



**TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON (TriMet)**

**MONTHLY PASS PROGRAM CONTRACT
EMPLOYER SALE of TRIMET TICKETS and PASSES TO EMPLOYEES**

This contract is entered into April 1st, 2012 by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") and **CITY OF PORTLAND** ("Employer"), located at 1120 SW 5th Avenue, Suite 1250, Portland, OR 97204.

In consideration of TriMet's desire to make its tickets and passes (hereinafter collectively "fare instruments") available for sale and distribution through employer venues, and in consideration of the convenience, economic and operational efficiencies to Employer in obtaining TriMet fare instruments on a consignment basis for sale to its employees, the undersigned Employer agrees to the following terms:

1. Term

This contract shall commence on the date entered above and remain in effect until terminated by either party as provided under the provisions of this contract.

2. ADA Compliance Certification

Employer certifies that it shall during the period of this Contract, implement and maintain compliance with either or both Title II and Title III of the Americans with Disabilities Act ("ADA"), as applicable, and its implementing regulations, and all applicable state and local laws, regulations and ordinances (collectively referred to as the "laws"), regarding removal of barriers; physical access to buildings and facilities; access to TriMet programs, services and activities; and/or accessibility, as required by the ADA. If Employer's activities pursuant to this Contract are conducted in whole or in part in historic buildings or places of historic significance, the Employer certifies that the building or place satisfies the legal definition of historic building or place of historic significance and that it has and will maintain compliance with the laws for historic buildings and places of historic significance.

3. Employer Sale of TriMet Fare Instruments

Employer shall use its best efforts to market and sell TriMet fare instruments to Employer's employees only, in accordance with the terms and conditions set forth in Exhibit A, which is attached to and made a part of this contract.

4. Employer is an Independent Contractor

Employer shall be an independent contractor for all purposes and is solely responsible for performance of its obligations under this Contract. Employer's employees, agents, and subcontractors, if any, shall not be deemed to be employees or agents of TriMet. Employer is responsible for all federal, state and local taxes and fees applicable to or arising out of this contract. Nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the parties to this Contract.

5. Correspondence/Communications

TriMet's Marketing Representative and Employer's Transportation Coordinator shall be responsible for routine, day-to-day correspondence and communications regarding Employer's implementation of the Monthly Pass program. Upon commencement of this Contract, TriMet and Employer shall provide written notice to each other of the name and address of their respective designated Marketing Representative and Transportation Coordinator, and shall provide prompt written notice of any change thereto.

All other correspondence and communications pertaining to this Contract shall be provided to the individuals signing on behalf of the parties at the addresses indicated below the signature line.

6. Liability

Subject to the Oregon Tort Claims Act (ORS 30.260 through 30.300 and the Oregon Constitution, Article XI, Section 7), Employer shall indemnify, defend and hold harmless TriMet, its directors, officers, employees and agents from any loss or claim, including reasonable legal fees and costs of defending actions, or suits arising out of the negligence or intentional misconduct of Employer, or Employer's officers, employees, agents in the performance of this contract. Notwithstanding any limitations of liability in the foregoing provision, Employer is responsible for all fare instruments upon delivery to Employer, including any loss, theft or destruction of such fare instruments for any cause whatsoever, including but not limited to transport and/or delivery of unused fare instruments to TriMet.

7. Suspension of Deliveries

TriMet, in its sole discretion, may suspend deliveries to Employer at any time, without notice, should Employer fail to timely remit sales receipts, sales proceeds or other documentation or materials required to be submitted by this Contract, or due to the occurrence of any accounting irregularities in remittal of the above as determined by TriMet.

8. Workers Compensation

Employer, its subcontractors, if any, and all subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

9. Assignment

Employer may not assign, delegate or subcontract for performance of any of its responsibilities under this contract without TriMet's prior written consent.

10. Labor and Material

Employer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of Employer's obligations under this Contract, all at no cost to TriMet.

11. Termination for Convenience

This contract may be terminated at any time by either party by providing at least 30 days prior written notice to the other party. Employer shall submit sales receipts or proceeds and return all TriMet fare instruments that remain unsold or undistributed within ten (10) business days after the date of termination, and shall receive credit for such returned fare instruments. Obligations incurred by either party prior to the effective date of termination shall survive termination.

12. Termination for Default

If Employer fails to perform in the manner called for in this Contract, or if Employer fails to comply with any other provisions of the Contract, TriMet may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Employer setting forth the manner in which Employer is in default. If it is later determined by TriMet that Employer had an excusable reason for not performing, such as a strike, fire, flood or other event that is not the fault of, or is beyond the control of, Employer, TriMet, in its sole discretion, may allow Employer to continue work or may treat the termination as a termination for convenience.

13. Jurisdiction

This contract shall be governed by the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines, and the parties agree to submit to the jurisdiction and venue of the courts of Multnomah County, Oregon.

14. Compliance with Laws and Regulations

Employer shall adhere to all applicable federal, state and local laws, regulations and policies, including, but not limited to, equal employment opportunity, nondiscrimination and affirmative action. Specifically, during the term of this Contract, Employer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, age, national origin, marital status or disability.

15. Credit Investigation

This Contract is subject to TriMet's review and approval of Employer's credit history/status. TriMet reserves the right, in its sole discretion, to require at any time during this Contract, that Employer provide a credit report from a TriMet approved credit reporting agency or an audited financial statement in lieu of a credit report. In such event, TriMet will notify Employer of the information required and timelines for submission of the report or statement.

16. Records and Audit

Employer shall maintain proper accounting records relating to this Contract and make such records available to TriMet at its business location at all reasonable times. Employer shall retain and make available such records for the term of this Contract plus six (6) years from its termination or expiration and permit authorized representatives of TriMet to inspect, audit and obtain copies of such records.

17. No Waiver

TriMet's failure to object to any breach of this Contract shall not constitute a waiver of TriMet's right to object to any additional breach or to require Employer to comply with the terms of this Contract.

18. No Third Party Beneficiary

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

19. Integration and Modification

This Contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Contract may be modified only by a written agreement signed by authorized representatives of the parties in accordance with the terms of this Contract.

20. Execution of Contract

This Contract and any written modifications thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format date file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

21. Authority

The representatives signing below on behalf of the parties represent and warrant that they are duly authorized by the party for which they sign to bind the party and enter into this contract.

CITY OF PORTLAND**THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON**By: _____
*signature*By: _____
signature

Date: _____

Date: _____

Name: _____
please print

Name: Drew Blevins

Title: _____

Title: Director
Marketing & Customer Service

Address: _____

Telephone Number: _____

Federal Employer ID Number: _____

APPROVED AS TO FORM


CITY ATTORNEY

Employer affirms, under penalty of perjury as provided in ORS 305.385(6), that to the best of its knowledge, it is not in violation of any Oregon Tax Laws set forth at ORS chapters 118, 314, 316, 321 and 323 and the elderly rental assistance program under ORS 310.630-310.706; under ORS 320.005-320.150; under ORS 403.200-403.250 and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

EXHIBIT A

Employer shall market and sell TriMet fare instruments only to its employees according to the following procedures:

1. Accounting Period

TriMet monthly passes are sold from the 20th day of the prior month through the first week of the month in which the passes are valid. The monthly settlement date for all fare instruments in which sales shall be remitted to TriMet, shall be on the twelfth (12th) day of each month. If the twelfth (12th) day shall fall on a weekend or recognized holiday, the accounting period and remittal day shall be on the next business day to the twelfth (12th) day of the month.

2. Refunds

Employer shall not refund money to Employer's employees for fare instruments. Employer shall refer inquiries regarding refunds to TriMet's Finance Division, 4012 SE 17th Avenue, Portland, Oregon, 97202. Phone: (503) 962-5873.

3. Basis of Sales

A. Passes

Employer will be issued monthly passes on a consignment basis. At the end of each monthly accounting period, balance on passes sold is due and payable with credit given for those not sold. Employer must complete TriMet's Ticket and Pass Outlet Accounting Invoice (Invoice) and submit it with payment to TriMet's Finance Division, 4012 SE 17th Avenue, Portland, Oregon, 97202. To obtain credit for unsold passes, Employer must return any unsold passes with the submitted Invoice and payment. Passes must be accounted for within the month valid or else credit will not be given. (For example: June pass payment must be mailed by June 12th.)

B. Ten Ride Ticket Books

Issuance to Employer of 10-Ride Ticket Books constitutes a sale to Employer. A payment to TriMet of one hundred percent (100%) of the value of the tickets issued will be required of Employer, due at the time of delivery, and payable on the 12th of the month immediately following delivery. Employer must submit a completed Invoice with full payment for issued tickets to the TriMet address set forth in paragraph A above, by the 12th of the month immediately following delivery.

4. Acceptable Forms of Payment

TriMet will accept checks payable to TriMet and accepted by Employer from employees as payment for fare instruments. Payment of all other amounts due will be made by Employer's check. Employer shall use best efforts to require adequate identification of employees purchasing TriMet tickets, etc. If Employer elects to accept bank debit or credit cards as payment for TriMet materials, all authorization procedures and expenses remain the responsibility of Employer.

Employer will establish a monthly pass order and may order tickets by an established monthly order or as needed. Orders and order changes are to be made by contacting TriMet's Outlet Sales Department at (503) 962-2424 or salesoutletprogram@trimet.org.

5. Delivery of Fare Instruments

TriMet will mail or deliver all fare instruments to a central location designated in writing by Employer.

6. Advertising and Point of Sale Promotion

Employer shall market to its employees TriMet fare instruments. TriMet will provide Employer point-of-sale information displays and on-site transit-use promotional material for its employees as mutually agreed upon between TriMet and Employer.

7. Employer Information

The following information shall be supplied by Employer to assist TriMet in Contract compliance. Employer shall promptly notify TriMet of any changes to the information listed below.

A. The following information is to be filled out if Employer is a corporation:

1. Corporation Name: _____

Corporate Address: _____

Corporate Telephone Number: _____

Corporate Fax Number: _____

Corporate President: _____

2. Corporate Registered Agent: _____

Registered Agent Address: _____

Registered Agent Telephone Number: _____

B. The following information is to be filled out if Employer is a sole proprietor or partnership:

1. Registered Business Name: _____

Registered Business Address: _____

Registered Business Telephone Number: _____

2. Principal Business Owner(s): _____

Home Address(es): _____

(P.O. Box Not Acceptable)

Home Telephone Number(s): _____

Date(s) of Birth: _____