

April 21, 2022

Board of Commissioners
Clackamas County

Dear Board of County Commissioners:

Approval of Intergovernmental Agreement with Washington County and South Metro Area Regional Transit (SMART) with HB2017 State Transportation Improvement Fund Discretionary Program Funds for the I205 / Borland Rd / Bridgeport Village pilot transit service. The funding source is HB2017 Discretionary in the amount of \$720,000.
No County General Funds are required.

Purpose/Outcomes	Approval of this IGA to pass funds through to Washington County and South Metro Area Regional Transit (SMART). The funds will be used to implement express service along I-205 and shuttle service along Borland Rd.
Dollar Amount and Fiscal Impact	The maximum agreement amount is \$720,000.00. The maximum amount for Washington County is \$476,000.00. The maximum amount for SMART is \$244,000.00. Match is being provided by both Washington County and Clackamas County. Clackamas County match is Regional Coordination dollars from our Statewide Transportation Improvement Funds (STIF)
Funding Source	STIF Discretionary grant from ODOT. Clackamas County matching funds are coming from STIF Regional Coordination Dollars. There are no general funds involved.
Duration	August 10, 2021 to June 30, 2023
Previous Board Action	Board order # 072921-A5 , Issues 4/19/22
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
Counsel Review	AN reviewed and approved this document on 12/9/21
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S#10462

The Social Services Division of the Department of Health, Housing and Human Services requests approval of an intergovernmental agreement with Washington County and South Metro Area Regional Transit (SMART) for the implementation of transit service that connection Tualatin (Bridgeport Village) and Clackamas Town Center.

This new pilot transit connection is building off a feasibility study done in 2020 that looked at the need for transit along the I-205 corridor. This transit connection would provide a missing link in transit for both Clackamas County and Washington County. Partners for this project include Washington County, the City of Tualatin, the City of West Linn, the City of Oregon City, SMART, and Ride Connection. The partners are looking to extend and connect current transportation options that would allow people to move from Bridgeport Village in Tualatin to Oregon City, West Linn, Clackamas Town Center and additionally connect to critical services off of Borland Rd.

The HB 2017 STIF Discretionary grant is for \$720,000. The match requirement of \$180,000 will be paid by Clackamas County and Washington County. Clackamas County's share will come from STIF Regional Coordination Funds that have already been awarded. No County general funds are involved.

RECOMMENDATION:

Staff recommend recommends the approval of this agreement by the Board of County Commissioners

Respectfully submitted

Rodney A. Cook

Rodney A. Cook, Interim Director
Health, Housing and Human Services

PUBLIC TRANSPORTATION DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Public Transportation Division, hereinafter referred to as "State," and **Clackamas County**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2021** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, grant funds under this Agreement shall be available for project costs incurred on or before **June 30, 2023** (the "Expiration Date"). No grant funds are available for any expenditures after the Expiration Date. State's obligation to disburse grant funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Subagreement Insurance Requirements and Recipient Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Grant Funds.** State shall provide Recipient an amount not to exceed **\$720,000.00** (the "Grant Funds"). Recipient acknowledges and agrees that State may change the amount of funds available under this Agreement, based on availability of funds and other factors as determined by State, upon notification to Recipient in accordance with Section 11.g of this agreement. Recipient will be responsible for all Project costs not covered by the Grant Funds.
4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>. If Recipient is unable to access OPTIS, reports must be sent to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.
6. **Disbursement and Recovery of Grant Funds.**
 - a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Funds amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement

described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.

- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
 - v. Any audit findings relating to Recipient's use of funds under this Agreement or any other agreement with State have been resolved.

c. **Recovery of Funds.**

- i. Recovery of Misexpended Funds or Nonexpended Funds. Any funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended as of the Expiration Date ("Unexpended Funds") or (ii) expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to State. Recipient shall return all Misexpended Funds to State no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 15 days after the earlier of expiration or termination of this Agreement.
- ii. Recovery of Funds upon Termination. If this Agreement is terminated under either Section 10(a)(i) or Section 10(a)(v) below, Recipient shall return to State all funds disbursed to Recipient within 15 days after State's written demand for the same.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to State as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the funds. Recipient 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 Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient 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 Recipient's 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 Recipient is a party or by which Recipient or any of its properties 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 Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, 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.** Recipient'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 subagreements, 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 Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded by any state or federal agency or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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.

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, including, without limitation, records relating to capital assets funded by this Agreement, the 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. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the funds were expended.
- d. **Audit Requirements.**
 - i. Recipient shall, at Recipient's own expense, submit to State, Public Transportation Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDreporting@odot.state.or.us, a copy of, or electronic link to, any annual audit covering the funds expended under this Agreement by Recipient or a party to any subagreement with Recipient, as well as the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
 - ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

This section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of Recipient's subagreement with the contractor and to name State as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide State with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon request by State. This Paragraph 9.a.iii. shall survive expiration or termination of this Agreement.
 - iv. Recipient must report to State any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**
 - i. **Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including 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 Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.**
 - ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.
 - iii. Recipient shall require the other party, or parties, to each of its subagreements 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 Exhibit C to this Agreement. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code (Oregon Revised Statutes (ORS) Chapters 279 A, B and C) and rules, ensuring that:
 - i. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable,

including all applicable provisions of the Oregon Public Contracting Code and rules. Procurements of rolling stock, facilities and personal services for any amount, and all procurements for an amount greater than \$100,000 must be approved by State prior to solicitation.

- ii. Recipient shall complete all purchases, including installation, and all construction of capital assets funded under this Agreement prior to the Expiration Date of this Agreement. If local circumstances prevent purchase, installation, or construction by the specified date, Recipient will notify State in writing of the circumstances regarding the delay. Such notification must be received at least forty-five (45) days prior to the expiration of the Agreement. Agreement amendment for time will be considered in extenuating circumstances.

d. **STIF Procurements**

Pursuant to Oregon Administrative Rule (OAR) 732-044-0050(6)
Recipient shall:

- i. Establish useful life standards for capital assets acquired pursuant to STIF Discretionary grant agreements which meet or exceed the duration of those established by State.
 - ii. Use State's published procedures or substantially similar procedures and ensure that Sub-Recipients use the same procedures for the disposition of capital assets acquired with STIF funds.
 - iii. Retain the net proceeds from a sale or other disposition of a capital asset to reinvest in a future STIF capital project or return the net proceeds to State. Net proceeds are the disposal proceeds less original value, depreciation, and disposal costs. If non-STIF funds were used in the original purchase, only the proportion representing the STIF contribution to the purchase is subject to this rule.
 - iv. Establish written procedures to ensure that a capital asset is maintained in safe operating condition.
 - v. Maintain insurance coverage, or require Sub-Recipients to maintain insurance coverage that meets or exceeds the standards in Oregon Revised Statutes (ORS) 806.070.
 - vi. Ensure that vehicles purchased in whole or in part with STIF funds are titled with the Oregon Department of Transportation Driver and Motor Vehicle Service Division pursuant to ORS 803.045 and supporting rules, with ODOT Public Transportation Division listed as a security interest holder, subject to the following additional requirements:
 - a. If the vehicle is registered in the name of a Sub-Recipient receiving the vehicle, and the Sub-Recipient is not a Qualified Entity (OAR 732-040-005(26)) or Public Transportation Service Provider (OAR 732-040-005(25)), then the Qualified Entity or Public Transportation Service Provider must be listed on the vehicle title as the primary security interest holder.
 - b. If the vehicle was purchased with federal funds in addition to STIF funds, and the federal funding source requires the vehicle to be titled otherwise than provided in this rule, then the federal titling requirements prevail.
- e. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 et seq., as those laws may be subsequently amended.

10. **Termination**

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the

- Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
- ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
- i. Upon notification to State of its desire to withdraw from eligibility to receive the funds and providing to State a reason acceptable to State for the withdrawal; or
 - ii. If federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. 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 State or Recipient 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 State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State 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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient 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 State on the one hand and of Recipient 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. State'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 State had sole liability in the proceeding.

With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient 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 State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State 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 Recipient on the one hand and of State 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. Recipient'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 it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Insurance.** Recipient shall meet the insurance requirements within Exhibit C.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient 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 or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** State and Recipient 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.

Recipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **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, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.i. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. 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 when received.
- h. **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 State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon 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. 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.

- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- n. **Survival.** The following provisions survive termination of this Agreement: Sections 6.c., 8 and 11.

Clackamas County/State of Oregon
Agreement No. 35094

The Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Rail and Public Transit Division Administrator.

SIGNATURE PAGE TO FOLLOW

Clackamas County/State of Oregon
Agreement No. 35094

Clackamas County, by and through its
Board of Commissioners

By Tootie Smith
(Legally designated representative)

Name Tootie Smith
(printed)

Date 7/29/2021

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Teresa Christopherson
Social Services Department
Oregon City, OR 97045
1 (503) 650-5718
teresachr@co.clackamas.or.us

State Contact:

Valerie Egon
555 13th Street NE
Salem, OR 97301-4179
1 (971) 301-0909
Valerie.Egon@odot.state.or.us

Signed Agreement Return Address: ODOTPTDReporting@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By K. Criswell
Karyn Criswell
Public Transportation Division Administrator

Date 8/10/21

APPROVAL RECOMMENDED

By Valerie Egon

Date 06/24/2021

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

By _____
Assistant Attorney General

Name Sam Zeigler by email
(printed)

Date 05/21/2021

EXHIBIT A
Project Description and Budget

Project Description/Statement of Work

Project Title: STIF IC Clackamas County 35094				
<i>I205 / Borland Rd / Bridgeport Village Transit Service.</i>				
Item #1: Bus < 30ft				
	Total	Grant Amount	Local Match	Match Type(s)
	\$205,000.00	\$164,000.00	\$41,000.00	Local
Item #1: Route Signing				
	Total	Grant Amount	Local Match	Match Type(s)
	\$6,000.00	\$4,800.00	\$1,200.00	Local
Item #1: Project Admin.				
	Total	Grant Amount	Local Match	Match Type(s)
	\$15,000.00	\$12,000.00	\$3,000.00	Local
Item #1: Operating Assistance				
	Total	Grant Amount	Local Match	Match Type(s)
	\$674,000.00	\$539,200.00	\$134,800.00	Local
Sub Total	\$900,000.00	\$720,000.00	\$180,000.00	
Grand Total	\$900,000.00	\$720,000.00	\$180,000.00	

1. BACKGROUND

In the 2017 legislative session, the Oregon Legislature passed House Bill 2017, the Statewide Transportation Improvement Fund (STIF). The bill designated nine percent of the total funds appropriated to be awarded to eligible Public Transportation Service Providers (PTSPs) based on a competitive grant process. This nine percent is divided into a five-percent share for STIF Discretionary projects and a four-percent share for STIF Intercommunity Discretionary projects.

The STIF Discretionary fund is a flexible fund source that aims to expand or improve public transportation services by supporting projects that create new service routes, adopt enhanced forms of technology and data collection, maintain transit fleets in a state of good repair, and advance the equity and sustainability of transportation in the state.

The STIF Intercommunity Discretionary fund is housed with FTA Section 5311(f) funds under the "Statewide Transit Network Program." The purpose of the Statewide Transit Network Program is to support projects that enhance Oregon's statewide fixed route transit network by investing in key transit hubs, closing gaps between two or more communities, improving access to and from transit for pedestrians and bicyclists, improving collaboration and coordination between agencies that results in functional benefits, or other activities that improve the function of the overall transit network and serve the interests of more than one transit agency.

This Agreement describes the duties and responsibilities of State and Recipient in the management and proper use of STIF funds or 5311(f) funds and the associated reporting requirements.

2. PROJECT DESCRIPTION

Operations

This Agreement funds the creation of a transit connection between Washington County and Clackamas County, Oregon that serves populations between Tualatin and Clackamas Town Center (coordinating with planned bus-on-shoulder programs along I-5 and I-205 corridors).

STIF discretionary reimbursements for this task shall not exceed \$539,200.

Vehicle Expansion

This Agreement provides funding to purchase passenger transportation vehicles to be used to provide public transportation service. Public transportation service is defined as service to the general public or special populations such as seniors and individuals with disabilities. Recipient may use the vehicles to coordinate public and human service transportation services with other agencies. Recipient will not lease the vehicles to another agency without the permission of State.

Funding under this Agreement is for the purchase of four Category D transit vehicles as follows:

Two Category Ds

Useful life - 5 years or 150,000 miles; approximate length - less than 30 feet; estimated number of seats - 10; estimated number of ADA securement stations - 2 fuel type - CNG.

And

Two Category Ds

Useful life - 5 years or 150,000 miles; approximate length - less than 30 feet; estimated number of seats - 10; estimated number of ADA securement stations - 2 fuel type - gasoline.

Purchase includes all equipment and supplies necessary to put the vehicles into service.

STIF discretionary reimbursements for this task shall not exceed \$164,000.

Signs, Shelters, and Amenities

This Agreement provides funding to eight each of bus stop signs, poles, and installation, in a manner to comply with ADA accessibility requirements to support the public transportation needs of the general public. The purpose of the project is to install passenger amenities and improvements such as benches for the comfort and convenience of riders, and procure and install signage for transit route information.

Eligible expenses are: associated services, permits, permissions, and equipment, infrastructure needed to put the passenger shelter(s), route sign(s), benches, trash receptacles, reader boards, electronic routing equipment, and infrastructure into service; costs incurred from the procurement process; delivery charges; and post-delivery inspections. Architecture, design, engineering, planning, and preparation services and permits, clearly needed to proceed with the project, are eligible reimbursable expenses.

A National Environmental Policy Act environmental assessment may be required for this project, depending on fund source and complexity. A Documented Categorical Exclusion worksheet or Categorical Exclusion worksheet must be submitted to State, and must be approved by the Federal Transit Administration if this project is matched with federally sourced funding. FTA concurrence must be received by State for all partially federally-funded projects, prior to any ground disturbance. This award is contingent on approval of the worksheet. Any project expenses incurred will not be reimbursed if the project's required worksheet is not approved.

A Documented Categorical Exclusion worksheet or Categorical Exclusion worksheet may be submitted to State to establish a historical benchmark. State-funded shelters, signs, or amenities projects must comply with state and local procurement and construction rules.

STIF discretionary reimbursements for this task shall not exceed \$4,800.

Administration

This Agreement provides funding for Recipient's administrative expenses not directly related to providing transit services, but which support the effective, efficient, and safe delivery of those services.

STIF discretionary reimbursements for this task shall not exceed \$12,000.

3. PROJECT DELIVERABLES, TASKS and SCHEDULE

Operations

Recipient, in the performance of this Project, shall document steps taken to improve accessibility of public transportation for vulnerable populations and/or historically marginalized communities. Vulnerable populations include low-income individuals or households, veterans, Tribal communities or groups, individuals of age 65 and older, individuals with disabilities, and individuals with limited English proficiency. Information on this topic shall be provided to State through reporting.

Recipient, shall create and maintain current GTFS data describing the funded services. GTFS data should be updated in advance of system changes to allow trip planners to stay current. Recipient, if operating demand response service, is strongly encouraged to create and maintain GTFS-flex data for their service. GTFS creation and maintenance services may be supported by State's GTFS contractor.

Competitive purchases of systems that can count passengers [e.g., Automated Passenger Counters (APC), Automated Fare Collection (AFC) systems] shall include an explicit scoring preference for systems that support the GTFS-Ride and GTFS-RealTime data standards and shall include support for GTFS data access to State and interested third parties.

STIF Discretionary-supported service providers are encouraged to serve key transit hubs and stops operated or used by for-profit/national transit providers where practical.

Modifications to Project Objectives or Service:

Recipients receiving operating or mobility management funding for fixed route service shall provide adequate public notice of impending service changes. State shall be included in the first entities notified of any impending service changes. Cause for such notification shall include, but not be limited to, changes to route stops, route frequency, or the primary vehicle used for the service as well as Recipient's inability to maintain interline agreements made with other public transportation service providers. Service changes determined to significantly impede Recipient's ability to achieve objectives and deliverables identified in this Agreement may result in loss or reduction of project funding.

The service, schedule, days, hours, and service type will be designed to meet the needs of the target population as determined by Recipient and program type, in consultation with the operator of service, the affected community members, and stakeholders identified by Recipient.

To the extent possible, Recipient (and contractors, as applicable), will coordinate the delivery of transportation services with other public and private transportation providers to enhance regional services and to avoid duplication of services. Coordinated service may be made available to a variety of potential users.

Recipient may amend the service design at any time in accordance with local demand, funding issues, or other situations that require service to be changed. Recipient will inform State if there is a change in the service funded by this Agreement.

Recipient will market the services in culturally appropriate ways. Marketing and promotional activities should be focused on incentivizing ridership through inclusive customer engagement techniques. Activities may include marketing strategies, marketing campaigns, and creating marketing materials. Recipient may use key performance indicators in marketing the service.

Recipient is encouraged to set realistic goals and establish measurable outcomes for this project. Goals and outcomes can be related to rides provided to seniors and persons with disabilities, number of rides transitioned from demand responsive to fixed route transit through mobility management efforts, hours of public transportation services to low-income households at the 200 percent poverty threshold, and overall ridership. They can also be related to Environmental Justice goals. Progress meeting established goals and outcomes should be shared in Recipient's agency periodic report.

Recipient shall engage in a good faith effort to generate program income to help defray program costs.

Vehicle Expansion

All purchases and installations must be completed prior to the expiration date of this Agreement.

*Estimated order date: August 2, 2021
Estimated delivery date: June 30, 2023.*

For vehicles procured using State Price Agreement contracts managed by the Oregon Department of Administrative Services, all vehicle orders will be reviewed and approved by State prior to submission to selected vendor. State is responsible for submitting vehicle orders to selected vendor. If Recipient does not purchase from the State Price Agreement contracts managed by the Oregon Department of Administrative Services, requests for proposals to procure the vehicles must be reviewed by State prior to solicitation for bids. All vehicle orders will be reviewed by State prior to submission to the selected vendor.

State will retain title to the vehicles as primary security interest holder for as long as the vehicles remain in public transportation service. Recipient must request permission from State to release title for disposal when planning to sell or transfer a vehicle which has exceeded the minimum useful standard for age or mileage, and must notify State when actual disposal has been completed. Recipient must request permission from State in advance to transfer or otherwise dispose of a vehicle prior to its meeting federal useful life standards. Recipient must request permission from State to release title for changes.

Recipient will create and maintain a vehicle maintenance plan that utilizes the original equipment manufacturer (OEM) requirements for each vehicle and meets FTA transit asset management requirements in 49 Part CFR 625. Recipient will follow the plan to ensure each vehicle is maintained in a state of good repair. Recipient will provide State a copy of the plan upon request.

Signs, Shelters, and Amenities

Recipient will submit a description and list for sign and/or shelter locations. Recipient will submit certification attesting to fulfillment of any applicable permitting, inspections, or other requirements prior to final payment. An on-site inspection or photo documentation of installations is required prior to final payment.

By accepting federal or state funds, Recipient certifies that the project will meet all Americans with Disabilities Act requirements as set forth in 49 CFR parts 27, 37, and 38.

All purchases, installations, and construction must be completed prior to the expiration date of this Agreement. If an extension for time is required, a request must be received by State at least 45 days prior to the expiration date.

*Expected project start date: December 2, 2021
Expected project completion date: June 30, 2023.*

Administration

Recipient shall perform administrative activities to support service sustainability as follows: ongoing financial resource budgeting and allocation, service coordination, capital asset replacement planning, contract management, reporting, marketing and outreach, and planning.

4. PROJECT ACCOUNTING and MATCHING FUNDING

Operations

Recipient retains authority over costs and allocations of STIF funds within the guidelines established by Oregon Revised Statutes (ORS) 184.751 through 184.758 and Oregon Administrative Rules (OAR) Chapter 732.

Generally accepted accounting principles and Recipient's own accounting system determine those costs that are to be accounted for as gross operating expenses. The contractor may use capital equipment funded from USDOT- or State-source grants when performing services rendered through a contract funded by this Agreement. Depreciation of capital equipment funded

from USDOT- or State-source grants is not an eligible expense.

Program income that may be used as Recipient's matching funds for this Agreement includes service contract revenue, advertisement and other earned income, other local funds, cash donations, and other verifiable in-kind contributions integral to the project budget. In-kind contributions claimed as matching funds must be properly documented and reported to State. Recipient may not use passenger fares as matching funds.

Recipient will subtract revenue from fares, tickets and passes, either pre-paid or post-paid, from the gross operating expense of the service. Administrative expenses are reimbursable as operating expenses.

Vehicle Expansion

Eligible expenses that may be charged to this Agreement include grant administration, the cost of the procurement process, delivery charges and post-delivery inspections. Aftermarket equipment, graphics and other items directly associated with these vehicles and required to put the vehicles into service are eligible. Purchase of an extended warranty is an eligible expense; however, the eligible warranty shall not exceed the defined useful life of the vehicles. Licensing and other post-delivery expenses are not eligible for reimbursement.

Recipient will provide matching funding from non-federal source(s). Sources of funding that may be used as matching funding for this Agreement include state funds, local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as matching funding.

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. State's obligation to reimburse Project costs is contingent upon Recipient first paying or otherwise contributing its minimum match amount set forth in this Exhibit A. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible.

Signs, Shelters, and Amenities

The service provider may use capital items funded under USDOT- or State-source agreements when performing services rendered through a contract or sub-agreement funded by this Agreement. Depreciation of capital items funded under USDOT- or State-source grants is not an eligible expense.

Eligible matching fund sources for this Agreement include Statewide Transportation

Improvement Formula Fund, Special Transportation Formula Fund, local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as match. Administration and facility contributions are documented by percentage of contribution directly attributed to the project.

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. The required local match share will be subtracted from the project expenses to determine the Agreement share of the project expense. Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted for as gross operating expenses.

Receipt of federal funds for construction projects requires that labor must be paid at the prevailing wage as prescribed by the Davis-Bacon Act.

Administration

Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted as administrative expenses. Eligible project administrative expense may include, but are not limited to: administrative staff salaries; overhead expenses; marketing expenses; insurance premiums and payments to a self-insurance reserve; office supplies; office equipment; telecommunications; facilities and equipment rental. Administrative costs for coordination of transit services are eligible as project administration if the activity is part of a coordinated public transportation program.

5. REPORTING AND INVOICING REQUIREMENTS

Operations

Recipient shall confirm the eligibility of any Sub-Recipient prior to distributing STIF moneys and entering into an agreement with the Sub-Recipient. Recipient shall ensure that Sub-Recipients maintain eligibility throughout the project period. Recipient shall provide State with copies of agreement(s) made with Sub-Recipients within 30 days of execution of those agreements.

Per OAR 732-044-0040(1)(a), Recipient shall report on Project progress, outcomes achieved, and expenditures of discretionary STIF funds by itself and its Sub-Recipients. Failure to use STIF funds towards achievement of identified project deliverables may result in the cessation of funding to Recipient for the remainder of the Agreement period.

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State. Copies of invoices must be submitted for all vendor charges. In-house charges must be documented showing time specifically associated with the project. In addition, Recipient must regularly provide a summary of the work performed pursuant to this Agreement in its agency periodic report. Photographs of public transportation activities, and related operations, are encouraged to memorialize the achievement of project deliverables.
Project Progress Reporting

Recipient shall report Project progress quarterly through the Oregon Public Transit Information System (OPTIS) Agency Periodic Report (APR) and shall include a brief status update for each deliverable. Project reporting should align with project deliverables identified in this Agreement. State will use reporting information to assess Recipient's progress by comparing task-based expenditures to progress on deliverables.

Outcomes Achieved Reporting

Recipient shall report outcomes achieved through project performance. Continued funding under this Agreement is contingent upon reporting of outcomes achieved.

On a quarterly basis, in addition to continuing required elements in the APR, Recipient shall complete a short narrative describing outcomes achieved in performance of the Project. For the final quarter of the biennium, Recipient shall report on quarterly outcomes achieved as well as summarize outcomes achieved over the duration of the Agreement. Recipient shall provide additional information on outcomes achieved when and where directed to do so by State in reporting guidance.

Outcomes achieved are defined in State's program guidance and that guidance provides State's expectations surrounding all reporting requirements. For detailed instructions on quarterly, annual, and biennial reporting, refer to State's STIF Discretionary/STN Reporting Guidance document.

Recipients of operating, mobility management, or any STIF Discretionary, STIF Intercommunity Discretionary, or 5311(f) funds associated with a specific transportation service shall report on several key project outcomes related to that service.

On a quarterly basis, Recipient shall report in the APR the overall service costs, revenue miles, revenue hours, and ridership for the service associated with this Agreement. Recipient shall also report the fare revenue, contract revenue, and any other revenue collected as a result of the service.

Expenditures

Expenditures of STIF Discretionary funds will be tracked in OPTIS. Recipient must submit reimbursement requests in OPTIS to receive reimbursement for Project expenditures.

Recipient shall ensure Satisfactory Continuing Control of capital assets, including real property, purchased in whole or part under this Agreement while the capital assets are being used for public transportation purposes. Satisfactory Continuing Control means the legal assurance that a capital asset will remain available to be used for its originally-authorized purpose throughout its useful life or until disposition.

An inventory of capital assets purchased in whole or in part with STIF funds will be created by State in the OPTIS asset register. The inventory will include a description of the capital asset, the date of purchase, the date put into public transportation service, the purchase price, the amount of STIF funds contributed to the purchase, the source of other funds, the authorized use per this agreement, the Recipient or Sub-Recipient using the capital asset (Owner/Operator), and the condition of the asset. Recipient shall report quarterly on all capital assets through the OPTIS APR, providing information relevant to purchased capital assets, including but not limited to, asset condition, and vehicle mileage.

Recipient shall request authorization from State for the sale, transfer, or other disposition of any Capital Asset purchased under this Agreement and shall report the amount of proceeds, if any, from the sale to State. Capital asset useful life standards shall be the same as those outlined by the Federal Transit Administration.

Recipient will provide reporting information as prescribed by State on the capital asset purchases under this Agreement as long as the capital asset remain in public transportation service.

Reimbursement requests for capital assets must include the following: a cover letter and copies of all invoices associated with expenses identified for reimbursement. Where a vehicle asset will be partially funded with federal funds, Recipient shall submit pre-award and post-delivery certification forms documenting compliance to Altoona bus testing, Federal Motor Vehicle Safety Standards, Buy America, and Disadvantaged Business enterprise requirements.

Vehicle Expansion

Recipient will provide reporting information as prescribed by State on the vehicles purchased under this Agreement as long as the vehicles remain in public transportation service.

Recipient will submit a request for reimbursement in a format provided by State. Reimbursement requests must include a cover letter and copies of all invoices associated with expenses identified for reimbursement.

Signs, Shelters, and Amenities

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State. Copies of invoices must be submitted for all vendor charges. In-house charges must be documented showing time specifically associated with the project. In addition, Recipient must provide a cover letter or summary of the work performed pursuant to this Agreement in each Agency Periodic Report. Before and after photographs of the project are encouraged to memorialize the achievement of deliverables and may be submitted with the final report.

Recipient will report as prescribed by State on assets purchased or constructed under this Agreement as long as they remain in use for public transportation service.

Expenses incurred will not be reimbursed if the project's scope is changed or altered without the necessary pre-approval and amendment by State.

Administration

Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted as administrative expenses. Eligible project administrative expense may include, but are not limited to: administrative staff salaries; overhead expenses; marketing expenses; insurance premiums and payments to a self-insurance reserve; office supplies; office equipment; telecommunications; facilities and equipment rental.

Reporting on Mitigation of Tax Impacts to Low-income Populations

Per OAR 732-040-0025(1), Qualified Entities receiving STIF funds shall submit a report on any actions taken by any PTSP located within the area of the Qualified Entity to mitigate the impact of the STIF tax on passengers who reside in low-income communities. This report must be submitted no later than 60 days after the end of each fiscal year in which the Qualified Entity receives STIF funds.

Recipient shall complete and submit a form detailing any mitigation actions taken by Recipient to the appropriate Qualified Entity no later than 30 days after the end of each Fiscal Year in which the PTSP receives STIF discretionary funds. This form will be provided to Recipient prior to the deadline for submission of the form and will include instructions for the proper completion and submittal of the form.

EXHIBIT B
FINANCIAL INFORMATION

This Agreement is financed by the funding source indicated below:

State Program STF: ORS 391.800 through ORS 391.830 and OAR Chapter 732, Divisions 5, 10, and 30 And/Or STIF: ORS 184.758 through ORS 184.766 and OAR Chapter 732, Divisions 040, 042, and 044.	State Funding Agency Oregon Department of Transportation 355 Capitol St. N.E. Salem, OR 97301-3871		Total State Funding \$720,000.00
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Administered By Public Transportation Division 555 13th Street NE Salem, OR 97301-4179
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EXHIBIT C

Insurance Requirements

Subagreement Insurance Requirements

GENERAL.

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence. Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required

limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subagreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subagreement, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **Recipient shall immediately notify State of any change in insurance coverage.**

CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Recipient Insurance Requirements

GENERAL.

Recipient shall: i) obtain at the Recipient's expense the insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force and at its own expense throughout the duration of this Agreement. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Coverage shall be primary and non-contributory with any other insurance and self-insurance with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insurance retention and self-insurance, if any.

INSURANCE REQUIREMENT REVIEW.

Recipient agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and State.

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employers liability insurance with coverage limits of not less than \$500,000 must be included.

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury, death, and property damage and shall include personal and advertising injury liability, products and completed operations and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability Insurance shall not be less than the following amounts as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property. Automobile Liability Insurance shall not be less than the following amount as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/ Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the Recipient's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) Recipient's completion and State's acceptance of all Services required under this Agreement or,

(ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE.

Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE.

State shall obtain from Recipient a certificate(s) of insurance for all required insurance before the effective date of this Agreement . The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

STATE ACCEPTANCE.

All insurance providers are subject to State acceptance. If requested by State, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to State's representatives responsible for verification of the insurance coverages required under this **Exhibit C**.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND WASHINGTON COUNTY AND SOUTH METRO AREA TRANSIT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into and between Clackamas County, a political subdivision of the State of Oregon, South Metro Area Regional Transit ("SMART), an Oregon municipal corporation, and Washington County, a political subdivision of the State of Oregon, collectively referred to as the "Parties" and each a "Party."

RECITALS

1. 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.
2. ORS 184.751 establishes the Statewide Transportation Improvement Fund ("STIF Discretionary Fund"), which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
3. The STIF Discretionary Fund is intended to improve public transportation services for current and potential future Oregon transit users by distributing moneys to transit providers. STIF Discretionary Funds are not intended to supplant local funding sources currently directed to public transportation service providers.
4. Clackamas County is authorized to receive STIF Discretionary Funds and provide public transportation services in and around Clackamas County, Oregon. Clackamas County may disburse STIF Discretionary Funds to transportation service providers as outlined in the IGA entered into by and between Clackamas County and Oregon Department of Transportation (#35094) (the "ODOT IGA"), attached hereto and incorporated herein as Exhibit C.
5. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, the parties enter into this Agreement for the sole purpose of disbursing the approved STIF Discretionary Funds to Clackamas County in order for Washington County and SMART to implement the project described in Exhibit A.

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 execution by all Parties, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2023, whichever is sooner.

2. **Scope of Work.** The Parties agree to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein (“Work”).
3. **Consideration.** Clackamas County agrees to pay Washington County and SMART, from available and authorized funds, the amounts set forth in Exhibit A on a reimbursement basis in accordance with the budgets attached hereto as Exhibit B, and incorporated by this reference herein. Washington County and SMART may seek reimbursement of eligible expenses incurred between August 10, 2021 and June 30, 2023. Funds shall be used solely for the project(s) identified in Exhibit A, and only for eligible expenses identified in Exhibit A, and shall not be used for any other purpose.
4. **Payment.** Unless otherwise specified, Washington County and SMART shall each submit monthly invoices for eligible expenses incurred. Such invoices shall include the total amount billed to date by each party prior to the current invoice. Invoices shall describe all eligible expenses incurred with particularity and shall further itemize and explain all such expenses. Payments shall be made to Washington County and SMART following Clackamas County’s review and approval of invoices submitted by each Party. If any expenses are not approved or are determined ineligible, Clackamas County shall advise Washington County and SMART of the same in writing and allow Washington County and SMART to submit additional information supporting the eligibility of the reimbursable expense. Neither Washington County nor SMART shall submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth in Exhibit A, nor will County pay any amount not in accordance with the budgets attached hereto as Exhibit B.
5. **Representations and Warranties.**
 - A. *SMART Representations and Warranties:* SMART represents and warrants that it 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 SMART enforceable in accordance with its terms. SMART represents and warrants that they have all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the Project, 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.
 - B. *Washington County Representations and Warranties:* Washington County represents and warrants that Washington 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 Washington County enforceable in accordance with its terms. Washington County represents and warrants that they have all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the Project, 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 ADA, charter and school bus, and safety and asset management.

- C. *Clackamas County Representations and Warranties*: Clackamas County represents and warrants that Clackamas 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 Clackamas County enforceable in accordance with its terms.
- D. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. The Parties may, by mutual written agreement, terminate this Agreement at any time.
- B. Any Party may terminate this Agreement in the event of a breach of the Agreement by any of the other Parties to this Agreement. Prior to such termination however, the Party seeking the termination shall give the other Parties written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within thirty (30) 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 thirty (30) day period, this provision shall be complied with if the breaching Party begins correction of the default within the thirty (30) 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. No Party shall be deemed to have waived any breach of this Agreement by any 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. Any Party may terminate this Agreement in the event the terminating Party fails to receive expenditure authority sufficient to allow that Party, 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 performance under this Agreement is prohibited or the terminating Party 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.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, SMART agrees to indemnify, save harmless and defend Washington County, Clackamas County, and their 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 SMART or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which SMART has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Washington County agrees to indemnify, save harmless and defend SMART, Clackamas County, and their 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 Washington County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which Washington County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Clackamas County agrees to indemnify, save harmless and defend Washington County, SMART, and their 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 Clackamas County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which Clackamas County has a right to control.

8. **Insurance.** Each Party shall maintain insurance, or self-insurance, in the amounts provided in Exhibit C.

7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Parties at its then current notice address.

Contact Information for Clackamas County:

Teresa Christopherson
Administrative Services Manager
Clackamas County
2051 Kaen Road Oregon City, OR 97045
P: 503-650-5718

Contact Information for SMART:

Dwight Brashear
SMART/City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070
503-682-7790
brashear@ridesmart.com

Contact Information for Washington County:

Dyami Valentine
Washington County
155 N. First Avenue MS13
Hillsboro, OR 97124
503-846-3821
Dyami_valentine@co.washington.or.us

9. 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 without giving effect to the conflict of law provisions thereof. Any claim between the Parties 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 any Party 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. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Each Party 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. This obligation includes, but is not limited to, the Parties' compliance with the terms and conditions of ORS 184.751 through 184.766, the provisions of OAR Chapter 732 Divisions 40 and 42, as may be amended, and any then-current ODOT guidance documents pertaining to the Statewide Transportation Improvement Funds program.

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 a 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 Parties.
- D. **Access to Records.** Each Party 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. Each Party

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, each Party shall permit the authorized representative of the other Parties access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Hazard Communication.** Each Party shall notify the other Parties prior to using products containing hazardous chemicals to which a Party's 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 Agencies (40 CFR Part 302), and any amendments thereto. Upon request by a Party, the Party using products containing hazardous chemicals shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **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.
- G. **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.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matters described herein. 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 all 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.
- I. **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.
- J. **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.

- K. **No Third-Party Beneficiary.** The Parties 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.
- L. **Subcontract and Assignment.** Except for as provided in Exhibit A, no Party shall 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 Clackamas County, which shall be granted or denied in the other Parties' sole discretion. Consent to any subcontract shall not relieve the assigning Party of any of its duties or obligations under this Agreement. SMART and Washington County shall not be relieved of any responsibility for performance of SMART's and/or Washington County's duties under this Agreement, regardless of any subcontract entered into. SMART and Washington County shall require any subcontractor performing services under this Agreement to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Where provided in this Agreement, SMART and Washington County shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.
- M. **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.
- N. **Survival.** All provisions in Sections 5, 7, 9 (A), (C), (D), (F), (G), (H), (I), (K), (L), (N), (Q), and (S), and 10 (A), (B), (C), and (D) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **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.
- P. **Time is of the Essence.** The Parties agrees that time is of the essence in the performance this Agreement.

- Q. **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.
- R. **Force Majeure.** No Party shall be held responsible for delay or default caused by events outside of any of the party's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, parties 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.
- S. **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.

10. Additional Terms and Conditions

- A. **ODOT IGA.** Clackamas County's use of STIF Discretionary Funds is subject to the ODOT IGA, a copy of which has been made available to the Parties prior to execution of this Agreement. In the event that the ODOT IGA is amended in a manner that materially changes a Party's obligations under this Agreement, the Parties agree to negotiate, in good faith, to amend this Agreement to address such changes. If the Parties are unable to agree to amendment to this Agreement then any Party may terminate pursuant to the provisions set forth in Section 6(D) of the Agreement. The ODOT IGA is attached hereto as Exhibit C and incorporated by this reference herein.
- B. **Audit and Compliance Review.** SMART and Washington County shall be subject to periodic on-site compliance reviews by Clackamas County. The purpose of the compliance site review is to ensure that SMART and Washington County have appropriate, adequate internal controls and management procedures to meet the terms and conditions of the agreements governing the disbursement of STIF Discretionary Funds. Compliance reviews may include, but are not be limited to, the following: 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 ADA, charter and school bus, and safety and asset management.

SMART and Washington County shall permit Clackamas County, ODOT, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to STIF Discretionary Funds received or disbursed and to inspect the STIF Plans and Projects financed with STIF Discretionary Funds including, but not limited to, the financial records, physical premises, and Capital Assets used to deliver public transportation services.

SMART and Washington County shall ensure that its agreements and/or contracts with subcontractors or vendors include provisions which permit Clackamas County, ODOT, the Secretary of State of Oregon, or their authorized representatives,

access to data and records held by SMART and Washington County or vendor as described in this Section.

- C. **Accounting Requirements.** SMART and Washington County shall account for use of STIF Discretionary Funds disbursed by Clackamas County under this Agreement in accordance with generally accepted accounting principles.

SMART and Washington County shall document the expenditure of all STIF Discretionary Funds disbursed by Clackamas County under this Agreement. SMART and Washington County shall create and maintain expenditure records showing the services in sufficient detail to permit Clackamas County to verify how the STIF Discretionary Funds were expended. SMART and Washington County shall comply with applicable federal, state and local laws for accounting, billing and reporting requirements with STIF Discretionary Funds.

- D. **Documentation.** In addition to any other reporting required by this Agreement or by law, SMART and Washington County shall submit to Clackamas County the results of any relevant financial audits of SMART and Washington County, or any of their subcontractors, as required by a local, state or federal oversight agency for the purposes of statewide reporting including, but not limited to: any other report concerning the financial and administrative activities of SMART and Washington County as required by law that affects the ability of either SMART or Washington County, or their subcontractor, to perform the functions or programs funded by this Agreement.

Results of audits described in this Section must be submitted to Clackamas County no later than 15 days after receipt of the final results.

SMART and Washington County shall further provide Clackamas County with any report that document the benefits and discrete measurable outcomes associated with each project outlined in Exhibit C, the ODOT IGA for STIF Discretionary Fund Reporting Requirements Overview as requested by Clackamas County.

- E. **Withholding of Funds.** SMART and Washington County shall ensure that funds provided by Clackamas County under this Agreement are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STIF Discretionary Funding requirements hereunder by SMART and Washington County. Upon breach of this Agreement, or knowledge that funds were used for purposes other than those described in the IGA between Clackamas County and ODOT, by SMART and Washington County, Clackamas County may withhold future STIF Discretionary Fund payments to SMART and Washington County.
- F. **Discrimination Prohibited.** SMART and Washington County certify that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which SMART and Washington County receives STIF Discretionary Funds. SMART and Washington County shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.

SMART and Washington County shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, SMART and Washington County expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

SMART and Washington County will include the terms set forth in this Sections 10 in any contract with a vendor or subcontractor that is compensated with STIF Discretionary Funds.

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

Washington County

DocuSigned by:
Tanya Ange Tanya Ange
BE194EB4331E46E

Chair, Board of Commissioners

2/28/2022 | 10:11 PST

Date

South Metro Area Transit

Bryan K. Cosgrove

Bryan Cosgrove, City Manager

3/9/22

Date

Exhibit A
SCOPE OF WORK

SCOPE OF WORK FOR SOUTH METRO AREA REGIONAL TRANSIT and WASHINGTON COUNTY

I. Background

House Bill (“HB”) 2017 created a new funding source for transit operations and capital expenditures. The funding source is to be used primarily for new or expanded service, and is focused on providing service for the transit dependent, students, and low income populations.

For FY2021-23, a total of \$900,000 in STIF Intercommunity Discretionary funds was awarded to Clackamas County to fund the Bridgeport-Stafford shuttle, extending the Tualatin Shuttle system to I-205 via Borland Road. A 20% match rate is required. Washington County, via third party service provider Ride Connection, will provide the extension of the current Tualatin Shuttle. Ride Connection, who is a private, non-profit organization dedicated to coordinating and providing transportation services to people with limited options in Clackamas, Multnomah, and Washington counties, will operate a service, hereafter referred to the Tualatin Shuttle Green Line, expanding transportation options for populations between Tualatin and Clackamas Town Center. South Metro Area Regional Transit (SMART) will operate the I-205 express service connecting to the Tualatin Shuttle Green Line to Clackamas Town Center. The operation of the two service lines is hereinafter referred to as the “Project.”

This new pilot transit connection is building off a feasibility study completed in 2020 that evaluated the need for transit along the I-205 corridor. In FY 22-23, SMART plans to pilot a commuter shuttle service between Wilsonville and Clackamas Town Center. SMART’s express service will be enabled by and coordinated with ODOT implementing its bus-on-shoulder program along I-5 and I-205. Washington County, through its partner Ride Connection, will pilot shuttle service connecting the Bridgeport Park & Ride in Tualatin and a shared stop with SMART at the I-205/Stafford Rd interchange. This will provide a vital connection between southeast Washington County and western Clackamas County, allowing passengers to travel from Bridgeport Village in Tualatin and the Tualatin Westside Express Service (WES) station to Oregon City, West Linn, and Clackamas Town Center and additionally connect to critical services off of Borland Road.

The proposed express service, operated by SMART, will provide Monday-Friday service, operating on 30-minute headways during peak hours to align with the Tualatin Shuttle service. Headways will be 60 minutes during weekday off-peak hours.

The Tualatin Green Line shuttle will begin at Tualatin Park & Ride, where connections are available to TriMet, SMART, and Cascades POINT services (Amtrak). The Tualatin Green Line will continue south on Lower Boones Ferry to downtown Tualatin and the WES station, and then travel along Borland Road to the shared I-205/Stafford transfer point. The Tualatin Green Line will be designed to serve commuters and also provide local connections to Bridgeport Village, Tualatin Meridian Park Hospital, Bridgeport Elementary School, Athey Creek Middle School, social services along Borland Road, and other destinations in Stafford. The Tualatin Green Line will provide Monday-Friday service, operating on 30-minute headways during peak hours to align with the existing Tualatin Shuttle service and peak service on the new SMART express route. Headways (time between runs) will be 60 minutes during weekday off-peak hours.

II. Scope of Work: Monetary Consideration

To establish the Tualatin Green Line and I-205 Express service, the Parties have agreed to provide the following monetary consideration:

The total project cost estimate to establish and operate the Tualatin Green Line and I-205 Express services are \$900,000. The I-205 express service will account for \$305,000 of the total cost. The Tualatin Green Line shuttle will account for \$595,000 of the total cost. The 20% match obligation (\$180,000) will be shared between Washington County and Clackamas County. Quarterly ODOT Reimbursement billings will treat the project as a whole, with match requirements to be divided as follows:

1. Clackamas County: Clackamas County shall contribute \$34,000 in local match using Regional Connection Funds. This match will be used as overall project match.
2. Washington County: Washington County shall contribute up to \$146,000, which includes \$56,000 in local match using the MSTIP Opportunity Funds and \$90,000 from the State of Oregon (ARPA) funds anticipated to be distributed to Washington County. This match will be used as overall project match and will reduce the amount of reimbursement for total project costs submitted by Washington County to \$449,000 or a reimbursement rate of 75%. If Washington County does not receive ARPA funding, Clackamas County will be responsible for covering \$27,000 additional local match and Washington County's reimbursement rate will be 80%.
3. SMART: SMART shall provide \$0 in match and all costs will be fully reimbursable.

Other costs associated with this Agreement are as follows:

1. Washington County: Washington County's total costs under this Agreement will not exceed \$595,000, which amount includes the purchase of one new vehicle. The cost of the vehicle shall not exceed a total cost of \$85,000. The additional funds are described in Washington County's budget, attached hereto as Exhibit B.

Washington County will submit all required documentation to Clackamas County on a quarterly basis for reimbursement. The costs submitted by Washington County will contribute to the total project cost for that particular quarter. Reimbursement to Washington County will be the net of the total billed by Washington County minus the obligated project match. Clackamas County will only reimburse Washington County for eligible costs identified in Exhibit B

2. Clackamas County: Clackamas County will not have any direct costs associated with this project.
3. SMART: SMART's total costs under this Agreement will not exceed \$305,000, which amount includes the purchase of one new vehicle. The cost of the vehicle shall not exceed a total cost of \$120,000. Additional costs are described in SMART's budget, attached hereto as Exhibit B.

SMART will submit all required documentation to Clackamas County on a quarterly basis for reimbursement. The costs submitted by SMART will be contributed to the total project costs for that particular quarter. Reimbursement to SMART will be made at 100% of their eligible project costs. Clackamas County will only reimburse SMART for eligible costs identified in Exhibit B. SMART will not have any match obligations under this Agreement.

III. Scope of Work: Operation of Services

To establish the Tualatin Green Line, the Parties have agreed to provide the following transit services:

1. SMART: SMART will commence operation of their express service upon ODOT approval of bus-on-shoulder operations along I-205.
2. Washington County: Washington County, through Ride Connection, will implement the Tualatin Green Line shuttle in a phased-in approach. Phase 1 of the shuttle will run from Tualatin Park & Ride to Rolling Hills Community Church on Borland Road via Meridian Park Hospital in a loop. Phase 2 will extend the previously implemented Green Line shuttle out to Stafford Road upon implementation of the SMART I-205 Express service, currently anticipated in FY2023.

IV. Scope of Work: SMART deliverables

SMART shall perform the following:

1. Work with ODOT to complete initial planning work for bus on shoulder along I-205;
2. Implement I-205 Express service utilizing approved bus on shoulder along I-205;
3. Identify appropriate stop locations at Stafford, West Linn, Oregon City, and Clackamas Town Center working with Washington and Clackamas County;
4. Purchase and receive delivery of one new vehicle to operate the I-205 Express service, based on vehicle availability;
5. Purchase and install up to 5 new bus stop signs; and
6. In coordination with Washington County, place a sign in an agreed upon location for the stop off of Stafford Rd.

V. Scope of Work: Washington County deliverables

Washington County shall perform the following:

1. Enact Phase 1 of the Tualatin Green Line service from Tualatin Park & Ride to Rolling Hills Community Church via Tualatin WES Station, including new stops along the route;
1. Enact Phase 2 of Green Line service, extending from Rolling Hills Community Church to Resurrection Catholic Parish in Stafford, including new stops along the route, upon implementation of the SMART I-205 express service anticipated by FY2023;
2. Operate the Tualatin Green Line service to run in conjunction with SMART's I-205 express service to ensure good connections for riders;
3. Purchase and receive delivery of one new vehicle to operate the service; and
4. Purchase up to 8 new bus stop signs working with Clackamas County to identify and install stop locations. Work in conjunction with SMART to place a sign in an agreed upon location for the stop off of Stafford Rd.

VI. MILESTONES: SMART

SMART shall provide the deliverables described in Section IV, above by the following deadlines:

1. Implement I-205 Express Service in FY23 contingent upon I-205 Bus on Shoulder access.

2. Establish four (4) shared stops with other Transit providers (Clackamas Town Center, Oregon City, West Linn, and Stafford Rd).
3. Accept delivery of one shuttle vehicle in FY23, based on vehicle availability.

VII. MILESTONES WASHINGTON COUNTY

Washington County shall provide the deliverables described in Section V, above by the following deadlines:

1. Implement phase 1 of the Tualatin Green Line Shuttle by end of FY22, contingent on shuttle and driver availability.
2. Implement phase 2 of the Tualatin Green Line Shuttle by FY23, contingent upon SMART implementing I-205 Express Service.
3. Establish one (1) shared stops with other Transit providers (Stafford Rd).
4. Accept delivery of one shuttle vehicle, based on vehicle availability.

VIII. SPECIAL REQUIREMENTS

Vehicle/ Operator Requirements

SMART and Washington County shall ensure that all drivers of equipment purchased with STIF Discretionary Funds have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). SMART and Washington County shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

SMART and Washington County shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers as provided by SMART and WASHINGTON COUNTY's own policy or as provided for in a contract with a vendor or contractor.

SMART and Washington County will include the terms of vehicle / operator requirements in any contract with a vendor or subcontractor that is compensated with STIF Discretionary Funds.

Progress Reporting Requirements

SMART and Washington County shall prepare a quarterly report for Clackamas County which details Project progress, outcomes achieved, and expenditures of STIF Discretionary Fund moneys by itself and any subcontractors. The quarterly report must be submitted no later than 30 business days following the end of a quarter.

The quarterly reporting periods for each STIF Plan year are:

January through March

April through June

July through September

October through December

Clackamas County reserves the right to request additional information as may be necessary to comply with state reporting requirements.

Funding

Upon execution of this Agreement, Clackamas County shall disburse STIF Discretionary Funds to SMART and Washington County on a quarterly reimbursement basis as described in the Scope of Work.

SMART and Washington County shall document eligible use of STIF Discretionary Funds through the reports submitted to Clackamas County in accordance with this Agreement and the Exhibits.

Exhibit B
BUDGET

SMART			
	Total	Match Obligation	Grant Amount
Capital Purchase	\$ 120,000.00	\$ 13,377.05	\$ 106,622.95
Project Admin	\$ 10,000.00	\$ 1,114.75	\$ 8,885.25
Route Signing	\$ 2,000.00	\$ 222.95	\$ 1,777.05
Operations	\$ 173,000.00	\$ 19,285.25	\$ 153,714.75
	\$ 305,000.00	\$ 34,000.00	\$ 271,000.00
Clackamas County		\$ 34,000.00	

11%

WA County (with ARPA)			
	Total	Match Obligation	Grant Amount
Capital Purchase	\$ 85,000.00	\$ 20,857.14	\$ 64,142.86
Project Admin	\$ 6,000.00	\$ 1,472.27	\$ 4,527.73
Route Signing	\$ 4,000.00	\$ 981.51	\$ 3,018.49
Operations	\$ 500,000.00	\$ 122,689.08	\$ 377,310.92
	\$ 595,000.00	\$ 146,000.00	\$ 449,000.00
Washington County		\$ 146,000.00	

25%

Total Project Costs			
	Total	Match Obligation	Grant Amount
Capital Purchase	\$ 205,000.00	\$ 34,234.19	\$ 170,765.81
Project Admin	\$ 16,000.00	\$ 2,587.02	\$ 13,412.98
Route Signing	\$ 6,000.00	\$ 1,204.46	\$ 4,795.54
Operations	\$ 673,000.00	\$ 141,974.32	\$ 531,025.68
	\$ 900,000.00	\$ 180,000.00	\$ 720,000.00
Washington County		\$ 146,000.00	
Clackamas County		\$ 34,000.00	

EXAMPLE

Project Expenditures	\$ 100,000.00	\$ 75,000.00	\$ 260,000.00	\$ 50,000.00	\$ 300,000.00	\$ 40,000.00	\$ 75,000.00	\$ 900,000.00
Washington County	\$ 50,000.00	\$ 70,000.00	\$ 140,000.00	\$ 35,000.00	\$ 220,000.00	\$ 30,000.00	\$ 50,000.00	\$ 595,000.00
SMART	\$ 50,000.00	\$ 15,000.00	\$ 110,000.00	\$ 15,000.00	\$ 80,000.00	\$ 10,000.00	\$ 25,000.00	\$ 305,000.00
Clackamas County	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Project Match Obligation	\$ 20,000.00	\$ 15,000.00	\$ 52,000.00	\$ 10,000.00	\$ 60,000.00	\$ 8,000.00	\$ 15,000.00	\$ 180,000.00
Reimbursement	\$ 80,000.00	\$ 60,000.00	\$ 208,000.00	\$ 40,000.00	\$ 240,000.00	\$ 32,000.00	\$ 60,000.00	\$ 720,000.00
Washington County	\$ 37,731.09	\$ 52,823.53	\$ 105,647.06	\$ 26,411.76	\$ 166,016.81	\$ 22,638.66	\$ 37,731.09	\$ 449,000.00
Clackamas County	\$ 42,268.91	\$ 7,176.47	\$ 102,352.94	\$ 13,588.24	\$ 73,983.19	\$ 9,361.34	\$ 22,268.91	\$ 271,000.00
Clackamas County Match	\$ 7,731.09	\$ 7,823.53	\$ 7,647.06	\$ 1,411.76	\$ 6,016.81	\$ 638.66	\$ 2,731.09	\$ 34,000.00
SMART	\$ 50,000.00	\$ 15,000.00	\$ 110,000.00	\$ 15,000.00	\$ 80,000.00	\$ 10,000.00	\$ 25,000.00	\$ 305,000.00

SMART			
	Total	Match Obligation	Grant Amount
Capital Purchase	\$ 120,000.00	\$ 24,000.00	\$ 96,000.00
Project Admin	\$ 10,000.00	\$ 2,000.00	\$ 8,000.00
Route Signing	\$ 2,000.00	\$ 400.00	\$ 1,600.00
Operations	\$ 173,000.00	\$ 34,600.00	\$ 138,400.00
	\$ 305,000.00	\$ 61,000.00	\$ 244,000.00
Clackamas County		\$ 61,000.00	

20%

WA County			
	Total	Match Obligation	Grant Amount
Capital Purchase	\$ 85,000.00	\$ 17,000.00	\$ 68,000.00
Project Admin	\$ 6,000.00	\$ 1,200.00	\$ 4,800.00
Route Signing	\$ 4,000.00	\$ 800.00	\$ 3,200.00
Operations	\$ 500,000.00	\$ 100,000.00	\$ 400,000.00
	\$ 595,000.00	\$ 119,000.00	\$ 476,000.00
Washington County		\$ 119,000.00	

20%

Total Project Costs			
Capital Purchase	\$ 205,000.00	\$ 41,000.00	\$ 164,000.00
Project Admin	\$ 16,000.00	\$ 3,200.00	\$ 12,800.00
Route Signing	\$ 6,000.00	\$ 1,200.00	\$ 4,800.00
Operations	\$ 673,000.00	\$ 134,600.00	\$ 538,400.00
	\$ 900,000.00	\$ 180,000.00	\$ 720,000.00
Washington County		\$ 119,000.00	
Clackamas County		\$ 61,000.00	

EXAMPLE

Project Expenditures	\$ 100,000.00	\$ 75,000.00	\$ 260,000.00	\$ 50,000.00	\$ 300,000.00	\$ 40,000.00	\$ 75,000.00	\$ 900,000.00
Washington County	\$ 50,000.00	\$ 70,000.00	\$ 140,000.00	\$ 35,000.00	\$ 220,000.00	\$ 30,000.00	\$ 50,000.00	\$ 595,000.00
SMART	\$ 50,000.00	\$ 15,000.00	\$ 110,000.00	\$ 15,000.00	\$ 80,000.00	\$ 10,000.00	\$ 25,000.00	\$ 305,000.00
Clackamas County	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Project Match Obligation	\$ 20,000.00	\$ 15,000.00	\$ 52,000.00	\$ 10,000.00	\$ 60,000.00	\$ 8,000.00	\$ 15,000.00	\$ 180,000.00
Reimbursement	\$ 80,000.00	\$ 60,000.00	\$ 208,000.00	\$ 40,000.00	\$ 240,000.00	\$ 32,000.00	\$ 60,000.00	\$ 720,000.00
Washington County	\$ 40,000.00	\$ 56,000.00	\$ 112,000.00	\$ 28,000.00	\$ 176,000.00	\$ 24,000.00	\$ 40,000.00	\$ 476,000.00
Clackamas County	\$ 40,000.00	\$ 4,000.00	\$ 96,000.00	\$ 12,000.00	\$ 64,000.00	\$ 8,000.00	\$ 20,000.00	\$ 244,000.00
Clackamas County Match	\$ 10,000.00	\$ 11,000.00	\$ 14,000.00	\$ 3,000.00	\$ 16,000.00	\$ 2,000.00	\$ 5,000.00	\$ 61,000.00
SMART	\$ 50,000.00	\$ 15,000.00	\$ 110,000.00	\$ 15,000.00	\$ 80,000.00	\$ 10,000.00	\$ 25,000.00	\$ 305,000.00

Exhibit C

ODOT Agreement #35094

**PUBLIC TRANSPORTATION DIVISION
OREGON DEPARTMENT OF TRANSPORTATION**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Public Transportation Division, hereinafter referred to as "State," and **Clackamas County**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2021** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, grant funds under this Agreement shall be available for project costs incurred on or before **June 30, 2023** (the "Expiration Date"). No grant funds are available for any expenditures after the Expiration Date. State's obligation to disburse grant funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Subagreement Insurance Requirements and Recipient Insurance Requirements

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Grant Funds.** State shall provide Recipient an amount not to exceed **\$720,000.00** (the "Grant Funds"). Recipient acknowledges and agrees that State may change the amount of funds available under this Agreement, based on availability of funds and other factors as determined by State, upon notification to Recipient in accordance with Section 11.g of this agreement. Recipient will be responsible for all Project costs not covered by the Grant Funds.
4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <https://www.oregon.gov/odot/RPTD/Pages/index.aspx>. If Recipient is unable to access OPTIS, reports must be sent to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.
6. **Disbursement and Recovery of Grant Funds.**
 - a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Funds amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement

Clackamas County/State of Oregon
Agreement No. 35094

described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.

- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
 - v. Any audit findings relating to Recipient's use of funds under this Agreement or any other agreement with State have been resolved.

c. **Recovery of Funds.**

- i. Recovery of Misexpended Funds or Nonexpended Funds. Any funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended as of the Expiration Date ("Unexpended Funds") or (ii) expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to State. Recipient shall return all Misexpended Funds to State no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 15 days after the earlier of expiration or termination of this Agreement.
- ii. Recovery of Funds upon Termination. If this Agreement is terminated under either Section 10(a)(i) or Section 10(a)(v) below, Recipient shall return to State all funds disbursed to Recipient within 15 days after State's written demand for the same.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to State as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the funds. Recipient 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 Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient 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 Recipient's 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 Recipient is a party or by which Recipient or any of its properties 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 Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, 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.** Recipient'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 subagreements, except as permitted by applicable law. No

Clackamas County/State of Oregon
Agreement No. 35094

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 Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded by any state or federal agency or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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.

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, including, without limitation, records relating to capital assets funded by this Agreement, the 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. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the funds were expended.
- d. **Audit Requirements.**
- i. Recipient shall, at Recipient's own expense, submit to State, Public Transportation Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDreporting@odot.state.or.us, a copy of, or electronic link to, any annual audit covering the funds expended under this Agreement by Recipient or a party to any subagreement with Recipient, as well as the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
 - ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

Clackamas County/State of Oregon
Agreement No. 35094

This section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of Recipient's subagreement with the contractor and to name State as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide State with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon request by State. This Paragraph 9.a.iii. shall survive expiration or termination of this Agreement.
 - iv. Recipient must report to State any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**
 - i. **Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including 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 Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.**
 - ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.
 - iii. Recipient shall require the other party, or parties, to each of its subagreements 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 Exhibit C to this Agreement. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code (Oregon Revised Statutes (ORS) Chapters 279 A, B and C) and rules, ensuring that:
 - i. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable,

Clackamas County/State of Oregon
Agreement No. 35094

including all applicable provisions of the Oregon Public Contracting Code and rules. Procurements of rolling stock, facilities and personal services for any amount, and all procurements for an amount greater than \$100,000 must be approved by State prior to solicitation.

- ii. Recipient shall complete all purchases, including installation, and all construction of capital assets funded under this Agreement prior to the Expiration Date of this Agreement. If local circumstances prevent purchase, installation, or construction by the specified date, Recipient will notify State in writing of the circumstances regarding the delay. Such notification must be received at least forty-five (45) days prior to the expiration of the Agreement. Agreement amendment for time will be considered in extenuating circumstances.

d. **STIF Procurements**

Pursuant to Oregon Administrative Rule (OAR) 732-044-0050(6)
Recipient shall:

- i. Establish useful life standards for capital assets acquired pursuant to STIF Discretionary grant agreements which meet or exceed the duration of those established by State.
- ii. Use State's published procedures or substantially similar procedures and ensure that Sub-Recipients use the same procedures for the disposition of capital assets acquired with STIF funds.
- iii. Retain the net proceeds from a sale or other disposition of a capital asset to reinvest in a future STIF capital project or return the net proceeds to State. Net proceeds are the disposal proceeds less original value, depreciation, and disposal costs. If non-STIF funds were used in the original purchase, only the proportion representing the STIF contribution to the purchase is subject to this rule.
- iv. Establish written procedures to ensure that a capital asset is maintained in safe operating condition.
- v. Maintain insurance coverage, or require Sub-Recipients to maintain insurance coverage that meets or exceeds the standards in Oregon Revised Statutes (ORS) 806.070.
- vi. Ensure that vehicles purchased in whole or in part with STIF funds are titled with the Oregon Department of Transportation Driver and Motor Vehicle Service Division pursuant to ORS 803.045 and supporting rules, with ODOT Public Transportation Division listed as a security interest holder, subject to the following additional requirements:
 - a. If the vehicle is registered in the name of a Sub-Recipient receiving the vehicle, and the Sub-Recipient is not a Qualified Entity (OAR 732-040-005(26)) or Public Transportation Service Provider (OAR 732-040-005(25)), then the Qualified Entity or Public Transportation Service Provider must be listed on the vehicle title as the primary security interest holder.
 - b. If the vehicle was purchased with federal funds in addition to STIF funds, and the federal funding source requires the vehicle to be titled otherwise than provided in this rule, then the federal titling requirements prevail.

- e. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 et seq., as those laws may be subsequently amended.

10. **Termination**

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the

Clackamas County/State of Oregon
Agreement No. 35094

- Project by Recipient is, for any reason, rendered improbable, impossible, or illegal;
or
- ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
- i. Upon notification to State of its desire to withdraw from eligibility to receive the funds and providing to State a reason acceptable to State for the withdrawal; or
 - ii. If federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. 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 State or Recipient 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 State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State 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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient 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 State on the one hand and of Recipient 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. State'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 State had sole liability in the proceeding.

With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement

Clackamas County/State of Oregon
Agreement No. 35094

actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State 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 Recipient on the one hand and of State 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. Recipient'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 it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Insurance.** Recipient shall meet the insurance requirements within Exhibit C.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient 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 or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** State and Recipient 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.

Recipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **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, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.i. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. 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 when received.
- h. **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 State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon 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. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND

Clackamas County/State of Oregon
Agreement No. 35094

WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- n. **Survival.** The following provisions survive termination of this Agreement: Sections 6.c., 8 and 11.

Clackamas County/State of Oregon
Agreement No. 35094

The Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Rail and Public Transit Division Administrator.

SIGNATURE PAGE TO FOLLOW

Clackamas County/State of Oregon
Agreement No. 35094

Clackamas County, by and through its
Board of Commissioners

By Tootie Smith
(Legally designated representative)

Name Tootie Smith
(printed)

Date 7/29/2021

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Teresa Christopherson
Social Services Department
Oregon City, OR 97045
1 (503) 650-5718
teresachr@co.clackamas.or.us

State Contact:

Valerie Egon
555 13th Street NE
Salem, OR 97301-4179
1 (971) 301-0909
Valerie.Egon@odot.state.or.us

Signed Agreement Return Address: ODOTPTDReporting@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By K. Criswell
Karyn Criswell
Public Transportation Division Administrator

Date 8/10/21

APPROVAL RECOMMENDED

By Valerie Egon

Date 06/24/2021

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

By _____
Assistant Attorney General

Name Sam Zeigler by email
(printed)

Date 05/21/2021

Clackamas County/State of Oregon
Agreement No. 35094

EXHIBIT A
Project Description and Budget

Project Description/Statement of Work

Project Title: STIF IC Clackamas County 35094				
<i>I205 / Borland Rd / Bridgeport Village Transit Service.</i>				
Item #1: Bus < 30ft				
	Total	Grant Amount	Local Match	Match Type(s)
	\$205,000.00	\$164,000.00	\$41,000.00	Local
Item #1: Route Signing				
	Total	Grant Amount	Local Match	Match Type(s)
	\$6,000.00	\$4,800.00	\$1,200.00	Local
Item #1: Project Admin.				
	Total	Grant Amount	Local Match	Match Type(s)
	\$15,000.00	\$12,000.00	\$3,000.00	Local
Item #1: Operating Assistance				
	Total	Grant Amount	Local Match	Match Type(s)
	\$674,000.00	\$539,200.00	\$134,800.00	Local
Sub Total	\$900,000.00	\$720,000.00	\$180,000.00	
Grand Total	\$900,000.00	\$720,000.00	\$180,000.00	

1. BACKGROUND

In the 2017 legislative session, the Oregon Legislature passed House Bill 2017, the Statewide Transportation Improvement Fund (STIF). The bill designated nine percent of the total funds appropriated to be awarded to eligible Public Transportation Service Providers (PTSPs) based on a competitive grant process. This nine percent is divided into a five-percent share for STIF Discretionary projects and a four-percent share for STIF Intercommunity Discretionary projects.

The STIF Discretionary fund is a flexible fund source that aims to expand or improve public transportation services by supporting projects that create new service routes, adopt enhanced forms of technology and data collection, maintain transit fleets in a state of good repair, and advance the equity and sustainability of transportation in the state.

The STIF Intercommunity Discretionary fund is housed with FTA Section 5311(f) funds under the "Statewide Transit Network Program." The purpose of the Statewide Transit Network Program is to support projects that enhance Oregon's statewide fixed route transit network by investing in key transit hubs, closing gaps between two or more communities, improving access to and from transit for pedestrians and bicyclists, improving collaboration and coordination between agencies that results in functional benefits, or other activities that improve the function of the overall transit network and serve the interests of more than one transit agency.

This Agreement describes the duties and responsibilities of State and Recipient in the management and proper use of STIF funds or 5311(f) funds and the associated reporting requirements.

2. PROJECT DESCRIPTION

Operations

This Agreement funds the creation of a transit connection between Washington County and Clackamas County, Oregon that serves populations between Tualatin and Clackamas Town Center (coordinating with planned bus-on-shoulder programs along I-5 and I-205 corridors).

STIF discretionary reimbursements for this task shall not exceed \$539,200.

Vehicle Expansion

Clackamas County/State of Oregon
Agreement No. 35094

This Agreement provides funding to purchase passenger transportation vehicles to be used to provide public transportation service. Public transportation service is defined as service to the general public or special populations such as seniors and individuals with disabilities. Recipient may use the vehicles to coordinate public and human service transportation services with other agencies. Recipient will not lease the vehicles to another agency without the permission of State.

Funding under this Agreement is for the purchase of four Category D transit vehicles as follows:

Two Category Ds

Useful life - 5 years or 150,000 miles; approximate length - less than 30 feet; estimated number of seats - 10; estimated number of ADA securement stations - 2 fuel type - CNG.

And

Two Category Ds

Useful life - 5 years or 150,000 miles; approximate length - less than 30 feet; estimated number of seats - 10; estimated number of ADA securement stations - 2 fuel type - gasoline.

Purchase includes all equipment and supplies necessary to put the vehicles into service.

STIF discretionary reimbursements for this task shall not exceed \$164,000.

Signs, Shelters, and Amenities

This Agreement provides funding to eight each of bus stop signs, poles, and installation, in a manner to comply with ADA accessibility requirements to support the public transportation needs of the general public. The purpose of the project is to install passenger amenities and improvements such as benches for the comfort and convenience of riders, and procure and install signage for transit route information.

Eligible expenses are: associated services, permits, permissions, and equipment, infrastructure needed to put the passenger shelter(s), route sign(s), benches, trash receptacles, reader boards, electronic routing equipment, and infrastructure into service; costs incurred from the procurement process; delivery charges; and post-delivery inspections. Architecture, design, engineering, planning, and preparation services and permits, clearly needed to proceed with the project, are eligible reimbursable expenses.

A National Environmental Policy Act environmental assessment may be required for this project, depending on fund source and complexity. A Documented Categorical Exclusion worksheet or Categorical Exclusion worksheet must be submitted to State, and must be approved by the Federal Transit Administration if this project is matched with federally sourced funding. FTA concurrence must be received by State for all partially federally-funded projects, prior to any ground disturbance. This award is contingent on approval of the worksheet. Any project expenses incurred will not be reimbursed if the project's required worksheet is not approved.

A Documented Categorical Exclusion worksheet or Categorical Exclusion worksheet may be submitted to State to establish a historical benchmark. State-funded shelters, signs, or amenities projects must comply with state and local procurement and construction rules.

STIF discretionary reimbursements for this task shall not exceed \$4,800.

Administration

This Agreement provides funding for Recipient's administrative expenses not directly related to providing transit services, but which support the effective, efficient, and safe delivery of those services.

STIF discretionary reimbursements for this task shall not exceed \$12,000.

3. PROJECT DELIVERABLES, TASKS and SCHEDULE

Clackamas County/State of Oregon
Agreement No. 35094

Operations

Recipient, in the performance of this Project, shall document steps taken to improve accessibility of public transportation for vulnerable populations and/or historically marginalized communities. Vulnerable populations include low-income individuals or households, veterans, Tribal communities or groups, individuals of age 65 and older, individuals with disabilities, and individuals with limited English proficiency. Information on this topic shall be provided to State through reporting.

Recipient, shall create and maintain current GTFS data describing the funded services. GTFS data should be updated in advance of system changes to allow trip planners to stay current. Recipient, if operating demand response service, is strongly encouraged to create and maintain GTFS-flex data for their service. GTFS creation and maintenance services may be supported by State's GTFS contractor.

Competitive purchases of systems that can count passengers [e.g., Automated Passenger Counters (APC), Automated Fare Collection (AFC) systems] shall include an explicit scoring preference for systems that support the GTFS-Ride and GTFS-RealTime data standards and shall include support for GTFS data access to State and interested third parties.

STIF Discretionary-supported service providers are encouraged to serve key transit hubs and stops operated or used by for-profit/national transit providers where practical.

Modifications to Project Objectives or Service:

Recipients receiving operating or mobility management funding for fixed route service shall provide adequate public notice of impending service changes. State shall be included in the first entities notified of any impending service changes. Cause for such notification shall include, but not be limited to, changes to route stops, route frequency, or the primary vehicle used for the service as well as Recipient's inability to maintain interline agreements made with other public transportation service providers. Service changes determined to significantly impede Recipient's ability to achieve objectives and deliverables identified in this Agreement may result in loss or reduction of project funding.

The service, schedule, days, hours, and service type will be designed to meet the needs of the target population as determined by Recipient and program type, in consultation with the operator of service, the affected community members, and stakeholders identified by Recipient.

To the extent possible, Recipient (and contractors, as applicable), will coordinate the delivery of transportation services with other public and private transportation providers to enhance regional services and to avoid duplication of services. Coordinated service may be made available to a variety of potential users.

Recipient may amend the service design at any time in accordance with local demand, funding issues, or other situations that require service to be changed. Recipient will inform State if there is a change in the service funded by this Agreement.

Recipient will market the services in culturally appropriate ways. Marketing and promotional activities should be focused on incentivizing ridership through inclusive customer engagement techniques. Activities may include marketing strategies, marketing campaigns, and creating marketing materials. Recipient may use key performance indicators in marketing the service.

Recipient is encouraged to set realistic goals and establish measurable outcomes for this project. Goals and outcomes can be related to rides provided to seniors and persons with disabilities, number of rides transitioned from demand responsive to fixed route transit through mobility management efforts, hours of public transportation services to low-income households at the 200 percent poverty threshold, and overall ridership. They can also be related to Environmental Justice goals. Progress meeting established goals and outcomes should be shared in Recipient's agency periodic report.

Recipient shall engage in a good faith effort to generate program income to help defray program costs.

Clackamas County/State of Oregon
Agreement No. 35094

Vehicle Expansion

All purchases and installations must be completed prior to the expiration date of this Agreement.

*Estimated order date: August 2, 2021
Estimated delivery date: June 30, 2023.*

For vehicles procured using State Price Agreement contracts managed by the Oregon Department of Administrative Services, all vehicle orders will be reviewed and approved by State prior to submission to selected vendor. State is responsible for submitting vehicle orders to selected vendor. If Recipient does not purchase from the State Price Agreement contracts managed by the Oregon Department of Administrative Services, requests for proposals to procure the vehicles must be reviewed by State prior to solicitation for bids. All vehicle orders will be reviewed by State prior to submission to the selected vendor.

State will retain title to the vehicles as primary security interest holder for as long as the vehicles remain in public transportation service. Recipient must request permission from State to release title for disposal when planning to sell or transfer a vehicle which has exceeded the minimum useful standard for age or mileage, and must notify State when actual disposal has been completed. Recipient must request permission from State in advance to transfer or otherwise dispose of a vehicle prior to its meeting federal useful life standards. Recipient must request permission from State to release title for changes.

Recipient will create and maintain a vehicle maintenance plan that utilizes the original equipment manufacturer (OEM) requirements for each vehicle and meets FTA transit asset management requirements in 49 Part CFR 625. Recipient will follow the plan to ensure each vehicle is maintained in a state of good repair. Recipient will provide State a copy of the plan upon request.

Signs, Shelters, and Amenities

Recipient will submit a description and list for sign and/or shelter locations. Recipient will submit certification attesting to fulfillment of any applicable permitting, inspections, or other requirements prior to final payment. An on-site inspection or photo documentation of installations is required prior to final payment.

By accepting federal or state funds, Recipient certifies that the project will meet all Americans with Disabilities Act requirements as set forth in 49 CFR parts 27, 37, and 38.

All purchases, installations, and construction must be completed prior to the expiration date of this Agreement. If an extension for time is required, a request must be received by State at least 45 days prior to the expiration date.

*Expected project start date: December 2, 2021
Expected project completion date: June 30, 2023.*

Administration

Recipient shall perform administrative activities to support service sustainability as follows: ongoing financial resource budgeting and allocation, service coordination, capital asset replacement planning, contract management, reporting, marketing and outreach, and planning.

4. PROJECT ACCOUNTING and MATCHING FUNDING

Operations

Recipient retains authority over costs and allocations of STIF funds within the guidelines established by Oregon Revised Statutes (ORS) 184.751 through 184.758 and Oregon Administrative Rules (OAR) Chapter 732.

Generally accepted accounting principles and Recipient's own accounting system determine those costs that are to be accounted for as gross operating expenses. The contractor may use capital equipment funded from USDOT- or State-source grants when performing services rendered through a contract funded by this Agreement. Depreciation of capital equipment funded

Clackamas County/State of Oregon
Agreement No. 35094

from USDOT- or State-source grants is not an eligible expense.

Program income that may be used as Recipient's matching funds for this Agreement includes service contract revenue, advertisement and other earned income, other local funds, cash donations, and other verifiable in-kind contributions integral to the project budget. In-kind contributions claimed as matching funds must be properly documented and reported to State. Recipient may not use passenger fares as matching funds.

Recipient will subtract revenue from fares, tickets and passes, either pre-paid or post-paid, from the gross operating expense of the service. Administrative expenses are reimbursable as operating expenses.

Vehicle Expansion

Eligible expenses that may be charged to this Agreement include grant administration, the cost of the procurement process, delivery charges and post-delivery inspections. Aftermarket equipment, graphics and other items directly associated with these vehicles and required to put the vehicles into service are eligible. Purchase of an extended warranty is an eligible expense; however, the eligible warranty shall not exceed the defined useful life of the vehicles. Licensing and other post-delivery expenses are not eligible for reimbursement.

Recipient will provide matching funding from non-federal source(s). Sources of funding that may be used as matching funding for this Agreement include state funds, local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as matching funding.

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. State's obligation to reimburse Project costs is contingent upon Recipient first paying or otherwise contributing its minimum match amount set forth in this Exhibit A. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible.

Signs, Shelters, and Amenities

The service provider may use capital items funded under USDOT- or State-source agreements when performing services rendered through a contract or sub-agreement funded by this Agreement. Depreciation of capital items funded under USDOT- or State-source grants is not an eligible expense.

Eligible matching fund sources for this Agreement include Statewide Transportation

Improvement Formula Fund, Special Transportation Formula Fund, local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as match. Administration and facility contributions are documented by percentage of contribution directly attributed to the project.

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. The required local match share will be subtracted from the project expenses to determine the Agreement share of the project expense. Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted for as gross operating expenses.

Receipt of federal funds for construction projects requires that labor must be paid at the prevailing wage as prescribed by the Davis-Bacon Act.

Administration

Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted as administrative expenses. Eligible project administrative expense may include, but are not limited to: administrative staff salaries; overhead expenses; marketing expenses; insurance premiums and payments to a self-insurance reserve; office supplies; office equipment; telecommunications; facilities and equipment rental. Administrative costs for coordination of transit services are eligible as project administration if the activity is part of a coordinated public transportation program.

Clackamas County/State of Oregon
Agreement No. 35094

5. REPORTING AND INVOICING REQUIREMENTS

Operations

Recipient shall confirm the eligibility of any Sub-Recipient prior to distributing STIF moneys and entering into an agreement with the Sub-Recipient. Recipient shall ensure that Sub-Recipients maintain eligibility throughout the project period. Recipient shall provide State with copies of agreement(s) made with Sub-Recipients within 30 days of execution of those agreements.

Per OAR 732-044-0040(1)(a), Recipient shall report on Project progress, outcomes achieved, and expenditures of discretionary STIF funds by itself and its Sub-Recipients. Failure to use STIF funds towards achievement of identified project deliverables may result in the cessation of funding to Recipient for the remainder of the Agreement period.

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State. Copies of invoices must be submitted for all vendor charges. In-house charges must be documented showing time specifically associated with the project. In addition, Recipient must regularly provide a summary of the work performed pursuant to this Agreement in its agency periodic report. Photographs of public transportation activities, and related operations, are encouraged to memorialize the achievement of project deliverables.
Project Progress Reporting

Recipient shall report Project progress quarterly through the Oregon Public Transit Information System (OPTIS) Agency Periodic Report (APR) and shall include a brief status update for each deliverable. Project reporting should align with project deliverables identified in this Agreement. State will use reporting information to assess Recipient's progress by comparing task-based expenditures to progress on deliverables.

Outcomes Achieved Reporting

Recipient shall report outcomes achieved through project performance. Continued funding under this Agreement is contingent upon reporting of outcomes achieved.

On a quarterly basis, in addition to continuing required elements in the APR, Recipient shall complete a short narrative describing outcomes achieved in performance of the Project. For the final quarter of the biennium, Recipient shall report on quarterly outcomes achieved as well as summarize outcomes achieved over the duration of the Agreement. Recipient shall provide additional information on outcomes achieved when and where directed to do so by State in reporting guidance.

Outcomes achieved are defined in State's program guidance and that guidance provides State's expectations surrounding all reporting requirements. For detailed instructions on quarterly, annual, and biennial reporting, refer to State's STIF Discretionary/STN Reporting Guidance document.

Recipients of operating, mobility management, or any STIF Discretionary, STIF Intercommunity Discretionary, or 5311(f) funds associated with a specific transportation service shall report on several key project outcomes related to that service.

On a quarterly basis, Recipient shall report in the APR the overall service costs, revenue miles, revenue hours, and ridership for the service associated with this Agreement. Recipient shall also report the fare revenue, contract revenue, and any other revenue collected as a result of the service.

Expenditures

Expenditures of STIF Discretionary funds will be tracked in OPTIS. Recipient must submit reimbursement requests in OPTIS to receive reimbursement for Project expenditures.

Recipient shall ensure Satisfactory Continuing Control of capital assets, including real property, purchased in whole or part under this Agreement while the capital assets are being used for public transportation purposes. Satisfactory Continuing Control means the legal assurance that a capital asset will remain available to be used for its originally-authorized purpose throughout its useful life or until disposition.

Clackamas County/State of Oregon
Agreement No. 35094

An inventory of capital assets purchased in whole or in part with STIF funds will be created by State in the OPTIS asset register. The inventory will include a description of the capital asset, the date of purchase, the date put into public transportation service, the purchase price, the amount of STIF funds contributed to the purchase, the source of other funds, the authorized use per this agreement, the Recipient or Sub-Recipient using the capital asset (Owner/Operator), and the condition of the asset. Recipient shall report quarterly on all capital assets through the OPTIS APR, providing information relevant to purchased capital assets, including but not limited to, asset condition, and vehicle mileage.

Recipient shall request authorization from State for the sale, transfer, or other disposition of any Capital Asset purchased under this Agreement and shall report the amount of proceeds, if any, from the sale to State. Capital asset useful life standards shall be the same as those outlined by the Federal Transit Administration.

Recipient will provide reporting information as prescribed by State on the capital asset purchases under this Agreement as long as the capital asset remain in public transportation service.

Reimbursement requests for capital assets must include the following: a cover letter and copies of all invoices associated with expenses identified for reimbursement. Where a vehicle asset will be partially funded with federal funds, Recipient shall submit pre-award and post-delivery certification forms documenting compliance to Altoona bus testing, Federal Motor Vehicle Safety Standards, Buy America, and Disadvantaged Business enterprise requirements.

Vehicle Expansion

Recipient will provide reporting information as prescribed by State on the vehicles purchased under this Agreement as long as the vehicles remain in public transportation service.

Recipient will submit a request for reimbursement in a format provided by State. Reimbursement requests must include a cover letter and copies of all invoices associated with expenses identified for reimbursement.

Signs, Shelters, and Amenities

Recipient will request reimbursement for covered expenses incurred during each period as prescribed by State. Copies of invoices must be submitted for all vendor charges. In-house charges must be documented showing time specifically associated with the project. In addition, Recipient must provide a cover letter or summary of the work performed pursuant to this Agreement in each Agency Periodic Report. Before and after photographs of the project are encouraged to memorialize the achievement of deliverables and may be submitted with the final report.

Recipient will report as prescribed by State on assets purchased or constructed under this Agreement as long as they remain in use for public transportation service.

Expenses incurred will not be reimbursed if the project's scope is changed or altered without the necessary pre-approval and amendment by State.

Administration

Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted as administrative expenses. Eligible project administrative expense may include, but are not limited to: administrative staff salaries; overhead expenses; marketing expenses; insurance premiums and payments to a self-insurance reserve; office supplies; office equipment; telecommunications; facilities and equipment rental.

Reporting on Mitigation of Tax Impacts to Low-income Populations

Per OAR 732-040-0025(1), Qualified Entities receiving STIF funds shall submit a report on any actions taken by any PTSP located within the area of the Qualified Entity to mitigate the impact of the STIF tax on passengers who reside in low-income communities. This report must be submitted no later than 60 days after the end of each fiscal year in which the Qualified Entity receives STIF funds.

Clackamas County/State of Oregon
Agreement No. 35094

Recipient shall complete and submit a form detailing any mitigation actions taken by Recipient to the appropriate Qualified Entity no later than 30 days after the end of each Fiscal Year in which the PTSP receives STIF discretionary funds. This form will be provided to Recipient prior to the deadline for submission of the form and will include instructions for the proper completion and submittal of the form.

Clackamas County/State of Oregon
Agreement No. 35094

EXHIBIT B
FINANCIAL INFORMATION

This Agreement is financed by the funding source indicated below:

State Program	State Funding Agency		Total State Funding
STF: ORS 391.800 through ORS 391.830 and OAR Chapter 732, Divisions 5, 10, and 30 And/Or STIF: ORS 184.758 through ORS 184.766 and OAR Chapter 732, Divisions 040, 042, and 044.	Oregon Department of Transportation 355 Capitol St. N.E. Salem, OR 97301-3871		\$720,000.00

Administered By Public Transportation Division 555 13th Street NE Salem, OR 97301-4179
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Clackamas County/State of Oregon
Agreement No. 35094

EXHIBIT C

Insurance Requirements

Subagreement Insurance Requirements

GENERAL.

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence. Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required

Clackamas County/State of Oregon
Agreement No. 35094

limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subagreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subagreement, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **Recipient shall immediately notify State of any change in insurance coverage.**

CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Recipient Insurance Requirements

GENERAL.

Recipient shall: i) obtain at the Recipient's expense the insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force and at its own expense throughout the duration of this Agreement. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Coverage shall be primary and non-contributory with any other insurance and self-insurance with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insurance retention and self-insurance, if any.

INSURANCE REQUIREMENT REVIEW.

Clackamas County/State of Oregon
Agreement No. 35094

Recipient agrees to periodic review of insurance requirements by State under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and State.

TYPES AND AMOUNTS.

WORKERS COMPENSATION.

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employers liability insurance with coverage limits of not less than \$500,000 must be included.

COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury, death, and property damage and shall include personal and advertising injury liability, products and completed operations and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability - Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Commercial General Liability Insurance shall not be less than the following amounts as determined by State:

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000**.

AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering business-related automobile use on all owned, non-owned or hired vehicles for bodily injury and property. Automobile Liability Insurance shall not be less than the following amount as determined by State:

Coverage shall be written with a combined single limit of not less than **\$1,000,000**.

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the Recipient's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

"TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) Recipient's completion and State's acceptance of all Services required under this Agreement or,

Clackamas County/State of Oregon
Agreement No. 35094

(ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, Recipient shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE.

Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE.

State shall obtain from Recipient a certificate(s) of insurance for all required insurance before the effective date of this Agreement . The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

STATE ACCEPTANCE.

All insurance providers are subject to State acceptance. If requested by State, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to State's representatives responsible for verification of the insurance coverages required under this **Exhibit C**.

Exhibit D
Insurance Requirements

EXHIBIT D

SUBRECIPIENT INSURANCE REQUIREMENTS

GENERAL

Subrecipient shall obtain and provide, and require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Subrecipient for subcontractor's performance under its sub agreement: i) insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of this Agreement and of any sub agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Clackamas County. Subrecipient shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a sub agreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the Subrecipient is a party.

Subrecipient may be self-insured as long as the amount of insurance are equal to the amounts listed below. Subrecipient shall comply with any requirements of Clackamas County with respect to these insurance requirements, including but not limited to Clackamas County issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

- I. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
- II. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to Clackamas County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by Clackamas County:

Bodily Injury, Death and
Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.

- III. AUTOMOBILE Liability Insurance: Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by Clackamas County:

Bodily Injury, Death and
Property Damage:

\$5,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include, ODOT, Clackamas County and TriMet, and its respective officers, employees and agents as Additional Insureds but only with respect to the Subrecipient's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Subrecipient and the subcontractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement for Subrecipient, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and Clackamas County's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under this Agreement with respect to Subrecipient and the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the Subrecipient or subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Subrecipient or subcontractor may request and Clackamas County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Clackamas County approval is granted, the Subrecipient or subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE

The Subrecipient or its insurer must provide 30 days' written notice to Clackamas County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE

Subrecipient shall submit to Clackamas County a certificate(s) of insurance for all required insurance before the commencement of performance of services. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. In lieu of filing the certificate of insurance required herein, if Subrecipient is a local government as defined under ORS 190.003, Subrecipient may furnish a declaration that Grantee is self-insured for no less than the amounts required by applicable law.

For Administrative Use Only – Z99999

Supplier Name: Clackamas County OR

Actual Contract Number (CustomText4): 22-0221

Department (Location): LUT - Admin.

Contract Type: 8 Agreements

Contract Sub Type (Custom2Code):

Minute Order Date: 1/25/2022

Minute Order Number: 22-29

Master Contract Number (CustomText1): 22-0221

Bid/RFP # (BidRFP):

BPO Number (Custom1Code): Expense Contract

SHIP TO (LocShipTo): LUT - Admin.

BILL TO (LocBillTo): LUT - Admin.

Project Number (CustomText2): 100648

Chargeable Program Number (ChargeProgram): 209-607010

Contract Admin (Administrator): Ray Nielsen

Certificate Of Completion

Envelope Id: A865EC9880144BEDB104DE8E275DADD5	Status: Completed
Subject: Please DocuSign: 22-0221: Clackamas County OR	
Source Envelope:	
Document Pages: 47	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Connie Wilson
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	155 N. First Ave, Suite 270
	MS28
	Hillsboro, OR 97124-3087
	Connie_Wilson@co.washington.or.us
	IP Address: 204.147.152.5

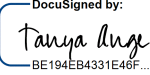
Record Tracking

Status: Original	Holder: Connie Wilson	Location: DocuSign
2/24/2022 11:03:25 AM	Connie_Wilson@co.washington.or.us	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Washington County	Location: DocuSign

Signer Events

Tanya Ange
 Tanya_Ange@co.washington.or.us
 County Administrator
 Washington County, Oregon
 Security Level: Email, Account Authentication (None), Access Code

Signature

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 204.147.152.5

Timestamp

Sent: 2/24/2022 11:08:56 AM
 Resent: 2/28/2022 10:01:50 AM
 Viewed: 2/28/2022 10:11:34 AM
 Signed: 2/28/2022 10:11:44 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/24/2022 11:08:57 AM
Certified Delivered	Security Checked	2/28/2022 10:11:34 AM
Signing Complete	Security Checked	2/28/2022 10:11:44 AM
Completed	Security Checked	2/28/2022 10:11:44 AM
Payment Events	Status	Timestamps