APPENDIX “A”

POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS FOR PUBLIC-PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS

I. Background & General Guidance

A. Public-private partnerships create opportunities for both the public and private sectors

Agreements between public and private sector entities to jointly plan, design, finance, develop, construct, reconstruct, replace, improve, maintain, manage, repair, operate and take whatever actions authorized by TriMet’s enabling legislation that may be necessary or convenient to provide transportation and transit projects (“infrastructure projects”) are herein referred to as public-private partnerships (“partnerships”). Recognizing that the structure of these partnerships will be dependent upon the project scope and the opportunities the project offers, the involved entities play varying roles and assume varying degrees of responsibility in identifying, financing, designing, building, operating, and maintaining projects. Partnerships are designed to benefit both the public and private partners.

The primary difference between public-private partnerships and the way transportation projects are currently structured is the degree to which the private sector can be involved. As it is now, the private sector plays an important role in many transportation projects, providing engineering, construction, and other services, but cannot initiate projects or assume any ownership of them. In public-private partnerships contemplated by the Policy and Rules contained herein, the private sector can initiate projects by submitting unsolicited proposals and can assume some ownership of or direct responsibility for the public system, ranging from none to complete.

By assuming this additional responsibility, the private sector also assumes risk, creating an opportunity for a market-based return on investment. As the degree of responsibility increases, so do the risk but also the opportunity for higher return. The public sector benefits by gaining access, through the private sector, to financing sources and arrangements traditionally not available to TriMet and to innovative methods that can shorten the time required for project design and construction.

When they are properly conceived and implemented, including having the support of the community and local jurisdictions, public-private partnerships can offer significant advantages to both sectors. The core concepts that are woven through TriMet’s belief in and commitment to public-private partnerships in developing infrastructure are desirability and need for: (1) Innovation; (2) Streamline and expedited selection and contract award processes; (3) Competition; (4) Quality; (5) Leverage of private and governmental expertise; (6) The necessity for fair and consistent standards, consistent messages, and trust in any public private venture; (7) Cost effective use of increasingly scarce public funds; (8) Informed risk taking and resilience to the occurrence of unforeseen and significant problems; (9) Public confidence, accountability, and transparency, and; (10) Continuous monitoring, evaluation, and learning.
B. Summary

In summary, public private partnerships have the following characteristics:

- Leveraging the expertise and resources of the private and public sector can effectively deliver a high quality project, reduce the use of public funds, and enhance confidence and public trust in the performance of government and its ability to spend taxpayer money wisely;
- Allowing private sector firms the ability to submit innovative, creative, and proprietary approaches, plans, processes, procedures, and mechanisms that have commercial value to the firms and can be tailored to fit TriMet’s needs and requirements;
- Meeting the public need for infrastructure projects that cannot be wholly or as effectively satisfied by existing methods of procurement and financing;
- Delivering critically needed transportation projects quickly, thereby reducing costs, traffic and other disruptions;
- Providing access to innovative project development and financing sources and arrangements;
- Providing cost certainty earlier in the procurement process;
- Encouraging and promoting business and employment opportunities; and,
- Attracting a larger number of and increasing competition among highly qualified firms by providing a sound investment opportunity for the private sector.

II. Definition Of Unsolicited Proposal For Public Partnership Infrastructure Projects

Recognizing that TriMet can build its infrastructure in the traditional manner, unsolicited proposals provide another means to encourage and facilitate highly qualified private sector firms to propose innovative financing, development and operational approaches and methods for infrastructure projects. The unsolicited proposal Policy and Rules contained herein also implement and facilitate federal funding agency objectives and requirements that federal funds be utilized in a manner that provides for maximum return on federal investment in infrastructure projects.

An unsolicited proposal is a written offer that may meet TriMet’s strategic goals and requirements with respect to the creation of light rail or other infrastructure projects and it is initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror, and; (3) Be prepared without TriMet’s supervision, endorsement, direction, or direct TriMet involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet.

An unsolicited proposal should be distinguished from the following:

1. Advertising or Promotional Material

   Material designed to acquaint TriMet with prospective offeror’s current products or potential capabilities, or designed to determine TriMet’s interest in procuring such products or services; and

2. Contributions

   Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in its efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and
3. Technical Correspondence

Written inquiries regarding TriMet’s interest in developing infrastructure projects, pre-proposal explorations, technical inquiries and research proposals.

III. Advance Guidance

Organizations or individuals interested in submitting an unsolicited proposal should be encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contact with TriMet technical personnel is permissible and should be encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet’s needs relative to the type of effort contemplated. Personal contacts shall be conducted in a manner that (1) precludes TriMet commitment regarding acceptance of an unsolicited proposal; and (2) avoids providing a prospective offeror a competitive advantage in any planned competitive solicitation.

IV. Process And Evaluation Description

TriMet will follow a Four (04) Step Evaluation Process in determining whether to accept an Unsolicited Proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the Four Step Evaluation Process is set forth in the following paragraphs.

V. Initial Review And Evaluation Of The Proposal - STEP 1

An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation (See Section IX). If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information.

A. A favorable initial evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. TriMet may deem an Unsolicited Proposal to be unacceptable for negotiation for the following threshold reasons. The substance of the unsolicited proposal:

1. Does not contain any unique approaches to financing or capital investment and would be available to TriMet without restriction from other sources, or
2. Closely resembles that of a pending competitive solicitation, or
3. Is otherwise not sufficiently innovative or unique to justify acceptance, or
4. The proposal is otherwise determined to be not meritorious.

If, due to any of the above reasons, TriMet determines that a proposal is unacceptable, the proposal shall be returned to the offeror together with the reasons for the return.

B. In evaluating an unsolicited proposal, the following criteria will be considered in addition to any other criteria:
1. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.

2. Overall merits of the proposed project effort.

3. Potential contribution that the proposed effort is expected to make to TriMet’s specific goal, if pursued at this time

4. Capabilities related to experience, facilities, or techniques, or unique combinations thereof that the offeror possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal,

5. Qualifications, capabilities, and experience of the proposed principal, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

6. The financial benefit to TriMet in implementing the proposal, including but not limited to access to and level of the capital contribution or assumption/allocation of risk proposed,

7. Timing considerations of any proposed effort

C. Upon completion of the initial evaluation, TriMet staff performing the evaluation shall prepare a memo setting forth the evaluation results. The memo shall also recommend further action if any.

D. TriMet shall not be required to conduct secondary evaluation if, upon application of the above-described criteria, the proposal is deemed not to be within the purview of TriMet’s interests. In such cases, the offeror shall be furnished a prompt reply, stating how the document is being interpreted by TriMet, and the reasons for TriMet not continuing with subsequent evaluation.

VI. Publication To Determine Sole Source - STEP 2

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as acceptable, TriMet will publicize its “Intent to Negotiate for Contract Offered by Unsolicited Proposal”. The purpose of such publication is to ascertain whether other parties desire and are able to accomplish the same infrastructure project that is similar to that contemplated within the original Unsolicited Proposal. TriMet's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If interest, in written form, is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider written submittals as long as it conforms to the same requirements outlined in this policy and required of the original Unsolicited Proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet's interest to conduct a competitive solicitation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.
VII. **Secondary Review Of Proposal, Required Supplemental Material – STEP 3**

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source justification for the contract to be awarded in accordance with the services proposed, TriMet will conduct a secondary review of the initial proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the Offeror has the technical capability and financial resources to perform the contract as contemplated. Prior to recommending a contract award to its Board of Directors, TriMet staff will insure that all unsolicited proposals or tentative agreements undergo a comprehensive review and analysis, including an independent cost estimate on all phases of the project proposal.

VIII. **Board Of Director Review – STEP 4**

An unsolicited proposal that results in a recommendation of TriMet staff that a contract be awarded is subject to review and approval of the TriMet Board of Directors. The terms and conditions of any contract awarding a public private partnership for infrastructure shall be reviewed at a public meeting of the TriMet Board of Directors. The public will have an opportunity to make comments to the TriMet Board of Directors on the proposed agreement.

IX. **Content Of Unsolicited Proposals**

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

1. Basic Information

   This includes the name and address of the offeror; if an organization, indicated type: e.g., profit, nonprofit, educational, small business; names and telephone numbers of the offeror’s technical and business personnel whom TriMet may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by TriMet only for evaluation purposes; names of any other Federal, TriMet, local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or representative of the organization, or a person authorized to contractually obligate the organization. If the proposal is a joint venture, partnership, and consortium or otherwise involves more than one legal entity, the same information will be required for all entities.

2. Technical Information

   This includes a concise abstract (approximately 800 words) of the proposed infrastructure project effort; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the method of financing the project, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of TriMet’s goal; the names and brief biographical information of the offeror’s key personnel (including alternatives, if desired) who would be involved, and the type of support, if any, the offeror requests of TriMet, e.g., facilities, equipment, materials or personnel resources.
3. Supporting Information

This includes a proposed cost and risk allocation structure for the proposed effort sufficiently
detailed so that there can be meaningful evaluation; the type of contract preferred; the period of
time for which the proposal is valid (a minimum of 6 months is suggested); the proposed
duration of effort; statements, if applicable, regarding cost sharing, the level of investment to be
made by the offeror; organizational conflicts of interest; environmental impacts; and brief
descriptions of the organization, previous work or experience in the field of the proposal, and
facilities to be utilized for the work, where appropriate for understanding the proposal.

X. Time For Submission

Unsolicited proposals should be submitted well in advance of the offeror’s desired beginning of the
proposed effort or activity in order to allow TriMet sufficient time to evaluate the proposal and
negotiate a contract if the proposal is accepted.

XI. Submission Of Proposal

Proposals shall be submitted to the Director of Procurement and Contracts, 4th Floor, TriMet 4012
SE 17th Avenue, Portland, Oregon 97202. Offeror shall submit three (3) copies of the proposal with
cover letter. The Director of Procurement and Contracts shall acknowledge unsolicited proposals
as soon as possible.

XII. Use Of Information

All proposals submitted to TriMet are subject to the applicable public records laws. Offerors
are advised to familiarize themselves with the provisions of these laws. If the offeror has
special concerns about proprietary information that it would desire to make available to
TriMet, such offeror may wish to suggest for TriMet’s consideration, prior to submission of
its proposal, methods for safeguarding such information from disclosure consistent with
applicable public records laws.

Nothing herein precludes TriMet from using any data, concept or idea that it may have intended to
use had the unsolicited proposal not been submitted. Subject to this Policy, any information
submitted to TriMet shall be held in confidence until such time that TriMet accepts the Unsolicited
Proposal and it becomes necessary to commence the contract award process.
APPENDIX “B”

POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS (NON-PUBLIC/PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS)

I. DEFINITION OF UNSOLICITED PROPOSAL

An Unsolicited proposal is a written offer which may meet TriMet strategic goals and requirements and entail the performance of a proposed task, service, or effort, initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror, and; (3) Be prepared without TriMet supervision, endorsement, direction, or direct TriMet involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet. This procedure does not apply to public improvements as defined in ORS 279A.010(1)(aa).

An unsolicited proposal should be distinguished from the following:

1. Advertising Material
   Material designed to acquaint TriMet with prospective offeror’s current off-the-shelf products or potential capabilities, or designed to determine TriMet’s interest in procuring such products; and

2. Commercial Products Offerings
   Offers of standard commercial products usually sold in substantial quantities to government agencies or the general public which the offeror desires TriMet to procure as an alternate or replacement for existing supplies; and

3. Contributions
   Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in his efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and

4. Technical Correspondence
   Written inquiries regarding TriMet’s interest in research areas, pre-proposal explorations, technical inquiries and research descriptions.

II. ADVANCE GUIDANCE

Organizations or individuals interested in submitting an unsolicited proposal should be encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contract with TriMet technical personnel is permissible and should be encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet’s needs relative to the type of effort contemplated. Personal contacts shall be conducted in a manner that (1) precludes agency commitment regarding acceptance of an unsolicited proposal; and (2) avoids providing a prospective offeror a competitive advantage in any planned competitive solicitation.
III. PROCESS AND EVALUATION DESCRIPTION

TriMet will follow a Three (03) Step Evaluation Process in determining whether to accept an Unsolicited Proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the Three Step Evaluation Process is set forth below in the following paragraphs.

IV. INITIAL REVIEW AND EVALUATION OF THE PROPOSAL – STEP 1

A. An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal:
   1. Contains sufficient technical and cost information to permit a meaningful evaluation; and
   2. Has been approved by a responsible official or authorized representative of the organization submitting the proposal or a person authorized to contractually obligate the organization.

   If the proposal does not meet the requirements of paragraphs A (1) and A (2) above, the offeror may be given the opportunity to provide the required data.

B. A favorable initial evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. TriMet may deem an Unsolicited Proposal to be unacceptable for negotiation for the following threshold reasons. The substance of the unsolicited proposal:
   1. Is available to TriMet without restriction from another source, or
   2. Closely resembles that of a pending competitive solicitation, or
   3. Is otherwise not sufficiently innovative or unique to justify acceptance, or
   4. The proposal is otherwise determined to be not meritorious.

If, due to any of the above reasons, TriMet determines that a proposal is unacceptable, the proposal shall be returned to the offeror together with the reasons for the return.

A. In evaluating an unsolicited proposal, the following criteria will be considered in addition to any other criteria:
   1. Unique, innovative, or meritorious methods, approaches, or idea that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
   2. Overall merits of the proposed effort or activity.
   3. Potential contribution that the proposed effort is expected to make to TriMet’s specific goal, if pursued at this time.
   4. Capabilities related experience, facilities, or techniques, or unique combinations thereof, which the offeror possesses and offers and which are considered to be integral factors for achieving the objective(s) of the proposal.
   5. Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.
   6. The financial benefit to TriMet in implementing the proposal.

B. Upon completion of the initial evaluation, TriMet staff performing the evaluation shall prepare a memo setting forth the evaluation results. The memo shall also recommend further action if any.
C. TriMet shall not be required to conduct secondary evaluation if, upon application of the above-described criteria, the proposal is deemed not to be within the purview of TriMet’s interests. In such cases, the offeror shall be furnished a prompt reply, stating how the document is being interpreted by TriMet, and the reasons for TriMet not continuing with subsequent evaluation.

V. PUBLICATION TO DETERMINE SOLE SOURCE – STEP 2

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as acceptable, TriMet will publicize its “Intent to Negotiate for Contract Offered by Unsolicited Proposal”. The purpose of such publication is to ascertain whether other parties may desire and be able to offer goods or services within a scope that is similar to that contemplated within the original Unsolicited Proposal. TriMet’s publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If, based on TriMet’s publication, interest is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider such submittal as long as it conforms to the same requirements outlined in this policy and required of the original Unsolicited Proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet’s interest to conduct a competitive negotiation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.

VI. SECONDARY REVIEW OF PROPOSAL REQUIRED SUPPLEMENTAL MATERIAL - STEP 3

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source for the goods or services contemplated by the proposal, TriMet will conduct a secondary review of the initial proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the Offeror has the technical capability and financial resources to perform the contract as contemplated.

An unsolicited proposal that results in a recommendation of TriMet staff that a contract be awarded is subject to all other applicable contract award and approval requirements.

VII. CONTENT OF UNSOLICITED PROPOSALS

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

1. Basic Information

   This includes the name and address of the offeror; if an organization, indicated type: e.g., profit, nonprofit, educational, small business; names and telephone numbers of the offeror’s technical and business personnel whom the agency may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by the agency only for evaluation purposes; names of any other Federal, state, local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of...
submission; and signature of a responsible official or representative of the organization, or a person authorized to contractually obligate the organization.

2. Technical Information

This includes a concise title and an abstract (approximately 200 words) of the proposed efforts; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent or the anticipated results, and the manner in which the work will help to support accomplishment of TriMet’s goal; the names and brief biographical information of the offeror’s key personnel (including alternatives, if desired) who would be involved, and the type of support, if any, the offeror requests of the agency, e.g., facilities, equipment, materials or personnel resources.

3. Supporting Information

This includes a proposed price or total estimated cost; a cost estimate for the proposed effort sufficiently detailed by elements of cost for the proposed effort sufficiently detailed by elements of cost for meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid (a minimum of 6 months is suggested); the proposed duration of effort; statements, if applicable, regarding cost sharing, the level of investment to be made by the offeror; organizational conflicts of interest; environmental impacts; and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

VII. TIME FOR SUBMISSION

Unsolicited proposals should be submitted well in advance of the offeror’s desired beginning of the proposed effort or activity in order to allow TriMet sufficient time to evaluate the proposal and negotiate a contract if the proposal is accepted.

IX. SUBMISSION OF PROPOSAL

Proposals shall be submitted to the Director of Procurement and Contracts, 4th Floor, TriMet 4012 SE 17th Avenue, Portland, Oregon 97202. Offeror shall submit three (3) copies of the proposal with cover letter. The Director of Procurement and Contracts shall acknowledge unsolicited proposals as soon as possible.

X. USE OF INFORMATION

All proposals submitted to TriMet are subject to the applicable public records laws. Offerors are advised to familiarize themselves with the provisions of these laws. If the offeror has special concerns about proprietary information that it would desire to make available to TriMet, such offeror may wish to suggest for TriMet’s consideration, prior to submission of its proposal, methods for safeguarding such information from disclosure consistent with applicable public records laws.

Nothing herein precludes TriMet from using any data, concept or idea which it may have intended to use had the unsolicited proposal not been submitted. Subject to this Policy, any information submitted to TriMet shall be held in confidence until such time that TriMet accepts the unsolicited proposal and it becomes necessary to commence the contract award process.