



DAN JOHNSON  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

March 12, 2020

Board of Commissioners  
Clackamas County

Members of the Board:

**Public Hearing Regarding the Proposed Withdrawal of County Road Status From a  
Portion of Otty Street (98<sup>th</sup> Ave.), County Road No. 2447**

<b>Purpose/Outcomes</b>	Public hearing to accept the Road Official's Report and to hear testimony pertaining to the withdrawal of county road status of a portion of Otty Street, County Road No.2447
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	October 16, 2018 Policy Session
<b>Strategic Plan Alignment</b>	Grow a Vibrant Economy
<b>County Counsel</b>	Reviewed and approved by County Counsel on 03/03/20
<b>Contact Person</b>	Doug Cutshall, Engineering Technician 503-742-4669

**BACKGROUND**

The Development Agency's realignment project of SE Otty Street allowed for unused portions of the old Otty Street alignment to be vacated. However, a short portion of the right of way was withheld from that vacation and is characterized as a County Road, subject to County maintenance. The remaining portion of Otty Street is part of a Local Access Road to provide access to adjoining properties. The Local Access Road was not constructed to a current county road standard and cannot be maintained as a county road.

Withdrawing the County Road status will ensure that the County does not retain a maintenance obligation over a short, orphaned piece of right of way. Withdrawal of County Road Status, ORS 368.026 must be accomplished through public notification and hearing process. The Withdrawal of County Road Status will not remove the "Public Road" status from this portion of right of way, which means the travelling public will still be able to access that portion of Otty Street.

The Board has scheduled a hearing for March 12, 2020 to accept the Road Official's Report and to hear testimony pertaining to the withdrawal proposal. Notice of the hearing with a brief statement of the reason for the proposed withdrawal, has been served to all adjoining property owners, posted in at least three public places in the area of the proposed withdrawal, and

advertised twice in the Clackamas Review.

**RECOMMENDATION**

Staff respectfully recommends that the Board hold the previously scheduled public hearing to accept the Road Official's Report and to hear testimony pertaining to the proposed withdrawal of county road status of a portion of Otty Street, County Road No.2447. Assuming there is no opposition to the proposed withdrawal of county road status, staff would recommend that the Board adopt an order formally withdrawing county road status from a portion of Otty Street, County Road No.2447.

Sincerely,

Douglas Cutshall  
Engineering Technician D.T.D.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Withdrawal of County  
Road Status of a portion of Otty Street,  
(98<sup>th</sup> Avenue) County Road No. 2447,  
Located in SE 1/4 of Section 29, T.1 S.,  
R.2 E., Willamette Meridian  
Clackamas County, Oregon



Board Order No. \_\_\_\_\_

*Page 1 of 2*

**This matter coming** before the Board of County Commissioners at this time and it appearing to the Board that in accordance with ORS 368.026 a Road Official's Report from the County Road Official, Dan Johnson, Director, has been submitted in the matter of a Hearing for the proposed Withdrawal of County Road Status of a portion of Otty Street, County Road No.2447, stating the reason and effects the proposed withdrawal may have on the property adjoining the county road proposed to be withdrawn; and

**Whereas**, pursuant to ORS 368.401 to 368.426, notice of a hearing with a brief statement of the reason for the proposed withdrawal, has been served to all adjoining property owners, posted in at least three public places in the area of the proposed withdrawal, and advertised twice in the Clackamas Review; and

**Whereas** on this date, the Board accepted the Road Official's Report and heard testimony from all interested persons either favoring or objecting to the proposed withdrawal for purposes of making its determination to withdraw or retain county road status for the portion of old Otty Street, County Road No.2447, as described below and shown on attached exhibit "A";

All of that portion of Otty Street, (98<sup>th</sup> Avenue per Park View Acres, Plat No. 417, Clackamas County Plat Records), County Road No.2447, situated in the SE ¼ of Section 29, T.1 S., R.2 E., W.M., Clackamas County, Oregon, lying north of the northerly right of way of realigned Otty Street, west of and between the west right of way of 82<sup>nd</sup> Avenue (State Highway 213) and the southerly extension of the east line of that property described in Document Number 2005-059255, Clackamas County Deed Records, being and meaning to be all of Otty Street, (98<sup>th</sup> Avenue), not vacated through Clackamas County Board Order Number 2018-031, recorded as document 2018-028626, Clackamas County Deed Records, and, as shown on attached Exhibit "A", being made a part of this description.

**Whereas** the Board having read said Road Official's Report and having heard public testimony this day, have determined the Withdrawal of County Road Status of a portion of Otty Street, County Road No.2447, to be in the public interest; and,

**Whereas** Clackamas County Departments of Transportation Maintenance, Engineering, Planning and, Traffic, have been contacted and do not have any objections to this Withdrawal of County Road Status; now therefore,

**IT IS HEREBY ORDERED** that County Road status be withdrawn from the described portion of Otty Street, County Road No.2447, containing, 52,038 square feet, more or less; and,

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Withdrawal of County  
Road Status of a portion of Otty Street,  
(98<sup>th</sup> Avenue) County Road No. 2447,  
Located in SE 1/4 of Section 29, T.1 S.,  
R.2 E., Willamette Meridian  
Clackamas County, Oregon



Board Order No. \_\_\_\_\_  
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**IT IS FURTHER ORDERED**, that this Order and attached exhibits be recorded  
in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor,  
County Assessor, and Finance Office/Fixed Assets.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020

BOARD OF COUNTY COMMISSIONERS

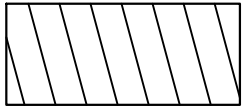
\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

SITUATED IN PARK VIEW ACRES PLAT No.417 AND,  
 THE SE 1/4 OF SECTION 20, T.1S., R.2E., W.M.  
 CLACKAMAS COUNTY, OREGON



**LEGEND**



LOCATION OF PROPOSED  
 WITHDRAWAL OF COUNTY  
 ROAD STATUS



SCALE 1"=60'

DEPARTMENT OF TRANSPORTATION  
 AND DEVELOPMENT  
 150 BEAVERCREEK ROAD  
 OREGON CITY, OR 97045



BY: D.CUTSHALL DATE: 12/10/2019

**EXHIBIT "A"**

SHEET  
 1 OF 1

## MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: December 26, 2019

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE WITHDRAWAL OF COUNTY ROAD STATUS OF OTTY STREET**

**LOCATION:** Otty Street, County Road Number 2447, situated in the SE 1/4 of Section 29, T.1 S., R.2 E., W.M. and, Park View Acres, Plat No. 417, Clackamas County Plat Records.

**FACTS AND FINDINGS:** The Development Agency's realignment project of SE Otty Street allowed for unused portions of the old Otty Street alignment to be vacated (Board Order 2018-031) however, a short portion of the right of way was withheld from that vacation; it is that short portion that is the subject of this Road Officials Report. The withheld portion of Otty Street retains County Road Status and, is a part of a Local Access Road constructed for this project to provide access to adjoining properties once the realignment project was complete. The proposed withdrawal will have no effect on the land abutting this area. The Local Access Road was not constructed to a county road standard.

Withdrawal of County Road Status, as set forth in ORS 368.026, must be accomplished through public notification and hearing process. After the withdrawal of County Road Status, this portion of right of way will continue to be a "Public Road". Staff proposes that the Department of Transportation and Development ultimately accept the dedication of right of way for this Local Access Road in a Partition Plat of the Development Agency's excess property.

Withdrawal of County Road Status, as set forth in ORS 368.026, provides the county governing body shall establish a time and place for a hearing to consider whether the proposed Withdrawal of County Road Status is in the public interest. The Board of County Commissioners has scheduled this hearing for March 12, 2020.

Notice, as established by ORS 368.401 to 368.426, of the intent to Withdraw County Road Status has been sent by certified mail to all adjoining property owners, has been posted in at least three public places near Otty Street and has been published in a newspaper of local circulation, once at least 20 days and once within 10 days of the date of this proceeding.

It is my assessment to support the Withdraw County Road Status for the remaining portion of Otty Street as described and shown on attached Exhibits "A" and "B".

This Road Official's Report is submitted for the Board of County Commissioner's consideration.



Elizabeth Comfort  
Finance Director, Interim

**Department of Finance**

Public Services Building  
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

March 12, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**First Reading of Ordinance No. \_\_, An Ordinance Amending the Clackamas County Code  
Chapter 8.02, Transient Room Tax**

Purpose/Outcomes	To revise Chapter 8.02 of the Clackamas County Code to make the provisions therein gender neutral, permit operators to deduct 5% of the tax collected as a collection expense, to clarify the language in the Chapter regarding the incidental use exemption to imposition of the Transient Room Tax, and to make various other minor edits and fixes throughout.
Dollar Amount and Fiscal Impact	There is no additional cost associated with these changes.
Funding Source	Finance retains 2% of the Transient Room Tax collected for administrative costs.
Duration	Ongoing
Previous Board Action	Finance held a policy session before this Board on January 28, 2020. The Board approved Finance proceeding with the proposed Code amendments.
Strategic Plan Alignment	The proposed amendments will support the Department of Finance goal of conducting business in a transparent, financially responsible, and responsive manner.  The proposed amendments will support the Department of Tourism & Cultural Affairs goals by simplifying the code to encourage compliance of online travel companies (OTC), potentially increasing transient room tax revenue.
Contact Person	Haley Fish, Finance, Deputy Director 503-742-5425 Kathryn Stewart, Finance 503-742-5462

**Background:**

On or about June 15, 2017 an amendment to Chapter 8.02 – *Transient Room Tax* was adopted. The purpose of this amendment, in part, was to capture tax revenues from the emerging rental market involving short-term rentals of private homes using various online platforms.



Elizabeth Comfort  
Finance Director, Interim

**Department of Finance**

Public Services Building

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In September of 2017, the County sued AirBnB, HomeAway and TripAdvisor, seeking to enforce the amended ordinance. In August of 2018, the U.S. District Court dismissed the County's case and found the amended ordinance invalid. Following the decision, the County reverted to applying the pre-amendment version of the ordinance.

The proposed amendments implements some of the changes previously proposed that were not contested in the litigation. The proposed amendments also seek to clarify the exemption language within Chapter 8.02 which has been unclear to customers and a hindrance to entering into voluntary agreements with the online travel companies. This clarification will also allow for a simpler and more efficient assessment of whether the exemption applies.

**Recommendation:**

Staff respectfully requests that the BCC hold this public hearing and schedule a second reading and public hearing of this ordinance on March 26, 2020 at 10:00 a.m.

Respectfully submitted,

Elizabeth Comfort  
Finance Director, Interim



ORDINANCE NO. \_\_\_\_\_

**An Ordinance Amending  
Clackamas County Code Chapter 8.02, Transient Room Tax.**

WHEREAS, it is necessary to amend the Code to revise the Chapter to make the provisions therein gender neutral, permit operators to deduct 5% of the tax collected as a collection expense regardless of whether payment was timely made to the County, to clarify the language in the Chapter regarding the incidental use exemption to imposition of the Transient Room Tax, and to make various other minor edits and fixes throughout;

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapter 8.02, Transient Room Tax, of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

ADOPTED this \_\_\_\_\_ day of March, 2020.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## Chapter 8.02

### 8.02 TRANSIENT ROOM TAX

#### 8.02.010 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ACCRUAL ACCOUNTING means the operator enters the rent due from a transient on the his records when the rent is earned, whether or not it is paid.
- B. BOARD means the Clackamas County Board of Commissioners.
- C. CASH ACCOUNTING means the operator does not enter the rent due from a transient on their his records until rent is paid.
- D. COUNTY means Clackamas County.
- A. HOTEL means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy, for thirty (30) days or less, for dwelling, lodging, or sleeping purposes. This includes, but is not limited to, any hotel, motel, inn, bed and breakfast, space in mobile home or trailer parks, tourist home, condominium, hostel, studio hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or portions thereof so occupied.
- B. OCCUPANCY means the use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any room or rooms in a hotel, or space in a mobile home, or trailer park, or portion thereof.
- C. OPERATOR means the person who is proprietor of the hotel in any capacity. Where the operator performs their his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as their his principal. Compliance with the provisions of this chapter, by either the principal or the managing agent, shall be considered to be compliance by both.
- D. PERSON means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- E. RENT means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property, or any other consideration valued in money, without any deduction; but does not include the sale of any goods, services, and commodities, other than the furnishing of room accommodations and parking space in mobile home parks or trailer parks.
- F. RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when consideration is not a part of a package plan.
- K. TAX ADMINISTRATOR means the official appointed by the Board of County

Commissioners to carry out provisions of this chapter.

- L. TAX means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator ~~he~~ is required to report the his collections.
- M. TRANSIENT means any person who exercises occupancy, or is entitled to occupancy, in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than thirty (30) consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.020 Tax Imposed**

For the privilege of occupancy in any hotel, on and after the effective date of this chapter, each transient shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on the his records when rent is collected if the operator keeps the his records on the cash accounting basis, and when earned if the operator keeps the his records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.030 Where Tax is Imposed**

The tax imposed by this chapter shall apply to all hotels located within Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

#### **8.02.040 Collections of Tax by Operator, Rules for Collection**

- A. Every operator renting rooms in this County, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.
- B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.
- C. For rent collected on portions of a dollar, the first one cent (\$.01) of tax shall be collected on five cents (\$.05) through twenty-one cents (\$.21) inclusive; and the second one cent (\$.01) of tax on twenty-two cents (\$.22) through thirty-eight

cents (\$38); the third one cent (\$.01) of tax on thirty-nine cents (\$39) through fifty-five cents (\$.55); the fourth one cent (\$.01) of tax on fifty-six cents (\$.56) through seventy-two cents (\$.72); the fifth one cent (\$.01) of tax on seventy-three cents (\$.73) through eighty-nine cents (\$.89); and the sixth one cent (\$.01) of tax on ninety cents (\$.90) through the next one dollar and four cents (\$1.04) of rent.  
[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.050 Operator's Duties**

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax, or any part of the tax, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that when added, any part will be refunded, except in the manner provided by this chapter. [Codified by Ord. 05-2000, 7/13/00]

#### **8.02.060 Exemptions**

No tax imposed under this chapter shall be imposed upon:

- A. Any person who rents a room or facility for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- B. Any person whose rent is of a value less than \$15.01 per day;
- C. Any person who rents a private home, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to the owner's his own use thereof. A personal rental is not incidental to an owner's own use if the private home, vacation cabin, or like facility is publicly advertised for rent by the owner or any other person or entity including, but not limited, rental management agencies or transient lodging intermediaries, as defined by ORS 320.300. This exemption does not apply if the private home, vacation cabin, or like facility is rented for fourteen (14) days or more within a calendar year;
- D. Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people, that are licensed, registered, or certified by the Oregon Department of Human Services; or
- E. Employees, officials or agents of the U. S. Government occupying a hotel in the course of official business.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2005, 5-26-05; Amended by Ord. 02-2010, 2/25/10]

#### **8.02.070 Registration of Operator, Form and Contents, Execution, Certification of Authority**

Every person engaging or about to engage in, business as an operator of a hotel in this County shall register with the Tax Administrator on a form provided by the Tax Administrator, him or her. Operators engaged in business at the time this chapter is adopted, must not register later than thirty (30) calendar days after passage of this chapter. Operators starting business after this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of

payment, or collection of tax, regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of ~~the~~ ~~his~~ place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The operator shall sign the registration. The Tax Administrator shall, within ten (10) days after registration, issue without charge from the occupant, a Certificate of Authority to the registrant to collect the tax, from the occupant of the hotel, together with a duplicate thereof, for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and,
- D. “This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Chapter of the Clackamas County Code by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by the County and remitting the tax to the Tax Administrator.”

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.080 Due Date, Returns, and Payments**

- A. The transient shall pay the tax imposed by this chapter to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month and are delinquent ~~if received after~~ ~~on~~ the last day of the month in which they are due.
- B. On or before the fifteenth (15th) day of the month following each month of collection a return for the preceding month’s tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.
- C. Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of the operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
- D. The person ~~that~~ required ~~to file filing~~ the return should deliver the return together with the remittance of the amount of the tax due to the Tax Administrator at ~~their~~ ~~his~~ office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.
- E. For good cause, the Tax Administrator may extend for up to one (1) month the time for making any return or payment of tax. No further extension shall be

granted, except by the Board. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month, on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

- F. ~~If the operator has complied with the terms of this chapter and particularly the provisions of this section relating to prompt payment of taxes due and payable to the Tax Administrator, the~~ An operator shall be permitted to deduct as collection expense five percent (5%) of the amount of the taxes collected, as shown by the return mentioned in paragraph C of this section.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.090 Penalties and Interest**

- A. Original Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this chapter prior to delinquency, shall pay a penalty of ten percent (10 %) of the amount of tax due in addition of the amount of the tax.
- B. Continued Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax due, and the ten percent (10%) penalty first imposed.
- C. Fraud: If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax due shall be added thereto, in addition to the penalties stated in paragraphs (1) and (2) of this section.
- D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one ~~half of one~~ percent (~~51~~%) per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.
- E. Penalties merged with tax: Every penalty imposed and such interest as accrues under the provisions of this chapter, shall be merged with and become a part of the tax herein required to be paid.
- F. Petition for waiver: Any operator who fails to remit the tax levied within the time stated, shall pay the penalties stated. However, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.100 Deficiency Determinations, Fraud, Evasion, Operator Delay**

- A. Deficiency determination: If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid



upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in 8.02.090.

1. In making a Determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in 8.02.090.
  2. The Tax Administrator shall give to the operator or occupant a written notice of ~~their~~ ~~his~~ determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this chapter, the service is complete upon receipt by the operator or ~~the operators~~ ~~his~~ agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.
  3. Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.
  4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he/she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade, or failure, or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes

final as herein provided.

- C. Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the County, will be jeopardized by delay or if any determination will be jeopardized by delay, s/he shall thereupon make a determination of the tax or amount of tax required to be collected noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof provided. However, the operator may petition after payment has been made for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.110 Re-determinations**

- A. Any operator against whom a determination is made under Section 8.02.100 or any person directly interested may petition for a re-determination and redemption and refund within the time required in 8.02.100, hereof. If a petition for re-determination and refund is not filed within the time required in 8.02.100, the determination becomes final at the expiration of the allowable time.
- B. If a petition for re-determination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in ~~their~~ ~~his~~ petition, shall grant the person an oral hearing, and shall give ~~them~~ ~~him~~ ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- C. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.
- D. The order or decision of the Tax Administrator upon a petition for re-determination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the Board within ten (10) days after service of such notice.
- E. No petition for re-determination of redemption and refund or appeal there from shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.120 Security, Collection of Tax**

- A. The Tax Administrator, after delinquency and when he or she deems it necessary to insure compliance with this chapter, may require any operator subject thereto to deposit with him/her such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which ~~they~~ ~~he~~-files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the



limitations herein provided.

- B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any State, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.130 Lien**

- A. The tax imposed by this chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Clackamas County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall be and until paid remain a lien from the date of its recording with the Clerk of Clackamas County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator, which may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator. The personal property subject to such lien may be seized by any authorized deputy or employee of the Tax Administrator and may be sold at public auction after twenty- (20) days notice of sale given by two publications in a newspaper of general circulation in the County. The notices required hereunder shall be published not less than seven (7) days apart. Such seizure and sale shall be in addition to any other process to secure payment of the delinquent tax allowed by law.
- B. Any lien for taxes shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.140 Refunds**

- A. Operators' refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded provided a verified claim in writing therefore stating the specific reason upon which the claim is founded is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to each such operator, ~~their~~ his administrators, executors or assignees.
- B. Transient Refunds. Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the Tax Administrator and it is

later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

| [Codified by Ord. 05-2000, 7/13/00]

### 8.02.150 Administration

- A. Transient Room Tax Fund. The Tax Administrator shall place all monies received pursuant to this order in the Transient Room Tax Fund.
- B. Records Required from Operators. Every operator shall keep guest records of room sales and accounting books and records of room sales. The operator shall retain all records for a period of three (3) years and six (6) months after they come into being.
- C. Examination of Records, Investigations. For the purpose of enforcing 8.02.100 of this chapter, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in 8.02.100 of this chapter, then the Tax Administrator or any person authorized in writing by him or her may examine during normal business hours the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- D. Confidential Character of Information Obtained, Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Nothing in this subsection shall be construed to prevent:
  - 1. The disclosure to or the examination of records and equipment by another county official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting taxes imposed hereunder;
  - 2. The disclosure after the filing of a written request to that effect to the taxpayer, himself receivers, trustees, executors, administrators' assignees, and guarantors if directly interested of information as to any paid tax, and unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Clackamas County Counsel approves each such disclosure, and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;
  - 3. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued; or

4. The disclosure of general statistics regarding taxes collected or business done in the County.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.160 Tax Revenue Sharing**

- A. Commencing with tax revenues collected January 1, 1993, the total net transient room tax receipts after operator collection expense of 5% and County administrative costs, not to exceed 2%, have been deducted, shall be distributed by the Tax Administrator as follows:
  1. Between January 1, 1993, and June 30, 1993, an amount sufficient to bring proceeds up to a base support amount of \$250,000 per year shall be paid in equal quarterly installments to the Clackamas County Fair; this amount shall be adjusted annually to allow for inflation by an amount to be determined by the Tourism Development Council (TDC); these funds shall be used by the Fair for construction, operations and maintenance, in accordance with its annual budget approved by the Board; and,
  2. The balance placed with the County Treasurer for deposit until transferred to the TDC monthly to pay expenditures authorized as provided below.
- B. There is hereby created the Clackamas County Tourism Development Council, consisting of nine (9) members to be appointed by the Board of County Commissioners. The TDC is to oversee the development and promotion of tourism and conventions in Clackamas County.
- C. The TDC is to develop, adopt and implement, subject to Board of County Commissioners' approval, a Tourism Development and Promotion Master Plan. The Master Plan shall address at least the following elements: tourism promotion, tourism development, conventions, visitor information services, special events and festivals, and the County Fair. The Master Plan may be revised from time to time, subject to Board of County Commissioners' approval. Prior to adoption of the Master Plan, the TDC may adopt, subject to Board of County Commissioners' approval, an Interim Plan.
- D. The funds described in subsection 8.02.160 A 2 above shall be allocated to projects and programs by the TDC in accordance with the Tourism Development and Promotion Master Plan, except that revenues collected prior to final Board of County Commissioners' approval of a Master Plan may be expended pursuant to an interim Plan, if adopted.

[Codified by Ord. 05-2000, 7/13/00]

#### **8.02.170 Appeals to the Board**

Any person aggrieved by any provisions of the Tax Administrator may appeal to the Board by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter. [Codified by Ord. 05-2000, 7/13/00]

### **8.02.180 Violations**

It is unlawful for any operator or other person so required, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due, required by this chapter. Any person willfully violating any of the provisions of this chapter shall be subject to a fine in an amount set by resolution of the Board of County Commissioners. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03

### 8.02.190 Severance Clause

If any provision of this Chapter 8.02 is adjudged or declared to be unconstitutional or otherwise held to be invalid by a court of competent jurisdiction, the remaining provisions of this chapter shall remain in full force and effect.

March 12, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Tri-County  
Metropolitan District of Oregon for Special Transportation Formula  
Funds for Mt Hood Express Bus Service, Dedicated Dialysis Rides  
Program and Match Funds for Title XIX (Medicaid) non-medical  
Waivered Transportation

<b>Purpose/Outcomes</b>	Agreement with Tri-County Metropolitan Transportation District of Oregon (TriMet) to fund Mt Hood Express fixed route service to the Mt Hood area, rides for dialysis patients living outside the TriMet service district and provide local match dollars for the County's Title XIX (Medicaid) waived non-medical transportation program.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$90,711. No match funds are required and there would be no fiscal impact on the County.
<b>Funding Source</b>	State of Oregon, Public Transit Division, Special Transportation Funds (STF) Formula Base
<b>Duration</b>	July 1, 2019 to June 30, 2021
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with the strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.</li> </ol>
<b>Counsel Review</b>	Reviewed and Approved by Counsel on 2/11/20.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division - 503-655-8641
<b>Contract No.</b>	8553

**Background**

The Social Services Division of the Department of Health, Housing and Human Services requests approval of an intergovernmental agreement with Tri-County Metropolitan Transportation District of Oregon (TriMet) to receive Special Transportation Formula Funds passed through from the State of Oregon. This agreement will provide funding for Mt Hood Express operations, the Clackamas Transportation Consortium's Title XIX waived non-medical transportation program and rides to dialysis clients who live outside of the TriMet service district.

Clackamas County Social Services has received Special Transportation Funds (STF) to operate the Mt Hood Express transit for several years. ODOT has made STF formula base funds available through TriMet, the regional STF funds distributor. This Agreement amount is consistent with previous year levels with a modest 2% increase.

Clackamas County Social Services (CCSS) has operated the Mt Hood Express public bus service since 2007. The Villages Shuttle provides transportation service between the City of Sandy and the Villages of Mt Hood. This shuttle provides accessible transportation for local residents to reach the business and social services available in the City of Sandy and beyond.

For many years Clackamas County Social Services (CCSS) has received funding from TriMet general funds for to provide required match per one-way ride so that Consortium members receive the full \$14.00 per one-way ride for rides provided. This agreement now provides those funds through the State of Oregon Special Transportation Funds process. The Federal match rate is adjusted annually. The current rate is 30.38%. The balance is funded by Title XIX (Medicaid) Waivered Services funds. All rides must first be authorized by the client's Medicaid case manager in order for Consortium members to receive payment for the service. The goal of the Consortium in providing transportation services is to assist older and disabled county residents in meeting their individual needs. These services assist them in living independently in their own homes for as long as possible.

This agreement also funds rides for seniors who need transportation to dialysis and other life sustaining medical treatment who reside outside of the TriMet service district. This service for medically fragile residents is provided through the Transportation Reaching People program and is generally the only transportation option in rural areas.

Total amount of the agreement is \$90,711. No County General Funds are involved. This agreement was reviewed and approved by County Counsel on 2/11/20.

### Recommendation

We recommend approval for this agreement and further recommend that Richard Swift, H3S Director, be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director  
Health Housing & Human Services

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON  
SUBRECIPIENT AGREEMENT GP200839GS  
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION  
SPECIAL TRANSPORTATION FUNDS  
ODOT GRANT AGREEMENT NO. 33503**

**PARTIES:**

1. Tri-County Metropolitan Transportation District of Oregon (TriMet)
2. Clackamas County (Subrecipient)

**RECITALS:**

1. Pursuant to ORS Chapter 391, TriMet is designated to distribute to "providers of transportation," as that term is defined in ORS 391.830(6), State of Oregon Department of Transportation (ODOT), Public Transit Division, Special Transportation Funds (STF) for the purposes set forth at ORS 391.830(4). Subrecipient is a "provider of transportation" in Clackamas County, Oregon. ODOT, through its Public Transit Division, awarded TriMet Fiscal Year 2020-2021 Biennium STF Formula Funds (Funds) under Agreement No. 33503. Funds to Subrecipient has been approved by ODOT Grant Agreement No. 33503. Notwithstanding any term of provision of Grant Agreement No. 33503, the maximum amount of Funds to be disbursed to Subrecipient shall not exceed \$90,711.
2. Pursuant to OAR 732-005-0061, TriMet and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved Funds to Subrecipient for Subrecipient's accomplishment of the Project(s), specified in Exhibit C, attached hereto. **Funds shall be used solely for the Project(s) and shall not be used for any other purpose.**

**AGREEMENTS:**

**1. General**

Subrecipient agrees to comply with and use the Funds in accordance with the terms of this Agreement No. GP200839GS, including the attached Exhibit A, B, C, and D (Agreement). Subrecipient further agrees to comply with the terms and conditions of ORS 391.800 through 391.830 and the provisions of Oregon Administrative Rules (OAR) Chapter 732, as may be amended, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in the attached Exhibits A, B, C, and D, which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the Funds, and shall be amended to incorporate those changes, if any.

Subrecipient agrees to comply with all subrecipient monitoring policies, procedures and other



requirements to ensure compliance with applicable federal and State of Oregon statutes and rules, including, but not limited to, ORS 391.800 through 391.830, the provisions of OAR Chapter 732, and Title VI of the Civil Rights Act of 1964.

Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract Subrecipient may execute. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this Agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 4, and 6(B).

**2. Audit Requirements/Financial Management Procedures**

Funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit A shall apply. TriMet may request additional information including, but not limited to, audits of specific projects or services related to this Agreement or the Project(s). Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit A.

Subrecipient shall comply with applicable federal, state and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing and reporting requirements with Funds. **Subrecipient shall document the expense of all Funds disbursed under this Agreement.**

**3. Reporting Requirements**

In order to be reimbursed, Subrecipient shall submit quarterly progress reports electronically to TriMet's Project Manager, using the report form in Exhibit D, no later than 30 days after the close of each quarterly reporting period. Quarterly progress reports must be remitted via TriMet's established process for posting on its website that meets the requirements of Exhibit A and Exhibit C. Reporting periods follow calendar quarters Q1 (July through September), Q2 (October through December), Q3 (January through March), and Q4 (April through June).

TriMet and ODOT reserve the right to request additional information as may be necessary to comply with state reporting requirements. Copies of the reports shall be sent to TriMet's Project Manager, Vanessa Vissar, or her designee.

**4. Withholding of Funds**

In addition to any other provisions of this Agreement, including but not limited to Exhibits A and C, TriMet may withhold payment of Funds if:

4.1. The Funds are not being used in accordance with ORS 391.800 through 391.830, the relevant OARs or this Agreement;

4.2. All required reports have not been submitted; or

4.3. If there are any unresolved audit findings relating to the STF.

Subrecipient shall assure that Funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Upon breach of conditions that require TriMet to return Funds to ODOT, to the extent allowed by law, Subrecipient shall hold harmless and indemnify TriMet for an amount equal to the Funds required to be repaid, plus any additional costs incurred by TriMet.

**5. Discrimination Prohibited/Compliance with Laws**

Subrecipient certifies 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 Subrecipient receives Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and Federal Transit Administration (FTA) regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

**6. Indemnification**

The Parties agree that TriMet shall have no liability of any nature in connection with the Subrecipient's use of the Funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising, as between TriMet and Subrecipient, solely out of the Subrecipient's use of the Funds or Subrecipient's provision of transportation services by Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. If Subrecipient is a public body and the claim, suit, or action subject to indemnification under this section is limited by the Oregon Tort Claims Act (ORS 30.260 *et seq*), then Subrecipient's indemnification will not exceed an amount equal to the applicable tort claim limit for Subrecipient pursuant to the Oregon Tort Claims Act.

In addition to any other remedies available to TriMet provided by law or this Agreement, any Subrecipient receiving Funds pursuant to this Agreement shall assume sole liability for that

Subrecipient's breach of the conditions of this Agreement. The provisions set forth in this Section and related provisions in Exhibit A shall survive termination or expiration of this Agreement.

**7. Vehicle/ Operator Requirements**

Subrecipient shall ensure that all drivers of equipment purchased with 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). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

**8. Funding**

- A. Upon execution of this Agreement and to the extent TriMet has received funds from ODOT, TriMet shall disburse Funds to Subrecipient as outlined in Exhibits A and C. The total amount disbursed by TriMet under this Agreement shall not exceed the sum of \$90,711.
- B. TriMet will make quarterly installment payments to Subrecipient within 30 days after TriMet has received Funds from ODOT. TriMet shall determine the amount of each quarterly payment based on the amount of Funds stated in Exhibit C divided by the number of calendar quarters for which payments are scheduled to be made, with any adjustments as may be determined by TriMet.
- C. All Funds must be used for expenses incurred no later than June 30, 2021 and not before July 01, 2019.
- D. Subrecipient shall provide documentation (i.e., General Ledger reports) to TriMet's Project Manager (Vanessa Vissar at [vissarv@trimet.org](mailto:vissarv@trimet.org)) within 30 days after the end of each TriMet Fiscal Year that show cumulative total expenses incurred in the biennial period. Such documentation shall show that all Funds paid to Subrecipient were used solely for the Project(s) identified under Exhibit C.

If disbursements exceed actual expenditures as documented above, the amount must be returned to TriMet to be used at TriMet's discretion for projects approved by the Special Transportation Fund Advisory Committee.

- E. Prompt Payment - Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from TriMet. Subrecipient shall not hold retainage from

subcontractors.

**9. Term**

This Agreement shall be in effect from July 1, 2019 through June 30, 2021, unless the Agreement is terminated earlier as provided herein.

**10. Communications**

All communications between the Parties regarding this Agreement shall be directed to the Parties' respective Project Managers as indicated below:

TriMet:

Tom Mills  
TriMet  
1800 SW 1st Ave., Suite 300  
Portland, Oregon 97201  
(503) 962-4912  
[vissarv@trimet.org](mailto:vissarv@trimet.org)

Subrecipient:

Teresa Christopherson  
Clackamas County; Social Services Division  
2051 Kaen Rd, PO Box 2950  
Oregon City, Oregon 97045  
(503) 650-5718  
[teresachr@clackmas.or.us](mailto:teresachr@clackmas.or.us)

If one Party finds a need to designate a new Project Manager, it shall immediately notify the other Party in writing, electronic mail, or other dated documentation.

**11. Assignment/Subcontracts**

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other Party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by TriMet.

**12. Mediation**

Should any dispute arise between the Parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any Party commencing litigation. In such an event, the Parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.

**13. Entire Agreement/Authority**

This Agreement and the attached Exhibits A, B, C, and D constitute 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. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by authorized representatives of both Parties. If made, such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The failure of Subrecipient or TriMet to enforce any provision of this Agreement shall not constitute a waiver by the Party of that, or any other provision.

**14. 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.

**15. Authority**

The individuals signing below represent and warrant that they have authority to bind the Party for which they sign. 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.

**16. Counterparts**

This Agreement and the exhibits hereto may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and which together are deemed one binding agreement, notwithstanding that the Parties are not signatories to the same counterpart.

**Subrecipient: Clackamas County**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/FAX: \_\_\_\_\_

Federal Employer ID Number: \_\_\_\_\_

Signature: \_\_\_\_\_

**Tri-County Metropolitan Transportation District of Oregon (TriMet):**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Tri-County Metropolitan Transportation District of Oregon (TriMet):**

Name: \_\_\_\_\_

Title: Chief Financial Officer

Date: \_\_\_\_\_

Signature: \_\_\_\_\_