

November 13, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with the City of Sandy to support the Mt. Hood Express, Boring Lifeline, and Elderly and Disabled Transportation Services and Programs. Agreement Value is \$3,203,949 for 20 months. Funding is through Statewide Transportation Improvement Funds and a required match of \$55,000 in Budgeted County General Funds.

Previous Board Action/Review	No previous board action, new request for existing program		
Performance Clackamas	Safe, Secure, and Livable Communities.		
Counsel Review	Yes: Amanda Keller	Procurement Review	No
Contact Person	Tracy Garell	Contact Phone	971 610- 8183

EXECUTIVE SUMMARY: The Social Services Division of the Health, Housing, and Human Services Department requests approval of an Expenditure Intergovernmental Agreement with the City of Sandy to provide support for the Mt. Hood Express (MHX) bus service. This agreement provides funding to the City of Sandy to support the operations of the Mt. Hood Express, including staffing, facility rental for the bus service, reimbursement for shop supplies, and preventative maintenance for the MHX vehicles for fiscal years 2026 and 2027. Additionally, this agreement covers the City of Sandy, providing Boring Lifeline Services and expanded transportation services for older adults and individuals with disabilities in the Estacada area. This agreement will provide operations pass-through funding for the operations contractor to deliver direct services. The MHX operates out of the City's Transit Operations Center. This partnership has been in place for over eight years.

The Mt. Hood Express provides public transit bus service between the City of Sandy, Government Camp, Timberline, and other destinations in the Mt. Hood area, expanding access to employment and recreational opportunities. With this funding, approximately 59,184 Mt. Hood Express rides will be provided to the general public, along with 1,050 Boring Shuttle rides and 1,950 rides for older adults and individuals with disabilities.

Total Agreement value is \$3,203,949. \$55,000 of the budgeted County General funds are used to match the FTA 5311 funds for the operations of the Mt Hood Express.

RECOMMENDATION: Staff respectfully requests that the Board of County Commissioners approve the agreement (12124) and authorize Chair Roberts or his designee to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rumbaugh

Mary Rumbaugh
Director of Health, Housing, and Human Services

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CITY OF SANDY, OR**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and City of Sandy ("City"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

This Agreement provides the basis for a cooperative working relationship for the purpose of providing administrative support to the County's Mt. Hood Express ("MHX") transit service in partnership with the City's SAM transit service to increase operational efficiencies, collaboration, and cost-effective management of both services.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon signature, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2027, whichever is sooner. The City may seek reimbursement for eligible costs set forth in Exhibit B incurred on or after July 1, 2025.
2. **Scope of Work.** The City and the County agree to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to reimburse City, from available and authorized funds, a sum not to exceed **Three Million Two Hundred and Three Thousand, Nine Hundred and Forty Nine Dollars (\$3,203,949)** for accomplishing the Work required by this Agreement in accordance with **Exhibit B**.
4. **Payment.** Unless otherwise specified, the City shall submit monthly invoices for Work performed as required in **Exhibit A** and shall include the total amount billed to date by the City prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to City following the County's review and approval of invoices submitted by City. County shall make payment to City on undisputed amounts within 30 days of receipt of each invoice submitted. City shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**

- A. *City Representations and Warranties*: City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.
- B. *County Representations and Warranties*: County represents and warrants to City that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the City may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County or the City may terminate this Agreement in the event the County or the City fails to receive expenditure authority sufficient to allow the County or the City, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County or the City is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. City shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the

conduct of Work, or from any act, omission, or neglect of City, its subcontractors, agents, or employees. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the City agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the City or the City's employees, subcontractors, or agents. Notwithstanding the above, it is the intention of the Parties that each shall only be responsible for their own negligence and not for the negligence of the other Party.

B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

8. **Insurance.** The City agrees to furnish the County with evidence of commercial general liability insurance and auto liability insurance, with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County and TriMet, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate. If self-insured, City shall provide documentation to the County of City's self-insured status by completing the Self-Insurance Certification form provided by the County.

9. **Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

Kristina Babcock or their designee will act as liaison for the County.

Contact Information:

Kristina Babcock, Transit Services Manager
2051 Kaen Rd, Oregon city, OR 97054
kbabcock@clackamas.us (971-349-0481)

Andi Howell or their designee will act as liaison for the City.

Contact Information:

Andi Howell, Transit Director, City of Sandy
16610 Champion Way, Sandy, OR 97055
ahowell@ci.sandy.or.us (503-489-0925)

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County, as applicable, without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** City and County shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. City and County shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary

to clearly reflect actions taken. During this record retention period, City and County shall permit the County's and the City's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. The District hereby grants the City a non-exclusive license to use the work product developed by the City pursuant to this Agreement. On completion or termination of the Agreement, the City shall promptly deliver these materials to the District's Project Manager.
- F. **Hazard Communication.** City shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, City shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** City shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve City of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** City agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- S. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** City and County acknowledge that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by City, County, or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). City agrees to hold Confidential Information in strict confidence, using at least the same degree of care that City uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

Notwithstanding anything to the contrary, the obligations of the Parties under this Contract related to confidentiality of information are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law. While the Parties will make good faith efforts to perform under this Agreement, a Party's disclosure of Confidential Information, in whole or in part, will not be a breach of the Contract if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If a Party is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, the Party shall notify the other Party within a reasonable period of time of the request. The Party asserting the confidentiality of the information is exclusively responsible for defending its position concerning the confidentiality of the requested information. Neither Party is required to assist the other in opposing disclosure of Confidential Information, nor required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Chair, Board of County Commissioners

Date

City of Sandy

Tyler Deems
Tyler Deems, City Manager

October 22, 2025
Date

Approved as to form:

Amanda Wells
Assistant County Counsel

10/22/2025
Date

Exhibit A

Scope of Work

City Scope of Work

Subject to the terms of this Agreement, City agrees to provide the following:

- Act as on-sight liaison and provide operational oversight of MHX on behalf of County with shared operations contractor providing immediate communication with the contractor and their employees of policy and contractor functions. This includes contract compliance checks such as payroll, billable hours audit and policy compliance. Participate in contractor-led safety meetings.
- Work with the County on mutually agreeable policy and program development, in compliance with applicable transit rules and guidelines, and implement as needed, including communicating changes to contractor.
- Provide coordination and support with County's third-party contractor for timely maintenance and repair of MHX vehicles. Work with maintenance coordinator regarding MHX vehicle issues, maintenance, cleaning schedule, shop supplies and other issues as needed. Starting upon approval of Agreement by both parties, reconcile and pay for preventative maintenance and repair invoices submitted by contractor. Submit invoices to County for reimbursement as part of monthly billing.
- Provide oversight of fare collection process, deposit fares in City bank account, and provide monthly reimbursement to County for fares collected.
- Reserve meeting space at the Sandy Operations Center if needed for the Mt Hood Transportation Alliance. Participate in Mt. Hood Transportation Alliance meetings.
- Update the MHX website and media platforms, post notices to ITS systems and respond to information requests.
- Interact with public, including information requests that dispatch staff can't answer.
- Create and post notices and display schedules at the Sandy Operation Center and other locations upon request.
- Create and post notices on MHX vehicles, shelters and other locations. Update county schedules, inventory fare media and order new fare media as needed. Compile data required for fare media accounting.
- Continue oversight, maintenance and updates to the ITS system app and equipment on the MHX service, including troubleshooting and replacement of malfunctioning equipment as well as posting notices as needed.
- Provide space for office staff, program materials, parking space for riders, parking of buses, vehicle equipment and shop supplies.
- Provide vehicle(s) for use by the Mt Hood Express in emergencies when existing County owned vehicles are out of service.
- Compile data required for completion of fiscal and grant reports, including tracking performance measures. Collaborate and assist with completion of grant applications and other activities designed to promote long term stable funding.
- Provide necessary staff and other administrative resources necessary to fulfill its

obligations under this Agreement.

- Update service interruptions or other service updates on Passio (or other ITS system) and the MHX Website as soon as a service interruption or change is known.
- Ensure that service changes are only made by contracted employees in coordination with the City and/or County directly.
- Lead technology implementation and efares project on behalf of all County service providers including MHX and County shuttles.
- Act as pass through for contract payments to third party contractor.
- Other tasks and projects as needed.

County Scope of Work

Subject to the terms of this Agreement, County agrees to provide the following:

- Provide ongoing fiscal support to MHX, as set forth in Section 3 of this Agreement. Changes in funding requiring changes in service levels will be communicated to City when notification is received from the funder, and the parties will negotiate in good faith to address those changes.
- Complete and submit required reports to funders in a timely manner.
- Participate in ongoing planning and coordination efforts, including participation in the Mt Hood Transportation Alliance.
- Reimburse City in accordance with Section 3 of the Agreement for eligible costs incurred, as further described in Exhibit B.
- Contingent upon availability of sufficient funds, pay a vehicle use fee of \$50 per day for the back-up bus if needed.
- Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, and contingent upon availability of sufficient funds, as determined by the County in its sole discretion, County will be responsible for the following costs associated with accidents: insurance deductibles, repairs not covered by insurance and towing for City owned MHX back up bus for incidents occurring during its use for MHX routes.
- Contingent upon the availability of sufficient funds, as determined by County in its sole discretion, County may pay for additional costs associated with the MHX service that are not specifically included in this Agreement but are directly associated with the operation of the MHX service. Provided funds are available, City and County will negotiate, in good faith, to determine if COUNTY may reimburse CITY for such additional costs and document any additional agreement in writing.
- Provide administrative and operational support as needed.

**Exhibit B
Budget**

BUDGET		
	Year 1 7/25 - 6/26	Year 2 7/26 - 6/27
Operations	\$ 1,393,000.00	\$ 1,393,000.00
Administration	\$ 65,000.00	\$ 65,000.00
Boring Lifeline Transportation Services	\$ 50,000.00	\$ 53,000.00
Expanded Elderly and Disabled Transportation	\$ 80,000.00	\$ 80,000.00
Ski Boxes	\$ 24,949.00	\$ -
TOTAL	\$ 1,612,949.00	\$ 1,591,000.00
		\$ 3,203,949.00

Total Compensation under this agreement shall not exceed \$3,203,949

RIDES PROVIDED		
	Year 1 7/25 - 6/26	Year 2 7/26 - 6/27
Boring Lifeline Transportation Services	500	550
Expanded Elderly and Disabled Transportation	950	1000
TOTAL	1450	1550

EXHIBIT C REPORTING REQUIREMENTS

Reporting:

City shall submit on a monthly basis a narrative summary of the work performed on behalf of the Mt Hood Express, including progress on any planning or special projects.

Invoicing:

City, through designated staff, shall submit to County a monthly invoice for project management services, bus rental, reimbursement of shop supplies, and preventative maintenance and repair costs. Any bus rental fees will include a summary of rental use. Preventative maintenance and shop supply cost reimbursement requests will require documentation sufficiently detailed to allow for reimbursement from the applicable funding source, as determined by the County in its sole administrative discretion.

Farebox detail will be provided and fare income will be sent directly to the County on a monthly basis. Fares will not be deducted from the invoice.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by County on or before the 15th of each quarter following the billing period.

E-mail address: kbabcock@clackamas.us

County shall make payment to City on undisputed amounts within 30 days of receipt of each invoice submitted.

EXHIBIT D
SPECIFIC AGREEMENT PROVISIONS

Contractor (also referred to as “Subrecipient”) shall comply with the provisions as set forth in this Exhibit. Where provided in Exhibit D, Subrecipient shall require each of its lower-tier subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit. To the extent that these terms conflict with the provisions of the Contract above, the provisions of this Exhibit D shall control.

1. Disbursement and Recovery of STIF Formula Funds.

- A. Disbursement Generally.** TriMet shall promptly disburse STIF Formula Funds to Subrecipient after the Oregon Department of Transportation provides funding to TriMet in accordance with and subject to approval of the STIF Plan, the terms and conditions of this Agreement, and Subrecipient’s compliance with this Agreement. As used in this Section, “promptly,” means within 5 business days of TriMet’s receipt of STIF Formula Funds from ODOT, absent a written notification from TriMet to Subrecipient explaining the reason(s) for any delay beyond 5 business days. Subject to the forgoing and based on the current and best available information, TriMet anticipates the following schedule for distribution of STIF Formula funds to Subrecipient:
- i. Upon execution of this Agreement and to the extent TriMet has received funds from ODOT, TriMet shall disburse funds to the Subrecipient as outlined in Exhibit E. TriMet will make disbursements quarterly following receipt from ODOT. ODOT expects to disburse funds to TriMet on January 15, April 15, July 15, and October 15 each year during the STIF Plan Period.
 - ii. TriMet will provide a written summary of total funds received and total funds disbursed with each disbursement made under this Agreement to all Subrecipients.
- B. STIF Plan Budget Revisions.** In the event that Subrecipient determines that funds need to be shifted between tasks within that Subrecipient’s Project or between that Subrecipient’s Projects as allowed under ODOT published guidance, Subrecipient’s Project Manager will submit a transfer request to TriMet’s Project Manager for Reporting and Compliance. TriMet will promptly request approval from ODOT on Subrecipient’s behalf.

2. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to TriMet as follows:

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the STIF Formula Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet and County immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- E. **Policies and Procedures.** Subrecipient represents and warrants that it has all of the policies and procedures in place to ensure compliance with OAR 732, Divisions 40 and 42, and to achieve the goals and outcomes specified in the Agreement, including but not limited to program and project management, financial management, operations management,

procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

3. Retention of Records and Audit Expenses

- A. **Retention of Records.** Subrecipient shall retain and keep and require its subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Formula Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient and its subcontractors shall retain the records until the questions are resolved.
- B. **Capital Asset Records.** For any Capital Asset purchased with STIF Formula Funds by Subrecipient or a subcontractor, all records relating to such Capital Assets shall be maintained for three years after disposition of the Capital Asset.
- C. **Audit Requirements.** Subject to the applicable limits of the Oregon Constitution and the Oregon Tort Claim Act, Subrecipient shall indemnify and hold harmless TriMet and County from the cost of any audits or special investigations to the extent arising from or related to Subrecipient's use of STIF Formula Funds in breach of this Agreement or applicable law. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement. This section does not apply to regular audit and compliance reviews that are conducted pursuant to Section 2 of this Agreement.

4. Subrecipient Sub agreement and Procurement

- A. **Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.
 - i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon

request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being discovered.

- B. **Subrecipient's sub agreement(s) shall require the other party to such sub agreement (s) to indemnify, defend, save and hold harmless TriMet, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including reasonable attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that TriMet shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of TriMet, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.**

Any such indemnification shall also provide that neither Subrecipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subcontractors"), nor any attorney engaged by Subrecipient's Subcontractor(s), shall defend any claim in the name of TriMet nor purport to act as legal representative of TriMet without the prior written consent of TriMet. TriMet may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's Subcontractor is prohibited from defending TriMet or that Subrecipient's Subcontractor is not adequately defending TriMet's interests, or that an important governmental principle is at issue or that it is in the best interests of TriMet to do so. TriMet reserves all rights to pursue claims it may have against Subrecipient's Subcontractor if TriMet elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its sub agreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in this Agreement.

- C. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project in compliance with all applicable procurement laws and policies.

5. **Reserved.**

6. **General Provisions**

- A. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260

("Third Party Claim") against TriMet or Subrecipient with respect to which the other party may have liability, the notified party must promptly notify the other party in writing of the Third Party Claim and deliver to the other party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a party of the notice and copies required in this paragraph and meaningful opportunity for the party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which TriMet is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), TriMet shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of TriMet on the one hand and of the Subrecipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of TriMet on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. TriMet's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if TriMet had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with TriMet (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by TriMet in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of TriMet on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of TriMet on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. If Subrecipient is a public body, Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300,

and the Oregon Constitution, if Subrecipient had sole liability in the proceeding.

- B. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other party, organization or individual.
- C. **No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- D. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 12 Communications of the Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given three days after the date of mailing. If email is used for communications pursuant to the following Sections, either mail or personal delivery must also be employed by the sender to the recipient and the later of the delivery dates is the date that will be used to calculate any timeframes for responses or cure periods for the recipient: Section 5.2; Exhibit A, Sections 1(A), 3(C), 5, and 6(A); and Exhibit C, Section 7.
- E. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- F. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required

Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall include in any subcontracts to perform services pursuant to this Agreement a provision requiring a subcontractor to comply with this Subsection F, and that failure to do so is a material breach of the subcontract with Subrecipient.

- G. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of TriMet. Subrecipient shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the parties.

EXHIBIT E

Summary of Federal Requirements and Incorporating by Reference Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement ("Master Agreement")

Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the Certifications and Assurances available at www.transit.dot.gov. The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

Recipient further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at www.transit.dot.gov. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Exhibit B:

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the Parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT- assisted contracts. Recipient's DBE program, if applicable, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to State of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. The requirements of the National Environmental Policy Act (NEPA), including 23

CFR Part 771, apply to all projects that receive federal funds (whether directly or through the State) or that need a federal approval or permit. The process of addressing compliance with NEPA and all other applicable federal laws relating to the environment, parks, or historic resources (e.g., the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act) is referred to as the environmental review process. Recipient shall coordinate with the State and FTA prior to incurring any costs, making any expenditures, or conducting any project-related activities to confirm requirements for complying with the environmental review process. Recipient is responsible for submitting all documentation required to comply with the environmental review process to the State for approval by the FTA.

Until the FTA concurs that the environmental review process is complete and in compliance with 23 CFR 771.113(a)(1), the following activities cannot proceed: final design activities (design beyond 30%), property acquisition (includes purchase discussions with property owners that imply or are explicitly binding), purchase of construction materials or rolling stock, or project construction activities (including, but is not limited to, any ground disturbance or facility modification). This award is contingent on the FTA's concurrence that the environmental review process is complete, and the project has complied with NEPA and related federal laws. Any project expenses incurred prior to completion of the environmental review process will not be eligible for reimbursement and may cause the entire project to be ineligible to receive federal funding.

5. Recipient must include the following language in each subagreement Recipient signs with a subcontractor or subrecipient:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor 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 Recipient deems appropriate.

6. Recipient and contractors receiving in excess of \$100,000 in federal funds, other than Indian tribes, must certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.

