer's per employee sticker purchase price.
- 4) TriMet will not provide refunds for terminated employees. Replacement validation stickers will be provided for replacement employees only in accordance with paragraph G.8) below.

F. Contract Pricing

- 1) Employer's per pass (validation sticker) pricing calculation formula is set forth at TriMet Code Sections 19.15(C)(9)(a), (c) and (d) (*a copy of TMC Section 19.15(C)(9)(a), (c) and (d) is available at www.TriMet.org or on request from TriMet*).
- 2) Employer's Total Contract Pricing shall be calculated as follows:
 - a. (# of qualified employees) x (per pass price) = total contract amount. For example: Employer ABC has 250 employees and the price per pass is \$58.00 based on their transit mode split. The total contract amount would be $(250) \times (\$58.00) = \$14,500$
 - b. The minimum annual contract price shall be the amount of the Annual Adult All-Zone pass price. This amount is subject to pro-rating for less than a contract term year, as outlined in these Program Requirements.

G. Fare Instrument; Use of Stickers; Remedies

- 1) Employer shall provide qualified employees with a photo identification (ID) card which shall be affixed with the validation sticker provided by TriMet. Only the employer's designated program administrator may affix the validation sticker to employee ID cards. The sticker must be placed on the ID card near the employee's photo. The employee's ID card with the affixed sticker shall constitute the fare instrument and must be carried by the employee as proof of fare payment. The validation sticker remains the property of TriMet, the use of which is subject to the terms of the contract between employer and TriMet.
- 2) At the request of employer, TriMet may create a standard photo ID card template for the purpose of creating ID cards for the Program. TriMet may charge a reasonable administrative fee for this service.
- 3) The employer shall verify qualified employee status before providing an employee with a validation sticker. Only one validation sticker may be distributed per qualified employee.
- 4) Employee photo ID cards already provided by the employer, may be used as the fare instrument when affixed with a validation sticker if approved by TriMet as an acceptable fare instrument prior to use. The ID card must display the following:
 - a. A photo of the employee;
 - b. The employee's name; and
 - c. The company's name.
- 5) The employee's photo ID card with an affixed validation sticker is valid as the fare instrument through the month and year shown on the validation sticker, and shall allow All-Zone travel for TriMet services within the TriMet service district, including regular bus and MAX service, and door-to-door LIFT service.
- 6) The fare instrument may not be provided to or used by anyone other than the qualified employee to whom it is issued, and is a valid fare instrument only for the person whose name and photo appear on the identification card.
- 7) TriMet is not responsible for replacing lost or stolen validation stickers. TriMet, in its sole discretion, may replace damaged or destroyed validation stickers; TriMet reserves the right to require employers to provide adequate documentation of the damaged or destroyed stickers(s). The employer may purchase replacement

stickers at a prorated price based on the number of months remaining in the contract year (September 1 through August 31).

- 8) Employer must collect employee validation sticker upon an employee's separation from employment. TriMet reserves the right, in its sole discretion, to require employer to provide upon request the separated employee's validation sticker or other written documentation approved by TriMet evidencing that employer has disabled the effectiveness of the separated employee's fare instrument. Replacement stickers shall be provided only in accordance with the requirements set forth in this paragraph G.8).
- 9) In the event that TriMet reasonably believes that any of an employer's employees has duplicated, altered, or otherwise used the validation sticker in a manner not authorized by the contract, upon notice from TriMet, employer shall conduct a reasonable investigation of the matter, including notice to the employee and an opportunity for the employee to respond. Employer shall submit written findings of its investigation to TriMet. TriMet reserves the right to make its own independent investigation and determinations as to whether the misuse occurred. If, based on the results of an investigation, TriMet determines that the misuse occurred, TriMet reserves the right to require employer to return the employee's validation sticker or provide written assurance to TriMet that employer has disabled the effectiveness of the employee's fare instrument. Employer shall not forward any employee ID cards to TriMet. In addition, TriMet reserves all rights and remedies available under law.
- 10) If TriMet believes that employer has provided falsified information, intentionally provided validation stickers to non-qualified employees or other ineligible persons, or that employer is otherwise in breach of the contract including but not limited to failure to make a contract payment when due, TriMet reserves the right in its sole discretion to demand within the timelines specified by TriMet, that employer return any or all validation stickers, or that employer provide other written assurance that employer has disabled the effectiveness of any fare instruments, and may also immediately terminate the contract. In addition, TriMet reserves all rights and remedies available under law. In the event of termination by TriMet, employer's sole remedy shall be reimbursement for any undistributed validation stickers returned to TriMet so long as employer's failure to distribute the stickers did not constitute a breach of the contract and employer is otherwise not in default of the contract terms; any reimbursement to employer may be prorated by TriMet based on the number of days remaining in the contract term.
- 11) In any action or suit based upon any of the rights and obligations of the parties contained in the contract where TriMet is the prevailing party, employer shall be liable for TriMet's reasonable attorneys fees and its costs and disbursements.
- 12) In no event shall TriMet be liable for any consequential, special, incidental or punitive damages, whether under theory of tort, contract, statute or otherwise.

H. Payment Options; Issuance of Validation Stickers; and Contract Remedies

- 1) The employer shall be required to enter into a written contract based on the annual term of September 1 through August 31, in a minimum annual amount of the Annual Adult All-zone pass. The contract amount may be prorated for less than one year, as provided for in these program requirements. An employer signed original contract must be received by TriMet before the contract start date.
- 2) Employers with a total contract amount of \$6,050 or greater may submit the total payment amount in full or may pay the total payment in equal quarterly installments.
 - a. Payment in Full: A discount of 5% off the entire contract balance may be taken if full payment is received within 30 days of the contract start date. If full payment is not received within 30 days of the contract start date, the 5% discount will be void. No validation stickers will be issued until the first payment or a purchase order is received by TriMet. Employers renewing their participation in the Program by executing a new contract, with prior credit approval from TriMet, will be invoiced with payment due net 30 days from the invoice date.
 - b. Quarterly Payments: Employers electing to make quarterly payments are required to submit payment for the first quarter in advance, with subsequent quarterly payments due net 30 days from the invoice date. No validation stickers will be issued until first payment or a purchase order is received by TriMet. Employers renewing their participation in the Program by executing a new contract, with prior credit approval from TriMet, will be invoiced for the 1st quarter with payments due net 30 days from invoice date.
- 3) Employers with a total contract amount of less than \$6,050 must pay the contract amount in full before the contract start date. No validation stickers will be issued until the payment or a purchase order is received by

TriMet. Employers renewing their participation in the Program by executing a new contract, with prior credit approval from TriMet, will be invoiced with payment due net 30 days from the invoice date. A discount of 5% off the entire contract balance may be taken if full payment is received within 30 days of the contract start date.

- 4) Payment for additional validation stickers purchased throughout the contract year must be paid in one lump sum, and will not be calculated into remaining quarterly payments. Payment for additional validation stickers is due net 30 days from the date of the invoice.
- 5) Payments not received by the due date will accrue interest at an annual rate of 18%.
- 6) In the event an employer fails to make a payment as scheduled in the contract, TriMet reserves all its rights and remedies under law, including but not limited to the right to suspend future issuance of validation stickers and as otherwise provided in Paragraph G above.
- 7) Invoices past due over 90 days will be forwarded to TriMet's Legal Department for further action.
- 8) Payment(s) shall be submitted to TriMet's Finance Department, Attn: Accounts Receivable-FN4, at 4012 SE 17th, Portland, Oregon, 97202.
- 9) Validation stickers will be provided to the employer, normally within ten (10) business days of TriMet's receipt of an employer's total payment or first quarterly installment due as described above. For employers renewing their participation in the Program by executing a new contract, and with prior credit approval from TriMet, validation stickers will be provided normally within ten (10) business days of receipt of an employer's signed contract. TriMet is not responsible for late deliveries. A designated representative of the employer must sign for receipt of the validation stickers. TriMet reserves the right to limit the number of validation stickers provided at any one time, or to determine the distribution schedule thereof.

I. Employer Designated Agents

- 1) Employer may elect to participate in the Program through their designated agent ("Employer Designated Agent"). Employer Designated Agent will enter into a contract with TriMet for implementation of the Program in accordance with these Program requirements, including the purchase of and payment for validation stickers.
- 2) Employer Designated Agent must be an incorporated entity, established for the purpose of providing administrative services to facilitate employer transportation options or other employer related services, including commercial or industrial property management and/or other transportation related services.
- 3) Upon TriMet's request, Employer Designated Agent shall provide TriMet with written authorization from employer on employer's official letterhead evidencing employer's designation of Employer Designated Agent.

J. Information Required of Employers

- 1) Prior to contract approval, TriMet must receive the survey data form, or an equivalent document with the following information:
 - a. the total number of qualified employees;
 - b. the total number of employees in other employee work groups included in the Program at the participating worksite(s); and
 - c. a copy of the employer's survey results and data. A participating employer must conduct follow-up surveys as defined above, with results and data provided to TriMet. The survey instruments must be in conformance with the survey requirements as described in these program requirements.
- 2) TriMet, at its sole discretion, may require an employer to verify the number of qualified employees and to confirm employee status at any time during the term of the contract.
- 3) Employees must sign a statement verifying receipt of a validation sticker. The statement must include a signed acknowledgement by the employee that the validation sticker and the photo ID card affixed with the validation sticker (fare instrument) are non-transferable and may only be used by the employee to whom it was issued, and that the sticker must be returned to the employer upon separation from employment. The employer must keep these signed statements on file and make them available for TriMet's review upon request by TriMet.