

**CITY OF PORTLAND**  
**AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES**  
**CONTRACT NO. \_\_\_\_\_**  
**PORTLAND STREETCAR LOOP PROJECT**  
**VEHICLE ENGINEERING SERVICES**

This contract is between the City of Portland, acting by and through its Elected Officials, hereafter called "City," and Portland Streetcar, Inc., hereafter called PSI or Contractor. The City's Project Manager for this contract is Vicky Diede. PSI shall subcontract with LTK Engineering Services, hereafter called LTK or Subcontractor, to carry out the requirements of this contract.

**Effective Date and Duration**

This contract shall become effective on January 1, 2010. This contract shall expire, unless otherwise terminated or extended, on June 30, 2012.

**Consideration**

- (a) City agrees to pay Contractor a sum not to exceed \$1,000,000 for accomplishment of the work.
- (b) The parties recognize that additional vehicle engineering services will likely be required if the City approves the request of Oregon Iron Works (OIW), manufacturer of the Portland Streetcar Loop Project vehicles, to substitute the supplier of the streetcar vehicle electrical/propulsion system; and, if the substitution is approved agree to negotiate a modification to this contract providing for the additional cost of these services.
- (c) Interim payments shall be made to Contractor according to provisions of Exhibit A and based on the Cost Estimate shown in Exhibit A-1.

**Notice to Proceed**

The Contractor shall not authorize LTK to proceed with any work required under this contract in advance of the effective date of this contract unless the City issues a Notice to Proceed earlier. Any work performed or expenses incurred by the Contractor or Subcontractor prior to the effective date or the date of the Notice to Proceed, if earlier, shall be entirely at the Contractor's risk. Work performed and expenses incurred after Notice to Proceed will be eligible for reimbursement under the terms of this contract.

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**CONTRACTOR DATA AND CERTIFICATION**

Name (please print): Portland Streetcar, Inc.

Address: 1140 S.W. 11th Avenue, Suite 500, Portland, OR 97205

Employer Identification Number (EIN) : N/A

Federal Tax ID No. 93-1179323

City of Portland Business License #: Exempt

Citizenship: Nonresident alien  Yes  No  N/A

Business Designation (check one):  Individual  Sole Proprietorship  Partnership  Corporation  
 Limited Liability Co (LLC)  Estate/Trust  Public Service Corp.  Government/Nonprofit

Payment information will be reported to the IRS under the name and taxpayer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to 20 percent backup withholding.

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**STANDARD CONTRACT PROVISIONS FOR**  
**PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)**

**1. Effective Date and Duration**

The passage of the contract expiration date (as recorded above) shall not extinguish, prejudice, or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

**2. Notices and Communications**

- (a) All notices and communications concerning this contract shall be written in English and shall bear the contract number assigned by the City. Notices and other communications may be delivered personally, by telegram, facsimile or by regular, certified or registered mail.
- (b) A notice to the City will be effective only if it is delivered to that person designated in writing in either **1)** the Notice of Award of this contract, **2)** the Notice to Proceed under this contract or **3)** to another individual 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 the Contractor at address shown with the signature or to another individual designated in writing by the Contractor in the contract or in written

notice to City.

### 3. Order of Precedence

This contract consists of the terms and conditions of this contract, the Qualifications Based Selection (QBS TRN078) issued by the City, and the Contractor's proposal in response to the QBS. In the event of any apparent or alleged conflict between these various documents, the following order of precedence shall apply to resolve the conflict:

- a) this contract's terms and conditions,
- b) the City's QBS, and
- c) the proposal submitted by LTK Engineering Services in response to the QBS.

### 4. Funds

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.

### 5. Early Termination of Agreement

- (a) The City and the Contractor, by mutual written agreement, may terminate this Agreement at any time.
- (b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

### 6. Payment on Early Termination

- (a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
- (b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- (c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.
- (d) In the event of early termination all of the Contractor's work product will become and remain property of the City.

### 7. Remedies

- (a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.
- (b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- (c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

### 8. Subcontracts and Assignment

Contractor shall subcontract the work scheduled under this agreement with LTK Engineering Services (LTK or Subcontractor). Contractor shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. Contracts between Contractor and subcontractors shall be subject to written approval of the City Project Manager.

### 9. Compliance with Applicable Law

In connection with its activities under this Agreement, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

**10(a) Indemnity - Claims for Other than Professional Liability**

The contract between Contractor and Subcontractor shall require Subcontractor to defend, save, and hold harmless the City of Portland, TriMet and the Federal Transit Administration (FTA) and their respective directors, officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement. Nothing in this section requires the Contractor or the Subcontractor or their insurer to indemnify the City, TriMet or the FTA for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City, TriMet or the FTA. All provisions of this Section survive the termination or expiration of this Contract for any cause.

**10(b) Indemnity - Claims for Professional Liability**

The contract between Contractor and Subcontractor shall require Subcontractor to defend, save, and hold harmless the City of Portland, TriMet and the FTA and their respective directors, officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Subcontractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify the City, TriMet or the FTA for any claims or losses caused by the negligence of the City, TriMet or the FTA. All provisions of this Section survive the termination or expiration of this Contract for any cause.

**10(c) Indemnity - Standard of Care**

The contract between Contractor and Subcontractor shall require that the standard of care applicable to Subcontractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed and that Subcontractor will re-perform any services not meeting this standard without additional compensation.

**11. Insurance**

During the term of this contract Contractor shall require Subcontractor and other subcontractors to maintain in force at their own expense, each insurance noted below:

- (a) Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027). Certificate required and attached.
- (b) General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, TriMet and the FTA and their respective agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract: Certificate required and attached.
- (c) Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable: Certificate required and attached.
- (d) Professional Liability insurance with a combined single limit of not less than \$1,000,000 per claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. If insurance coverage is provided on a "claims made" basis, the successful Proposer shall acquire a "tail" coverage or continue the same coverage for three years after completion of the contract, provided coverage is available and economically feasible. If such coverage is not available or economically feasible, Contractor shall notify City immediately. Certificate required and attached.
- (e) On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City and to TriMet.
- (f) Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time Contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause and 10-day non-payment clause that provides that the insurance shall not terminate or be cancelled without 30 days or 10 days written notice first being given to the City Auditor and to TriMet. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
- (g) Additional Insureds: With the exception of Professional Liability Insurance, the insurance required under this Section shall include the City of Portland, TriMet and the FTA and each of their respective directors, agents, officers, and employees, with respect to work or operations connected with this Agreement.

## 12. Federal Requirements

This contract is funded in part under a financial assistance agreement between TriMet and the U.S. Department of Transportation Federal Transit Administration (FTA). Under an Intergovernmental Agreement between TriMet and the City of Portland, the parties have agreed that the City will manage and implement the project through its Bureau of Transportation. This contract is subject to all provision proscribed for third party contracts by that financial assistance agreement, including but not necessarily limited to, the provisions the Federal Requirements, attached to this Contract and made a part hereof.

## 13. Ownership of Work Product

All work products produced by the Contractor and Subcontractor under this contract is the exclusive property of the City. "Work product" shall include but not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; the Contractor and the City intend that such work product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the work product is the property of the Contractor-Architect, and by execution of this contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that work product.

## 14. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub I. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

## 15. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

## 16. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

## 17. Waiver

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

## 18. Errors

The Contractor shall require Subcontractor to perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

## 19. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon.

## 20. Amendments

All changes to this contract, including changes to the scope of work and contract amount, must be made by written amendment and approved by the Purchasing Agent to be valid. Any amendment that increases the original contract amount by more than 25% must be approved by the City Council to be valid.

## 21. Business License

The Contractor is exempt from the requirement of obtaining a City of Portland business license. The Contractor is responsible for assuring that Subcontractor and all other subcontractors obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Agreement. The Subcontractor shall provide a business license number in the space provided on page one of this Agreement. Additionally, the Subcontractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this contract. Failure to be in compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

**22. Prohibited Interest**

- (a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- (b) No City officer or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

**23. Payment to Vendors and Subcontractors**

The Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

**24. Arbitration: /  / Not Applicable /  / Applicable**

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the City. Insofar as the Contractor and the City legally may do so, they agree to be bound by the decision of the arbitrator.

(b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of a dispute, and the City shall make payments as required by the Agreement for undisputed portions of work.

**25. Progress Reports: /  / Applicable /  / Not Applicable**

The Contractor shall provide progress reports to the City Project Manager so as to meet all City and federal requirements.

**26. Contractor's Personnel: /  / Applicable /  / Not Applicable**

The Contractor shall require LTK Engineering Services to assign qualified personnel to do the work in the capacities designated, as indicated in the LTK Engineering Services response to QBS No. TRN078, dated October 29, 2009. Work assignments shall not be changed without the prior written consent of the City.

**27. Subcontractors: /  / Applicable /  / Not Applicable**

PSI shall subcontract with LTK Engineering Services, hereafter called LTK or Subcontractor, to carry out the requirements of this contract. The Contractor shall not change Subcontractor assignments without prior written consent of the City Project Manager.

**Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## Exhibit A

**Portland Streetcar Loop Project  
Vehicle Engineering Services  
Scope of Service**

1. The Contractor shall require Subcontractor to be responsible for providing the following services:
  - 1.1 Assist the City Streetcar Project Manager with grant and contract administration
  - 1.2 Review and evaluation of proposals from the vehicle manufacturer
  - 1.3 Review and approval of vehicle design documents
  - 1.4 Review and witness proof-of-design tests of major subsystems
  - 1.5 Process documents such as submittals, cost proposals, payment requests and other communications, reports and documentations
  - 1.6 Attend meetings with the Project team
  - 1.7 Prepare progress reports, meeting notices and minutes
  - 1.8 Prepare documents required to meet City, TriMet and FTA requirements
  - 1.9 Inspect vehicle manufacturer and their testing to certify that the vehicle has met all safety standards and procedures and can be put in revenue service
  - 1.10 Provide engineering support during delivery of the car and acceptance procedures
  - 1.11 Assist with other tasks related to the vehicle manufacturing process
  
2. The Contractor shall require the Subcontractor to perform the tasks listed below for Portland Streetcar Loop Project vehicle procurement, and shall be expected to work closely with designated City, TriMet and PSI personnel to accomplish these goals:
  - 2.1 Conduct Design Review
    - 2.1.1 Answer Requests For Information (RFI) and substitution requests
    - 2.1.2 Interpret the Technical Specifications in response to vehicle manufacturer inquiries
    - 2.1.3 Review and approve/disapprove drawings for conformance to specifications
    - 2.1.4 Review and approve/disapprove materials submittals
    - 2.1.5 Review and approve/disapprove all Contract Data Requirements List (CDRL) items
  
  - 2.2 Perform Technical Oversight and Inspection Services
    - 2.2.1 Review and determine adequacy of vehicle manufacturer test plans, assembly procedures, and quality assurance program
    - 2.2.2 Maintain documentation and drawing files
    - 2.2.3 Audit the vehicle manufacturer's QA/QC program as required
    - 2.2.4 Conduct and/or witness routine and First Article Inspections (FAI) at vehicle manufacturer and subcontractor facilities
    - 2.2.5 Provide on-site inspection services, as directed, at vehicle manufacturer facility
    - 2.2.6 Document inspections and reviews and regularly report to PSI and the City.
    - 2.2.7 Monitor vehicle manufacturer progress and approve/disapprove vehicle manufacturer work and conformance to the contract requirements
  
  - 2.3 Monitor Testing and Commissioning
    - 2.3.1 Review and determine adequacy of all proposed test plans
    - 2.3.2 Witness tests and approve/disapprove test results
    - 2.3.3 Coordinate commissioning program with COP streetcar operations
  
  - 2.4 Assist in Contract Administration
    - 2.4.1 As directed, draft/transmit contractual correspondence to the vehicle manufacturer
    - 2.4.2 Assist in change order negotiations
    - 2.4.3 Recommend to approve/disapprove progress payments to the vehicle manufacturer
    - 2.4.4 Attend meetings with the vehicle manufacturer as required
    - 2.4.5 Assist in determining vehicle manufacturer adherence to schedule

## Payment Provisions

### 1. Invoices

The Contractor shall submit to the City's Project Manager invoices for work performed by actual cost of Subcontractor services performed during the preceding month. The invoices shall contain the City's Contract Number and set out all items for payment including, but not limited to: the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed. The Contractor shall also attach photocopies of claimed reimbursable expenses. The Contractor shall stamp and approve the subconsultant invoices and note on the subconsultant invoice what they are approving as "billable" under the contract. Prior to initial billing, the Contractor shall develop a billing format for approval by the City. The City shall pay all amounts to which no dispute exists within 30 days of receipt of the invoice. Payment of any bill, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved. The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Contractor on invoices from the subconsultant.

### 2. Maximum Compensation

The City shall pay Contractor and Contractor shall pay Subconsultant for its professional services performed and expenses incurred during the term of this contract (January 1, 2010 through June 30, 2012) an amount not to exceed \$1,000,000. The parties recognize that additional vehicle engineering services will likely be required if the City approves the request of Oregon Iron Works (OIW), manufacturer of the Portland Streetcar Loop Project vehicles, to substitute the supplier of the streetcar vehicle electrical/propulsion system; and, if the substitution is approved agree to negotiate a modification to this contract providing for the additional cost of these services.

### 3. Payment

Payments to the Consultant for the actual cost of Subcontractor services without markup by the Contractor shall be the sum of:

- (a) The cost of professional services based on the actual hourly pay to employees, plus overhead and profit markup as described below, for time spent in fulfilling the requirements of the contract; and
- (b) The cost of direct expenses which shall include the actual cost of reproduction, long distance telephone, supplies, travel expenses approved by the City Project Manager and other costs directly attributable to fulfilling the requirements of this contract; and
- (c) The actual cost of any subcontractors.
- (d) Payments shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services.

### 4. Hourly Rates

- (a) Hourly billing rates for employees of Subcontractor billing to Contractor and the City shall be the sum of the actual hourly pay to employees by Subcontractor plus 1) a provisional overhead factor times the hourly pay; 2) and a 10% fixed percentage profit markup times the hourly pay and overhead as set out in the table entitled "LTK Rate Schedule" attached hereto. Following each calendar year and/or at completion of services, the Subcontractor's provisional overhead factor and payments to Subcontractor may be adjusted by Contractor or the City based on the actual overhead factor established by an audit of Subcontractor's overhead costs for each calendar year in which Subcontractor provides services. Annual audits shall be conducted by Subcontractor in accordance with standard accounting procedures, this contract and local and federal governmental and FTA grant requirements.
- (b) The hourly pay rates for 2010 set out in the attached "LTK Rate Schedule" may be adjusted annually for subsequent years (2011 and 2012) provided that they do not exceed the average inflation rate for the Portland Metropolitan Area during the previous year as determined from the US Department of Labor statistics and certified by the City of Portland Auditor. Other than the impact of inflation as described above, compensation rates shall not be increased beyond those set out for 2010 in the attached "LTK Rate Schedule".

### LTK RATE SCHEDULE

Name	Firm	Effective Date	2009 Hourly Rate	2010 Hourly Rate	2011 Hourly Rate	2012 Hourly Rate	General Lab Cat Desc	OH %	Fee %
Porter, Dennis	LTK	1/1/2009	\$73.36	\$76.29	\$79.35	\$82.52	Senior Systems Consultant	157.55%	10.00%
Sanders, David	LTK	1/1/2009	\$75.16	\$78.17	\$81.29	\$84.54	Senior Vehicle Consultant	157.55%	10.00%
Krause, Jason	LTK	4/20/2009	\$36.06	\$37.50	\$39.00	\$40.56	Vehicle Consultant	157.55%	10.00%
Collins, Michael	LTK	1/1/2009	\$61.30	\$63.75	\$66.30	\$68.95	Senior Systems Consultant	157.55%	10.00%
Andreassen, Roger	LTK	1/1/2009	\$61.16	\$63.61	\$66.15	\$68.80	Senior Vehicle Consultant	119.90%	10.00%
Hall, Michael	LTK	1/1/2009	\$61.14	\$63.59	\$66.13	\$68.77	Senior Systems Consultant	119.90%	10.00%
Johnson, Brandon	LTK	1/1/2009	\$36.46	\$37.92	\$39.44	\$41.01	Vehicle Consultant	157.55%	10.00%
Guthrie, Michael	LTK	1/1/2009	\$49.68	\$51.67	\$53.73	\$55.88	Vehicle Consultant	157.55%	10.00%
Matlock, Lori	LTK	1/1/2009	\$23.06	\$23.98	\$24.94	\$25.94	Administrative Staff	157.55%	10.00%
VAI - TBD	VAI		\$48.00	\$49.92	\$51.92	\$53.99	Inspector	124.50%	10.00%



**LTK Engineering Services  
 COP Streetcar Vehicle Engineering (C4036)  
 COST ESTIMATE**

Summary by Firm		<u>Hours</u>	<u>Labor</u>	<u>Travel</u>	<u>ODCs</u>	<u>2% Fee on Subcontractors</u>	<u>Total</u>	<u>Percentage by Firm</u>
LTK Engineering Services	LTK	5,544	\$ 912,120	\$ 29,865	\$ 18,242	\$ 774	\$ 961,002	96.1%
Virginkar & Associates, Inc.	VAI	240	\$ 30,120	\$ 7,977	\$ 602	\$	\$ 38,699	3.9%
<b>Totals</b>		<b>5,784</b>	<b>\$ 942,240</b>	<b>\$ 37,842</b>	<b>\$ 18,845</b>	<b>\$ 774</b>	<b>\$ 999,701</b>	<b>100.0%</b>
							<b>DBE</b>	<b>3.9%</b>

183519

EXHIBIT A - 1



COP Streetcar Engineering Services (C4036)

ESTIMATED TRAVEL COSTS BY FIRM

Base Year	2009
Airfare - Escalation	5%
Other - Escalation	3%

LTK TRAVEL EXPENSES	RATE	2009		2010		2011		2012		Total	
		Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost
<b>AIRFARES (Round Trip)</b>											
Portland to Design Review/FAI (TBD)	\$800	-	\$ -	4	\$ 3,360	4	\$ 3,528	-	\$ -	8.0	\$ 6,888
Albuquerque to Portland	\$800	-	\$ -	6	\$ 4,944	4	\$ 3,395	-	\$ -	10.0	\$ 8,339
<b>HOTELS (Per day)</b>											
TBD	\$150	-	\$ -	8	\$ 1,236	8	\$ 1,273	-	\$ -	16.0	\$ 2,509
Portland	\$150	-	\$ -	18	\$ 2,781	12	\$ 1,910	-	\$ -	30.0	\$ 4,691
<b>SUBSISTENCE (Per Day)</b>											
TBD	\$50	-	\$ -	8	\$ 412	8	\$ 424	-	\$ -	16.0	\$ 836
Portland	\$66	-	\$ -	18	\$ 1,224	12	\$ 840	-	\$ -	30.0	\$ 2,064
<b>CAR RENTAL (Per Day)</b>											
TBD	\$75	-	\$ -	8	\$ 618	8	\$ 637	-	\$ -	16.0	\$ 1,255
Portland	\$90	-	\$ -	18	\$ 1,669	12	\$ 1,146	-	\$ -	30.0	\$ 2,814
<b>MISC. (Per Trip)</b>	\$25	-	\$ -	10	\$ 258	8	\$ 212	-	\$ -	18.0	\$ 470
<b>TOTALS</b>			\$ -		\$ 16,501		\$ 13,365		\$ -		\$ 29,865

VAI TRAVEL EXPENSES	RATE	2009		2010		2011		2012		Total	
		Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost	Quantity	Cost
<b>AIRFARES (Round Trip)</b>											
TBD	\$800	-	\$ -	4.0	\$ 3,360	2.0	\$ 1,764	-	\$ -	6.0	\$ 5,124
<b>HOTELS (Per day)</b>											
TBD	\$150	-	\$ -	8.0	\$ 1,236	4.0	\$ 637	-	\$ -	12.0	\$ 1,873
<b>SUBSISTENCE (Per Day)</b>											
TBD	\$66	-	\$ -	8.0	\$ 544	4.0	\$ 280	-	\$ -	12.0	\$ 824
<b>CAR RENTAL (Per Day)</b>											
Seattle	\$90	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -
<b>MISC. (Per Trip)</b>	\$25	-	\$ -	4.0	\$ 103	2.0	\$ 53	-	\$ -	6.0	\$ 156
<b>TOTALS</b>			\$ -		\$ 5,243		\$ 2,734		\$ -		\$ 7,977

<b>TOTALS</b>			\$ -		\$ 21,744		\$ 16,098		\$ -		\$ 37,842
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Exhibit B

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_ Entity \_\_\_\_\_

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

- 1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

SECTION C

Independent contractor certifies he/she meets the following standards:

- 1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:
A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
D. Labor or services are performed only pursuant to written contracts;
E. Labor or services are performed for two or more different persons within a period of one year; or
F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT C - FEDERAL REQUIREMENTS (10/09)**1. No Government Obligation To Third Parties

TriMet and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statement and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C 3801 et seq. And U.S. DOT regulations, "Program Fraud civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Audit and Inspection of Records

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, 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, 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 Paragraph 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 Paragraph 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.

4. Federal Changes (10/09)

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives,

including without limitation those listed directly or by reference in the Agreement (*Form FTA MA(16) dated October 1, 2009*) between TriMet and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of Federal Transit Administration Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TriMet requests which would cause TriMet to be in violation of the FTA terms and conditions.

7. Disadvantaged Business Enterprise

A. Policy. TriMet has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TriMet has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TriMet has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of TriMet to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

B. Contractor and Subcontractor Obligation. Contractor and/or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

8. Debarment and Suspension (10/04)

The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Lobbying

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is

not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- (1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The prohibition does not apply as follows:
  - (i) Agency and legislative liaison by Own Employees.
    - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
    - (b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
    - (c) For purposes of paragraph B (2) (i) (a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
      - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
      - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
    - (d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
      - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
      - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,



- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
  - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
  - (b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
  - (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
  - (d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).
- (iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- (iv) Professional and technical services by Other than Own Employees.
  - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
  - (b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and

technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
  - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
  - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

10. Clean Air

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. 7401 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirement in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Clean Water Requirements

If the total value of this contract exceeds \$100,000:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

12. Environmental Violations

For all contracts and subcontracts in excess of \$100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

13. Energy Conservation

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

14. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. Cargo Preference

Contractor agrees:

- A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to TriMet (through the contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.
- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. Fly America

If this contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in subcontracts at every tier. The Contractor shall submit, if a foreign carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event provide a certificate of compliance with Fly America Requirements. 41 CFR Part 301-10.

17. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

18. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

19. Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the

project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding – TriMet shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, TriMet may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to TriMet for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29

CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has

received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

20. Contract Work Hours and Safety Standards Act

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and



guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

21. Buy America (03/06)

If this contract is for Construction and/or the Acquisition of Goods or Rolling Stock (valued at more than \$100,000), the Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661 as amended, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. and include, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**END OF EXHIBIT C – FEDERAL REQUIREMENTS**

**CONTRACTOR SIGNATURE:**

This contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same Agreement.

The parties agree the City and Contractor may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

I, the undersigned, agree to perform work outlined in this contract in accordance to the STANDARD CONTRACT PROVISIONS, the terms and conditions, made part of this contract by reference, and the STATEMENT OF THE WORK made part of this contract by reference; hereby certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; hereby certify that my business is certified as an Equal Employment Opportunity Affirmative Action Employer and is in compliance with the Equal Benefits Program as prescribed by Chapter 3.100 of Code of the City of Portland; and hereby certify I am an independent contractor as defined in ORS 670.600.

PORTLAND STREETCAR, INC.

BY: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contract No. \_\_\_\_\_

Contract Title: \_\_\_\_\_

**CITY OF PORTLAND SIGNATURES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bureau Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Purchasing Agent

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Elected Official

Approved:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Auditor

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Attorney