POWELL-DIVISION TRANSIT AND DEVELOPMENT PROJECT
Project Development Phase

Intergovernmental Agreement No. 933686

This Intergovernmental Agreement (this "Agreement") is between the **City of Portland** ("City") and **Metro** ("Metro"), collectively referred to as the "Parties." The Effective Date of this Agreement is July 1, 2015, regardless of the date signed by the Parties.

ARTICLE I - RECITALS

A. The City is a jurisdiction organized under the laws of the State of Oregon.

B. Metro is an Oregon metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.

C. The Powell-Division Transit and Development Project (the "Project") is located between downtown Portland and Gresham. The 2035 Regional Transportation Plan update prioritized Powell-Division as one of the next corridors the region would examine for a high capacity transit solution.

D. The City, the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), Metro, and other jurisdictional partners collaborated on the first phase of the Project. The Steering Committee approved the Powell Division Transit Action Plan on June 1, 2015, which focused on a vision for the corridor by narrowing the mode, alignment, and terminus of the future high capacity transit and defined the work for project development. Concurrently, the City developed an action plan with land use policies and actions to support development outcomes in the corridor.

E. The Project is now entering project development under the Small Starts Program of the Federal Transit Administration ("Project Development"); which includes engineering, selection and adoption of a locally preferred alternative ("LPA"), a finance plan and other materials for Small Starts project rating, and environmental approval under the National Environmental Policy Act ("NEPA") in order to move forward and develop a Small Starts grant application. During Project Development, Metro will refine the transit alternative and environmental approvals process under NEPA while TriMet will manage design efforts and become the lead agency in developing and implementing the Small Starts grant application. Both Metro and TriMet will lead public engagement activities during Project Development. The City and jurisdictional partners will provide engineering and technical input, develop and seek approvals of the LPA, support public engagement efforts, and participate in development of a finance plan for the Project. In other words, the work will be shared among Metro, TriMet, the City and their partners.

F. A Project Development work plan for Fiscal Years 2015/16 and 2016/17 describing the Project Development deliverables, schedule, project management structure, and agency responsibilities is set forth in the attached Exhibit A (the "Work" or "Work Plan").

G. The total estimated cost of the two-year Project Development phase ranges between $7,100.000 and $8,870,000 depending on the NEPA class of action, including both cash and

in-kind staff time. Metro intends to enter into additional intergovernmental agreements with TriMet and other jurisdictional partners to secure funding and other commitments to accomplish the Work.

H. The Parties desire to enter into this Agreement to document each Party's understanding related to the services to be performed under this Agreement.

ARTICLE II – TERM

The Term of this Agreement will be from July 1, 2015 through December 31, 2017, unless terminated sooner or extended under the provisions of this Agreement.

ARTICLE III – CITY OBLIGATIONS

A. The City shall participate in the following organizational groups, and shall make reasonable efforts to attend and participate in all meetings of these groups: (i) Project Team; (ii) Design/Traffic technical advisory committee; (iii) Project Leadership Team; and (iv) Project Steering Committee.

B. The City will review and comment on designs related to the Project's analysis of bus rapid transit options from Portland to Gresham.

C. The City shall collaborate with Metro and TriMet on engaging the Steering Committee members and other stakeholders to advance the project.

D. The City shall contribute Transportation System Development Charge ("TSDC") funds towards the Project (in accordance with Section V(A) and Section V(B), below). The City's funding is subject to Portland City Council annual budget appropriation.

E. Once the Project successfully enters into Project Development with the Federal Transit Administration, all Project funds spent, including the TSDC funds described in III.D, above, are intended to serve as local match for future federal or state funds for the Project. In addition, the TSDC funds require a match ratio of 75% TSDC / 25% other, which the 25% match will be provided by Metro's contribution set forth in Paragraph IV.E., below, as well as contributions by TriMet.

F. The City shall track its staff efforts and will report in-kind funds spent due to staff work or other related expenses toward the Project, as requested by Metro. The form of these reports shall comply with all applicable state and federal grant requirements and shall be in the form of Exhibit B. At a minimum, each report shall include:

1) a description of the nature and cost of work accomplished;

2) the names, rates and hours worked of personnel; and

3) disbursements to consultants, contractors and outside vendors for materials and services.

If these reports are received with incomplete information or disputed items, Metro will advise the City in writing what specific information is missing or disputed. The City and Metro will work collaboratively to reach resolution on in-kind funds reports.

ARTICLE IV – METRO OBLIGATIONS

A. Prior and up to selection of the LPA, Metro shall lead and collaborate with the project partners on engaging the Steering Committee members and other stakeholders to narrow the transit design options and related transportation investments to be accomplished in connection with or to be considered part of the Project, as set forth in the Work Plan.

B. After selection of the LPA, Metro shall collaborate with and support TriMet's engagement of the Steering Committee and other stakeholders.

C. Metro shall lead, in consultation with TriMet and project partners, the environmental and transportation analysis and approvals required under NEPA.

D. Metro shall lead, in consultation with TriMet and project partners, the development of a finance plan to complete the Project through design, engineering and construction.

E. Metro is expected to spend $1,240,000 on its portion of the Work over two years starting with Fiscal Year 2015/16 and ending in Fiscal Year 2016/17. Metro shall track its costs, along with that of the other jurisdictional partners, and will report costs incurred toward the Project, as requested by City, and in accordance with the reporting format set forth in Section III (F), above, to document that match requirements for the City's TSDC funds are met.

ARTICLE V – FUNDING, COMPENSATION, AND ALLOWABLE COSTS

A. The City shall pay Metro $1,000,000 (the "Funds") toward the fees, cost, and expenses Metro incurs in performance of its portion of the Work, as set forth in the Work Plan.

B. In addition to the Funds to Metro, the City is anticipated to spend an estimated total of $1,000,000 (the "In-Kind Funds") to perform the City's portion of the Work, as set forth in the Work Plan.

C. One-half of the Funds and of the In-Kind Funds are authorized in the City's current fiscal year's budget. As the Project spans multiple fiscal years, the Portland City Council will encumber the other half of the Funds and the In-Kind Funds as they are approved through its annual budget appropriation. This second half of the Funds and the In-Kind Funds are subject to the Portland City Council's annual budget appropriation.

D. Within thirty (30) days after full execution of this IGA and with official notice from the Federal Transit Administration that the Project has been approved for Project Development under the Small Starts program, Metro will invoice the City $500,000. Metro will invoice the City for the remainder of the Funds following the City's annual budget appropriation and no sooner than the City's 2016-17 fiscal year that begins July 1, 2016. The City will make payment of the Metro invoices on a Net 30 day basis.

E. Metro shall apply the Funds only toward TSDC eligible expenses, for example, planning, design and engineering for improvements, and construction of improvements, as set forth in the Work Plan. Costs for operations, maintenance, moving transit stock, and personal services such as out of town travel, training, educational expenses and equipment purchases are not eligible.

F. Project Match for the TSDC Funds. The TSDC funds require a match ratio of 75% TSDC / 25% other, applied to the actual cost to complete the Project's SE Division Street segment between SE 6th Avenue and SE 122nd Avenue, or any portion thereof. The 25% match will be provided by Metro's contribution set forth in Paragraph IV.E., above, as well as project contributions by TriMet during Project Development and future Project phases. Metro shall track Project expenditures to account for TSDC match and shall also require TriMet to track expenditures to account for TSDC match. Upon completion of Project Development, Metro shall provide documentation to the City to show Project expenditures for work on the Project's Division Street segment and anticipated cost-to-complete.

G. Allowable Costs for the In-Kind Funds. This section applies to the City's use of the In-Kind Funds for its work on the Work Plan and not to Metro's use of the Funds.

1) Direct Costs:

a. Personal Services. Covers reimbursement for direct wages paid to personnel engaged in performance of the Work.

b. Benefit Costs. Covers reimbursement for the fully loaded benefit costs associated with direct wages, which represents the actual benefit load attributable to the respective employees.

c. Materials & Services. Covers actual costs for the purchase of materials, supplies, and services, or reimbursement of incidental expenses and support staff personal services where the expenditure is for performance of the Work and within the authorized budget.

d. Contracted Services. Covers reimbursement for contracted professional or construction services in carrying out the Work and within the authorized budget.

2) Indirect Costs. Covers reimbursement for overhead costs at the rate established annually by the City's negotiated indirect cost agreement for federal aid projects pursuant to Office of Management and Budget (OMB) Circular No. A-87.

a. This Agreement was originated in Fiscal Year 2015/16. For that Fiscal Year, the Bureau's rate of reimbursement is 79.27% (Seventy-Nine and Twenty-Seven Hundredths Percent) of personal services and benefit costs. These costs generally include fixed costs related to the administration and operation, as well as program management costs including executive management staff, rent, telephone, power, insurance, office supplies, and equipment.

b. The City shall provide written notification to Metro of the new Fiscal Year rate for Fiscal Year 2016/17 as soon as possible.

H. Metro shall apply the Funds, and all earnings on the Funds while they are held by Metro, to pay for fees, costs, and expenses it incurs for the Work, subject to the limitations and requirements set forth in Section V(E), above (and not subject to the additional requirements of Section V(G), above). Any portion of the Funds and their earnings that are not so applied shall be promptly returned to the City. Any portion of the Funds that are determined by the City to not meet the required TSDC match shall be promptly refunded to the City.

I. Expenditure of the Funds and In-Kind Funds shall comply with all applicable state and federal grant requirements as shown in Exhibit C.

ARTICLE VI – GENERAL PROVISIONS

A. Liability. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, the City shall hold harmless and indemnify Metro and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of the City's officers', agents' or employees' work under this Agreement. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Metro shall hold harmless and indemnify the City and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of Metro's officers', agents' or employees' work under this Agreement.

B. Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, (a) Title VI of the Civil Rights Act of 1964; (b) Title V and Section 504 of the Rehabilitation Act of 1973; (c) the Americans with Disabilities Act of 1990and (d) the FTA Federal Requirements of Exhibit C, all of which are hereby incorporated by reference.

C. Maintenance of Records. The City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. The City acknowledges and agrees that it shall retain such documents for a period of three years after termination of this Agreement, or such longer period as may be required by applicable law. In the event of any audit, controversy, or litigation arising out of or related to this Agreement, the City shall retain such documents until the conclusion thereof.

D. Relationship of Parties. Each of the Parties hereto is deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one Party shall be deemed to be an employee, agent or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor may it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship.

E. No Third-Party Beneficiary. Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or will be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

F. Contracts for the Project. Metro is solely responsible for any and all contracts and subcontracts associated with the Work that Metro secures, including but not limited to procurement under applicable public contracting laws, contract management, and payments to contractors and subcontractors. Metro acknowledges that other than the City's payment of the Funds to Metro, the City has no other obligation or responsibility for the Work that Metro performs or secures.

G. Oregon Law, Dispute Resolution, and Forum. This Agreement is to be construed according to the laws of the State of Oregon. The City and Metro shall negotiate in good faith to resolve any dispute arising out of this Agreement. If, after seeking recourse under Article VI, the Parties are unable to resolve any dispute within fourteen (14) calendar days, the Parties shall attempt to settle any dispute through mediation. The Parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the Parties otherwise agree. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity. Any litigation between Metro and the City arising under this Agreement or out of work performed under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

H. Assignment. Neither the City nor Metro may assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.

I. Interpretation of Agreement. This Agreement will not be construed for or against any Party by reason of authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and may not be used in constructing or interpreting this Agreement.

J. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification, or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a Party to enforce any provision of this Agreement will not constitute a waiver by a Party of that or any other provision.

K. Severability/Survivability. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless will remain in full force and effect and the illegal or unenforceable provision will be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.

L. Authority. The representatives signing on behalf of the Parties certify they are duly authorized by the Party for whom they sign to make this Agreement.

M. Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties hereto.

N. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

O. Modifications to Work Plan. The City and Metro authorize Metro's Planning and Development Director and the Portland Bureau of Transportation's Director to modify the Work Plan (Exhibit A), upon mutual agreement, provided that there are no changes to the City's contribution, total cost of the Work nor substantial changes to the schedule covered by the Work Plan.

P. Termination.

1. This Agreement may be terminated by mutual written consent of both parties. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

2. If not earlier terminated, this Agreement shall terminate on the earlier of when Metro has expended all the Funds or the Work is completed.

3. If this Agreement or the Project is terminated while Metro holds any unexpended and unobligated Funds or earnings on those Funds, Metro shall pay those Funds and earnings to the City promptly after termination. The parties acknowledge that Metro may hold unspent Funds together with unspent monies contributed toward the cost of the Work by other jurisdictions. In that event, Metro will return unspent funds to each jurisdiction in amounts proportionate to the amounts contributed.

IN WITNESS WHEREOF, the parties have agreed to the terms and conditions of this Agreement.

CITY OF PORTLAND	**METRO**
By:_____	By:_____
Name: Steve Novick	Name:_____
Title: Commissioner	Title:_____
Date:_____	Date:_____
Approved as form:	Approved as to form:
APPROVED AS TO FORM _____ 6W 9/2/2015 CITY ATTORNEY	_____

EXHIBIT A:
Powell-Division: Project Development Work Plan for FY 15-16 and FY 16-17

I. INTRODUCTION

This work plan is intended to guide Metro, TriMet and Project Partners through the Federal Transit Administration's Project Development phase of the Powell-Division Transit and Development Project.

Project partners for the Powell-Division Transit and Development project will identify, develop and construct a new high-capacity transit route for the Powell-Division corridor. The project has the following phases:

1. Planning (Winter 2014 to Summer 2015)
2. Project Development: Design, Environmental and Small Starts Rating (2015-2017)
3. Final Design, Construction, Testing (2018-2020)
4. Operations and Revenue Service (2020 and beyond)

The planning phase was initiated by partners in 2014 to develop a planning vision for future transit service and related investments in the corridor. There are two outcomes completed in the planning phase of the project, which culminates in a request to FTA for entry into Small Starts Project Development:

- Identification of a preferred transit vision, which includes a general transit route, vehicle mode, and key station locations.
- Creation of land use visions and action plans for key station locations. These station area visions and action plans will form the basis for detailed station area planning during the design and environmental review phase of the project.

The Project Development phase includes the following deliverables that will be guided by a steering committee:

- Locally Preferred Alternative (LPA) for approval and local adoption
- Environmental approvals under the National Environmental Policy Act (NEPA)
- Engineering and design sufficient for application for federal Small Starts funding
- Draft project finance plan
- Materials necessary for a Small Starts rating by FTA and subsequent Small Starts Construction Grant application

Metro and the project partners will continue to explore opportunities to advance additional planning activities and development opportunities that align with the local aspirations of the community the transit project will serve. Meaningful public involvement is critical to the success of the project. The project will continue efforts at engaging diverse and representative community members, businesses and institutions to share a project that meets the needs of transit riders, identifies related transit, roadway and active transportation infrastructure, complements existing neighborhoods, and serves commercial neighborhoods, educational institutions and major destinations.

II. PROJECT DEVELOPMENT DELIVERABLES AND SCHEDULE

A) Locally Preferred Alternative (Summer 2015 –Spring 2016)

- A.1) Development of Concept Designs
- A.2) Purpose and Need Criteria
- A.3) Concept design analysis and agreement on Locally Preferred Alternative
- A.4) Detailed Definition of Alternative Report (describing the LPA in detail)

B) Environmental Approvals under NEPA (Fall2015 – Summer 2017)

- B.1) Purpose and Need
- B.2) Class-of-Action consultation, coordination, and determination
- B.3) NEPA assessment and findings, including traffic, SEE analysis, and public engagement (intended to culminate in a Finding of No Significant Impact, FONSI)

C) Preliminary Engineering and Design (Summer 2015 – Fall 2017). Assuming the required NEPA class of action results in an Environmental Assessment (EA) the design steps would be the following (to be adjusted if a Documented Categorical Exclusion (DCE) or other action is determined appropriate):

- C.1) LPA Plan set (roughly 10%, sufficient for EA)
- C.2) "15%" design (expected to be the result of incorporating comments and adjustments to LPA Plan Set)
- C.3) "30%" design (generally a typical design level for interim review)
- C.4) "60%" design (expected to be the plan set used for cost estimation and negotiation of Construction Grant Agreement with FTA)

D) Draft Finance Plan

E) Update to the Regional Transportation Plan and related policy elements

F) Development of initial Small Starts application for rating and subsequent Small Starts Construction Grant Application

III. PROJECT MANAGEMENT STRUCTURE

Project partners will work together collaboratively and coordinate work and project deliverables through the following groups:

A. Steering Committee: project partners will continue to meet with designated community leaders on the Steering Committee through the definition of the Locally Preferred Alternative for the transit project.

B. Project Leadership Team: project partners will designate agency representatives to participate in regular meetings to facilitate efficient progress of the region's delivery of an LPA for the Powell-Division transit project within the schedule set out in Section II, and the work to complete the project development phase.

C. Project Team: project partners will continue to designate staff to meet regularly to review work products and provide direction.

D. Design and Traffic Technical Advisory Committee: project partners will continue to designate staff to meet to review technical work products related to design and traffic analysis to identify potential concerns and issues to be addressed.

IV. PROJECT DEVELOPMENT RESPONSIBILITIES

Metro: Until the LPA, Metro is the local lead planning agency for the Powell Division Transit Project, as well as the FTA liaison for the study. Metro will be responsible for the planning phase of the project leading up to the identification of the Locally Preferred Alternative (LPA). Metro's responsibilities during Project Development are summarized below:

- Project Management through selection of the LPA
- FTA Coordination on NEPA
- Steering Committee decision-making through LPA identification
- Collaborate on a coordinated implementation approach for the Powell Division Transit Action Plan and Shared Investment Strategy
- Public Engagement
- Transportation analysis
- Environmental approvals under NEPA
- Finalize the LPA and update the regional transportation plan
- After LPA selection, continue to support partner coordination, decision making and issue resolution

TriMet: As the transit agency, TriMet is responsible for design, construction and operations of the transit option that is selected for implementation. TriMet will be responsible for the design/engineering and cost estimating of the alternatives and design options as well as lead author of all Small Starts materials submitted for rating and construction grant application. Once an LPA is selected, TriMet will become the lead agency with support from Metro as Metro manages the completion of the NEPA process. TriMet's responsibilities are summarized below:

- After selection of the LPA, Project Management
- After selection of the LPA, Transit Project Steering Committee and decision-making structure
- FTA lead on Project Development and Small Starts Grant Application
- Engineering and Design
- Finance Plan
- After selection of the LPA, Public Engagement
- Technical review of environmental analysis
- Partner coordination and issue resolution
- Development of Small Starts application materials for rating and Grant Application

ODOT: The Oregon Department of Transportation is the state agency responsible for state transportation, and owns and maintains state highway facilities in the corridor, including US 26 (Powell Boulevard) and OR 213 (82nd Avenue). ODOT's responsibilities are summarized below:

- Committee participation
- Transportation analysis support
- Technical review
- Permitting and approvals required by ODOT
- Partner issues resolution
- Support Steering Committee decision-making
- Support Public Engagement Plan

Multnomah County: Multnomah County's responsibilities are summarized below:

- Committee participation
- Transportation analysis support
- Public Engagement support
- Technical review
- Permitting and approvals
- Partner issues resolution
- Support Steering Committee decision-making

City of Gresham: City of Gresham's responsibilities are summarized below:

- Committee participation
- Transportation analysis support
- Public Engagement support
- Technical review
- Permitting and approvals
- Partner issues resolution
- Support Steering Committee decision-making

City of Portland: The City of Portland, through its Bureau of Transportation, is the jurisdiction responsible for the City's transportation system and public rights of way. The City is the road authority for SE Division Street, as well as the intersecting arterial and local street network. US 26 (Powell Boulevard) and OR 213 (82nd Avenue) are both are city rights-of-way for which ODOT is the road authority. However, through existing intergovernmental agreements with ODOT, the City maintains and operates the traffic signal and street lighting systems on Powell and on 82nd. City of Portland's responsibilities are summarized below:

- Committee participation
- Transportation analysis support
- Public Engagement support
- Technical review
- Permitting and approvals
- Partner issues resolution
- Support Steering Committee decision-making

Consultants will be used to supplement study staff in key areas:

- Transit design/engineering
- Transit Definition of Alternative report
- Financial plan and assistance
- Environmental analysis, including the SEE analysis and preparation of NEPA documentation
- Transportation analysis, including traffic analysis, planning, and mitigation
- Public Engagement
- Small Starts Application

Exhibit B: In Kind Funds Tracking

The City shall submit in kind hours spent in the following format on a quarterly basis. The report will include a description of the nature and cost of work accomplished. The City shall also provide a summary of disbursements to consultants, contractors and outside vendors for materials and services. Below is an example of how to track in kind funds.

Project No.	Project Description	Period End Date	Name	Hours Type	Hours	Hourly Rate	Benefits & Accrued Leave	Indirect Rate 79.27%	Total
XXXX	Powell/Division	9/30/2015	Doe,Jane	RG	1.00	$50	$40	$71.34	$161.34

Exhibit C: Despite the labeling of the parties as "TriMet and Contractor" the requirements apply to Metro and the City.

FEDERAL REQUIREMENTS (11/14)

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 (10/14)

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(21) dated October 1, 2014)* 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, as revised, 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 (11/14)

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, which may include, but is not limited to:
i) Withholding monthly progress payments;
ii) Assessing sanctions;
iii) Liquidated damages; and/or
iv) Disqualifying the contractor from future bidding as non-responsible

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 that 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 age 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 officershall 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