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00100 TERMS AND DEFINITIONS

"Change Order" The term "Change Order" means a written document signed by TriMet, issued to the Contractor which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor's compensation, or makes any other change to the Contract.

"Change Request" The term "Change Request" means a document issued by the Contractor or TriMet to the Resident Engineer requesting that a Change Order be issued.

"Construction Schedule" The term "Construction Schedule" means the schedule prepared by the Contractor and accepted by TriMet setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with this Contract and specifically to meet the specified milestone dates.

"Construction Work" The term "Construction Work" shall mean all work necessary to achieve Substantial Completion of the Work plus completion of all Punch List items, excluding design services.

"Consultant" The term "Consultant" means the firm or firms under contract to TriMet which are performing services, including but not limited to engineering, design, project control, construction management, surveying, geotechnical investigations, and environmental assessment in support of the overall Project of which this Contract is a part.

"Contract" The term "Contract" shall include the Contract, the Request for Proposals with addenda, General Provisions, Special Provisions, Plans, Specifications, Bid Schedules, its attachments, and any Change Orders issued pursuant thereto.

"Contract Closeout" The term "Contract Closeout" means the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Final Acceptance of the construction portion of the Work. Contract Closeout is a condition precedent to final payment.

"Contractor" The term "Contractor" means the person, persons, partnership, joint-venture, company or corporation entering into this Contract for the performance of the Work required by the Contract.

"Days" The term "Days" means calendar days which includes every day of the year.

"Design Build Services" A contracting method whereby an owner contracts with a single entity to perform design and construction services.

"Engineer" The term "Engineer" refers to the Resident Engineer or his or her duly authorized representative.

"Final Acceptance" The term "Final Acceptance" means written notice by TriMet acknowledging that Contractor has fulfilled all of its Construction Work obligations under the Contract, including completion of all Punch List items, and that TriMet has accepted the Construction Work as of the date stated in the notice. Final Acceptance precedes Contract Closeout, and defines commencement of the warranty period.

"Final Completion" The term "Final Completion" means fulfillment of all the Contractor's Construction Work obligations under the Contract, including completion of all Punch List items.

"Invitation to Bid" The term "Invitation to Bid" ("ITB") refers to the bid solicitation letter and all attachments thereto.

"Materials" The term "Materials" includes materials, equipment, products, and articles incorporated or to be incorporated into the Work.
"Plans" The term "Plans" includes the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details that show the locations, character, dimensions, and details of the Work.

"Product Data" The term "Product Data" includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to describe Materials to be used for some portion of the Work.

"Project" The term "Project" means TriMet's overall objective or endeavor of which this Contract forms a part.

"Project Engineer" The term "Project Engineer" refers to the Resident Engineer or his or her duly authorized representative.

"Punch List" The term "Punch List" means a list or lists of items to be furnished and/or work to be performed by the Contractor to finally complete the construction portion of the Work.

"Project Manager" The term "Project Manager" means the Contractor's executive representative designated in accordance with Article 00505.

"Provisional Sum" The term "Provisional Sum" means an amount set by TriMet and included in the Proposal Forms to provide for payment for specified items of work.

"Resident Engineer" The term "Resident Engineer" means TriMet's authorized representative charged with the professional administration of this construction Contract.

"Request for Proposals" The term "Request for Proposals" refers to the proposal solicitation letter and all attachments thereto.

"Samples" The term "Samples" includes physical examples of Materials to be supplied or workmanship, which shall, when approved by TriMet, establish standards by which the Work shall be judged.

"Shop Drawings" The term "Shop Drawing" means drawings, diagrams, schedules, or other data prepared by Contractor or any subcontractor, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work.

"Specifications" The term "Specifications" means that part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

"Subcontractor" The term "Subcontractor" means any person, firm, partnership, corporation, or other entity, other than employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and Materials, under this Contract.

"Substantial Completion" The term "Substantial Completion" means completion of the Work, or a designated portion thereof, to a point where TriMet and any owning agency certifies that the Work or the designated portion can be used for the purpose for which it was intended.

"Supplier" The term "Supplier" means any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.

"TriMet" The term "TriMet" means the Tri-County Metropolitan Transportation District of Oregon, acting through its authorized representative.
"Work"  The term "Work" means the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

"Work Site"  The term "Work Site" means the area enclosed by the Limit of Work indicated on the Plans and the boundaries of local streets and public easements in which the Contractor is to perform under the Contract.

"Working Drawings"  The term "Working Drawings" means the drawings prepared by the Contractor which depict the sequence, methods, Material, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, falsework, shoring, concrete formwork and excavation plans.

END OF SECTION 00100 - TERMS AND DEFINITIONS
00200 BIDDING REQUIREMENTS AND CONDITIONS

00201 Examination of Bidding Documents

Bidders shall examine the Invitation to Bid (ITB) and associated bidding documents and strictly comply with all instructions and provisions contained therein. Failure to do so shall be at the bidder's risk.

00202 Clarification of Bidding and Contract Requirements

A. Bidders shall immediately notify TriMet of any ambiguity, error, or omission in the ITB and associated bidding documents. A bidder desiring clarification of the meaning of any aspect of the Invitation to Bid and associated bidding documents must request the clarification in writing. If TriMet determines that a clarification is required, TriMet shall furnish the additional information to all prospective bidders in the form of an addendum to the ITB. Requests for clarification, or reports of errors or omissions, shall be submitted in writing to TriMet's Contract Administrator, 710 N.E. Holladay Street, Portland, Oregon 97232. Requests for clarification may be transmitted by facsimile to (503) 962-2298. Bidders must use TriMet's Contract Number on all correspondence.

B. Any request for clarification must be received by TriMet's Contracts Manager at least seven (7) days prior to the scheduled bid opening. TriMet may decline to consider requests received less than seven (7) days before the scheduled bid opening.

00203 Interpretation of Bid Quantities

All quantities, if any, stated in the Invitation to Bid are TriMet's best estimates of what actually will be required. TriMet has provided those estimates to describe the Work generally, to distinguish elements of the Work, and to provide a basis for comparison of bids. Each bidder should review the specifications and drawings to determine the performance required by the Contract and should inspect the site and prepare its own estimates of the quantities required to achieve that performance. The Contractor is responsible for furnishing the quantity of Materials and Work required to complete the Work in accordance with the Plans and Specifications.

00204 Substitution Proposals During Bidding

This General Provision defines "Substitution" and sets out requirements for requests for approval of Substitutions during the bid period.

For the purposes of this General Provision, "Product" shall mean any manufactured good, and "Item" shall mean a Product, piece of equipment, service, or a method or technique of fabrication or construction.

TriMet reserves the right to use the named or specified product or item to establish standards for equality of the Product or Item proposed for Substitution, including aesthetic and visual characteristics, performance, quality, availability, maintainability, and any other relevant characteristic.

A. Definition

(1) Substitution:

An Item that does not conform to the Contract and is proposed by the bidder in lieu of the item required by the Contract.

TriMet must approve use of the Item in accordance with the terms of this General Provision.
A Substitution will be considered by TriMet when:

(a) The Substitution is due to the unavailability of the specified Item; or

(b) The specified Item will not perform as specified; or,

(c) The manufacturer or fabricator does not certify or warrant performance of the specified Item as required for its intended purpose; or

(d) The Substitution is considered, in TriMet's sole judgment, to be beneficial to the completed Work.

B. Procedures

(1) Bidders shall notify TriMet of any inappropriate or unavailable Products, equipment, services or techniques that may be called for in the Invitation to Bid.

(2) Prior to bid opening, written requests for approval of Substitutions may be submitted to TriMet only by prospective bidders who are registered holders of full sets of Bid Documents. TriMet will consider only requests conforming to the requirements of this General Provision.

(3) TriMet will be the sole judge of the acceptability of any proposed Substitution. The proposer will be notified in writing of the approval or rejection of a properly submitted request. An approval notice also shall be included in an addendum issued to all bidders. Bidders shall not rely upon approvals made in any other manner. TriMet's decision shall be final.

(4) Requests for Substitutions during bidding shall be submitted in writing to TriMet's Contract Administrator, 710 N.E. Holladay Street, Portland, Oregon 97232 or by facsimile to (503) 962-2298, or by electronic submission as directed by TriMet's Contract Administrator. Bidders must use the appropriate TriMet Contract Number on all correspondence.

The Bidder shall at the same time submit one copy of the information listed below, with any additional information the Bidder considers necessary to support the proposal.

The Bidder has the burden of demonstrating that the proposed Substitution's function, quality and performance will be equal in all respects to that of the specified item.

The following information is required as a minimum:

(a) The reason for the request;

(b) Complete data substantiating that the function, quality and performance of the proposed Substitution will be equal or superior in all respects to the performance of the specified item.

(c) The following information shall be included in the documentation for Substitution of construction or fabrication methods:

1. Detailed description of the proposed methods.
2. Drawings illustrating the proposed methods.

(d) Product identification, including manufacturer's name and address, contact person and telephone number;
(e) Manufacturer's literature, including product description, performance and test data, and reference standards;

(f) Samples, if appropriate or required by TriMet.

(g) The name and address of a reference person to similar projects on which the Item was used, date of installation and reliability and service record;

(h) An itemized comparison of the proposed Substitution with the specified Item;

(i) Assurance that the proposed Substitution will not affect dimensions or other elements of the Work, or full disclosure of any such effects.

(j) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Substitution, and substantiation that adequate supplies of parts and repair services are readily available.

(6) The request for Substitution complete with all required information must be received by TriMet's Contracts Administrator at least fourteen (14) days prior to the date of the scheduled bid opening. TriMet may decline to consider requests that are incomplete or not received in accordance with this time limitation.

00204A Product Option Proposals During Bidding

This General Provision defines "Product Option" and sets out requirements for requests for approval of Product Options during the bid period.

For the purposes of this General Provision, "Product" shall mean any manufactured good.

TriMet reserves the right to use the named or specified Product to establish standards for equality, including aesthetic and visual characteristics, performance, quality, availability, maintainability, and any other relevant characteristic.

A. Definition

Product Option:

The use of an item demonstrated to be equal in all respects to a Product specified by brand name or mark or as the Product of one or more manufacturers or suppliers, whether or not followed by the terms "or equal" or "or approved equal".

Equality shall be demonstrated by the Bidder following the procedure set out herein, and TriMet must approve use of the item in accordance with the terms of this General Provision.

B. Procedures

(1) Bidders shall notify TriMet of any inappropriate or unavailable Product that may be called for in the Invitation to Bid.

(2) Prior to bid opening, written requests for approval of Product Options may be submitted to TriMet only by prospective bidders who are registered holders of full sets of Bid Documents. TriMet will consider only requests conforming to the requirements of this General Provision.

(3) TriMet will be the sole judge of the acceptability of any proposed Product Option. The proposer will be notified in writing of the approval or rejection of a properly submitted request. An
approval notice also shall be included in an addendum issued to all bidders. Bidders shall not rely upon approvals made in any other manner. TriMet's decision shall be final.

(4) Requests for Product Options during bidding shall be submitted in writing to TriMet's Contract Administrator, 710 N.E. Holladay Street, Portland, Oregon 97232 or by facsimile to (503) 962-2298 or by electronic submission as directed by TriMet's Contract Administrator. Bidders must use the appropriate TriMet Contract Number on all correspondence.

The Bidder shall at the same time submit one copy of the information listed below, with any additional information the Bidder considers necessary to support the proposal.

The Bidder has the burden of demonstrating that the proposed Product is equal in all respects to the item specified.

The following information is required as a minimum:

(a) The reason for the request;

(b) Complete data substantiating equality of the proposed Product to the product specified.

(c) Product identification, including manufacturer's name and address, contact person and telephone number;

(d) Manufacturer's literature, including Product description, performance and test data, and reference standards;

(e) Samples, if appropriate or required by TriMet.

(f) The name and address of a reference person to similar projects on which the Product was used, date of installation and reliability and service record;

(g) An itemized comparison of the proposed Product Option with the specified product.

(h) Assurance that the proposed Product Option will not affect dimensions or other elements of the Work, or full disclosure of any such effects.

(i) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Product Option Substitution, and substantiation that adequate supplies of parts and repair services are readily available.

(6) The request for Product Option complete with all required information must be received by TriMet's Contracts Administrator at least fourteen (14) days prior to the date of the scheduled bid opening. TriMet may decline to consider requests that are incomplete or not received in accordance with this time limitation.

00205 Completion of Bid Forms

A. Bids shall be prepared without assistance from any person employed by TriMet except as stated in Article 00202, Clarification of Bidding and Contract Requirements.

B. Each bidder shall furnish all information required by these documents. Each bid shall bear the bidder's name and address, the signature of a person authorized to bind the bidder, and the title of that person. All documents must be clearly and distinctly typed or written with ink in the English language. No erasures are permitted. Mistakes must be crossed out and initialed in ink by the person signing the bid. Corrections by interlineation must be explained in the bid over the signature of the person signing the bid.
C. Bids shall be made only on the Bid Form provided by TriMet. Bids submitted on any other form will be rejected as non-responsive. No changes shall be made in the phraseology of the bid forms, and no addition shall be made to the items contained therein. Any additions, limitations, or provisions attached to the bid will render it non-responsive and cause its rejection.

00206 Compliance with Tax Laws

A. Each bidder shall certify in writing, under penalty of perjury, that the bidder is, to the best of the bidder's knowledge, not in violation of any Oregon tax law imposed by ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323 and sections 10 to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the Elderly Rental Assistance Program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

B. Any bidder that does not make the certification required by Subparagraph A. of this Paragraph shall be deemed to be non-responsive and, pursuant to Oregon law, TriMet shall not enter into a contract with that bidder.

00207 Registration Required

A. No bid for a construction Contract shall be received or considered by TriMet unless the bidder is registered with the Construction Contractor's Board as required by ORS 701.021. Bidders may contact the Board at the following address and telephone number:

Oregon Construction Contractors Board
700 Summer Street NE, Suite 300
P.O. Box 14140
Salem, Oregon 97309-5052
Telephone (503) 378-4621

B. All electrical work shall be performed by Oregon State Licensed Electricians. Electrical work is defined to mean all work that comes under the jurisdiction of the electrical inspection and licensing authority, and all work described and regulated by the National Electrical Code. Electrical Work consists, in part, of the installation of electrical products such as conduits, conductors, and equipment.

C. Any engineering or design work performed by the Contractor must be done by a Registered Professional Engineer licensed in Oregon in the appropriate discipline for the work performed. TriMet shall be entitled to rely on the accuracy and completeness of such engineering or design work, including but not limited to the calculations underlying such work.

00208 Bid Price

A. To be the lowest responsive bid, the bid must meet the requirements contained in this Invitation to bid and have the lowest total bid price.

B. All prices on the Bid Form shall be in U.S. dollars.

C. If required on the Bid Form, the unit price for each item shall be shown. Prices shall include all costs associated with furnishing and/or installing the item as defined in the Payment Schedule and Contract including overhead, profit, packing, import duties, transportation and delivery charges, insurance unless otherwise furnished by TriMet, and all other costs. Unit prices must be based upon the number of units designated on the Bid Form. Bids that attempt to modify the units upon which the unit price is based, that attempt to impose a minimum shipment, or that attempt to condition prices bid in any other way will be rejected as non-responsive. A total shall be entered in
the "Total Price" column of the Bid Form for each item. In the case of a discrepancy between the unit price for an item and the Total Price for that item, the unit price shall be used and the Total Price recalculated accordingly. The Total Bid Price will be recalculated by TriMet based upon unit prices and shall be the basis for awarding the Contract.

D. TriMet is exempt from Federal Excise and Transportation taxes, and these taxes shall not be included in bid prices.

00209 No Telegraphic or Facsimile Bids

TriMet will not accept any bid transmitted by telegraph, facsimile, or other electronic means.

00210 Revisions to the Invitation to Bid

A. TriMet reserves the right to cancel, revise or amend the Invitation to Bid and associated bidding documents up to the time set for opening the bids. Revisions and amendments shall be announced only by issuance of an addendum to the ITB. Copies of any addenda shall be furnished to all prospective bidders. If an addendum is required, the date set for opening bids may be postponed by TriMet to enable bidders to revise their bids. In any case, bid opening shall be at least five (5) days after the issuance of the last addendum that contains information which, in TriMet's judgment, is likely to affect the bid price. If the bid opening is postponed, TriMet will announce the new date for opening bids in an addendum. All bidders are required to acknowledge receipt of each addendum by submitting the form entitled Receipt of Addenda with their bid.

B. Notwithstanding the above paragraph, TriMet may extend the time of the bid opening to later in the same bid opening day, without formal addendum, when it is in the public interest to do so. In that situation, TriMet will orally announce the new time for the bid opening at the time and place set for the original bid opening, allow bidders to withdraw their bids until the new bid opening time, and to otherwise retain bids unopened until the new bid opening time.

00211 Submission of Bids

Bidders shall deliver bids only to TriMet's Contract Administrator, 710 N.E. Holladay Street, Portland, Oregon 97232, at or before the time specified in this Invitation to Bid, unless the time of the bid opening has been extended pursuant to GP00210(B), above. TriMet shall accept no bids after the time specified. TriMet shall not be liable for delays in delivery of bids to the Contract Administrator due to handling by the U.S. Postal Service, any other type of delivery service or TriMet's internal mail distribution system. TriMet shall keep bids unopened until the time fixed for the bid opening. TriMet reserves the right to postpone the bid opening for its own convenience.

00212 Marking of Bids

Each bid shall be sealed in a suitable envelope that prominently bears the following information in capital letters on the front and back:

A. The words "TRIMET - BID FOR:" followed by the name of the Contract;

B. The Contract number;

C. Bidder's full and correct name; and

D. Bidder's address.

00213 Modification of a Bid
A bidder may modify its bid in writing prior to the time scheduled for opening bids. The modification shall conform in all respects to the requirements for submission and marking of bids. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original bid. If multiple modifications are submitted, they must be sequentially numbered so the TriMet can accurately determine the final content and price of the bid. The writing shall identify the specific bid element being modified, the exact nature of the modification, the revised price, if any, for the modified element, and the resulting modified total bid price. No telegraphic, facsimile, or other electronically transmitted modifications are permitted.

00214 Withdrawal of a Bid

A bidder may withdraw its bid only by a written and signed request that is received by TriMet's Contracts Administrator prior to the time that the first bid is opened. Following withdrawal of its bid, the bidder may submit a new bid, provided that it is received prior to the designated time for bid opening. The bidder agrees that after the first bid is opened, its bid constitutes a valid firm offer that shall not be withdrawn sooner than sixty (60) days after bid opening.

00215 Bid Security

A. No bid will be considered unless it is accompanied by a cashier's or certified check payable to TriMet by a responsible bank in the United States for ten percent (10%) of the total bid price for this Contract, or by an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 for that amount, or by a bid bond for that amount payable to TriMet and executed by a surety company authorized to transact business in Oregon. The bid security shall be enclosed in the envelope containing the bid. The entire bid security shall be paid to TriMet as fixed and liquidated damages pursuant to ORS 279C.385 if the Contract is awarded to the bidder and the bidder fails promptly and properly to execute the Contract or any required bonds.

B. If a bid bond is submitted in lieu of a check, it shall be a corporate surety bond on TriMet's Bid Bond Form, which is included in the Bid Forms. Any other form will render the accompanying bid non-responsive and cause its rejection. A bid bond that provides for payment of the difference between the bid price and the price for which TriMet ultimately contracts for the same performance, or that provides for the possibility of payment of any amount less than ten percent (10%) of the total bid price, will not satisfy this Article and will render the accompanying bid non-responsive and cause its rejection, and bid bonds including a provision voiding the bond obligation upon payment of that amount will render the accompanying bid non-responsive and cause its rejection.

00216 Administrative Remedies

A bidder or offer or may seek administrative remedies under Bid/Proposal Protest Procedures of TriMet's Contracting Procedures. Copies of TriMet's Bid/Protest Procedures are available upon request from TriMet's Procurement and Contracts Department, 710 N.E. Holladay Street, Portland, Oregon. In accordance with FTA Circular 4220.1F, the FTA will only entertain a protest that alleges that TriMet failed to have or adhere to its protest procedures.

00217 Bid Validity

All bids submitted in accordance with this Invitation shall be valid and binding on the Bidder for a period of sixty (60) days following the date set for bid opening.

00218 Investigation

TriMet may investigate issues of responsibility, responsiveness, cost, and price, as necessary, prior to awarding a contract. A bidder's failure to supply information promptly upon request by TriMet pursuant to such an investigation shall be grounds for disqualification and rejection of its bid. If all or part of the information requested by TriMet is of a confidential nature, the bidder may request, in
writing, that the designated information be deemed “trade secrets” pursuant to ORS 192.501 through 192.505.

00219 Rejection of a Bid

TriMet may reject a bid for any of the following reasons:

A. If the bid is not in substantial compliance with all prescribed public bidding procedures and requirements;

B. If the bid is conditioned in whole or in part upon the addition, revision, or deletion of any requirement or provision in any part of the Invitation to Bid (ITB);

C. If the bid is based upon any Substitution or Product Option that has not been approved by TriMet;

D. If the bidder does not have financial, material, equipment, facilities, personnel, resources and expertise (or the ability to obtain the resources and expertise) necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;

E. If the bidder does not have a satisfactory record of performance;

F. If the bidder does not have a satisfactory record of integrity;

G. If the bidder is not qualified legally to contract with TriMet;

H. If the bidder has been disqualified by TriMet under ORS 279C.440.

I. If the bidder has not supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder fails to promptly supply information requested by TriMet concerning responsibility, TriMet shall base its responsibility determination upon any available information, or may find the prospective bidder not to be responsible; or

J. For good cause upon a finding by TriMet that it is in the public interest to reject the bid or all bids.

00220 Not Used

00221 Not Used

00222 Not Used

00223 Contents of Bid

Each bidder shall complete in English and submit to TriMet the following documents, which are contained in the Section entitled “Bid Forms:"

- Identification of Bidder
- Bid Form
- Certificate of Compliance with Tax Laws
- Certificate Regarding Ineligible Contractors
- Lobbying Certificate
- Cargo Preference Certificate
- Buy America Certificate
- Receipt of Addenda
- Bid Bond

These forms shall constitute the bid.
00224 Record of Integrity Disclosure

Within five (5) calendar days from the date the bidder is notified that it is the apparent low bidder, the apparent low bidder shall complete and submit the Record of Integrity Disclosure Form contained in this section as Exhibit “A”. The apparent low bidder shall: a) Disclose any pending or final litigation and violations of environmental, health, safety or other laws that are relevant to the bidder’s responsibility; and b) require major subcontractors utilized substantially by the bidder to make the same disclosures. The evaluation of a bidder’s responsibility shall take into consideration the following: the seriousness of the violations; the dates of the violations; the repetitiousness and/or multiplicity of the violations; the criminal or civil status of the violations; the existence of mitigating circumstances; the corrective actions taken; other relevant information; and the impact or effect of all considerations on the bidder’s ability to perform the proposed contract. Failure to complete and submit the Record of Disclosure Form may result in rejection of the bid.

00225 Disclosure of Subcontractors

Within two working hours after the date and time of the deadline set for submission of bids, each Bidder shall submit to TriMet a list of any first-tier subcontractors that:

(a) Will be furnishing labor or labor and materials in connection with the public improvement; and
(b) Will have a contract value that is equal to or greater than either i) five percent (5%) of the total project bid or $15,000, whichever is greater; or ii) $350,000, regardless of the percentage of the total project bid.

The disclosure of first-tier subcontractors shall include:

(a) The name of each subcontractor;
(b) The category of work that each subcontractor will be performing; and
(c) The dollar value of each subcontract.

The bid of any contractor that does not submit a subcontractor disclosure list as described herein shall be considered non-responsive.

END OF SECTION 00200 BIDDING REQUIREMENTS AND CONDITIONS
00300 AWARD AND EXECUTION OF CONTRACT

00301 Procedure When Only One Responsive Bid is Received

If TriMet receives only one responsive bid, TriMet reserves the right to negotiate a contract with the sole responsive bidder. As a condition of TriMet's entering into negotiations with the bidder, and as a matter of continuing responsiveness to the ITB, the bidder shall submit detailed cost and price data to TriMet, and shall allow TriMet to verify the data. If the bidder certifies in writing that the cost and price data is confidential and privileged, TriMet will not disclose it to any third party except the Federal Transit Administration (FTA), or pursuant to a lawful order of a court of competent jurisdiction, or pursuant to the requirements of ORS Chapter 192, Oregon's Public Records Law. TriMet will use the cost and price data to determine whether the bid price is fair and reasonable. TriMet will not award the Contract to the bidder if TriMet determines that the bid price is not fair and reasonable, unless TriMet and the bidder negotiate a price that is fair and reasonable.

00302 Equal Bids or Proposals

If two or more responsible bidders submit responsive pricing proposals with identical low Total Prices, or if two or more responsible proposers submit responsive proposal with identical final scores, TriMet will select the successful bidder or proposer publicly using a random selection process.

00303 Cancellation

TriMet reserves the right to cancel award of this Contract at any time before execution of the Contract by both parties if cancellation is deemed to be in TriMet's best interest. In no event shall TriMet have any liability for the cancellation of award. The bidder assumes the sole risk and responsibility for all expenses connected with the preparation of its bid.

00304 Board Approval Required

Approval by TriMet's Board of Directors is required at the following thresholds:

a) $150,000 for Personal Services Contracts
b) $500,000 for goods and ordinary services contracts when the contract has been solicited by other means than a formal Invitation for Bid process.
c) $500,000 for goods and ordinary services contracts when the contract has been solicited by a formal Invitation for Bid process.

Revenue contracts are approved or delegated for approval by TriMet's General Manager.

00305 Award of Contract

A. Unless all proposals or bids are rejected or this procurement is canceled, the Contract shall be awarded to the responsive and responsible proposer submitting the highest ranked proposal in accordance with the RFP or the lowest responsive and responsible bidder. TriMet may

1) Hold the bids or proposals and accompanying checks or bonds under consideration for a maximum of sixty (60) days until the final award is made;
(2) Conduct a pre-award survey of any bidder; or

(3) Waive any minor informality or irregularity in a bid or proposal.

B. After receiving Notice of Intent to Award the contract and within ten (10) days after receipt of the TriMet Contract form for execution, the successful bidder or proposer shall deliver to TriMet the following:

(1) Signed Contract (in duplicate)
(2) Required Bonds (GP00306, 00307)
(3) Representative in Oregon (GP 00308)
(4) Insurance Certificates (SP-07)
(5) Record of Integrity Disclosure (GP Exhibit "A")
(6) Proof of Oregon Construction Contractors Board license and Public Works Bond.

The Contract with the successful proposer shall not be effective until both Contractor and TriMet have signed it.

D. The Contract to be awarded by TriMet to the successful proposer shall be based upon TriMet's Request for Proposals or Invitation To Bid, and the bid or proposal submitted by the successful bidder or proposer. No negotiations shall be permitted, except as provided in the RFP or ITB. A sample of the Contract form that the successful proposer shall be required to sign is included in the ITB or RFP. The successful bidder or proposer shall not make any additions to, deletions from, or changes in the required contract form, except that the successful bidder or proposer shall complete the appropriate blanks in the form and shall sign the form.

00306 Performance Bond

The Contractor shall provide and continuously maintain a performance bond in the amount of one hundred percent (100%) of the total contract price to guarantee faithful performance of the Contract and any changes thereto. The bond shall be payable to TriMet and issued by a good and sufficient surety company authorized to transact business in Oregon and listed in the then current U.S. Department of the Treasury's Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. The bond shall be in the form of Performance Bond included in the ITB or RFP. The costs of the bond shall be borne by Contractor. The successful bidder or proposer shall deliver the performance bond to TriMet within ten (10) days after receipt of the TriMet Contract form for execution. If, as part of the permitting process, a local jurisdiction requires itself to be named as a dual obligee on the Performance Bond, Contractor shall cause its bond to be so amended.

00307 Labor and Material Payment Bond

The Contractor shall provide and continuously maintain a labor and material payment bond in the amount of one hundred percent (100%) of the total Contract price to guarantee payment for all labor and materials furnished in accordance with the Contract and any changes thereto. The bond shall be payable to TriMet and issued by a good and sufficient surety company authorized to transact business in Oregon and listed in the then current U.S. Department of the Treasury's Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. The bond shall be in the form of Labor and Material Payment Bond included in the ITB or RFP. The costs of the bond shall be borne by Contractor. The successful bidder or proposer shall deliver the bond to TriMet within ten (10) days after receipt of the TriMet Contract form for execution.

00308 Representative in Oregon
Within ten (10) days after receipt of the TriMet Contract form for execution, the successful proposer shall notify TriMet in writing of the name and address of its agent in Oregon who is authorized to accept all legal process on behalf of the successful proposer. The successful proposer shall not change that authorized agent without prior written notice to TriMet.

00309 Contractor's Identification

Contractor shall, within ten (10) days after receipt of the TriMet Contract form for execution, provide TriMet, in writing, Contractor's Federal Internal Revenue Service Employer Identification Number, or, if Contractor is an individual with no employer identification number, Contractor's Social Security Number.

00310 Notice to Proceed

A. Except as specifically authorized in writing by TriMet, the Contractor is not authorized to perform Work under the Contract until the effective date of the Notice to Proceed. Upon the effective date of Notice to Proceed, the Contractor shall commence Work and prosecute the Work to completion within the time limits specified. The effective date of the Notice to Proceed shall be the first day of the Contract for purposes of the Construction Schedule.

B. If the successful proposer fails to deliver the documents specified in General Provisions 00305, item B, within the period specified therein, TriMet may, 1) cancel the Notice of Award, award the Contract to the next lowest responsive and responsible bidder or proposer, and invoke any contractual and/or legal remedies available to it, including but not limited to forfeiture of the bid or proposal security, or; 2) reduce the number of days allowed for completion of the Contract Milestone by one day for every day or part thereof the bidder or proposer is late in delivering the specified documents.

00311 Return of Bid or Proposal Security

If applicable, TriMet shall promptly return the bid or proposal security to unsuccessful bidders or proposers after the Contract is executed by Contractor and TriMet or in no event more than sixty days after bid or proposal opening. TriMet shall promptly return the successful bidder or proposer's bid security following that bidder's execution of the Contract and the required bonds.

00312 Prohibited Interests

A. No TriMet board member, officer, employee, or agent shall have any direct or indirect interest in this Contract or its proceeds during, or within one year after, that person's tenure with TriMet.

B. Except for unsolicited gifts of nominal value given for advertising purposes, no TriMet board member, officer, employee, or agent shall solicit or accept, and Contractor shall not offer or give to any TriMet board member, officer, employee, or agent, any gratuities, favors, or anything of monetary value in connection with this Contracts.

C. No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising therefrom.

00313 Not Used

00314 Paragraph Headings and Other Titles

The parties agree that paragraph headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.
00315 Severability

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this contract so that the purposes of this contract are effected. All provisions concerning indemnity survive the termination or expiration of this contract for any cause.

00316 Applicable Law And Jurisdiction

This contract shall be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this contract shall be commenced and prosecuted in the courts of Multnomah County, Oregon or the U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

00317 Federal Requirements

This contract is funded in part under a financial assistance agreement between TriMet and the U.S. Department of Transportation, Federal Transit Administration (FTA). This contract is subject to all provisions prescribed for third party contracts by that financial assistance agreement, including, but not necessarily limited to, the provisions in Appendix A, which is made a part of this contract.

END OF SECTION 00300 AWARD AND EXECUTION OF CONTRACT
00400 SCOPE OF WORK

00401 General

A. Contractor shall perform the Work described by the Plans and Specifications in strict accordance with the Contract. Contractor shall provide and pay for all supervision, labor, Materials, tools, equipment and machinery, water, electricity, fuel, heat, utilities, transportation, and other facilities and services, except for those specifically identified in the Contract as provided by TriMet, necessary for the proper execution and completion of the Work by its own means and methods. Contractor shall supervise and perform the Work using its best skill and ability.

B. If any references have been made in the Specifications to responsibilities of work by crafts and specialty or trade contractors, these references were made for the convenience of preparing the Specifications and are not intended to limit any responsibility of the Contractor to provide a complete installation under this Contract. Whenever such references are made to any trade designation, subcontractor, or specialty contractor, it shall be deemed to mean the Contractor responsible to TriMet for the Work under this Contract.

00402 Intent of Contract

A. The General Provisions, Special Provisions, Plans, Specifications, and Contract attachments and exhibits are essential to this Contract. All are intended to be complementary and to provide for a complete project suitable for its intended use. A requirement occurring in one is as binding as though occurring in all. Where plans and specifications describe portions of the Work in general terms, but details are incomplete or silent, it is understood that only the best general practice is to prevail and that only new materials and first-quality workmanship are to be used. Omissions of details of Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve the Contractor from the obligation to perform such Work. Notes on Plans are part of the Plans. No reliance shall be placed on dimensions scaled from any Plans.

B. The documents referenced below are listed in descending order of precedence. Any conflict between any of these documents shall be resolved in favor of the document with the lower number.

1. Contract Modifications
2. Change Orders
3. Contract Form and Federal Requirements
4. Addenda issued to TriMet ITB or RFP Requirements
5. Special Provisions
7. TriMet ITB or RFP Bid or Proposal Requirements
8. Labor Compliance Manual and Prevailing Wage Rates
9. Construction Safety Program
10. Quality Assurance Program
11. Workforce Training and Hiring Program
12. DBE Program
13. Technical Specifications
14. Drawings
15. Contractor’s Bid or Proposal

C. The Contractor shall notify TriMet immediately of any ambiguity or conflict within or between contract documents, any error, omission, lack of necessary detailed description, or a detail that is a potential code violation, and request clarification thereof. TriMet will provide clarification and direction as required to fulfill the intent of the specifications. TriMet will issue a Change Order, in accordance with Article 00406, Changes in the Work, if necessary.
D. Proceeding without the required notification and request for clarification or instruction shall be at the Contractor's risk and any work performed may be determined to be non-conforming.

00403 Contractor's Status

Contractor is an independent contractor for all purposes, is not an agent nor employee of TriMet and is entitled to no compensation from TriMet other than that provided by this Contract.

00404 Site Investigation and Conditions Affecting The Work

A. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

(1) conditions bearing upon transportation, disposal, handling, and storage of material;

(2) the availability of labor, water, electric power and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the Work Site;

(4) the conformation and conditions of the ground; and

(5) the character of equipment and facilities needed preliminary to and during Work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site, including all exploratory work done by TriMet, as well as from the drawings and specifications made a part of this Contract and referenced materials made available by TriMet. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to TriMet.

B. TriMet assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by TriMet. Nor does TriMet assume responsibility for any understanding reached or representation made by any of its officers or agents before the execution of this Contract concerning conditions that can affect the Work, unless that understanding or representation is expressly stated in this Contract.

00405 Differing Site Conditions

A. Contractor shall promptly, and before the conditions are disturbed, give a written notice to TriMet of (1) subsurface or latent physical conditions at the Work Site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the Work Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract.

B. TriMet shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the Work under this Contract, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.

C. No request by the Contractor for an equitable adjustment to the Contract under this Article shall be allowed unless the Contractor has given the written notice required.
D. No request by Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

00406 Changes in the Work

A. TriMet may, at any time, without notice to the sureties, make changes in the Work within the general scope of the Contract, including changes:

(1) In the Plans and Specifications;
(2) In the method or manner of performance of the Work;
(3) In the TriMet-furnished facilities, equipment, materials, services, or site; or
(4) In the performance period for the Work.

B. The Contractor shall promptly notify TriMet in writing when the Contractor has received direction, instruction, interpretation or determination (collectively, "order") from any source that the Contractor believes may cause any change in cost or time required for the performance of the Work. Such written notification shall state (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change. Such notice shall be given to TriMet within fourteen (14) days after contractor receives said order and before Contractor acts thereon and:

The Contractor may request additional time or additional compensation or both for Work through a Change Request. For any Change Request that has merit, TriMet will initiate a change to the Contract as provided in this Article. If the request for change is denied and the Contractor believes the request has merit, the Contractor may proceed in accordance with the provisions of Article 00513, Claims.

C. If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any of the Work under this Contract, TriMet shall make an equitable adjustment and modify the Contract by a written Change Order or by an adjustment of the Quantities as described in Article 00408, Minor Adjustment in the Plans and Quantities.

D. For any change requested by TriMet or the Contractor, the Contractor shall submit, within fourteen (14) days of the request, a detailed price and schedule proposal supported with documentation that reflects all cost- and time-related impacts on the Contract. The proposal shall be prepared in accordance with the provisions of Articles 00909, Payment for Changes and 00910, Cost Reimbursable (Force Account) Work. The proposal shall include a complete breakdown of direct costs of both deletions and additions directly attributable to the proposed change in the Work, itemizing labor, materials, equipment, and any other eligible direct costs. Overhead and profit percentage markups shall not exceed those specified in General Provisions Article 00910, Cost Reimbursable (Force Account) Work.

E. TriMet and the Contractor shall negotiate a settlement of the time and cost related impacts of the change. A negotiated Change Order shall set out prices, scheduling requirements, time extensions and all costs of any nature arising out of the change. The execution of a Change Order by both parties will be deemed an accord and satisfaction of all claims of any nature arising from or relating to the change.

In the event that the Contractor and TriMet are unable to agree on the amount of any adjustment to be made to the Contract price or time, TriMet may order the Contractor to proceed with the performance of the Work in question. Such Work will, at TriMet's option be paid for:
(1) as cost reimbursable work in accordance with Article 00910, Cost Reimbursable (Force Account) Work; or

(2) pursuant to a unilateral Change Order issued by TriMet.

The Contractor when so ordered shall proceed with the Work.

F. Contractor shall proceed with any Work ordered under this Article in a timely manner so as to avoid delay and minimize any increase in time required for performance of the Work, but in no event shall Contractor proceed with such Work without a fully executed Change Order or written order from TriMet to so proceed. An inadvertent payment made by TriMet for work not specifically authorized in writing by TriMet shall not be evidence or acknowledgment of TriMet's liability for such payment.

G. When Contractor performs work which the Contractor contends is additional or changed work under this Article before agreement to a Contract adjustment is reached, Contractor shall keep daily records of the costs incurred in connection with such work in accordance with the requirements of Article 00910, Cost Reimbursable (Force Account) Work and submit daily timesheets to TriMet in accordance with that Article 00910. TriMet's action in approving timesheets submitted by the Contractor shall not be construed as acceptance of the Contractor's position regarding the need for or magnitude of an equitable adjustment for such work.

H. Except as provided in this Article, no order, statement, or conduct of TriMet shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment.

00407 Emergency Work

In the event of an emergency which endangers life or property, Contractor shall take such immediate actions as may be reasonably necessary to safeguard life and property. Contractor shall notify TriMet as soon as possible of the circumstances of the emergency and the actions taken. Contractor shall perform such additional work as may be directed by TriMet either orally or in writing. Such oral orders will be confirmed in writing as soon as practicable.

If the Contractor performs emergency work for which TriMet is responsible, the Contractor shall keep accurate records of actual costs in accordance with Article 00910, Cost Reimbursable (Force Account) Work until such time as agreement on compensation is reached. Such records shall be subject to verification and audit by TriMet. Keeping and verification of such records shall not be construed as an indication that all work performed was required or that this method of compensation is necessarily acceptable for such emergency work and shall not preclude the possibility of an agreement to pay for such emergency work on another basis.

When agreement is reached regarding compensation for the performance of emergency work, the Contract will be amended by issuance of a Change Order reflecting such agreement.

00408 Minor Adjustments in the Plans and Quantities

A. TriMet reserves the right to make minor adjustments in construction details shown on the Plans or required by the Specifications without the issuance of a formal Change Order when:

(1) The character of the Work performed is the same or substantially the same as other Work required under the Contract;

(2) There is an applicable pay item either in the original Proposal Schedule, or a previously negotiated Change Order;

(3) There is no difference in the quantity of Work required; or, unless specifically exempted in the Technical Specifications, the difference in the quantity of Work required does not exceed plus
or minus twenty-five (25) percent of the original Contract quantity and the total of all adjustments to the pay item does not exceed plus or minus twenty-five (25) percent of the original Contract quantity or 5% of the total price, whichever is less; and

(4) The adjustment does not affect the character or quantity of other Contract Work, the time for completion of the Contract, or the geographic Contract limits.

B. Compensation for minor adjustments in the Plans or Specifications made in accordance with this Article will be made by adjusting the pay quantity of the appropriate pay item or previously priced item for the actual increase or decrease in quantity attributable to the adjustment.

C. An adjustment as described in this Article will be directed in writing by TriMet and will provide an estimate of the magnitude of the adjustment and the proposed method of compensation. If the Contractor disagrees with the direction or the method of compensation, the Contractor shall notify TriMet in accordance with Article 00406, Changes in the Work.

00409 Value Engineering Change Proposals

A. TriMet encourages the Contractor to submit Value Engineering Change Proposals (VECPs) in order to avail TriMet of potential cost savings. Contractor and TriMet will share any savings in accordance with this Article. Contractor is encouraged to submit VECPs whenever it identifies potential savings or improvements.

B. This paragraph applies to a Contractor-developed and documented VECP which:

(1) Requires a change to this Contract to implement the VECP; and

(2) Reduces the Contract amount without impairing essential functions or characteristics of the Work, provided that it is not based solely upon a change in specified quantities.

C. Contractor shall submit VECPs directly to TriMet. As a minimum, the following information shall be submitted by Contractor with each VECP:

(1) Description of the existing Contract requirements that are involved in the proposed change;

(2) Description of the proposed change;

(3) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

(4) Itemization of the Contract requirements which must be changed if the VECP is accepted (e.g., drawing numbers and specifications);

(5) Justification for changes in function or characteristics of each affected item, and effect of the change on the performance of the end item;

(6) Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;

(7) Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivery schedule; and

(8) Cost estimate for existing Contract requirements correlated to Contractor’s unit price or lump sum breakdown and the proposed changes in those requirements. Costs of development and
implementation by Contractor shall be provided. Additional costs to TriMet (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.

D. TriMet retains the right to reject a VECP without review, without recourse by the Contractor, if a similar change is already under review, or if, in TriMet's sole opinion, the potential savings are unlikely to justify the cost of the review, or if the proposed change is otherwise unacceptable to TriMet.

E. TriMet will expeditiously process proposals accepted for review but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. TriMet may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Article. Until an order to proceed is issued on a VECP, Contractor shall remain obligated to perform in accordance with this Contract. Change Orders made pursuant to this Article will so state. TriMet's decision as to acceptance or rejection of any VECP shall be at TriMet's sole discretion and shall be final and not subject to review by disputes process or otherwise.

F. If a VECP submitted by Contractor pursuant to this Article is accepted, the Contract price shall be adjusted in accordance with the following provisions:

1. Definitions:
   a. Estimated gross savings to Contractor (GS) means the difference between the cost of performing the Work according to the existing requirement and the cost to perform it according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.
   b. Contractor cost (CC) means reasonable costs incurred by Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
   c. Estimated net savings to Contractor (NS) means gross savings (GS) less Contractor costs (CC).
   d. TriMet's Costs (TMC) means reasonable costs incurred by TriMet in evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.

2. Calculations:

   The Contract amount shall be reduced by an amount equal to fifty percent (50%) of (NS) plus fifty percent (50%) of (TMC), expressed by the formula:

   \[ \text{Reduction} = 0.5 \times (\text{NS}) + 0.5 \times (\text{TMC}) \]

3. Contractor's profit shall not be reduced by application of the VECP.

G. Contractor shall include appropriate value engineering incentive provisions in all subcontracts of $25,000.00 or greater, and may include those provisions in any subcontract. In determining Net Savings for cost reduction proposals that involve a subcontractor, only actual costs to the Contractor and Subcontractor as defined in paragraph "F" will be allowed as a Contractor Cost. Incentive payments made to the Subcontractor by the Contractor in connection with the cost reduction proposal will not be allowed in determining Net Saving.

H. Contractor may restrict TriMet's right to use any sheet of a VECP or of the supporting data submitted pursuant to this Article in accordance with the terms of the following legend, if the legend is marked on the sheet:
"Data furnished pursuant to the "Value Engineering Change Proposals" Article of the Contract shall not be disclosed to any outside person or agency, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said clause."

This restriction does not limit TriMet's right to use information contained in this VECP if it is, or has been, obtained, or is otherwise available, from Contractor or from another source without limitations. If a VECP is accepted by TriMet after the use of the data in an evaluation, TriMet may duplicate, use, and disclose any data reasonably necessary to the full utilization of the VECP, as accepted in any current or future contract, in any manner and for any purpose whatsoever, and may allow others to do so.

I. The compensation provisions of this Article constitute Contractor's exclusive and complete compensation for TriMet's use of the VECP and Contractor shall have no right to additional compensation for future or additional uses of the VECP. TriMet shall have an absolute and unrestricted right to use the VECP for any purpose other than on the Contract or contracts for which it was submitted.

00410 Final Cleanup

A. Prior to Final Acceptance, all areas occupied or disturbed by the Contractor in connection with the Work shall be cleaned of all rubbish, materials, products designated in the Contract as becoming or remaining the property of the Contractor, equipment and temporary structures. The ground shall be returned to original contours and restored to as near preconstruction condition as possible unless alternate restoration plans are approved in writing by TriMet or required by the Contract.

B. Any private property occupied or disturbed by the Contractor in connection with the Work shall be restored to the satisfaction of the owner. Prior to Final Acceptance, the Contractor shall present TriMet with a release, signed by the owner of the property, attesting to the acceptability of the restoration work and waiving any and all claims against TriMet.

C. The restoration of all property, including sites used for disposal of material removed from the project or as a source of material incorporated in the Work, shall be such that the condition of the sites, including all materials and structures which remain following Final Completion of the Work, present no hazard to the public and fully comply with all applicable laws and regulations including but not limited to local zoning and land use requirements.

00411 Warranty of Work

A. Contractor warrants that all Work performed pursuant to the Contract shall be of the quality specified, or of the best grade if no quality is specified, and shall conform to the Plans, Specifications, Samples, and other descriptions set forth in the Contract. Unless otherwise provided in this Contract, Contractor warrants all Materials furnished by Contractor and all Work performed by Contractor to be free of defects and faults for a period of two (2) years from the date of Final Acceptance of the Work by TriMet. The Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor.

B. Upon receipt of written notice from TriMet of a breach of warranty during the applicable period, Contractor shall redesign, repair or replace in a manner satisfactory to TriMet the defect or malfunction, and shall perform such tests as TriMet may require to verify that such redesign, repair or replacement complies with the requirements of the Contract. Contractor warrants the redesigned, repaired or replaced work for the remainder of the original warranty period. If less than ninety (90) days remain on the original warranty, it shall be extended for a minimum of ninety (90) days after acceptance of the redesign, repairs, or replacement. All costs incidental to redesign, repair or replacement, and testing, including the removal, replacement, and reinstallation of equipment necessary to gain access and all other costs incurred as a result of a breach of warranty shall be borne by Contractor and Contractor's surety.
C. If Contractor, within ten (10) days after receiving TriMet's written notice of a breach of warranty, fails to proceed to comply with the terms of this Article, TriMet may have the defects corrected, and Contractor shall be liable for all costs incurred, provided that in case of emergency where, in the opinion of TriMet, delay would cause serious loss or damage, repairs may be made without notice to Contractor, and Contractor shall pay the cost of the repairs.

D. During the warranty period, Contractor shall be liable for all damage or disturbance to property and other improvements under, above, within, or adjacent to the Work, caused in whole or in part by activities of Contractor in performing its duties and obligations under this Contract.

E. Contractor shall register all manufacturer and supplier warranties in TriMet's name.

F. Any warranty from a subcontractor, manufacturer or supplier to the Contractor exceeding any period required by the Contract shall be extended to TriMet for the same period of time as given to the Contractor.

G. The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties either express or implied by law, custom or usage of trade.

00412 Temporary Construction Facilities and Utilities

A. Temporary facilities and utilities shall be installed in compliance with federal, state, and local codes and statutes, at Contractor's expense. The installation and maintenance of all temporary facilities will be subject to the approval of TriMet, and unless otherwise authorized in writing by TriMet, all such facilities shall be removed before Final Completion of the Work.

B. Before proceeding with the erection of any construction facilities, including temporary structures, machinery, offices, and warehouses, Contractor shall, at its expense, notify and furnish TriMet with such information and drawings as TriMet may request showing locations of such facilities, capacities and capabilities of the machinery and equipment, and projected utility requirements. Such construction facilities shall be fully adequate for the uses intended and fully comply with the requirements of the Contract.

00413 Variation in Estimated Quantity (if applicable)

A. Unless specifically exempted in the Technical Specifications, if the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit priced item varies more than twenty-five percent (25%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon request of either party in accordance with the Provisions of this Contract. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

   (1) For an actual quantity exceeding 125% of the estimated quantity, the unit price shall be adjusted only for the quantity in excess of 125% of the estimated quantity.

   (2) For an actual quantity less than 75% of the estimated quantity, the unit price shall be adjusted for the total actual quantity of work performed.

B. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time. The request must be received by TriMet within ten (10) days from the date TriMet notifies the Contractor of the quantity variation, or the date the Contractor was aware of the quantity variation, whichever is earlier, or within such further period as may be granted by TriMet before the date of final settlement of the Contract. Upon receipt of a written
request for an extension, TriMet shall ascertain the facts and make an adjustment extending the completion date if such extension is justified in TriMet's judgment.

END OF SECTION 00400 - SCOPE OF WORK
00500 CONTROL OF THE WORK

00501 Resident Engineer

A. TriMet shall appoint a Resident Engineer for this Contract.

B. The Resident Engineer and his or her representatives shall at all times have access to the Work wherever it is in preparation or progress.

C. The Resident Engineer shall be the formal contact between TriMet and Contractor and shall handle all matters on behalf of TriMet, except as otherwise provided in the Contract.

D. The Resident Engineer's authority shall include authority to stop any Work whenever deemed necessary, to order changes, to reject Work, to receive all notices under the Contract, to establish progress and final Contract pay amounts, and to take other appropriate action as necessary in accordance with the Contract. The Resident Engineer's decision regarding the acceptability of workmanship and Materials and the percentage or units of Work performed for progress payment purposes will be final.

E. Contractor shall carry out the instructions of the Resident Engineer concerning the Work to be done under the Contract.

F. The Resident Engineer's approval will not relieve the Contractor of its obligation to fully comply with the requirements of the Contract.

00502 Inspectors

A. TriMet may utilize one or more inspectors who shall be representatives of the Resident Engineer and who shall have access to the Work at all times wherever it is in preparation or progress.

B. Inspectors are utilized solely for TriMet's benefit, and are not intended as a source of advice for Contractor's employees or subcontractors.

C. The inspector has the authority to reject defective Work or Work not in conformance with Contract requirements.

D. The inspector may verify quantities and labor and equipment time for force account or disputed Work. Such verification shall not be construed as TriMet's acceptance of responsibility for any or all costs or schedule impacts of such Work.

E. The inspector does not have authority to authorize any changes in the Work, to waive provisions of the Contract, to direct the Contractor's operations, to accept Work on behalf of TriMet, or to order extra Work.

00503 Inspection, Sampling and Testing

A. TriMet may inspect and test all or any part of the Work at any reasonable time. Inspection and testing by TriMet does not relieve the Contractor of responsibility for the quality and conformance of the Work with Contract requirements.

B. The Contractor shall furnish TriMet with adequate facilities required for safe access to the Work for inspection and sampling and shall provide assistance in obtaining samples. The Contractor shall advise TriMet of the name and location of, and ensure that, manufacturers, producers and fabricators of Materials for this Contract provide access to their plants or facilities and provide proper facilities for sampling, inspection, and testing.
C. The Contractor shall give TriMet sufficient notice of the location and availability of elements of the Work to allow for inspection, sampling and testing prior to incorporation of Materials or covering of the Work.

D. TriMet may at any time prior to Final Acceptance require the Contractor to uncover portions of the Work for inspection and testing. Contractor shall restore these portions of Work to the standard required by the Contract. If the Work uncovered does not comply with the Contract, was done without required documentation, or if TriMet was given insufficient notice to allow adequate time for inspection, sampling or testing, the uncovering and restoration shall be done at the Contractor’s expense. If the Work uncovered meets Contract requirements and was done with sufficient notice to TriMet, the costs of uncovering and restoration shall be paid by TriMet in accordance with Article 00910, Cost Reimbursable (Force Account) Work and Article 00406, Changes in the Work.

E. When the United States government participates in the cost of the Work covered by this Contract, or if TriMet has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or may affect third party facilities, or if the Work is by law subject to inspection by any public body or official, properly authorized representatives of these organizations have the right to inspect the Work affecting their interest or property. Their right to inspect shall not make them a party to this Contract and shall not interfere with the rights of the parties to this Contract. Instructions or orders of such parties shall be transmitted to or through the Resident Engineer.

00504 Quality Control and Compliance with Contract Requirements

A. Materials furnished and Work performed by the Contractor shall conform to details shown on the Plans, and requirements given in the Specifications.

B. The Contractor has primary responsibility for inspection and testing of all Materials required in the performance of this Contract. TriMet may perform check testing and periodic inspections to verify adequacy of Contractor quality control or for any other purpose and will bear the cost of such testing and inspection. TriMet reserves the right to reject Materials on the basis of TriMet instituted inspection and testing.

C. Materials furnished or Work performed, which does not comply with Contract requirements, will be considered non-conforming. Non-conforming work includes, but is not limited to:

1. Work done or products incorporated beyond lines shown on the plans or established by TriMet.
2. Work done or products incorporated contrary to TriMet's instructions.
3. Work changed or added without TriMet's written authorization.
4. Work which includes incorporation of unapproved substitutions or unapproved Materials supplied under the "or equal" provisions of this Contract.
5. Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties.
6. Work or Materials not in conformance with the Contract requirements.

D. When non-conforming work is discovered, TriMet may:

1. Reject the Materials or workmanship or require its correction. Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the Work Site and properly dispose of them. If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, TriMet may, by contract or otherwise, remove and replace such rejected Materials or workmanship, correct such Materials or workmanship, and dispose of all rejected Materials and workmanship so
removed, charging the costs thereof to the Contractor, or TriMet may terminate the Contractor's
right to proceed in accordance with Article 00814, Termination for Default and Contractor and its
sureties shall be liable for any costs and damages occasioned thereby.

(2) Accept the Materials or workmanship as suitable for the intended purpose, document the basis of
such acceptance, and deduct an equitable amount from the Contract price for uncorrected work.

00505  Superintendence

A. The Contractor shall give its personal attention to the Work and have competent foremen or
superintendents present on the Work at all times during its progress.

B. Contractor shall appoint one competent on-site Project Manager who shall have full authority to act on
behalf of Contractor and any or all subcontractors in all matters within the scope of the Contract
including execution of Change Orders. The Project Manager or a designated assistant, competent to
direct the Work and authorized to act on behalf of Contractor, shall be present on the job site at all times
when work is being performed by the Contractor or a subcontractor of any tier. The Contractor shall
furnish TriMet with a written confirmation of the Project Manager's authority to act for Contractor.

C. Immediately following award of the Contract, Contractor shall submit to TriMet the resume of its
candidate for the position of Project Manager. If for any reason, and at any time, the candidate
submitted by Contractor is not acceptable to TriMet, or becomes unacceptable, Contractor shall
propose additional candidates. If Contractor wishes to replace its Project Manager at any time during
the performance of this Contract, it first shall submit the resume of its new candidate to TriMet for
TriMet's acceptance and shall not make the substitution without TriMet's acceptance.

D. The Contractor shall establish and maintain a Project office within the Portland Metropolitan Area and in
close proximity to the Work Site. The office shall be maintained from the time the Notice to Proceed is
issued until such time as all Contract Work has been finally completed. The Contractor shall promptly
notify TriMet of the location and mailing address of its project office.

00506  Contractor's Equipment

Contractor shall furnish equipment that shall be of adequate number, size and condition to produce a
satisfactory quality of work. All equipment used by Contractor shall meet all applicable safety, noise, and
emission requirements as well as other requirements of the Work. Equipment which, in TriMet's opinion,
fails to meet requirements of the Contract or produce a satisfactory product or result shall, upon written
order, be removed immediately and not used again on the project without prior written approval.

00507  Cooperation by the Contractor

A. The Contractor shall cooperate with TriMet in the conduct of Contractor's operations under this
Contract. The Contractor shall assist TriMet as required by this Contract. The Contractor shall:

(1) Keep at the Work Site one complete current set of Contract documents, Plans, Specifications,
working drawings, manufacturer's data and instructions, test results, and other applicable
documents. Such documents shall be available to TriMet personnel at all times.

(2) Furnish TriMet every reasonable facility necessary to obtain information regarding the nature,
quantity, and quality of any part of the Work.

(3) Provide TriMet with timely notification of planned work activities, including changes in established
schedules.

(4) Provide TriMet's Public Relations staff with information and assistance in keeping the public
informed and mitigating adverse impacts on the public associated with construction activities.
(5) Cooperate with TriMet and residents and businesses within the vicinity of the Work to minimize inconveniences caused by the construction or the activities of Contractor's employees or others involved in the Work on this Contract.

(6) Participate in regular project meetings chaired by TriMet.

B. TriMet may award other contracts in conjunction with this project. Other agencies may also be performing work, including utility relocation activities, by contract or otherwise, in support of this project. These activities may be underway in the proposed construction area during the term of this Contract. Contractor shall cooperate with TriMet, other agencies, and other contractors in scheduling, coordinating, and fitting Contractor's work with the work of others to minimize conflicts. Contractor shall not commit or permit any act that will interfere with the performance of work by any other agency, contractor, or TriMet.

C. Facilities and installations of various utilities may be present in the area of the Work. Contractor shall comply with ORS 757.557 and cooperate with owners of utilities to protect any above ground and below ground utility property. Contractor shall contact the utility owners and arrange operations and schedules to minimize any interruption of utility services. Contractor shall provide utility owners with sufficient notice to allow adequate time for location of utility services, scheduling of outages, or other utility activities needed to accommodate Contractor's operations. Contractor shall determine and verify the exact locations and conditions of existing utility property and specifically underground utility property with the utility owner prior to performing excavation or other Work in the area. Contractor shall be responsible for all costs, including costs for restoration of services, and resulting schedule impacts, when utility services are damaged or interrupted by its operations.

D. In the event of disruption or threat of disruption to utility services as a result of construction related activities, regardless of cause, Contractor shall promptly notify TriMet, the affected utility, and fire and/or police agencies as necessary, and shall cooperate with those authorities.

E. Operation of utility or agency water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority.

00508 Notices and Communications

A. All notices and other communications concerning this Contract shall be written in English and shall bear the number assigned to this Contract by TriMet. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when delivered.

B. Prior to issuance of the Notice to Proceed, a notice to TriMet will be effective only if it is delivered to TriMet's Contract Administrator, 710 N.E. Holladay Street, Portland, Oregon 97232. Following issuance of "Notice to Proceed," all communications and notices shall be delivered to the Resident Engineer at the address designated by TriMet. All correspondence shall reference the Contract Number.

C. Prior to commencement of Work on the project, a notice to Contractor will be effective if it is delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to TriMet.

D. After commencement of Work on the Contract a notice to the Contractor will be effective when delivered to the Project Manager or to the project office at the location designated in Article 00505, Superintendence.
E. After the commencement of Work, all communications shall be between the Contractor's Project Manager and the Resident Engineer.

00509 Contractor Submitted Drawings, Product Data and Samples

A. Contractor shall prepare and deliver to TriMet such Working Drawings, Shop Drawings, Product Data, Samples, or similar submittals as necessary for performance of the Work or as required by the Contract. All such drawings, documents and Samples shall be submitted to TriMet in a timely manner and in a sequence that facilitates review and causes no delay in the Work, or in the work of TriMet or any other contractor or agency working on the project.

B. Unless otherwise stated in the Specifications, Contractor shall, within thirty (30) days of Notice to Proceed, provide TriMet with a list of drawings, Product Data, Samples, and other documents, which are to be submitted by the Contractor. The list required by this paragraph shall be accompanied by a schedule for the submission of these materials.

C. Prior to submitting drawings, Product Data, Samples, and other documents, Contractor shall ensure that the material or other information upon which a submittal is based complies with all Contract requirements and Contractor has verified dimensions with field measurements, and field construction criteria. Contractor shall also check, coordinate and verify the compatibility of the various required submittals prior to transmitting them to TriMet.

D. Drawings, Product Data, Samples, and similar submittals shall not modify any Contract requirement, except as expressly allowed by this Contract. The purpose of their submittal is to demonstrate, for those portions of the work for which fabrication, procedures are not defined or details are not fully developed by the Contract documents or for which submittals are required, the way Contractor proposes to comply with the Contract.

E. Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by TriMet's review or approval of Shop Drawings, Product Data, Samples, or similar submittals. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by TriMet's review of the submittal. Contractor shall not deviate from reviewed Shop Drawings, Product Data, Samples, or similar submittals without submitting the proposed deviation for TriMet's review.

F. Working Drawings and other submittals offered to demonstrate methods, procedures, sequence or durations for performing the Work or to detail temporary elements such as shoring or falsework, shall be checked by TriMet for compliance with applicable requirements of the Contract. Such checking will not include a detailed analysis of the design or an evaluation of the adequacy of the method, procedure, resource commitments or time allocated for performance.

G. Submittals which demonstrate that Materials to be used or incorporated in the Work comply with Contract requirements or which establish a level of quality will be reviewed for approval.

H. TriMet will return or respond to submittals that are complete and require only TriMet review or approval within 21 days following the date received by the Resident Engineer. TriMet will return or respond to submittals which require approval by other agencies within fourteen (14) days following receipt of the other agency's comments or approval, or within forty-five (45) days following receipt by the Resident Engineer, whichever is earlier.

I. Any engineering or design work provided by the Contractor must be done by a Registered Professional Engineer licensed in Oregon in the appropriate discipline for the work performed and TriMet shall be entitled to rely on the accuracy and completeness of such engineering or design work including but not limited to the calculations underlying such work.
00510 Project Records

A. The Contractor shall keep and maintain comprehensive records and documentation relating to the Work under this Contract. The records shall be in English, and shall include but are not limited to Contract Documents, Subcontracts, Purchase Orders, Employment Records, Plans, Specifications, Addenda, Shop Drawings, Change Orders, Field Test Records, Quality Control documents, and As-Built Drawings and Records.

B. The Contractor shall maintain at the Work Site a set of the Plans and Specifications kept current with all changes and modifications and shall at all times give TriMet access thereto.

C. The Contractor shall also maintain, in addition to the Contract Plans and Specifications, a set of plans and specifications which shall include TriMet's, Contractor's, subcontractors' and all suppliers' plans, drawings, and specifications and other documentation pertaining to the Work. The Contractor shall keep this set current by legibly marking the Contract Plans and Specifications or otherwise making a record showing actual construction and providing periodic updates to TriMet. The final set shall be turned over to TriMet before Contract Closeout of the Work as a complete set of "as built" drawings and shall include TriMet's, Contractor's, subcontractors' and suppliers' drawings and any and all field modified drawings. TriMet may require at any time that the Contractor submit marked-up progress drawings showing the record of actual construction. The record of actual construction shall include, but is not necessarily limited to:

1. Locations and elevations of the various elements of the Work, referenced to the survey control baseline and project datum;

2. Locations of underground items referenced by distances and directions to permanent surface structures and by elevation to the project datum;

3. Field changes in dimension or detail;

4. Changes made by addendum, field order, or Change Order; and

5. Details not on the original Contract drawings.

D. Unless otherwise required by the Contract, the Contractor shall submit to TriMet during Contract Closeout, the "contract record documents" set and three (3) sets of record data in 3-ring vinyl binders with suitable indexing. All of the original warranties, guarantees and other original documents shall be included in one of the binders. These data shall include, but are not limited to product and equipment manufacturers, trade names, catalog data, supplier and subcontractor names with phone number, addresses and contact persons, maintenance and operating instructions and guarantees and warranties. The "As-built" submittal shall be on full size plan sheets and other submittals on 8-1/2" x 11" or 8-1/2" x 14" paper. Warranties and guarantees are to be original documents submitted in the form received from the manufacturer.

00511 Disputes

Any claim or issue that the Contractor and the Resident Engineer are unable to resolve will be considered a dispute in accordance with this Article. Any dispute arising under this Contract which is not disposed of by agreement, shall be decided by TriMet's General Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision rendered by TriMet's General Manager shall be the final step in the dispute review process under this Contract. Although the General Manager will make a full and fair review of the matter, it is the intent of the parties that the General Manager's decision shall not constitute the exercise of a quasi-judicial function by TriMet, and therefore is not subject to a Writ of Review as provided under ORS 34.010 through 34.100. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with TriMet's direction.
00512 Substantial Completion

A. When Contractor considers the Work to be substantially completed, it shall submit to TriMet a written request for determination of Substantial Completion. Within twenty-one (21) days after TriMet receives Contractor's written request, TriMet shall notify the contractor in writing whether Substantial Completion has occurred. If Substantial Completion has occurred, TriMet shall issue a notice of Substantial Completion. In any event, TriMet shall prepare and deliver to Contractor a written list of items to be completed or corrected.

B. When Contractor has completed all Work, corrected any deficiencies in the Work and any Work rejected by TriMet and has submitted all required project records, documentation and reports, the Contractor shall notify TriMet in writing that Contractor considers the Work finally complete and ready for final inspection in accordance with Article 00911, Final Completion, Contract Closeout and Final Payment.

00513 Claims

It is an express condition of Contractor's right to make a claim or to receive any recovery or relief under or in connection with the Contract, that Contractor submit a written Notice Of Intent to Claim to TriMet in accordance with the provisions of this Article. Failure to comply with the provisions hereof shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any such claim against TriMet.

The written Notice of Intent to Claim shall set forth:

1. The reasons for which the Contractor believes additional compensation will or may be due;

2. The nature of the costs involved;

3. Contractor's plan for mitigating such costs; and

4. If ascertainable, the amount of the potential claim.

The Notice of Intent to Claim shall be given within ten (10) days after the happening of the event or occurrence giving rise to the potential claim. If the event or occurrence is claimed to be an act or omission of TriMet, notice shall be given prior to commencing the portion of the Work to which such alleged act or omission relates.

The notice requirements of this Article are in addition to any other notice requirements set forth in the Contract.

The Contractor shall file all claims within sixty (60) days of the event or occurrence giving rise to the claim, in sufficient detail to ascertain the basis and amount of said claims. It will be the responsibility of the Contractor to furnish, when requested by TriMet, such further information and details as may be required to determine the facts or contentions involved in said claim. The Contractor agrees that he shall give TriMet access to his books, records and other materials relating to the Work, and shall cause his subcontractors to do the same, so that TriMet can investigate such claim. This right of audit shall continue throughout the claims and/or dispute processes described herein.

The Contractor's failure to submit any claim in writing within the relevant time and in the manner prescribed above shall waive any relief that might otherwise be due with respect to such claim. Depending upon the grounds for relief and the nature of relief sought, additional submittals and conditions upon submitting claims may be required, as set forth elsewhere in the Contract.

Each claim the Contractor may submit for an adjustment on account of delay for any cause shall be accompanied by a revised Construction Schedule reflecting the effects of the delay and proposals to minimize these effects. If no Construction Schedule has been submitted to TriMet reflecting conditions prior
to the delay for which relief is sought, then a Construction Schedule so reflecting these conditions shall be prepared and submitted with the claim.

TriMet shall be entitled to a reasonable time, in no case more than ninety (90) days, after it receives each claim in writing and accompanied by supporting documents and evidence, in which to investigate, review and evaluate such claim. When TriMet has completed its investigation, review, and evaluation, it will advise the Contractor of the relief, if any, to which it has found the Contractor to be entitled. If the Contractor is not satisfied with TriMet's findings, he may within thirty (30) days after being advised thereof, request resolution in accordance with Article 00511, Disputes.

In no event shall claims be made after Final Payment is made under Article 00911, Final Completion, Contract Closeout and Final Payment.

A claim will cease to be a claim if, at any time, a Change Order or Contract amendment resolving the issue is signed by all parties.

END OF SECTION 00500 - CONTROL OF WORK
00600 MATERIALS

00601 General

Contractor shall use or incorporate in the Work only new Materials conforming to the Plans and Specifications. New Material shall be used in the manufacture of products to be incorporated in the Work unless otherwise specified.

00602 Substitution Proposals After Award of Contract

This General Provision defines "Substitution" and sets out requirements for requests for approval of Substitutions after award of the Contract.

For the purposes of this General Provision, "Product" shall mean any manufactured good, and "Item" shall mean a Product, piece of equipment, service, or a method or technique of fabrication or construction.

TriMet reserves the right to use the named or specified Product or Item to establish standards for equality of the Product or Item proposed for Substitution, including aesthetic and visual characteristics, performance, quality, availability, maintainability, and any other relevant characteristic.

A. Definition

(1) Substitution: An Item that does not conform to the Contract and is proposed by the Contractor in lieu of the Item required by the Contract.

TriMet must approve use of the Item in accordance with the terms of this General Provision.

A Substitution will be considered by TriMet when:

(a) The Substitution is due to the unavailability of the specified Item; or

(b) The Substitution is required for compliance with a final interpretation of code requirements or insurance regulations; or

(c) The specified Item will not perform as specified; or,

(d) The manufacturer or fabricator does not certify or warrant performance of the specified Item as required for its intended purpose; or

(e) The Substitution is considered, in TriMet's sole judgment, to be beneficial to the completed Work.

B. Procedures

(1) The Contractor shall notify TriMet of any inappropriate or unavailable Products, equipment, services or techniques that may be called for by the Contract.

(2) The Contractor may submit to TriMet written requests for approval of Substitutions. TriMet will consider only requests conforming to the requirements of this General Provision.

(3) TriMet will be the sole judge of the acceptability of any proposed Substitution. The Contractor will be notified in writing of the approval or rejection of a properly submitted request. The Contractor shall not rely upon approvals made in any other manner. TriMet's decision shall be final.

(4) Requests for Substitutions shall be submitted to the Resident Engineer through the Contract submittal process in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of Substitution requests.
(5) Substitution requests must be submitted on TriMet's Product Option/Substitution Request Form. A copy of this form may be obtained from the Resident Engineer.

The Contractor shall at the same time submit up to six copies of the information listed below as directed by the Resident Engineer, with any additional information the Contractor considers necessary to support the proposal.

The Contractor has the burden of demonstrating that the proposed Substitution's function, quality and performance will be equal or superior in all respects to that of the specified Item.

The following information is required as a minimum:

(a) The reason for the request;

(b) Complete data substantiating that the function, quality and performance of the proposed Substitution will be equal or superior in all respects to the performance of the specified Item;

(c) The impact of the proposed Substitution on the Construction Schedule;

(d) The effect of the proposed Substitution on the Contract Price;

(e) The following information shall be included in the documentation for Substitution of construction or fabrication methods:
   1. Detailed description of the proposed methods.
   2. Drawings illustrating the proposed methods.

(f) Product identification, including manufacturer's name and address, contact person and telephone number;

(g) Manufacturer's literature, including product description, performance and test data, and reference standards;

(h) Samples, if appropriate or required by TriMet;

(i) The name and address of a reference person with personal knowledge of similar projects on which the Product, equipment service, method or technique, was used, date of installation and reliability and service record, if appropriate or required by TriMet;

(j) An itemized comparison of the proposed Substitution with the specified Product, equipment, service, method or technique;

(k) Assurance that the proposed Substitution will not affect dimensions or other elements of the Work, or alternatively, full disclosure of any such effects;

(l) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Substitution, and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by TriMet.

(6) Prior to making a request for a Substitution, the Contractor shall investigate the proposed Item, and determine that it is equal or superior in all respects to the Item specified. In making the request for a Substitution, the Contractor represents that:

(a) It will provide the same warranty for the Substitution as for the item specified.
(b) It will coordinate installation of the Substitution into the Work, making changes as may be required for the Work to be complete in all respects.

(c) Schedule and price data provided under paragraphs 5(c) and 5(d) is complete and includes all related Contractor cost and schedule impacts.

(d) It waives all claims for additional time for performance and additional costs related to the Substitution that may become apparent following TriMet's approval of the Substitution.

(e) It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing TriMet's approval of such design or redesign.

(7) The Contractor shall reimburse TriMet for its costs of evaluating Substitutions, and for its design or redesign costs, unless the proposed Substitution is necessary due to causes beyond the Contractor's control, and of which the Contractor could not reasonably have known at the date of opening of proposals.

(8) Only complete requests submitted in accordance with this General Provision will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a Substitution shall not constitute approval of such Substitution.

(9) TriMet will specifically approve or disapprove in writing all requested Substitutions. If a Substitution is approved, a Change Order will be prepared to incorporate the Substitution into the Contract. The Change Order will include any associated price or schedule adjustment.

(10) The Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a Substitution proposed due to the unavailability of a specified Item, if the specified Item was available as of the date of the Notice to Proceed. Extensions of time or reimbursement of additional costs for Substitutions necessitated by deficiencies that render the specified Item unacceptable, will not be allowed when the deficiency was known or should have been known by the Contractor at the time proposals were submitted.

00603 Product Option Proposals After Award of Contract

This General Provision defines "Product Option" and sets out requirements for requests for approval of Product Options after award of the Contract.

For the purposes of this General Provision, "Product" shall mean any manufactured good.

TriMet reserves the right to use the named or specified product to establish standards for equality, including aesthetic and visual characteristics, performance, quality, availability, maintainability and any other relevant characteristic.

A. Definition

Product Option: The use of an item demonstrated to be equal or superior in all respects to a Product specified by brand name or mark or as the Product of one or more manufacturers or suppliers, whether or not followed by the terms "or equal" or "or approved equal."

The Contractor shall demonstrate equality following the procedures set out herein, and TriMet must approve use of the item in accordance with the terms of this General Provision.

B. Procedures

(1) The Contractor shall notify TriMet of any inappropriate or unavailable Products that may be called for by the Contract.
(2) The Contractor may submit to TriMet written requests for approval of Product Options. TriMet will consider only requests conforming to the requirements of this General Provision.

(3) TriMet will be the sole judge of the acceptability of any proposed Product Option. The Contractor will be notified in writing of the approval or rejection of a properly submitted request. The Contractor shall not rely upon approvals made in any other manner. TriMet's decision shall be final.

(4) Requests for Product Options shall be submitted to the Resident Engineer through the Contract submittal process in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of Product Option requests.

(5) Product Option requests must be submitted on TriMet's Product Option/Substitution Request Form. A copy of this form may be obtained from the Resident Engineer.

The Contractor shall at the same time submit up to six copies of the information listed below as directed by the Resident Engineer, with any additional information the Contractor considers necessary to support the proposal.

The Contractor has the burden of demonstrating that the proposed item is equal or superior in all respects to the item specified.

The following information is required as a minimum:

(a) The reason for the request;
(b) Complete data substantiating equality of the proposed Product to the Product specified;
(c) A certification that the proposed Product Option will neither increase the Contract Price nor increase contract milestone durations;
(d) Product identification, including manufacturer's name and address, contact person and telephone number;
(e) Manufacturer's literature, including product description, performance and test data, and reference standards;
(f) Samples, if appropriate or required by TriMet;
(g) The name and address of a reference person with personal knowledge of similar projects on which the Product was used, date of installation and reliability and service record, if appropriate or required by TriMet;
(h) An itemized comparison of the proposed Product Option with the specified Product;
(i) Assurance that the proposed Product Option will not affect dimensions or other elements of the Work, or alternatively, full disclosure of any such effects;
(j) The name and address of the nearest supplier of maintenance and service parts and repair services for the proposed Product Option and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by TriMet.

(6) Prior to making a request for a Product Option the Contractor shall investigate the proposed item, and determine that it is equal or superior in all respects to the item specified. In making the request for a Product Option the Contractor represents that:
(a) It will provide the same warranty for the Product Option as for the item specified.

(b) It will coordinate installation of the Product Option into the Work, making changes as may be required for the Work to be complete in all respects.

(c) It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing TriMet's approval of such design or redesign.

(7) The Contractor shall reimburse TriMet for its costs of evaluating Product Options, and for its design or redesign costs, unless the proposed Product Option is necessary due to causes beyond the Contractor's control, and of which the Contractor could not reasonably have known at the date of opening of proposals.

(8) Only complete requests submitted in accordance with this General Provision will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a Product Option shall not constitute approval of such Product Option.

(9) TriMet will specifically approve or disapprove in writing all requested Product Options. If a Product Option is approved, a Change Order will be prepared to incorporate the Product Option into the Contract.

(10) The Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a Product Option proposed due to the unavailability of a specified Product, if the specified Product was available as of the date of the Notice to Proceed. Extensions of time or reimbursement of additional costs for Product Options necessitated by deficiencies that render the specified Product unacceptable will not be allowed when the deficiency was known or should have been known by the Contractor at the time proposals were submitted.

00604 Inspection, Sampling and Testing

A. All Materials except Materials specified by brand name or mark or manufacturer, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with Contract requirements. Unless specific tests are required by the specifications, Contractor may provide certifications to establish acceptability of the products furnished. Materials or products which require certification or other documentation shall not be incorporated into the Work until certifications have been delivered and the product approved by TriMet for incorporation.

B. TriMet's acceptance of Materials on the basis of compliance documentation, inspection or testing shall not relieve the Contractor of the obligation for conformance with the Contract.

C. References to standards, material specifications, test methods, or other publications of the Oregon Department of Transportation (ODOT), American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), other governmental agencies, or other recognized national organizations are those officially adopted by those agencies and organizations. The applicable standard, test method, material specification, or other reference is that which is in effect on the date the Contract was advertised.

D. When the Contract requires documentation that Materials comply with a given specification or standard, the Contractor shall provide documents which include a certification that the Materials conforms with all applicable Contract requirements. The documentation shall identify the Material, list the applicable specifications and tests covered by the certification, describe the source of the Materials, and the quantity of Materials certified. The certifying document shall originate with manufacturer or producer of the Materials and shall bear the signature of a person qualified to perform the certification and authorized to sign on behalf of the manufacturer or producer. If applicable, the certificate shall list any marking or other identification of the certified Materials.
E. For fabricated or manufactured Materials, in addition to the documentation required by Paragraph D of this Article, the supplier shall furnish documentation that the fabrication or manufacturing process complies with Contract requirements. The documentation shall be comparable to that required by Paragraph D of this Article and shall list the name and address of the manufacturer or fabricator, the specific processes covered by the certification and procedures and equipment used, tests performed and testing frequency, and any other pertinent information required to demonstrate Contract compliance.

F. For Materials specified or approved by brand name or mark, an identifying label or other marking affixed by the manufacturer, which contains sufficient information to verify that the Materials furnished are the Materials specified, will be accepted as documentation in lieu of additional certification. Other physical characteristics or packaging information may be accepted at TriMet's discretion to demonstrate compliance.

G. TriMet may require testing at the Contractor's expense of Materials that are delivered without acceptable identification, certification or other required documentation. Work that incorporates Materials for which the required documentation has not been provided, will be considered nonconforming work.

H. TriMet reserves the right to sample and test any Materials provided for use or incorporation into the Work. The Contractor shall furnish, at no cost to TriMet, all samples requested for testing. If TriMet's tests indicate that the Materials tested do not comply with Contract requirements, all Materials covered by the same certification as the test sample shall be considered as non-conforming.

I. If, at any time, TriMet deems Contractor's quality control measures are not providing adequate inspection and testing, Contractor shall immediately take corrective action as directed by TriMet.

00605 TriMet Furnished Materials

A. Materials listed in the Contract as TriMet-furnished will be available to the Contractor free of charge at the location indicated, unless otherwise specified.

B. With respect to TriMet furnished materials, the Contractor shall:

   (1) Be responsible for all costs for loading, unloading, transporting, storing and handling Materials until incorporated into the Work.

   (2) Install and make the Material fully operational, in accordance with the Contract and manufacturer's requirements, including furnishing all incidental parts and materials, and scheduling code and other required inspections and tests.

   (3) Assume responsibility for storage and demurrage charges and replacement of Materials lost or damaged from any cause, at no cost to TriMet, commencing on the later of the date of the Notice to Proceed or, if not in storage when the Notice to Proceed is issued, on the date Materials are made available to the Contractor.

   (4) Notify TriMet immediately upon discovery of any deficiency or defect in Materials furnished.

C. All Materials furnished by TriMet will remain the property of TriMet. Excess Materials not incorporated in the Work shall be stored on site at a central, accessible location approved by TriMet.

00606 Handling and Storage of Materials

A. Materials shall be so stored as to preserve their quality and fitness for the Work. Stored Materials, even though determined acceptable before storage, may again be inspected prior to their use in the Work. Stored Materials shall be arranged so as to facilitate their prompt inspection. Approved portions of the
right of way or other TriMet property designated in the Contract as available for use by the Contractor may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by the Contractor at his expense. Private property shall not be used for storage purposes without written permission of the owner and/or lessee. Copies of such written permission shall be furnished TriMet upon request. Any use of private property by Contractor shall comply with all applicable zoning, land use restrictions, and other regulatory requirements.

B. TriMet-furnished Materials or Materials paid for prior to incorporation shall be stored in secure locations approved in writing by TriMet in a manner which will preserve their full value. Such Materials shall be prominently labeled as property of TriMet and shall not be commingled with non-TriMet Materials. If necessary, storage shall be in controlled environment buildings. If Materials are stored on private property, the Contractor shall furnish TriMet with written permission for storage, signed by the owner and/or lessee, which guarantees access to TriMet and rights of removal.

C. All Materials shall be handled and transported in such a manner as to preserve their quality and fitness for the Work.

00607  Fly Ash

If cement or concrete is to be provided pursuant to this Contract, Contractor may use fly ash as an optional or alternate material. Any use of fly ash in cement or concrete shall be in accordance with the standards referenced in 40 CFR Part 249 and the Specifications of this Contract.

END OF SECTION 00600 - MATERIALS
00700 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

00701 Permits, Fees, and Notices

A. Contractor shall be fully responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities, required to fulfill the Contract requirements and Contractor's obligations except for those identified in the Contract as being furnished or paid for by TriMet.

B. Contractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restrictions. Upon written request, Contractor shall furnish TriMet with satisfactory documentation evidencing compliance with the applicable requirements.

00702 Compliance with Laws and Regulations

A. The Contractor acknowledges that it has familiarized itself with the requirements of any and all applicable federal, state, county, and local laws, ordinances, codes, rules, and regulations, and the conditions of any required licenses and permits prior to entering into this Contract. Contractor shall comply with any and all of the foregoing at its sole cost and expense and without any increase in Contract price or Contract time on account of such compliance, regardless of whether such compliance would require additional labor, equipment, and/or materials not expressly provided for in the Contract, provided however, that if unexpected Work is required as a result of enactment of new or amendment of existing statutes, ordinances, or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the date proposals were due, TriMet shall act in accordance with ORS 279C.525.

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. The Contractor shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235, 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference.

Contractor acknowledges that the Oregon Government Standards and Practices laws (“Ethics Laws”), as set forth in ORS 244.010 et seq. are applicable to contractors when performing certain work on behalf of TriMet under contract and that the individual employees and agents of Contractor may be treated as public officials under ORS 244.020 (14). Contractor agrees to determine whether and under what circumstances it or its agents are subject to the Ethics Laws, as referenced herein and incorporated by reference, and shall comply and ensure compliance by those subject to Contractor’s control when performing work under this Contract.

B. In compliance with ORS 279C.525 the following is a list of federal, state, and local agencies, of which TriMet has knowledge, that have enacted ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources, or other matters that may affect the performance of this Contract:

Federal Agencies

Agriculture, Department of
Forest Service
Soil Conservation Service

Defense Department of
Army Corps of Engineers

Energy, Department of
Bonneville Power Administration
Federal Energy Regulatory Commission

Environmental Protection Agency

Interior, Department of the
  Heritage, Conservation, and Recreation Service
  Bureau of Indian Affairs
  Bureau of Land Management
  Bureau of Reclamation
  Office of Surface Mining Reclamation and Enforcement
  Geological Survey
  Minerals Management Service
  Fish and Wildlife Service
  National Park Service

Labor, Department of
  Occupational Safety and Health Administration
  Mine Safety and Health Administration

Nuclear Regulatory Commission

Transportation, Department of
  Coast Guard
  Federal Highway Administration
  Federal Railroad Administration

Treasury, Department of
  Bureau of Alcohol, Tobacco and Firearms

Water Resources Council

State of Oregon Agencies

Agriculture, Department of
  Soil and Water Conservation Division

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Insurance and Finance, Department of

Oregon Occupational Safety and Health Division

Labor and Industries, Bureau of

Land Conservation and Development Department
C. Contractor shall adhere to all applicable Federal, state, and local laws, regulations, and policies, including, but not limited to those related to workers’ compensation, all applicable provisions of the Contract Work Hours and Safety Standards Act, equal employment opportunity, nondiscrimination in services and affirmative action, including all regulations implementing Executive Order No. 11246 of the President of the United States, as amended by Executive Order 11375, Section 402 of the Vietnam Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, and all applicable terms and conditions prescribed for third party contracts by the U.S. Department of Transportation. Contractor shall adhere to all safety standards and regulations established by TriMet for Work performed on its premises or under its auspices.

D. Contractor shall comply with, and make a part of each subcontract in excess of one hundred thousand dollars ($100,000.00), all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal Contracts, grants or loans, of facilities included on the EPA List of Violating Facilities. Any violation of these laws, rules, or regulations shall be reported immediately to the Administrator of FTA and to the United States Environmental Protection Agency, Assistant Administrator for Enforcement (EN-329).

E. Contractor shall maintain at the Work Site copies of all permits, licenses, certificates, or other documentation demonstrating compliance with any applicable statute, regulation, ordinance, or rule or other requirements of this Contract. Contractor shall provide copies of such documentation to TriMet promptly upon request.
F. Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

G. Contractor shall not be entitled to any additional compensation or extension of time as a result of Contractor's violation of applicable regulatory requirements. If a delay results from such a violation, Contractor shall be responsible for all costs including, but not limited to, overtime premium associated with regaining the time lost as a result of such delay, and any damages, including liquidated damages, which may result from Contractor's failure to comply with the Construction Schedule as a result of such delay.

00703 Taxes

Unless otherwise provided in the Contract, Contractor shall pay all sales, use, and other similar taxes that are enacted at the time proposals are received.

00704 Liens Prohibited

Contractor shall not permit any lien or claim to be filed or prosecuted against TriMet, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately.

00705 Payment of Claims by TriMet

Contractor shall not permit any lien or claim to be filed or prosecuted against TriMet, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately.

00706 Indemnification

A. Contractor shall indemnify, hold harmless, and defend TriMet, Consultants, and their representatives, officers, directors, and employees (collectively, the "Indemnified Parties"), from any loss or claim made by third parties including legal fees, expert witness fees, and costs of defending actions or suits, resulting directly or indirectly from Contractor's performance or nonperformance of this Contract, where the loss or claim is attributable wholly or in part to the negligence or other fault of Contractor, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint or concurrent negligence or other fault of one or more of the Indemnified Parties and Contractor, the resulting damages shall be borne by each in proportion to the degree of negligence or other fault attributable to each. Contractor's obligation to indemnify the parties listed above shall not be limited by the types or amounts of insurance required by this Contract.

B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which the Indemnified Parties may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, TriMet may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claim or demand; provided, however, that TriMet may release such funds to Contractor if Contractor provides TriMet with adequate assurance of the protection of TriMet's interests. TriMet shall be the sole judge of whether such assurances are adequate.

00707 Insurance

A. During the term of this contract, Contractor shall purchase and maintain any insurance required by this contract. Contractor shall furnish acceptable certificates of insurance and additional
insured endorsements to TriMet within ten (10) days after award of this contract, and prior to commencement of any contract work.

Contractor shall be responsible for the payment of all premiums and deductibles and shall indemnify TriMet for any liability or damages that TriMet may incur due to Contractor’s failure to purchase or maintain any required insurance.

Contractor shall maintain insurance of the types and in the amounts described below:

B. Contractor shall maintain insurance of the types and in the amounts described below:

   (1) Commercial General Liability Insurance
       Commercial General Liability insurance, with coverage limits not less than:

       $1,000,000.00 per occurrence, bodily injury and property damage; and
       $2,000,000.00 general aggregate, bodily injury and property damage.

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

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

       (a) Bodily injury: $1,000,000.00 per person; $1,000,000.00 per accident; and

       (b) Property damage: $1,000,000.00 per accident.

   (3) Worker’s Compensation Insurance
       Oregon statutory workers’ compensation and employer’s liability coverage, including broad form all states protection, if applicable, voluntary compensation and Federal endorsement. Employer’s liability coverage shall have the following limits:

       (a) Bodily Injury by Accident: $1,000,000 each accident

       (b) Bodily Injury by Disease: $1,000,000 each employee

       (c) Bodily Injury by Disease: $1,000,000 policy limit

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

   (4) Builder’s Risk Insurance
       Contractor shall purchase and maintain in force builder’s risk insurance in the contract amount on the entire work covering physical loss or damage to items under construction and property at the construction site. This includes all materials at the site which are or will become a permanent part of the work. TriMet shall be named as a loss payee as its interest may apply.
Failure of TriMet to demand certificates of insurance, additional insured endorsements or other evidence of full compliance with these insurance requirements or failure of TriMet to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

C. The insurance required under this Section shall:

1. Include (as evidenced by endorsement) TriMet and its directors, officers, representative, agents, and employees as additional insureds with respect to work or operations connected with the contract (excluding Professional Liability and Worker’s Compensation policies);
2. Require the insurer to give TriMet not less than thirty (30) days written notice prior to termination, cancellation, or non-renewal of coverage;
3. Insurance policies shall be purchased only from insurance companies that meet TriMet's A.M. Best Rating criteria of “A - ” or better (excluding SAIF) and are authorized to do insurance business in Oregon;
4. Contractor will cause its underwriters of insurance policies to waive their rights of subrogation arising from the work performed under this Contract.

D. Subcontractor Furnished Insurance

Contractor shall ensure that its Subcontractors comply with the provisions contained in this Section and maintain, at their own expense, the following minimum insurance coverage on policy forms with Insurers acceptable to TriMet:

1. **Automobile Liability**

   Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits:
   
   a. Bodily injury: $1,000,000.00 per person; $1,000,000.00 per accident; and
   b. Property damage: $1,000,000.00 per accident.

2. **Workers Compensation and Employers Liability Insurance**

   Oregon statutory workers' compensation and employer's liability coverage, including broad form all states protection, if applicable, voluntary compensation and Federal endorsement. Employer’s liability coverage shall have the following limits:
   
   a. Bodily Injury by Accident: $1,000,000 each accident
   b. Bodily Injury by Disease: $1,000,000 each employee
   c. Bodily Injury by Disease: $1,000,000 policy limit

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

3. **Commercial General Liability Insurance**

   Commercial General Liability insurance, with coverage limits not less than:
$1,000,000.00 per occurrence, bodily injury and property damage; and
$1,000,000.00 general aggregate, bodily injury and property damage.

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

TriMet, its directors, officers, employees, and agents shall be included as additional insureds under the liability insurance policies referenced in Subparagraphs D(1) and D(3).

Prior to Subcontractor’s entry onto the Project Site, Contractor will obtain certificates of insurance evidencing Subcontractor’s coverage described in this Paragraph D. All insurance coverage outlined above shall be purchased only from insurance companies that meet TriMet’s A.M. Best Rating criteria of “A -” or better (excluding SAIF) and are authorized to do insurance business in Oregon. Insurance certificates shall state that the Subcontractor will give Contractor not less than thirty (30) days written notice prior to termination, cancellation, or non-renewal of coverage.

Contractor shall provide certified copies of such Subcontractor insurance policies at the request of TriMet.

E. Other Insurance

Such other insurance as the Contractor or Subcontractors may carry with respect to its normal business operations and/or property is at its own expense and risk.

F. Contractor and its Subcontractors shall be solely responsible for damage to their own equipment. Any policy or policies of insurance which Contractor elects to carry as insurance against loss or damage to its construction equipment or tools shall contain a provision waiving the insurer's right of subrogation against TriMet. Contractor waives its right of recovery against TriMet for loss or damage to Contractor’s construction equipment or tools.

G. Contractor shall be responsible for all materials until they have been incorporated into the Contract work and the work has been finally accepted by TriMet.

H. Contractor shall be responsible for all deductibles.

00708 Intellectual Property

A. TriMet, including its successors in interest, shall have the right, within the scope of the Contract, or for the purposes of operating and maintaining the Materials supplied, to use, duplicate, modify, and disclose all technical data, including computer software and documentation, developed under this Contract, and the information conveyed therein, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

B. The Contractor warrants that the Materials used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any intellectual property right, including patent, copyright, trademark, trade-name and trade secret (collectively, “Intellectual Property Rights”). Contractor shall hold harmless, defend and indemnify TriMet, Consultants, and their representatives, officers, directors, and employees (collectively, the “Indemnified Parties”) from any loss of any kind based on a claim that the Materials used on or incorporated into the Work infringe any Intellectual Property Right. Such indemnity shall include all damages and costs incurred by any of the Indemnified Parties as a result of the claim including attorney fees and expert witness fees.
C. The Contractor shall promptly report to TriMet in writing in reasonable detail, each notice or claim of infringement of any Intellectual Property Right arising out of the performance this Contract, of which the Contractor has knowledge.

D. The Contractor shall bear all costs arising from the use of patented or proprietary Materials or processes used on or incorporated in the Work. If the use of such Materials or processes is held to constitute an infringement and is enjoined, the Contractor shall, at its own expense:

(1) Secure for TriMet the right to continue using said Materials or processes by lifting the injunction or by procuring a license or licenses; or

(2) Replace the infringing Materials or processes with non-infringing Materials or processes; or

(3) Modify the Materials or processes so that they become non-infringing or remove the enjoined Materials or processes and refund the sum paid by TriMet therefore without prejudice to any other rights of TriMet.

E. The preceding Paragraphs B and D shall not apply to any Materials or processes specified by TriMet or its Consultants or manufactured to the design of TriMet or its Consultants or in accordance with the details contained in the Plans and Specifications; and as to such Materials and processes the Contractor assumes no liability whatsoever for patent or copyright infringement and TriMet will hold the Contractor harmless against any claims arising there from.

F. Patent rights arising out of the Work, as well as information, designs, specifications, know-how, data, and findings shall be made available for public use, unless TriMet shall, in specific cases where it is legally permissible, determine that it is in the public interest that such information not be made available.

G. If any invention, improvement or discovery of Contractor is conceived or first actually reduced to practice in the course of or under this Contract, which invention, improvement, or discovery may be patentable under the laws of the United States of America or any foreign country, the Contractor shall immediately notify TriMet and provide a detailed report. The rights and responsibilities of TriMet, Contractor, and the federal Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

H. Contractor shall deliver all technical data, including computer software and documentation, to TriMet. All software created and provided hereunder shall be considered a "work made for hire" under contract to TriMet and Contractor shall take any and all steps necessary and execute all formal agreements to fully vest copyright in TriMet. All software created hereunder shall be owned by TriMet and shall be considered a trade secret of TriMet, and Contractor shall not publish any software created for TriMet hereunder. Contractor shall provide TriMet with a properly executed copyright registration and assignment or other documentation vesting in TriMet sufficient ownership of each such item of technical data to allow TriMet to use, duplicate, modify, and disclose such data lawfully, and without additional payment, within the scope of the Contract, or for the purpose of operating and maintaining the Materials supplied, and to use, duplicate, modify, and disclose the same and the information conveyed therein, in whole or in part, and to permit others to do the same. No copyright matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for TriMet and its successors in interest to use, duplicate, modify, and disclose the same in the manner described herein. Contractor shall have no rights in software developed by TriMet, even if such software is embedded in Contractor-supplied software or functionally equivalent to Contractor-supplied software, or even if such software developed by TriMet includes substantially similar sequences, structure, and overall organization to Contractor-supplied software.

00709 Rights in Data
A. The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to project administration.

B. The following restriction applies to all subject data first produced in the performance of this Contract: Except for Contractor's use in conjunction with the Work required by this Contract, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of TriMet, until such time as the federal government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.

C. The Contractor shall hold harmless, indemnify and defend TriMet, Consultants, and their representatives, officers, directors, and employees (collectively, the "Indemnified Parties") against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract.

D. In the event that this Contract is not completed, for any reason whatsoever, all data developed under this Contract shall become subject data as defined in Paragraph A of this Article and shall be delivered as TriMet may direct.

00710 Ownership of Work and Material

All Work performed by Contractor pursuant to this Contract shall be the property of TriMet. TriMet shall own all construction, and any data, documents, plans, specifications, working papers, computer programs, photographs, or other material produced by Contractor pursuant to this Contract, and Contractor hereby assigns and transfers to TriMet any and all copyrights for such materials.

As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to TriMet at the time of the payment. To the extent that title has not previously been vested in TriMet by reason of payments, full title shall pass to TriMet at delivery of the Work at the location specified in the Contract. Work to which TriMet has received title by reason of progress, partial or other payments shall be segregated from other Contractor or subcontractor materials and clearly identified as TriMet property.

The title transferred as above shall in each case be good, and free and clear of any and all security interests, liens, or other encumbrances. The Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any way that would result in any lien, security interest, charge, or claim upon or against said items.

The transfer of title as provided above shall not imply acceptance by TriMet, nor relieve the Contractor from the responsibility to strictly comply with the Contract, and shall not relieve the Contractor of responsibility for any loss of or damage to such items.

The Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Article.

00711 Consultant Conflict of Interest

Contractor shall not use any consultant who concurrently is employed by TriMet or by TriMet's consultants, including, but not limited to surveyors, engineers, architects, and testing laboratories, without first obtaining TriMet's approval in writing.
00712 Conservation

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

00713 Historical, Scientific, and Archaeological Discoveries

A. Contractor shall immediately report the discovery of any articles of historical, scientific or archaeological interest to TriMet. Contractor shall take all necessary steps to preserve the articles and shall cease operations which would affect the finds until otherwise directed by TriMet. TriMet shall decide the further operations of Contractor with respect to the discovery including disposition of the articles. As between Contractor and TriMet, TriMet shall have sole and exclusive title to any discovered articles.

B. Other than reporting to TriMet as required by this Article, Contractor shall keep the discovery of any articles of historical, scientific or archaeological interest confidential, and shall not discuss or disclose the discovery of any articles of historical, scientific or archaeological interest to any party other than TriMet without TriMet’s prior written consent. This includes, but is not limited to, refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public.

00714 Maintaining Traffic

Contractor shall be responsible for safely and efficiently maintaining rail, vehicular, and pedestrian traffic in all areas affected by its work, and shall comply with all requirements of authorities or owners having jurisdiction over the Work Site.

00715 Noise and Vibration Control

A. Contractor shall comply with all applicable Federal, state, and local laws, ordinances and regulations regarding control of noise and vibration.

B. Contractor is responsible for applying for and obtaining any noise variances necessary for contract Work at its own expense.

C. All construction equipment used on Contract Work shall have sound control devices no less effective than the devices provided on the original equipment. Every internal combustion engine in construction equipment shall have a muffled exhaust, and shall comply with pertinent local, state and federal laws and regulations.

D. All equipment shall comply with pertinent equipment noise standards of the U.S. Environmental Protection Agency.

E. Contractor shall provide all necessary testing or monitoring equipment required to demonstrate compliance with this Article.

F. TriMet or the responsible regulatory authority may conduct tests that it deems to be necessary or convenient to verify compliance with this Article. Contractor shall cooperate with and assist the testing personnel as required for the performance of their duties.

G. Contractor shall immediately modify its operations including any noncomplying equipment to bring them within the acceptable limits of noise level as established by the U.S. Environmental Protection Agency and state and local requirements. Contractor shall bear all costs associated with modifying its operations and such nonconforming equipment.
00716 Permissible Days and Hours of Work

Unless otherwise provided for in the Technical Specifications, the following shall apply:

A. Contractor shall comply with all applicable statutes, regulations, rules, ordinances, or other such measures which limit, restrict, or regulate the times of day and/or days of the week when any activities required by this Contract can be performed.

B. Contractor is responsible for applying for and obtaining any waivers or variances necessary for Contract Work at its own expense except for those specifically identified in this Contract as provided by TriMet.

C. Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless TriMet has expressly stated in this Contract that waivers, variances, or other authorizations shall apply to Contractor's activities, or specific portions thereof, and such waivers, variances, or other authorizations are unavailable at the specified date or are subsequently withdrawn and such unavailability or withdrawal did not result from some act or omission by Contractor.

00717 Hazardous and Contaminated Substance

A. General

"Hazardous substance(s)" shall mean those substances as defined in Oregon Revised Statutes (ORS) 465.200 et seq.

"Contaminated substance" shall mean materials, including but not limited to soil, groundwater, surface water, and other materials that can only be legally disposed in a regulated and permitted disposal facility.

"Release" shall be given the meaning as defined in ORS 465.200 et seq.

(1) All work involving the removal, remediation, handling, transportation, treatment or disposal of hazardous and/or contaminated substances shall be performed only by a contractor licensed to perform such work and has a minimum of three years experience in performing such work.

All such work involving hazardous and/or contaminated substances shall be performed only by personnel who have been trained in accordance with 29 CFR 1910.120 and certified to perform such work. The Contractor shall comply with all relevant federal, state, and local statutes, rules, regulations and ordinances pertaining to such work. Contractor shall take all necessary precautions to protect Contractor personnel, TriMet personnel, workers and the public from exposure to hazardous and/or contaminated substances.

(2) Contractor shall be liable and indemnify and hold TriMet harmless for any and all costs, expense, damages, claims, and causes of action of any kind, including attorney fees and expert witness fees, related to or arising out of a release of hazardous and/or contaminated substance to the extent such release was caused or contributed to by Contractor's intentional acts, negligence, or failure to perform in accordance with the Contract. Nothing in this Article shall limit Contractor's liability or responsibility under any other provisions of this Contract.

B. Unknown Hazardous and/or Contaminated Substances

(1) Contractor shall immediately cease working in any particular area of the Work Site where an unanticipated or unknown hazardous or contaminated substance has been discovered or encountered and shall immediately notify TriMet of any hazardous or contaminated substance which Contractor discovers or encounters during performance of the Work required by this Contract, unless the remediation or removal of such hazardous or contaminated substance is specifically part of the Work.
(a) Abnormal conditions or potential indicators of a hazardous or contaminated substance shall include, but shall not be limited to, the following:

(i) Presence of underground storage tanks or drums.

(ii) Discolored earth, metal, wood, or other debris.

(iii) Visible fumes/vapors.

(iv) Obnoxious or unusual odors.

(v) Excessively hot earth.

(vi) Smoke.

(vii) Abnormal or irregular results from health and safety air monitoring.

(viii) Any other condition which appears abnormal that could be a possible indicator of a hazardous and/or contaminated substance.

(ix) Such conditions shall be treated with extraordinary caution.

(2) Upon being notified by Contractor of the presence of unanticipated or unknown hazardous or contaminated substance(s) on the Work Site, TriMet shall promptly investigate the conditions and provide further direction to the Contractor with respect to the hazardous or contaminated substance(s).

(3) The Contractor's operation shall not resume until so directed by TriMet.

(4) Unless otherwise directed by TriMet, Contractor shall take all appropriate measures, if feasible, consistent with protecting the health and safety of Contractor's employees, to stop or minimize the immediate spread of any hazardous substance(s) encountered.

C. Contractor's Materials/Unknown Hazardous and Contaminated Substance Work Required by this Contract

(1) Contractor shall obtain TriMet's written consent prior to bringing into the Work Site any hazardous and/or contaminated substance(s). Notwithstanding such written consent from TriMet, the Contractor, at all times, shall:

(a) Properly handle, store, use, and dispose of all hazardous and/or contaminated substances brought onto the Work Site, in accordance with all applicable federal, state, and local statutes, rules, regulations, and ordinances;

(b) In the event of a release, take all appropriate measures, consistent with protecting the health and safety of Contractor personnel, TriMet personnel, and the public, to stop the spread of any hazardous and/or contaminated substance(s);

(c) Promptly clean up and dispose of materials resulting from the release, without cost to TriMet, to the satisfaction of TriMet and the governing regulatory agencies in accordance with all applicable federal, state, and local statutes, rules, regulations, and ordinances; and

(d) Be held liable and indemnify and hold TriMet harmless for any and all releases of hazardous and/or contaminated substance(s) brought onsite by the Contractor during the performance of this Contract.
(2) Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-108 for petroleum products. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to TriMet. A written follow-up report shall be submitted to TriMet within forty-eight (48) hours of the telephonic report. Such written report shall contain as a minimum:

(a) Description of items released (identity, quantity, manifest number, and all other documentation required by law.)

(b) Whether amount of items released is EPA/DEQ reportable and, if so, when it was reported.

(c) Exact time and location of release, including a description of the area involved.

(d) Containment procedures initiated.

(e) Summary of communications about the release that Contractor has had with members of the press or public officials.

(f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(g) Injuries to persons or damage to property, if any, resulting from or aggravated by, the release.

D. Environmental Cleanup Certificate

(1) Contractor shall submit, as part of the documentation required for Final Acceptance or as a separate written notice submitted with or before the Notice of Final Completion, copies of all disposal records and required permits and a certificate of environmental clean-up. Contractor shall certify that all hazardous and/or contaminated substance(s) which were produced, removed, cleaned-up, handled, transported, treated, or disposed as a result of Contractor's activities under this Contract, including the clean-up of hazardous and contaminated substances brought onto the Work Site by Contractor or the removal and/or remediation of hazardous and contaminated substances which Contractor performed as part of the Work under this Contract, has been completed and the materials disposed of in accordance with all applicable federal, state and local statutes, rules, regulations and ordinances, and to the satisfaction of all agencies having jurisdictions over such hazardous and contaminated substances.

00718 Asbestos Provisions

A. Release shall be given the meaning as defined in Oregon Revised Statutes (ORS) 465.200 et seq.

B. All work involving asbestos or asbestos-containing materials (collectively "asbestos-containing materials"), shall be performed only by a contractor licensed and certified to perform such work. All work involving asbestos-containing materials shall be performed only by personnel who have been trained and certified to perform such work. The Contractor shall comply with all relevant federal, state, and local statutes, rules, regulations and ordinances pertaining to such work. Contractor shall take all necessary precautions to protect Contractor’s personnel, TriMet personnel, workers and the public from exposure to asbestos-containing materials.

C. Contractor shall immediately notify TriMet if asbestos-containing materials are discovered which were not previously identified in the Plans and Specifications. The Contractor shall immediately cease all activities that could cause the release of such materials. TriMet will promptly advise the Contractor of further actions regarding the asbestos-containing materials.
D. For the demolition of structures identified under this Contract involving asbestos-containing materials, a licensed asbestos contractor shall observe all demolition activities for early identification of any additional asbestos-containing materials.

E. Contractor shall be liable and indemnify and hold TriMet harmless for any and all costs, expenses, damages, claims, and causes of action, or any of them, including attorney fees and expert witness fees, related to or arising out of a release of asbestos-containing materials to the extent such release was caused or contributed to by Contractor's intentional acts, negligence, or failure to perform in accordance with the Contract. Nothing in this Article shall limit Contractor's liability or responsibility under any other provisions of this Contract.

F. Any work involving the demolition or abatement of asbestos containing materials in a state building shall be performed in accordance with ORS 468A.

00719 Excavation by the Contractor

The Contractor shall comply with the requirements of ORS 757.542 through 757.562 regarding notification of utilities prior to undertaking any excavation required by this Contract.

00720 Publicity and Advertising

Contractor, its subcontractors, and suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of this Contract at any time without the prior written authorization of TriMet. Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work site other than those prescribed by the Contract or by law without the prior written authorization of TriMet. In addition, advertising or other copy mentioning TriMet or quoting the opinions of any of its employees shall not be released before TriMet approves such copy in writing. Any material proposed for publication must be factual, and not state or imply endorsement by TriMet of any firm, service, or product.

00721 Seismic Requirements

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.

00722 Energy Conservation

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

00723 Drug Testing Program

In accordance with ORS 279C.505, Contractor shall demonstrate that an employee drug testing program is in place.

00724 Not Used

END OF SECTION 00700 - LEGAL RELATIONS
00800 PROSECUTION AND PROGRESS

00801 Time of Completion

Time is of the essence in the performance of this Contract. Contractor shall proceed with performance of the Work under this Contract immediately after receipt of the Notice to Proceed, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in this Contract. Contractor shall not commence work until it receives the Notice to Proceed, except as otherwise required by this Contract.

00802 Computation of Time

All time periods measured in days shall be based upon calendar days, unless specified otherwise. Time periods measured in days shall be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday, or a legal holiday as defined in ORS 187.010 or ORS 187.020. If the last day of the period is a Saturday, Sunday, or legal holiday, the period shall run until, and shall include, the next day that is not a Saturday, Sunday, or legal holiday.

00803 Progress Schedule

The Contractor shall develop and deliver to TriMet schedules for the Work. The schedules shall be complete in all respects including items to be submitted to TriMet. Specific requirements for these schedules may be found in the Special Provisions and the Specifications.

The Construction Schedule, as accepted by TriMet, shall be as described in the Specifications and shall set forth times for completion of various components of the Work and Project Milestones; any such Project Milestones have been established by the Special Provisions of the Contract. The accepted Construction Schedule shall become part of the Contract and the Contractor shall be required to perform in accordance with this schedule or with the current accepted revision thereof.

00804 Delays and Extension of Time

A. The Contractor will be granted an extension of time for any delay on the critical path to completion of any Contract milestone, based on the latest approved Construction Schedule, arising from acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or wrongful acts of owners or occupants of property adjoining the Work Site, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has notified TriMet in writing of the cause or causes of delay within twenty-four (24) hours from the beginning of any such delay. Such delay shall not be the basis for a claim for additional compensation. For the purposes of this Paragraph, weather conditions shall not be deemed unusually severe if they fall within two standard deviations from the mean of data recorded by the U.S. Weather Bureau for the Portland metropolitan area over the past twenty (20) years.

B. If Contractor is delayed in the progress of the Work by an act, omission, or neglect of TriMet, its agents or representatives, or an act or omission of another contractor in the performance of a contract with TriMet, Contractor shall, within twenty-four (24) hours after the commencement of such delay, file with TriMet a written notice of delay together with a request for an extension of the Contract period for the portion of the Work so delayed. The notice shall set forth in detail the reasons for the delay, and the period for which an extension is requested. If the delay results in unforeseen and additional expenses to Contractor in performing the Work, Contractor shall file with the written notice of such delay, a request for additional compensation, together with the Contractor's estimate of anticipated additional expense for which compensation is requested. Contractor may submit a revised request for an extension of time and/or additional compensation within fourteen (14) days following the cessation of such delay.
C. When such a request is received, TriMet will ascertain the reasons for and extent of such delay. If TriMet determines that the cause was beyond the control and without the fault or negligence of Contractor and the facts justify an extension of time, or additional compensation, or both, the Contract will be modified accordingly, in writing, by a Change Order. Unless the above notice and appropriate requests are filed with TriMet pursuant to this Article within twenty-four (24) hours after commencement of the delay, or such other times as may be prescribed herein, no extension of time will be made or additional compensation allowed. In the case of a continuing cause of delay, only one request is necessary. If TriMet determines that the facts do not justify an extension of time or additional compensation, such request will be denied. TriMet's findings of fact for either determination will be delivered to Contractor in writing. Contractor agrees that any extension of time and/or additional compensation granted under this Article shall be its sole and exclusive remedy for the consequences of any delay described above.

D. Unusually severe weather delays shall apply only if they affect particular portions of the Work and operations of the Contractor, as determined by TriMet. The effects of weather less severe than the norm based on the criteria stated in Paragraph A, may be taken into account in granting time extensions.

E. An extension of time will not be granted for a delay caused by a shortage of Materials, except TriMet-furnished Materials, unless the Contractor furnishes to TriMet documented proof that it has made every effort to obtain such Materials from every known source within reasonable reach of the Work Site. The Contractor shall also submit proof, in the form of network analysis data, that the inability to obtain such Materials when originally planned, did in fact cause a delay in completion of any Contract milestone which could not be compensated for by revising the sequence of operations. Only the physical shortage of Materials will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that Materials could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of TriMet that such Materials could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

F. No extension of time will be granted under this Article for any delay to the extent: (1) that performance would have been delayed by any Contractor induced causes including but not limited to the fault or negligence of the Contractor or its subcontractors; or (2) for which remedies are provided or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Article shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the delay.

G. An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until Contract Closeout has been completed and accepted by TriMet. Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not constitute a waiver on the part of TriMet of any rights under this Contract.

H. Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or Materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by TriMet of TriMet's right to abrogate this Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.
00805 Suspension of Work

A. TriMet may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that TriMet determines appropriate for its own convenience.

B. If the performance of all or part of the Work is suspended, delayed, or interrupted for an unreasonable period of time:

(1) by an act of TriMet in the administration of this Contract, if not attributable to actions, inactions or defaults of the Contractor; or

(2) by TriMet's failure to act within the time specified in this Contract (or within a reasonable time if not specified),

an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified by issuance of a Change Order. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

00806 Maintenance During Suspension

In preparation for and during suspensions of Work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace at no cost to TriMet Work that is damaged or deteriorated during a Work suspension due to Contractor's failure to comply with this Paragraph. If TriMet finds that Contractor is not taking a reasonable precaution and Contractor fails to take the precaution within forty-eight (48) hours after written notice from TriMet, TriMet may cause the precaution to be taken and recover the reasonable costs of taking the precaution from Contractor.

00807 Use of Completed Portions of the Work

A. Whenever, as determined by TriMet, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of TriMet requires such use, TriMet may take possession of or use such portion of the Work. Such use by TriMet shall in no case be construed as Final Acceptance, and shall neither relieve the Contractor of any of its responsibilities under the Contract, nor act as a waiver by TriMet of any of the conditions thereof. The Contractor shall not be liable for the cost of repairs, rework, or renewals that may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, the Contractor shall notify TriMet in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with Article 00406, Changes in the Work. Any disputes regarding such entitlement shall be resolved in accordance with the provisions of Article 00511 Disputes.

B. If in the course of such use the Work proves to not be in compliance with the Contract, TriMet shall have the right to continue such use until such portion of the Work can, without injury to TriMet, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory Materials, as necessary for such portions of the Work to comply with the Contract. The Contractor shall be given the opportunity to make the repairs within twenty-four (24) months.

C. The Contractor shall not use any permanently incorporated Materials unless TriMet approves such use in writing. Where Contractor's request is granted for the use of certain Materials, the Contractor shall properly use and maintain, and upon completion of its use, and at its own expense, recondition such Materials to the satisfaction of TriMet.
00808 Prime Contractor Participation

A. The Contractor shall perform a minimum percentage of the Work, on the Work Site, with its own organization. This percentage is set forth in the Special Provisions. Items designated as "Specialty Items" in the Special Provisions, if subcontracted, will be deducted from the original Contract price before computing the amount of Work required to be performed by the Contractor's own organization.

B. The phrase "Contractor's own organization" as used in this Article includes only workers employed and paid directly by the Contractor, equipment owned or rented by the Contractor, and incidental rental of operated equipment.

C. Only pay items of the Contract shall be used in computing the total amount of construction work done at the Work Site. If an entire pay item is subcontracted, the amount of Work subcontracted will be the total amount proposed for the pay item.

D. If a portion of a pay item is subcontracted, the amount of Work subcontracted will be determined by multiplying the estimated percentage of the pay item subcontracted by the total amount proposed for the pay item, determined from information submitted by the Contractor and subject to TriMet's approval.

00809 Subcontractors and Suppliers

A. No subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers including persons directly or indirectly employed by them, their guests and invitees. The Contractor shall have sole responsibility for managing and coordinating the operations of its subcontractors and suppliers, including the settlement of disputes with or between them.

B. Nothing contained in this Contract shall be deemed to create a contractual relationship between any subcontractor or supplier and TriMet.

00810 Identification and Approval of Subcontractors

A. Within ten (10) days after awarding a subcontract at any tier, Contractor shall submit to TriMet a list of all proposed subcontractors, including those previously identified in the proposal documents as DBEs. The list shall identify the name of each subcontractor, whether the subcontractor is a Disadvantaged Business Enterprise, and the portion of the Work to be performed by each subcontractor. The information submitted by Contractor shall be sufficient to allow TriMet to determine the percentage of Work subcontracted for purposes of Article 00808 Prime Contractor Participation.

B. If following award of the Contract, Contractor proposes to subcontract a portion of the Work not identified with the submission of the proposal, Contractor shall obtain TriMet's approval prior to entering into the subcontract by following the procedure in Article 00812, Substitution of Subcontractors.

C. A subcontractor may be rejected by TriMet if it has breached a contractual obligation or has failed to substantially perform a contractual obligation regardless of whether that failure was formally designated a breach of contract by the contracting agency. Failure to complete performance of an obligation on time, including, but not limited to failure to meet a contract milestone date on a prior TriMet contract, shall be deemed a failure to substantially perform that obligation.

00811 Subcontract Provisions

Contractor shall include in each subcontract, and require each subcontractor to include in any lower tier subcontracts, any provisions necessary to make all of the provisions of this Contract fully effective. Contractor shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.
00812 Substitution of Subcontractors

Contractor shall request in writing TriMet's written approval before replacing a subcontractor. The request shall contain the information required in Article 00810, Identification and Approval of Subcontractors. If Contractor wishes to replace a DBE subcontractor, Contractor shall use good faith efforts to substitute another qualified DBE subcontractor. Substitute subcontractors will be evaluated in the same manner as subcontractors identified in the proposal.

00813 Termination in the Public Interest

A. TriMet may terminate performance of work under this Contract in whole, or from time to time in part, if TriMet determines that a termination is in the public interest. TriMet shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and except as directed by TriMet, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.

2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to finally complete the continued portion of the Contract.

3. Terminate all subcontracts or orders to the extent they relate to the work terminated.

4. Assign to TriMet, as directed by TriMet, all right, title and interest of the Contractor under the subcontract so terminated, in which case TriMet shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

5. With approval or ratification to the extent required by TriMet, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontract; the approval or ratification will be final for purposes of this clause.

6. As directed by TriMet, transfer title and deliver to TriMet (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information and other property that, if the Contract had been finally completed, would be required to be furnished to TriMet.

7. Finally complete performance of the work not terminated.

8. Take any action that may be necessary, or that TriMet may direct, for the protection and preservation of the property related to this Contract that is in possession of the Contractor and in which TriMet has or may acquire an interest.

9. Use its best efforts to sell, as directed or authorized by TriMet, any property of the types referred to in sub-paragraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, TriMet. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by TriMet under this Contract, credited to the price or cost of the work, or paid in any other manner directed by TriMet.

C. After expiration of the plant clearance period as defined in subpart 45.6 of the Federal Acquisition Regulations, the Contractor may submit to TriMet a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by TriMet.
The Contractor may request TriMet to remove those items or enter into an agreement for their storage. Within fifteen (15) days, TriMet will accept title to those items and remove them or enter into a storage agreement. TriMet may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

D. After termination, the Contractor shall submit a final termination settlement proposal to TriMet in the form and with the certification prescribed by TriMet. The Contractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by TriMet upon written request of the Contractor within this one (1)-year period. However, if TriMet determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If the Contractor fails to submit the proposal within the time allowed, TriMet may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

E. Subject to paragraph D above, the Contractor and TriMet may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of costs shown in subparagraph F(2) below, may not exceed the total Contract price as reduced by (1) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

F. If the Contractor and TriMet fail to agree on the whole amount to be paid the Contractor because of the termination of work, TriMet shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph E above:

1. For contract work performed before the effective date of termination, the total (without duplication of any items) of-
   a. The cost of this work;
   b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (a) above; and
   c. A sum, as profit on (a) above, determined by TriMet under subpart 49.202 of the Federal Acquisition Regulations in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been finally completed, TriMet shall allow no profit under this subdivision (c) and shall reduce the settlement to reflect the indicated rate of loss.

2. The reasonable costs of settlement of the work terminated, including:
   a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
   b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
   c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

G. Except for normal spoilage, and except to the extent that TriMet expressly assumed the risk of loss, TriMet shall exclude from the amounts payable to the Contractor under paragraph F above, the fair value, as determined by TriMet of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to TriMet or to a buyer.
H. The cost principles and procedures of part 31 of the Federal Acquisition Regulations in effect on the
date of this Contract, shall govern all costs claimed, agreed to, or determined under this clause.

I. The Contractor shall have the right to appeal any determination made by TriMet under paragraph D, F,
or K under the Disputes clause of this Contract, except that if the Contractor failed to submit the
termination settlement proposal within the time provided in paragraph D or K, and failed to obtain a time
extension, there is no right of appeal. If TriMet has made a determination of the amount due under
paragraph D, F, or K, TriMet shall pay the Contractor (1) the amount determined by TriMet if there is no
right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

J. In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this
contract;

(2) Any claim which TriMet has against the Contractor under this Contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the
Contractor or sold under the provisions of this clause and not recovered by or credited to TriMet.

K. If the termination is partial, the Contractor may file a proposal with TriMet for an equitable adjustment of
the price(s) of the continued portion of the Contract. TriMet shall make any equitable adjustment agreed
upon. In the absence of agreement, TriMet shall make any equitable adjustment it deems appropriate
under the circumstances. Any proposal by the Contractor for an equitable adjustment under this clause
shall be requested within ninety (90) days from the effective date of termination unless extended in
writing by TriMet.

L. TriMet may, under the terms and conditions it prescribes, make partial payments and payments against
costs incurred by the Contractor for the terminated portion of the Contract, if TriMet believes the total of
these payments will not exceed the amount to which the Contractor will be entitled.

(1) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the
excess to TriMet upon demand, together with interest computed at the rate established by the
Secretary of the Treasury under 60 U.S.C. App. 1215(b)(2). Interest shall be computed for the
period from the date the excess payment is received by the Contractor to the date the excess is
repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's
termination settlement proposal because of retention or other disposition of termination inventory
until ten (10) days after the date of the retention or disposition, or a later date determined by TriMet
because of the circumstances.

M. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and
documents relating to the terminated portion of this Contract for three (3) years after final settlement.
This includes all books and other evidence bearing on the Contractor's costs and expenses under this
Contract. The Contractor shall make these records and documents available to TriMet, at the
Contractor's office, at all reasonable times, without any direct charge. If approved by TriMet,
photographs, microphotographs, or other authentic reproductions may be maintained instead of original
records and documents.

00814 Termination for Default

A. TriMet may terminate this Contract for default by the Contractor. The Contractor is in default if:

(1) The Contractor is in material breach of any provision of this Contract;

(2) The Contractor abandons the Contract;
(3) To the extent permitted by the United States Bankruptcy Code, Contractor becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt, is subject to appointment of a receiver who is not discharged within forty-five (45) days after appointment, is subject to the filing of an involuntary petition in bankruptcy which is not dismissed within thirty (30) days after filing, or Contractor’s interest in this Contract becomes subject to attachment or levy of execution which is not discharged or released within ten (10) days following same;

(4) Contractor becomes a corporation in dissolution, or voluntarily or involuntarily forfeits its corporate charter;

(5) Contractor fails to abide by any applicable laws, ordinances or regulations including those of the United States, State of Oregon, any local jurisdiction having authority over the Work Site or TriMet, and such failure continues for a period of ten (10) days after receipt by Contractor of written notice of such failure; or

(6) Contractor repeatedly fails to make prompt payment to subcontractors or for Material or labor.

B. In addition to its right to terminate the Contract for the reasons set forth in paragraph A of this Article, if the Contractor refuses or fails to prosecute the Work or any separable part with the diligence that will insure its completion within the time specified in this Contract including any extension, TriMet may, by written notice to the Contractor, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, TriMet may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the Work Site necessary for completing the Work. The Contractor and its sureties shall be liable for any damage to TriMet resulting from the Contractor's refusal or failure to complete the Work within the specified time, or for liquidated damages for delay, as fixed in the Contract, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by TriMet in completing the Work.

C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued In the Public Interest.

D. The rights and remedies of TriMet in this Article are in addition to any other rights and remedies provided by law or under this Contract.

END OF SECTION 00800 – PROSECUTION AND PROGRESS
00900 PAYMENT

00901 Payment Procedures

A. TriMet shall pay to Contractor, at the times and in the manner hereinafter provided, the amount set forth in the Proposal Schedule for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.

B. Unless otherwise specified in the Special Provisions or Specifications, within thirty (30) days after receipt of TriMet's Notice to Proceed, and prior to submission of Contractor's first invoice, Contractor shall submit to TriMet a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as TriMet may require. When accepted by TriMet, the supplementary Schedule of Values shall be the basis for determining the amount of each progress payment.

C. Contractor shall submit monthly invoices, using an invoice template in Excel that will be provided by TriMet, setting forth the percentage of Work, or units of Work where applicable, completed during the month and the amount due for such Work based upon the supplementary Schedule of Values submitted in accordance with paragraph B of this Article.

D. Contractor shall not request payment from TriMet of any amount that the Contractor has withheld or retained from subcontractors or suppliers in accordance with ORS 279C.590 (6) until such time that Contractor has determined and certified to TriMet that the subcontractor is entitled to the payment of such amount.

E. Invoices shall be submitted in triplicate and shall include a cover summary sheet provided by TriMet. The invoices shall be accompanied by at least two sets of detailed back-up information. The form and content of invoices are subject to review and approval by TriMet. All of Contractor's invoices shall be sent directly to the attention of the Resident Engineer and shall contain a reference to the Contract Number. TriMet's Resident Engineer will be responsible for forwarding the invoice that is approved for payment to TriMet's Finance Department.

F. TriMet shall pay the approved invoice, less five percent (5%) for retainage, except as provided under 00903, Reduction of Retainage, within thirty (30) days after its receipt by TriMet. All retainage shall be held by TriMet until the time for final payment and TriMet's receipt of Consent of Surety.

G. In instances when an invoice is filled out incorrectly, or when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, TriMet shall notify the Contractor in writing, within fifteen (15) days of TriMet's receipt of such invoice, stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within seven (7) days of being notified by TriMet, shall not cause a payment to be made later than specified in this section unless interest is also paid.

H. Contractor warrants that (1) title to all Materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to TriMet at the time Contractor receives the progress payment; (2) all Materials are free and clear of all liens, claims, security interests, or encumbrances; and (3) no Materials have been acquired by Contractor, or by any other person performing Work at the Work Site or furnishing Materials for the Work under this Contract, that are subject to an agreement under which an interest in, or encumbrance on, the Materials or equipment is retained by the seller or otherwise imposed. Notwithstanding the provisions of this paragraph, the risk of loss of all Materials incorporated in the Work shall remain with Contractor until Final Completion and Final Acceptance by TriMet.
I. No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by TriMet, shall constitute an acceptance of any Work that is not in accordance with the Contract.

00902 Retainage

A. Retainage shall be held by TriMet in an interest bearing account on behalf of Contractor in an authorized depository of TriMet funds, or if approved by Contractor, TriMet shall allocate interest earnings to Contractor's retainage using as an interest factor TriMet's effective annual interest rate received on TriMet's short term investments calculated monthly. TriMet makes no warranties as to the amount of interest to be paid on said investments. Upon final payment, Contractor shall be entitled to all retainage and accumulated interest.

B. The Contractor may deposit bonds or securities with TriMet or in any bank or trust company to be held in lieu of the cash retainage for the benefit of TriMet. Bonds or securities deposited by Contractor shall comply with the provisions of ORS 279C.560. If the Contractor elects to deposit bonds or securities in lieu of retainage, TriMet shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570. Interest on such bonds or securities shall accrue to the Contractor.

00903 Reduction of Retainage

After fifty percent (50%) of the Work under the Contract is completed, the Contractor may make written application to TriMet to reduce or eliminate retainage on future Contract payments. Any such application by Contractor shall include written approval of Contractor's surety. If TriMet determines that the progress of the Work is satisfactory, TriMet may reduce or eliminate retainage on future Contract payments. Upon receipt of a written application by the Contractor, TriMet shall respond to the Contractor in a reasonable time. When the contract work is 97.5 percent completed, TriMet may, at TriMet's discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the Contractor, TriMet shall respond in writing within a reasonable time.

00904 Withholding of Payments by TriMet

A. TriMet may withhold all or part of a payment to the extent deemed necessary to protect TriMet from loss because of:

(1) Defective work not remedied;

(2) Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;

(3) Failure of Contractor to make payments properly to subcontractors, or for labor, Materials, or equipment;

(4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract sum;

(5) Damage to TriMet or another contractor;

(6) Contractor's failure to carry out the Work in accordance with the Contract;

(7) Contractor's failure to comply with any material provision or requirement of the Contract;

(8) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor.
(9) Contractor’s failure to provide the required progress schedules and record drawings in accordance with the Contract;

(10) Any sums expended by TriMet in performing any of the Contractor's Work under the Contract which the Contractor has failed to perform; or

(11) Liquidated damages.

00905 Progress Payments to Subcontractors

A. The Contractor shall comply with the provisions of ORS 279C.580 relating to Contractor's relations with subcontractors.

B. Contractor shall include in each subcontract for property or services entered into by the Contractor and a subcontractor, including a Materials supplier, for purposes of performing the Work under this Contract:

(1) A payment clause that obligates Contractor to pay the subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by TriMet under this Contract; and

(2) An interest penalty clause that obligates Contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with subparagraph B(1) of this Article, as follows:

(a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(b) Computed at the rate specified in ORS 279C.515(2).

(3) A clause requiring each subcontractor to include both a payment clause and an interest penalty clause conforming to the standards of subparagraphs 2(a) and (b) of this Article in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with lower tier subcontractors and suppliers.

C. A dispute between the Contractor and a subcontractor relating to the subcontractor's entitlement to a payment or the amount thereof, or a late payment interest penalty under a clause included in a subcontract pursuant to Paragraph B of this Article, does not constitute a dispute to which TriMet is a party. TriMet shall not be included as a party in any administrative or judicial proceeding involving such a dispute.

D. The Contractor's obligation to pay a late payment interest penalty to a subcontractor under a clause included in a subcontract pursuant to Paragraph B of this Article shall not be an obligation of TriMet for such late payment interest penalty. A cost reimbursement claim shall not include any amount for reimbursement of such late payment interest penalty.

E. If Contractor withholds or retains payment from a subcontractor pursuant to ORS 279C.580 (6), Contractor shall furnish TriMet with a copy of the notice given to the subcontractor or supplier in compliance with ORS 279C.580(8) specifying:

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor or supplier in order to receive payment of the amounts withheld.
F. If Contractor has made application for payment to TriMet and subsequently withholds or retains payments from a subcontractor under the circumstances described in ORS 279C.580(6), Contractor shall be obligated to pay interest to TriMet in accordance with the provisions of ORS 279C.580(6).

G. TriMet may, upon request and at its discretion, furnish to any subcontractor information regarding the percentages of completion or the amounts applied for by Contractor and the action taken on the application by TriMet on account of work done by the subcontractor.

00906 Interest on Overdue Payments

A. Interest shall be paid automatically when payments become overdue. Payments are due thirty (30) days following receipt of an invoice from Contractor or fifteen (15) days following approval of an invoice by TriMet, whichever is the earlier date. Interest will accrue at the rate of one and one-half percent per month, or such other rate as may be provided by law, on the progress payment, not including retainage, due the Contractor. Interest payments shall accompany the net amount due Contractor on the invoice. Contractor is not required to petition, invoice, bill or wait additional days to receive interest due [ORS 279C.570(2) and (3)].

B. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between TriMet and the Contractor. Whenever a Contractor brings formal administrative or judicial action to collect interest due under the provisions of ORS 279C.570, the prevailing party shall be entitled to costs and reasonable attorney fees. [ORS 279C.570(6)]

00907 Payment for Mobilization and Preparatory Work

If the Proposal Schedule for this Contract contains a pay item for mobilization and preparatory work, payment for this pay item will be made at the lump sum price stated in the Proposal Schedule and in accordance with the terms of payment for that pay item. Mobilization costs shall not exceed three percent (3%) of the Contract price. If payment terms are not specifically provided for this pay item, progress payments for mobilization and preparatory work will be made as follows:

A. When five percent (5%) of the Contract amount for construction is earned from other pay items, exclusive of payments made in accordance with 00908, Payment for Materials Prior to Installation, fifty percent (50%) of the pay item for mobilization and preparatory work shall be included for payment.

B. When ten percent (10%) of the Contract amount for construction is earned from other pay items, exclusive of payments made in accordance with Article 00908, Payment for Materials Prior to Installation, the balance of the pay item for mobilization and preparatory work shall be included for payment.

00908 Payment for Materials Prior to Installation

TriMet may, at its discretion, authorize payment for Materials not yet incorporated into the Work, whether or not delivered to the Work Site, subject to the following conditions:

A. In accordance with Article 00901 (B), Payment Procedures, as part of the supplementary Schedule of Values, Contractor shall submit to TriMet a list of all Materials for which Contractor will request payment under this Article. TriMet will review the list and notify the Contractor in writing of those items for which payment under this Article will be authorized. TriMet will not authorize prepayment of undeliverable materials.

B. Materials must be delivered to the Work Site, or delivered to Contractor, and promptly stored by Contractor in a warehouse, storage yard, or similar suitable place within ten (10) miles of the Work Site, or a greater distance approved by TriMet. TriMet shall at all times have access to such Materials and storage locations. If the Materials are stored off the Work Site, the Contractor shall provide
documentation of TriMet's right of access to the Materials in a form satisfactory to TriMet. Before any payment is made for the Materials, Contractor shall furnish to TriMet evidence of ownership and properly executed bills of sale warranting that the Materials are free from all liens, security interests, and other encumbrances.

C. Contractor shall ensure the security of the Materials, shall be strictly liable to TriMet for any damage to them, and shall replace damaged Materials without cost to TriMet.

00909 Payment for Changes

A. Subject to Section 00406, Changes in the Work, if any post-award change in this Contract results in a change in the quantity of Work from that specified in the Contract, the change in Contract compensation shall be paid in accordance with the Change Order.

B. In the event that a change in compensation is not determined by Lump sum, unit pricing or by agreement as set forth in this Article, the change in compensation shall be determined according to Article 00910, Cost Reimbursable (Force Account) Work. In any event, the terms of Article 00910 shall be complied with in relation to markups and their application.

C. Nothing in this Article shall be deemed to require a change in Contract compensation when additional, extra, or changed work is the result of an estimating, contracting or engineering error by Contractor.

D. In no event shall Contractor be entitled to compensation for loss of anticipated profits or for consequential damages, resulting from changes made in accordance with Article 00406, Changes in the Work.

00910 Cost Reimbursable (Force Account) Work

A. General

(1) When Work on changes is ordered by TriMet to be performed on a cost reimbursable basis, Work so performed and accepted shall be paid for in the manner set forth in this Article. The Materials, Equipment and Direct Labor rates established in this Article apply only to Cost Reimbursable Work ordered by TriMet and do not apply to any other Work performed under the Contract.

(2) The percentage Allowances made to the Contractor and Subcontractors in accordance with the terms outlined in this Article constitute full compensation for all overhead and profit, and all other costs not specifically designated in this Article and/or elsewhere in the Contract Documents as items for which payment is to be made.

(3) Cost Reimbursable Invoices:

(a) Contractor shall submit time charged to cost reimbursable Work to TriMet for verification on a daily basis. Such time sheets shall be submitted in duplicate by noon of the Workday following the day on which the Work was performed. One copy will be returned to Contractor; TriMet will retain the other. Contractor shall submit evidence of TriMet’s verification of time sheets with its invoice.

(b) Invoices for cost reimbursable Work shall show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such Work, and must give in detail the nature of the Work performed by each employee.

(c) Invoices for materials must be fully itemized showing dates of delivery, quantities, unit prices, amounts, freight and discounts, and must be accompanied by vendor invoices covering each item.
(d) Invoices for equipment rental must be fully itemized showing a complete description including size and capacity of equipment, the number of hours operated each day, the rental rates and amounts for each individual piece of equipment used on such Work, and any discount allowed.

(e) Invoices for cost reimbursable Work shall be prepared and submitted in accordance with Article 00901, Payment Procedures. All invoices, payrolls, and other forms of requests for payment of cost reimbursable Work shall be submitted in triplicate, with the progress payment request. Payment request shall state the Contract number and the cost reimbursable Work order or Change Order number under which the Work was performed.

(f) Failure to present requests in proper form within sixty (60) days after the close of the month in which the cost reimbursable Work was performed shall constitute a waiver by Contractor of its right to present such claim thereafter or to receive payment therefore.

B. Contractor Self-Performed Work

When Force Account Work is performed by the Contractor’s organization, payment shall be made in accordance with the following provisions:

(1) Direct Labor

(a) For all labor directly engaged in the specific change, Contractor shall receive the actual wages paid on the project for each hour that the labor is actually engaged in Work.

(b) For all labor directly engaged in the specific change, Contractor shall receive the actual cost of the accident and unemployment compensation premiums, the actual cost of payroll transit district taxes and social security taxes, and the actual cost of any health, welfare, pension, or collective bargaining agreement benefits paid, computed on the base rate for the class of Work involved for the actual amount of the payroll.

(c) No overtime premium will be paid, unless TriMet has given prior authorization, and then only the premium portion of the overtime will be paid, with no additional benefits or overhead.

(d) Contractor will be permitted to apply an Allowance on Direct Labor for the Work that it self-performs, in an amount that shall not exceed 20 percent of the Direct Labor costs. This Allowance is inclusive of any Design Fee or Construction Fee.

(2) Materials

For all materials and prices approved by TriMet prior to placement of any order and used in the specific Work, Contractor shall receive the actual cost of materials, including freight charges, as shown by the original receipted bills for materials and freight, less any discount allowed by the supplier. Contractor shall be permitted to apply an Allowance on Materials in an amount that shall not exceed 5 percent of the Material costs.

(3) Equipment

(a) Contractor Owned or Leased Equipment

Payment for the use and operation of equipment owned or leased by Contractor shall be made for all construction and automotive equipment required in the performance of the change. Such charges shall not include charges for any item of equipment or tool with a new cost of one thousand dollars ($1,000.00) or less each.

For equipment owned or leased by the Contractor, the use and operation rates shall be as set forth in the latest edition of the Rental Rate Blue Book for Construction Equipment (Blue Book), published by
Dataquest, Inc., San Jose, CA, which is in effect at the time of commencement of the changed Work. Those rates shall be applied as follows:

(i) Rental for the equipment shall be computed and charged as follows: The monthly base rate for the equipment shall be multiplied by the rate adjustment factor and the resulting product divided by one hundred seventy-six (176) hours/month to yield the hourly rental rate.

\[
\text{Hourly Rental Rate} = \frac{\text{Monthly Rental Rate} \times \text{Rate Adjustment Factor}}{176 \text{ Hours/Month}}
\]

The hourly rental rate for the equipment is multiplied by the actual number of hours the equipment is used in the conduct of the changed Work.

(ii) The application of weekly, daily, or hourly rates as set forth in the Blue Book is hereby excluded.

(iii) The application of regional adjustment factors is hereby excluded.

(iv) Normal Working conditions will be assumed unless otherwise approved by TriMet.

(v) Use of the equipment for second or third shifts shall be at fifty (50) percent of the first shift rate established in (1) above.

(vi) Unless otherwise agreed, the costs of fuel, lubricants, tires and other expendables, repair parts, service and maintenance shall be charged at the Estimated Operating Cost/Hr. set forth in the Blue Book.

(vii) Operators will be paid for as direct labor under GP00910 B(1), above.

(viii) Transportation costs to and from the Work Site for equipment shipped in specifically to perform changed Work, if approved in advance by TriMet, will be paid separately. No payment for transportation costs will be made if the equipment brought to the Work Site for changed Work is also used on Contract Work items.

(ix) Equipment standby time, if approved by TriMet, will be paid for at 40 percent of the applicable rental rate, up to a maximum of 8 hours per regular workday.

(x) If a rate is not published in the Blue Book, the Contractor shall furnish appropriate cost information to TriMet to allow calculation of an appropriate rate following the principles established in the Blue Book.

(xi) All equipment rates as set forth above shall be established in writing before commencing any changed Work.

(xii) Contractor will be permitted to apply an Allowance on Contractor owned or leased Equipment, in an amount that shall not exceed 20 percent of the amount to be paid by TriMet pursuant to this Article.

(b) Outside Rental Equipment

If Contractor owned or leased equipment is not available and equipment is rented from an Outside Source, which is a source where rental rates are based upon established catalog or market prices, and equipment is made commercially available to the general public trained in the equipment’s use, payment will be made at Contractor’s discretion, in one of the following manners:

(i) on the basis of actual invoiced cost, less any discount allowed by the renting source. Use of outside rental equipment at rates higher than the applicable Blue Book rate, as computed pursuant to
GP00910(B)(3)(a), above, will not be allowed unless approved in writing in advance by TriMet. If outside rental equipment is dedicated solely to the Force Account Work, Contractor will be permitted to apply an Allowance on outside rental equipment in an amount not to exceed 5 percent of the amount to be paid by TriMet pursuant to this paragraph.

Or

(ii) on the basis set forth in GP00910(B)(3)(a), above, for actual hours the equipment is used on the Force Account Work. Contractor will be permitted to apply an Allowance on outside rental equipment in an amount that shall not exceed 20 percent of the amount to be paid by TriMet pursuant to this paragraph.

C. Subcontract and Outside Special Services

(1) If TriMet and Contractor agree that a certain item of Work or service under Force Account Work cannot be adequately performed by Contractor’s organization, such Work or service may be performed by a Subcontractor or outside specialist. Where the Force Account Work necessitates fabrication or machining Work by Contractor away from the Work Site, charges for such Work may, by prior written agreement between TriMet and Contractor, be accepted as a specialist billing. Costs for Work performed by Subcontractors shall be computed in the same way as if the Contractor did the Work.

(2) Markups-Percentage Allowances for Subcontracted Force Account Work (Applies to Force Account and forward priced Change Orders)

(a) Direct Labor

(i) For all labor directly engaged in the specific change, the Subcontractor shall receive the actual wages paid on the project for each hour that the labor is actually engaged in Work.

(ii) For all labor directly engaged in the specific change, the Subcontractor shall receive the actual cost of the accident and unemployment compensation premiums, the actual cost of payroll transit district taxes and social security taxes, and the actual cost of any health, welfare, pension, or collective bargaining agreement benefits paid, computed on the base rate for the class of Work involved for the actual amount of the payroll.

(iii) No overtime premium will be paid, unless TriMet has given prior authorization, and then only the premium portion of the overtime will be paid, with no additional benefits or overhead.

(iv) Subcontractor will be permitted to apply an Allowance on Direct Labor for the Work that it performs, in an amount that shall not exceed 15 percent of the Direct Labor costs. This mark-up is inclusive of any Design Fee or Construction Fee.

(b) Materials

For all materials and prices approved by TriMet prior to placement of any order and used in the specific Work, Subcontractor shall receive the actual cost of materials, including freight charges, as shown by the original receipted bills for materials and freight, less any discount allowed by the supplier. Subcontractor shall be permitted to apply an Allowance on Materials in an amount that shall not exceed 5 percent of the Material costs.

(c) Equipment

(i) Subcontractor Owned or Leased Equipment

Payment for the use and operation of equipment owned or leased by Subcontractor shall be made in the manner described in 00910(B)(3)(a), above, except that Subcontractor shall be permitted
to apply an Allowance on owned or leased Equipment, in an amount that shall not exceed 15 percent of the amount to be paid by TriMet pursuant to this paragraph.

(ii) Outside Rental Equipment

If Contractor owned or leased equipment is not available and equipment is rented from an outside source, which is a source where rental rates are based upon established catalog or market prices, and equipment is made commercially available to the general public trained in the equipment’s use, payment will be made, at Subcontractor’s discretion, in one of the following manners:

(i) on the basis of actual invoiced cost, less any discount allowed by the renting source. Use of outside rental equipment at rates higher than the applicable Blue Book rate, as computed pursuant to GP00910(B)(3)(a), above, will not be allowed unless approved in writing in advance by TriMet. If outside rental equipment is dedicated solely to the Force Account Work, Subcontractor will be permitted to apply an Allowance on outside rental equipment in an amount not to exceed 5 percent of the amount to be paid by TriMet pursuant to this paragraph.

Or

(ii) on the basis set forth in GP00910(a)(3)(a), above, for actual hours the equipment is used on the Force Account Work. Subcontractor will be permitted to apply an Allowance on outside rental equipment in an amount that shall not exceed 15 percent of the amount to be paid by TriMet pursuant to this paragraph.

(3) Contractor Markup on Subcontractor Invoices

(a) In addition to the Allowances for Subcontractor performed Work described in GP00910(B)(2), Contractor will be allowed to apply an Allowance to the cost of the Work performed by lower tier Subcontractors. This Allowance shall not exceed 5 percent and is inclusive of any Design Fee or Construction Fee. In no event shall the total cost of the Allowance at all tiers, including Contractor level, exceed 30 percent of the total direct cost of the Work.

(b) The apportionment and distribution of the Allowance markup between Contractor and Subcontractors shall be the sole prerogative and responsibility of the Contractor to negotiate and resolve with its Subcontractors, in accordance with the provisions herein.

(c) The following Allowance markup calculations illustrate the operation of this provision, and define the maximum allowable Allowance percentage on direct cost at various tiers:

(i) For Work performed by the Contractor, total maximum Allowance markup percent is:

- Direct Labor - 20%
- Equipment – 20%
- Materials – 5%

(ii) For Work performed by a first-tier Subcontractor, total maximum Allowance markup percentage is:

- Direct Labor - [(1.15 x 1.05) - 1.00] = 0.2075, or 20.75%
- Equipment – [(1.15 x 1.05) – 1.00] = 0.2075 or 20.75%
- Materials – [(1.05 x 1.05) – 1.00] = 0.1025 or 10.25%

(iii) For Work performed by a second-tier Subcontractor, total maximum Allowance markup percentage is:

- Direct Labor - [(1.15 x 1.05 x 1.05) - 1.00] = 0.26788, or 26.788%
(iv) For Work performed by a third - or lower-tier Subcontractor, total maximum Allowance markup percentage for Direct Labor and Equipment is 30%. Total maximum Allowance markup percentage for Materials is 21.551% ([1.05 \times 1.05 \times 1.05 \times 1.05] – 1.00 = 0.21551 or 21.551%).

(D) Definitions

(1) For the purposes of GP00910, "Direct Cost" and “Allowance” are defined as follows:

(a) "Allowance": The term “Allowance” shall mean all costs other than Direct Costs, including but not limited to overhead (overhead includes, but is not limited to, all supervisory and managerial employees above foreman level, whether or not directly engaged in the specific change). When Contractor performs Force Account Work, Contractor shall be entitled to its Direct Costs plus the percentage Allowance specified in this Article. No other reimbursement, compensation or payment will be made.

(b) "Direct Cost" shall mean those “Direct Labor,” “Material” and “Equipment” costs that are described in this Article and are directly related to the specific Cost Reimbursable Work.

00911 Final Completion, Contract Closeout and Final Payment

A. Whenever the Contractor deems its Construction Work obligations under the Contract have been fulfilled, the Contractor shall notify TriMet in writing. Upon receipt of Contractor's notice, TriMet shall inspect the Construction Work and within fifteen (15) days after receiving Contractor's notice either finally accept the Construction Work or notify the Contractor in writing of Construction Work yet to be performed on the Contract. Upon receipt of TriMet's written Final Acceptance of the Construction Work, Contractor shall invoice TriMet for any amounts due under the Contract up through that time. TriMet shall pay Contractor within thirty (30) days after receipt of the approved invoice.

B. Whenever the Contractor deems that all of its obligations under the Contract have been fulfilled, the Contractor shall notify TriMet in writing. Upon receipt of Contractor's notice, TriMet shall inspect the Work and within fifteen (15) days after receiving Contractor's notice either issue a Certificate of Contract Closeout or notify the Contractor in writing of Work yet to be performed on the Contract. Upon receipt of TriMet's written Certificate of Contract Closeout of the Work, Contractor shall submit an invoice to TriMet for final payment of any amounts due under the Contract, including retainage. TriMet shall pay Contractor within thirty (30) days after issuing the Certificate of Contract Closeout.

C. Neither the final payment nor any remaining retained percentage shall become due until Contractor submits to TriMet (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (b) consent of surety, if any, to final payment, and (c) if required by TriMet, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by TriMet.

D. If, after Substantial Completion of the entire Contract, Final Completion is materially delayed through no fault of Contractor or by the issuance of Change Orders affecting Final Completion, TriMet, without terminating the Contract, shall pay the balance due for that portion of the Work that is eligible for Final Completion. If the remaining balance of work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion shall be submitted by Contractor prior to payment. Payment under this paragraph shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
E. The making of final payment by TriMet shall constitute a waiver of claims by TriMet except those arising from:

(1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;

(2) failure of the Work to comply with the requirements of the Contract; and

(3) terms of all warranties required by the Contract.

F. Acceptance of final payment by the Contractor, a Subcontractor, or a Materials supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of application for final payment. Such waivers shall be in addition to the waiver provided in this Article.

00912 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 Article 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 Article 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.

00913 Certified Current Cost or Pricing Data

A. If the aggregate increases and/or decreases in costs, plus applicable profits, of any modification to this Contract exceeds $100,000, the Contractor shall submit, in addition to the other information required to be submitted under Paragraph D of Article 00406, Changes in the Work, a certificate of current cost or pricing data. The certificate shall be submitted as soon as possible after agreement is reached on the Contract price adjustment. The certificate shall be in the following form:

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to TriMet or to TriMet's representative in support of -----* are accurate, complete, and current as of -------**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing date agreements between the offeror and TriMet that are part of the proposal.
B. No certificate is required for Contract modifications where the price adjustment is:

(1) Based on unit prices or lump sum prices established in the Contract;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

**00914 Price Reduction for Defective Cost or Pricing Data**

A. This Article shall apply only for any modification to this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $100,000, except that this Article does not apply to any modification for which the price is:

(1) Based on unit prices or lump sum prices established in the Contract;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

B. If any price, including profit, negotiated in connection with any modification of this Contract to which this Article applies was increased by a significant amount because:

(1) The Contractor or a subcontractor furnished cost or pricing data that was not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that was not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data or any description that were not accurate the price shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this Article becomes operative under Paragraph A above.
C. Any reduction in the Contract price under Paragraph B above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

D. If TriMet determines under paragraph B of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(1) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(2) TriMet should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of TriMet;

(3) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract; or

(4) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

E. Except as prohibited by paragraph D(2)(b) of this Article, an offset in an amount determined appropriate by TriMet based upon the facts shall be allowed against the amount of a Contract price reduction if:

(1) The Contractor certifies to the Resident Engineer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(2) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.

(3) An offset shall not be allowed if-

(a) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(b) TriMet proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

F. If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to TriMet for such overpayment. The Contractor shall pay TriMet at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date TriMet is repaid by the Contractor at the applicable rate for overdue payments to a contractor as prescribed by ORS 279.570(2).

00915 Subcontractor Cost or Pricing Data
A. The requirements of paragraphs B and C of this Article shall apply only to any modification to this
Contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to
exceed $100,000 and shall be limited to such modifications.

B. Before awarding any subcontract expected to exceed $100,000 when entered into, or pricing any
subcontract modification involving aggregate increases and/or decreases in costs, plus applicable
profits, expected to exceed $100,000, the Contractor shall require the subcontractor to submit cost or
pricing data unless the price is:

(1) Based on unit prices or lump sum prices established in the Contract;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to
   the general public; or

(3) Set by law or regulation.

C. The Contractor shall require the subcontractor to certify in substantially the form prescribed in Article
00914, Certified Current Cost or Pricing Data, that, to the best of its knowledge and belief, the data
submitted under paragraph B above were accurate, complete, and current as of the date of agreement
on the negotiated price of the subcontract or subcontract modification.

D. The Contractor shall insert the substance of this clause, including this paragraph D, in each subcontract
that exceeds $100,000 when entered into.

00916 Prompt Payment

A. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of
its subcontract no later than ten (10) days from the receipt of each payment the Contractor receives
from TriMet, and strictly in accordance with ORS 279C.580. The Contractor agrees further to return
retainage payments to each subcontractor within ten (10) days after the subcontractor’s work is
satisfactorily completed. Any delay or postponement of payment from the above referenced time
frame may occur only for good cause following written approval of TriMet.

END OF SECTION 00900 – PAYMENT
Exhibit A – Record of Integrity Disclosure Form

(To be submitted within five (5) calendar days from the date bidder is notified that it is the apparent low bidder)

TriMet Board Resolution 00-10-90 requires that bidders provide the following information prior to contract award. Additionally, the apparent low bidder must require that their major subcontractors provide the same information and must also submit that information to TriMet prior to contract award.

The apparent low bidder bidder/major subcontractor shall disclose on an attachment any pending or final litigation or violations of environmental, health, safety or other laws that are relevant to the bidder’s responsibility. For each litigation or violation, identify:

1) Its seriousness
2) The date(s) of the violations(s)
3) Whether it is a repeat violation
4) Its civil or criminal status
5) Existence of mitigating circumstances
6) Corrective actions taken
7) Other relevant information
8) Impact or effect on the contractor’s/subcontractor’s ability to perform under the proposed contract.

☐ The attached material represents my firm’s Record of Integrity disclosure as outlined above.

☐ My firm has no violations or litigation as outlined above.

Date: ____________________________

Signature: _________________________

Name: ____________________________

Title: ____________________________

2/01
1. No Government Obligation To Third Parties

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

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

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

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

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

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

3. Audit and Inspection of Records

A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment under this contract.
B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding $10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4. **Federal Changes (10/09)**

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

5. **Civil Rights**

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

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

that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

6. Incorporation of Federal Transit Administration Terms

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

7. Disadvantaged Business Enterprise

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

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

8. Debarment and Suspension (10/04)
The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. **Lobbying**

   A. **Definitions.** As used in this clause,

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

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

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

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

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

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

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

   (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

   (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

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

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

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

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

B. Prohibition

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

   (i) Agency and legislative liaison by Own Employees.

      (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or
receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following 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, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirement in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. **Clean Water Requirements**

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

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to TriMet and understands and agrees that TriMet will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by the FTA.
12. **Environmental Violations**

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

13. **Energy Conservation**

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

14. **Privacy Act**

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

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

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

15. **Cargo Preference**

Contractor agrees:

A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described
in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to TriMet (through the contractor in the case of a subcontractor’s bill-of-lading) marked with appropriate identification of the Project.

C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. **Fly America**

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

17. **Seismic Safety**

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

18. **Recycled Products**

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

19. **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

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

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

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

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

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

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

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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to TriMet for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually
registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(b) 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).


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 APPENDIX A – FEDERAL REQUIREMENTS
SECTION 3 - GENERAL PROVISIONS

1 Contractor's Status and General Responsibilities

Contractor is an independent Contractor for all purposes and is entitled to no compensation from TriMet other than that provided by this contract, assuming no expansion to the Scope of Services. Contractor shall inform TriMet of Contractor's Federal Internal Revenue Service Employer Identification Number, or, if Contractor is an individual with no employer identification number, Contractor's Social Security Number. The Contractor and its officers, employees, and agents are not officers, employees or agents of TriMet as those terms are used in ORS 30.265. The Contractor, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of TriMet for any purpose whatsoever, nor are they authorized to do so.

Contractor shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this contract specifically provides otherwise. Contractor shall supervise and direct contract performance using its professional skill, and shall be responsible for selecting the means of contract performance. If, during or after the term of this contract, Contractor learns of any actual or potential defect in the services provided under this contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this contract or of Federal, state, or local law, Contractor shall inform TriMet immediately in writing with a full description of the defect, problem, or nonconformance.

2 Notices and Communications

All notices and other communications concerning this contract shall be written in English and shall bear the contract number assigned by TriMet. Notices and other communications may be delivered personally, by telegram, facsimile, or by regular, certified or registered mail.

A notice to TriMet will be effective only if it is delivered to that person designated in writing in either a) the Notice of Award of this contract, b) the Notice to Proceed under this contract, or c) to another individual specifically designated by this contract. A notice to the Contractor shall be effective if it is delivered to the individual who signed this contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated in writing by the Contractor in the contract or in a written notice to TriMet.

3 Assignment and Sub-contracting

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

4 Indemnification

A. To the fullest extent permitted by law, Contractor agrees to fully indemnify, hold harmless and defend TriMet, its directors, officers, and employees from and against all claims,
damages, losses, attorney fees and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, caused by the fault or negligence in whole or in part of contractor, its agents, contractors, sub-contractors, or employees from the performance of the work.

B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which TriMet and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, TriMet may in its sole discretion reserve, retain or apply any monies due to the Contractor under the contract for the purpose of resolving such claims; provided, however, that TriMet may release such funds if the Contractor provides TriMet with adequate assurance of the protection of TriMet's interests. TriMet shall be the sole judge of whether such assurances are adequate.

5 Prompt Payment

Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment Contractor receives from TriMet. Contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TriMet.

6 Compliance with Laws and Regulations

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. The Contractor shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279B.220, 279B.230, 279B.235, 279B.320, 279C.505, and 279C.515, which are hereby incorporated by reference.

7 Liens Prohibited

Contractor shall not permit any lien or claim for payment to be filed or prosecuted against TriMet, its property or its right-of-way by any third party on account of any labor or material furnished or any other reason for work arising out of this Contract. If any such lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Contractor’s sole expense.

8 Safety

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

9 Prohibited Interests

A. No TriMet Board member, officer, employee or agent shall have any direct or indirect interest in this contract or its proceeds during, or within one year after, that person’s tenure with TriMet, except to the extent such interest is permitted and disclosed as may be required under applicable law and TriMet policy.
B. No TriMet Board member, officer, employee, or agent shall solicit or accept, and Contractor shall not offer or give to any TriMet Board member, officer, employee or agent, any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and TriMet policy.

C. No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

10 Integration, Modification, and Administrative Changes

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 in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. TriMet reserves the right to make administrative changes to the contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

11 Severability/Survivability

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this contract so that the purposes of this contract are affected. All provisions concerning indemnity survive the termination or expiration of this contract for any cause.

12 Waiver and Nonwaiver

A. A waiver by one party of a right to a remedy for breach of this contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. TriMet's acceptance of goods or services, or payment under this contract, shall not preclude TriMet from recovering against Contractor or Contractor's surety for damages due to Contractor's failure to comply with this contract.

B. Both parties having had the opportunity to consult an attorney regarding the provisions of this contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

13 Termination for Default

A. TriMet may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract; or (iii) Perform any of the other provisions of this contract.

B. TriMet's right to terminate this contract under subdivision (A) of this clause may only be exercised if the Contractor does not cure such failure within 10 calendar days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Contract Administrator specifying the failure.
C. If TriMet terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to TriMet for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

D. Contractor shall be paid the contract price only for completed supplies or services delivered and accepted. If it is later determined by TriMet that Contractor 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, Contractor, TriMet may allow Contractor to continue work, or may treat the termination as a termination for convenience.

E. The rights and remedies of TriMet in this Article are in addition to any other rights and remedies provided by law or under this Contract.

14 Termination for Convenience

TriMet may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in TriMet’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. TriMet will not be responsible for payment for any work performed after the time of termination. After termination, the Contractor shall promptly submit to TriMet its termination claim for payment. If the Contractor has any property in its possession belonging to TriMet, the Contractor will account for the same, and return it to TriMet in the manner that TriMet directs.

15 Intellectual Property

Contractor shall hold harmless, defend and indemnify TriMet, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade-name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by TriMet as the result of the claim, including attorney fees and expert witness fees.

16 Acceptance, Rejection, and Revocation of Acceptance

If this contract is for the supply of goods or equipment, then TriMet shall be deemed to have accepted goods only after the goods have been delivered by Contractor, and TriMet has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, TriMet may reject any goods that fail to conform to the requirements of this contract. TriMet may revoke its acceptance of goods that fail to conform to this contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if TriMet has started using the goods before discovering that they do not conform to the contract. Upon request by TriMet, Contractor shall replace or repair to TriMet’s satisfaction any goods that have been rejected by TriMet or the acceptance of which has been revoked by TriMet under this Paragraph. Failure to replace or repair those goods within a reasonable time after TriMet’s request shall be a material breach of this contract.
17 Inspection of Services

TriMet has the right to inspect and test all supplies/services called for under the contract, to the extent practicable, at all times and places during the term of the contract. TriMet shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the supplies or services do not conform with contract requirements, TriMet may require the Contractor to replace the supplies or perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in supplies or services cannot be corrected by re-performance, TriMet may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the supplies/services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, TriMet may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by TriMet or (2) terminate the contract for default.

18 Title and Risk of Loss

If this contract is for the supply of goods, Contractor shall bear the risk of loss until the goods have been delivered to the site designated by TriMet and an authorized TriMet employee or agent has taken possession of them. Title to goods shall pass to TriMet upon TriMet’s payment for those goods. If this contract is for the rental or lease of Contractor’s goods, the Contractor shall bear the risk of loss to Contractor’s goods. Contractor agrees to carry insurance to cover any such losses. Title to the Contractor’s goods shall remain with Contractor while goods are in TriMet’s possession. If this contract is for the repair or servicing of TriMet owned goods, Contractor shall bear the risk of loss until the goods have been delivered to the site designated by TriMet and an authorized TriMet employee or agent has taken possession of them. Title to TriMet owned goods shall remain with TriMet while goods are in Contractor’s possession. Contractor agrees to carry insurance to cover any losses/damages to TriMet’s goods while in Contractor’s possession.

19 Work Product

All work product of Contractor that results from this Agreement (the “Work Product”) is the exclusive property of TriMet. Work Product shall include but not be limited to all data, information in any form, documents, research, analysis and other any work subject to intellectual property laws and doctrines. TriMet and Contractor intend that such Work Product be deemed “work for hire” of which TriMet shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to TriMet all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as TriMet may reasonably request in order to fully document such vested rights in TriMet. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC Section 106A or any other rights of identification or authorship or rights of approval, restriction or limitation on use or subsequent modifications.
20 **Paragraph Headings and Other Titles**

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

21 **Mediation**

Should any dispute arise between the parties concerning this agreement which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties.

22 **Applicable Law and Jurisdiction**

This contract shall be governed by Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this contract shall be commenced and prosecuted in the courts of Multnomah County, Oregon or the U.S. District Court for the District of Oregon, in Portland, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

23 **Nondiscrimination**

During the term of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability or national origin.

24 **Publicity**

Contractor shall make no news release, press release, or statement to a member of the news media regarding this contract without prior written authorization from TriMet.

**End of Section 3**