



Clackamas County Sheriff's Office

ANGELA BRANDENBURG
Sheriff

March 25, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Intergovernmental Agreement with the Tri-County Metropolitan Transportation District of Oregon (TriMet) to Provide Transit Police Services

Purpose/Outcome	Funds received by TriMet will reimburse the Clackamas County Sheriff's Office for the actual cost of personnel assigned to provide patrol services to further TriMet's goal, "to build and maintain public confidence in the security and safety of TriMet's transit system through the development and implementation of proactive strategies, practices, and resource allocation and deployment methodologies to help ensure the safety and security of TriMet customers, employees, and the general public as they interact with the transit system."
Dollar Amount and Fiscal Impact	TriMet will fully compensate CCSO for the actual cost of salary and benefits of the personnel assigned to provide patrol services
Funding Source	Funds for this program come to the County through direct reimbursement from TriMet
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy and secure communities
Duration	The initial term of this IGA is April 1, 2021 – June 30, 2025. The IGA will automatically renew for one-year terms through June 30, 2028, unless terminated prior to this date by either party.
Previous Board Action/Review	The Board of County Commissioners has approved prior IGAs between TriMet and CCSO in past years
Counsel Review	1. <i>Date of Counsel review:</i> 03/09/2021 2. <i>Initials of County Counsel performing review:</i> AN
Procurement Review	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> Not applicable 2. <i>If no, provide brief explanation:</i> Not applicable
Contact Person	Undersheriff Michael Copenhaver, michaelcop@clackamas.us
Contract No.	GS210830EV

BACKGROUND:

Funds awarded via this IGA will allow for the Clackamas County Sheriff's Office to assist TriMet in furthering its objectives to, "focus efforts on prevention and pro-active enforcement to maximize visible presence on the system, including the use of outreach strategies and forming partnerships with community elements and services providers," and to, "maintain public confidence in use of transit services." Patrol services provided by CCSO will be solely for transit areas within the boundaries of Clackamas County.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approves and signs this Intergovernmental Agreement between the Clackamas County Sheriff's Office and the Tri-County Metropolitan Transportation District of Oregon.

Respectfully submitted,

Angela Brandenburg,
Sheriff

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Phone: 503-785-5000 • Fax: 503-785-5190 • www.clackamas.us/sheriff

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON AND CLACKAMAS COUNTY
FOR TRANSIT POLICE SERVICES**

Contract No. GS210830EV

This Agreement is entered into among the Tri-County Metropolitan Transportation District of Oregon (TriMet) and Clackamas County, pursuant to authority granted in ORS Chapter 190 for the purpose of providing Transit Police Services to TriMet.

RECITAL

TriMet and Clackamas County (“the Parties”) desire to enter into an Agreement with respect to Transit Police Division services including but not limited to deployment strategy, priority of services and administrative procedures.

AGREEMENT

The parties agree as follows:

1. TERM

The initial term of this Agreement shall be from April 1, 2021 through June 30, 2025. Thereafter, this Agreement will automatically renew for successive one-year terms through June 30, 2028, unless terminated sooner under the terms of this Agreement.

2. SERVICE LEVEL

- a. For the term of this Agreement, Clackamas County (also referred to as a Subsidiary Agency) will provide one or more full-time officer(s) or deputies (“law enforcement personnel”) for assignment to the Transit Police Division (hereinafter Division), in such numbers and classifications as the parties mutually agree in writing, by letter among Clackamas County Sheriff's Office, the TriMet Chief of Police, and TriMet's Executive Director, Safety and Security (Executive Director) with such letter in substantially similar a form as set forth in Exhibit 2. If a vacancy of any of the agreed-upon number of law enforcement personnel is not filled within 90 days, the parties agree that TriMet may reassign the opening to another jurisdiction, to provide law enforcement personnel to the Division. Clackamas County law enforcement personnel assigned to the Division will remain employees of Clackamas County and will not be considered employees or agents of TriMet or Multnomah County. For purposes of this Agreement, the law enforcement personnel assigned to the Division will be referred to as assigned to the TriMet Transit Police Division.
- b. Prior to this Agreement becoming effective, a separate intergovernmental agreement will be executed among TriMet and Multnomah County (Prime Agreement) to provide for the management, oversight, and deployment of the Division, including the assignment of Command Personnel to the Division. The Prime Agreement will provide that all Subsidiary Agencies are a third party beneficiary under the Prime Agreement for purposes of Multnomah County's obligation to indemnify Subsidiary Agencies for Multnomah County's actions.

- c. Clackamas County is, and shall at all times be deemed to be an independent contractor. Clackamas County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by Clackamas County pursuant to this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between TriMet and Multnomah County or Clackamas County or any of Clackamas County's agents or employees.

3. ASSIGNMENTS

- a. Deployment Strategy and Priority for Services: Both parties recognize that they have legitimate interests in the deployment strategy and priority of services of Transit Police personnel. The Parties shall work together to insure that the deployment and priorities of law enforcement personnel assigned to TriMet is effective and efficient, and in accordance with TriMet's Public Transit Agency Safety Plan (PTASP), TriMet's Security Management Plan (SMP), TriMet's Emergency Operations Plan (EOP), Federal Transit Administration (FTA) regulations concerning safety and security of transit systems, and as summarized in the attached Exhibit 1, which is incorporated into and made part of this Agreement.
- b. Daily Operation. Supervision of law enforcement personnel for the daily operations of the Transit Police will be provided by the Division's command personnel. Command personnel consists of an Multnomah County Deputy Sheriff with the rank of Captain to serve as the TriMet Transit Police Chief, the lieutenants, and sergeants assigned to the Division. The Police Chiefs or Sheriffs of the Subsidiary Agencies and the TriMet Transit Police Chief shall determine deployments of the respective jurisdiction's personnel on the transit system in accordance with the provisions of Exhibit 3.
- c. General Orders, Directives, and Training, Division Standard Operating Procedures. All law enforcement personnel assigned to the Division will remain subject to the General Orders, Directives, and training requirements of the Clackamas County Sheriff's Office. Additionally, all law enforcement personnel assigned to the Transit Police will abide by the Division's Standard Operating Procedures. In the event of a conflict among the Clackamas County Sheriff's Office's General Orders Directives, and the Division's Standard Operating Procedures, the Clackamas County Sheriff's Office's General Orders will prevail.
 - i. TriMet will not develop, maintain, or create any training materials, general orders, or directives for use by any law enforcement personnel assigned to the Transit Police in carrying out law enforcement activities. TriMet may provide orientation to law enforcement personnel on TriMet's system, the TriMet Code, and other non-enforcement specific information or training.
- d. Selection and assignment of law enforcement personnel to the Transit Police will be determined jointly by the command personnel of the Clackamas County Sheriff's Office and the Transit Police command personnel. Every effort will be made to select the most qualified available officer or deputy making application for assignment to the Transit Police.

- e. Supplemental Police Services: TriMet agrees to pay for supplemental Division police services on an intermittent basis to assist the Division in responding to occasional community impacts or surges that require additional policing. The Executive Director must approve the use of supplemental Division police services prior to deployment by the TriMet Transit Police Chief. Once approval is received from the Executive Director, the TriMet Transit Police Chief will submit in writing to the Executive Director the name of the Subsidiary Agency providing the supplemental police services, and the number and names of personnel being assigned.
- f. Term of Assignment: Law enforcement personnel assigned to the Transit Police Division shall serve a minimum of three (3) years. The term of assignment may be extended upon mutual agreement by TriMet and Clackamas County. In the event of a hardship, Clackamas County shall notify TriMet in writing explaining the hardship. The term of the assignment shall be revised as mutually agreed upon.

4. REIMBURSEMENT OF COSTS

- a. Personnel Costs: Clackamas County shall be responsible for paying the salaries, overtime, insurance, retirement, cell phone monthly bases, and other benefits (“Personnel Costs”) of its respective law enforcement personnel serving in the TriMet Transit Police Division. Clackamas County shall invoice TriMet monthly for all actual incurred Personnel Costs for Division personnel services provided by Clackamas County. Administrative fees charged by the Clackamas County to TriMet in connection with billings shall be 5% of direct costs of salaries, overtime, insurance, retirement and other benefits paid to its personnel (Personnel Costs) assigned to the Division. TriMet agrees to compensate Clackamas County within thirty (30) days after receiving the invoice.
- b. Invoices. All invoices must be submitted in conformance with Exhibit 4. TriMet agrees to compensate Clackamas County within thirty (30) days after receiving: (1) the respective invoice in the required format; and (2) any additional supporting documentation requested by TriMet. Invoices should be submitted to TriMet, Attn: Accounts Payable – FN4, 4012 S.E. 17th Avenue, Portland, OR 97202. For invoicing and auditing purposes, TriMet reserves the right to request any supporting documentation, including but not limited to timesheets, purchase orders, accounting charge spreadsheets, or invoices. TriMet reserves the right to reject any invoice or other payment request that is not in conformance with the requirements of this Agreement, including exhibits.
 - i. Payment. If TriMet fails to make a monthly payment within 45 days of an undisputed billing, Clackamas County may charge an interest rate no more than two percentage points above the interest rate on the monthly Clackamas County investment earnings.
- c. Training/Meeting Costs. Training and meeting costs must be pre-approved by the Transit Police Chief and the Executive Director as set forth in this paragraph. Training shall be in furtherance of the mission of the Transit Police to improve the understanding of the unique operational needs of transit or in furtherance of TriMet’s mission. Routine or required trainings for law enforcement personnel will generally not be approved. Transit Police personnel must follow training protocols established by their respective agencies and complete the necessary paperwork to attend training. Trainings must be

scheduled at least 30-days in advance of the training date. If approved by the Transit Police Chief, the Transit Police Chief shall forward the training/meeting cost requests to TriMet's Executive Director for final approval.

- d. Equipment and Uniforms: Clackamas County shall assign law enforcement personnel to the Transit Police with a standard uniform and a complement of personal equipment at its own expense. Non-personal equipment purchased at TriMet expense specifically for Transit Police shall be for the exclusive use of Transit Police, regardless of title. Personal equipment (such as but not limited to TASERS) purchased by TriMet for the use of law enforcement personnel from other agencies that do not provide such equipment shall remain for exclusive use within Transit Police, regardless of title.
 - i. Computers and Email. Clackamas County will provide access to a computer, an e-mail ID, appropriate software, training and support to all Clackamas County law enforcement personnel assigned to the Transit Police. All Clackamas County employees will maintain their Clackamas County e-mail ID. Clackamas County Information Services will provide support for county-issued equipment.
 - ii. Cell Phones. Clackamas County will provide its law enforcement personnel assigned to the Transit Police with cell phones.
 - iii. Radios. Clackamas County shall provide 800 MHz radios to all of its law enforcement personnel assigned to the Transit Police. Law enforcement personnel assigned to the Transit Police will be dispatched and use Clackamas County Sheriff's Office radio channels.
- e. Body Cameras. If Clackamas County authorizes the use of body worn cameras, Clackamas County will provide body cameras to law enforcement personnel assigned to the Transit Police. Clackamas County will be responsible for all costs related to data storage for body cameras. New and replacement body cameras may be billed to TriMet as provided in this Section. Reimbursement for data storage costs associated with body camera footage retention system will be negotiated in a separate agreement or by amendment to this Agreement.
- f. Equipment Replacement. Expenses associated with routine replacement of uniform and equipment unintentionally damaged by Transit Division personnel or worn-out in normal use shall be billed to TriMet subsequent to pre-approval. Operating costs for equipment (such as but not limited to telecommunications, radios and mobile telephones) shall be billed to TriMet. Monthly equipment replacement reserve costs for those items Clackamas County manages in that manner shall be billed to TriMet.
- g. Overtime. The following provisions apply to overtime for any personnel assigned to the Division by Clackamas County:
 - i. Discretionary. If approved in writing by the Executive Director of Safety and Security or the Executive Director's designee, Clackamas County may provide additional law enforcement personnel to perform operational overtime for special events or unusual occurrences. Overtime, when requested in these categories, will be billable at the actual overtime rate of the law enforcement personnel.

- ii. Disaster or Unusual Occurrence Overtime. If TriMet experiences a disaster or unusual occurrence that is within the TriMet District and officer overtime is requested by TriMet to stabilize the situation, the actual overtime expenditures will be billed to a grant, if available, or to TriMet if no grant funding is available.
- iii. Declared Emergency Overtime. In the case of a county, state, or national declared disaster for which overtime is required to manage the event, the overtime expense will be billed to the appropriate agency (e.g., FEMA). If reimbursement for overtime is not granted, TriMet may be responsible for the direct overtime expense of additional deputies performing duties, as negotiated under then-existing mutual aid agreements.
- iv. Tracking Overtime. Clackamas County will track the costs of any overtime incurred by the assigned law enforcement personnel that is related to his/her assignment to the Transit Police. TriMet agrees to reimburse Clackamas County for the actual cost of any TriMet-related overtime incurred by the assigned law enforcement personnel and approved by the TriMet Executive Director. TriMet will work with the TriMet Chief of Police to manage and oversee the performance of the agreement by creating written guidelines as to what routine overtime is acceptable. The Executive Director will be responsible for approving all non-routine overtime.
- h. Other Expenses. Any reimbursement by TriMet of costs or expenses incurred by Clackamas County in the performance of this Agreement not included in this Agreement, shall be subject to the Executive Director's prior authorization and approval, including but not limited to expenditures for supplies, vehicles, equipment and uniforms. Clackamas County shall be responsible for its incurred expenses in performing this Agreement unless authorized and approved by the Executive Director in accordance with this Agreement.
- i. Annual Budget: Prior to January 1st of each year of this Agreement beginning in 2022 and every year thereafter, Clackamas County shall submit to TriMet a proposed annual budget for services under this contract for next fiscal year (July 1 through the following June 30). The parties will then agree on the compensation to be paid by TriMet for services to Clackamas County under this Agreement. If the parties cannot agree on such compensation by January 1st, any party may elect to terminate this Agreement without penalty.
 - i. Notwithstanding the forgoing, prior to March 1, 2021 the parties shall agree on a budget for the remainder of the fiscal year and the following fiscal year (March 1, 2021 through June 30, 2022).
- j. Increases. If there are changes in Clackamas County General Orders or Policies that increase or modify the agreed upon Annual Budget, such costs increases shall be the responsibility of Clackamas County.

5. **AGENCY COOPERATION AND COORDINATION**

- a. The parties will work closely and continuously communicate with each other to ensure that the resources, strategies, work force deployment, and initiatives of TriMet, Multnomah County, and Clackamas County are coordinated and effective.
- b. The TriMet Chief of Police or his/her designee, will coordinate contact with the parties to insure that the resources, strategies, work force deployment, and initiatives of the Division and those of the respective law enforcement agencies are coordinated and effective.
- c. Clackamas County agrees to work cooperatively in an effort to increase reporting of TriMet related incidents. Clackamas County agrees to provide to the Division TriMet coded reports, data, and records based on the National Incident-Based Reporting System (NIBRS) or other similar reporting system. TriMet agrees to make available to Clackamas County, through the Division, particular data, reports, records, etc. that will assist in fulfilling the mission as outlined in this document.
- d. The Prime Agreement establishes that Multnomah County and TriMet will develop a strategic plan that will include performance metrics to measure the effectiveness of transit police services with the goal of continuous improvement of services. These performance metrics will be used to prioritize the deployment of services and overall law enforcement strategy for the Division.

6. **COLLECTIVE BARGAINING AGREEMENTS**

The parties agree that law enforcement personnel assigned to the Division from Clackamas County are subject to and protected by their respective collective bargaining agreements, and by Exhibit 3 to this Agreement, to the extent the terms of Exhibit 3 are not in conflict with the respective collective bargaining agreements. Determination of officer seniority of the Transit Police Division for purposes of making shift, vacation, holiday, and overtime assignments shall be according to the attached Exhibit 3.

7. **VEHICLES**

- a. Vehicles assigned to the Transit Police Division shall be purchased by TriMet for the exclusive use of law enforcement personnel. Those vehicles shall be marked with appropriate distinctive insignia to indicate they are Transit Police vehicles. TriMet shall hold title to all vehicles assigned to the Transit Division and be responsible for obtaining and maintaining all vehicle registration and applicable insurance, including self insurance.
- b. TriMet grants the following permit to Clackamas County for use of the vehicles described in this Section. Clackamas County shall use Vehicles only for the purposes expressly provided for herein, and shall, at its own expense, comply with and obey all laws, rules and regulations in using the Vehicles, including applicable requirements of the Federal Transit Administration. Clackamas County represents and warrants that its personnel are adequately trained and licensed to carry out the activities of Clackamas County under this Permit, and specifically, to operate the Vehicles. Clackamas County

shall allow only such trained and licensed personnel to perform the activities authorized by this permit, including operation of the Vehicles.

- c. Notwithstanding any other provision of this Agreement, including Section 10 TERMINATION, either party may immediately terminate this permit of use granted under 6 by providing written notice to the other party as provided in this Agreement for notices.
- d. Clackamas County shall not permit any other party other than officers from other Transit Police Division participating jurisdictions to take possession of or use the Vehicles described in this Section 7 while in the custody of Clackamas County under this Agreement.

8. **K-9 UNIT TRAINING FACILITY**

- a. TriMet has entered into a ground lease (hereinafter “Lease”) with the Port of Portland effective August 1, 2012 for the use of certain premises (hereinafter “Premises”) to house explosives storage magazines in support of TriMet’s training requirements to maintain U.S. Department of Homeland Security, Transportation Security Administration (“TSA”) certification for K-9 units. Transit Police Division personnel as designated by TriMet and TSA will be authorized to access and utilize the Premises for purposes of TriMet’s K-9 unit training in accordance with the Lease terms. Clackamas County agrees that the work and operations of the Division including assigned transit police personnel, with respect to activities relating to the Premises, are subject to and shall comply with all provisions and requirements of the Lease, the terms of which are incorporated into and made part of this Agreement, and specifically any obligations of TriMet as Lessee.
- b. Based on funding and other needs, the K-9 Program will be approved annually by the General Manager. K-9 Patrol Unit functions may include:
 - i. Conduct Patrol duties with officer;
 - ii. Respond to calls for suspected explosives;
 - iii. Proactively screen deliveries;
 - iv. Perform perimeter checks;
 - v. Evaluate abandoned packages;
 - vi. Support executive protection (with TriMet’s approval only);
 - vii. Support the management of special events; and
 - viii. Public relation events and community outreach;

9. **PROJECT MANAGERS**

- a. Project Managers. All communications or notices under this Agreement shall be provided to the Project Managers designated by this Paragraph. The parties shall promptly notify each other in writing of any change in the designated Project Managers.

- i. TriMet's Project Manager is:

Marla Blagg, Executive Director of Safety & Security
Phone: 503-962-5823
Address: 1020 NE 1st Avenue, Mailstop PSO, Portland, OR 97232

- ii. Clackamas County's Project Manager is:

Angie Brandenburg, Sheriff
Phone: 503-785-5000
Address: 2223 Kaen Road, Oregon City, OR 97045

10. TERMINATION

- a. Any party may terminate this Agreement for its convenience and without penalty by giving the other parties thirty (30) days written notice of its intention to terminate.
- b. If TriMet is unable to appropriate sufficient funds to pay Clackamas County for their services under this Agreement, TriMet must notify Clackamas County and Multnomah County and this Agreement shall automatically terminate as of the end of the last fiscal year for which such appropriations are available.
- c. In addition to the rights afforded under subparagraphs (a) and (b) above, this Agreement may be terminated by a party as a result of a material breach of an obligation by another party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the other parties with thirty (30) calendar days written notice of the material breach, including a detailed explanation of the breach during which period the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the default, the terminating party may terminate this Agreement for default.
- d. Any obligations arising prior to the date of termination survive the termination, including any obligation to defend, indemnify and hold harmless any other jurisdiction.
- e. Upon expiration or termination of this Agreement for any reason, TriMet will receive all equipment, vehicles, and supplies billed to TriMet during the course of this Agreement. Equipment and materials in excess of \$1,000 acquired by Clackamas County pursuant to this Agreement will be cataloged and tracked by Clackamas County, and transferred to TriMet upon termination. In addition, Clackamas County will transfer to TriMet the balance of all equipment reserve accounts to TriMet upon termination for any reason.

11. INDEMNIFICATION

- a. Intent. Multnomah County and Clackamas County will be responsible for the work of the law enforcement personnel assigned to the TriMet Transit Police Division. It is the intent of the parties that each party be responsible for their own actions or the actions they direct or control. Personnel assigned to the division from Clackamas County are not agents of TriMet or Multnomah County. If a suit or action results from the policy, direction, act or omission of a party, that party shall defend and indemnify the other party as provided below.

- b. Indemnity to TriMet and Multnomah County. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, if applicable, Clackamas County shall indemnify and hold harmless TriMet and Multnomah County and their respective officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of Clackamas County, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against TriMet or Multnomah County, Clackamas County shall defend the same at its sole cost and expense; provided that TriMet and Multnomah County each reserve the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against TriMet or Multnomah County, and its respective officers, agents, and employees, or any of them, or jointly against TriMet, the County, and Clackamas County and their respective officers, agents, and employees, or any of them, Clackamas County shall satisfy the same. Clackamas County is self-insured and maintains excess coverage for amounts over one million dollars. Clackamas County shall maintain excess coverage in an amount of at least one million dollars (\$1,000,000) and name TriMet and Multnomah County as an additional insured.
- c. Indemnity to Clackamas County. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, if applicable, TriMet shall indemnify and hold harmless Clackamas County and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of TriMet, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against Clackamas County, TriMet shall defend the same at its sole cost and expense; provided that Clackamas County reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against Clackamas County, and its officers, agents, and employees, or any of them, or jointly against Clackamas County and TriMet and their respective officers, agents, and employees, or any of them, the TriMet shall satisfy the same. TriMet is self-insured and maintains excess coverage for amounts over one million dollars.
- d. Liability Related to TriMet Ordinances, Policies, Rules and Regulations. In executing this Agreement, the Clackamas County does not assume liability or responsibility for, or in any way release TriMet from any liability or responsibility which arises in whole, or in part, from the validity or enforcement of TriMet's ordinances, policies, customs, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such TriMet adopted ordinance, policy, custom, rule or regulation is at issue, TriMet shall defend the enforceability and/or validity of any such ordinance, policy, custom, rule or regulation at its sole expense and, if judgment is entered or damages are awarded against TriMet, Clackamas County, or an individual officer due to the enforceability and/or validity of any such TriMet ordinance, policy, custom, rule or regulation, TriMet shall satisfy the same, including all chargeable costs and reasonable attorney fees. If a claim, suit, administrative proceeding or action determines that a TriMet policy or ordinance is

unconstitutional and/or violates a person's rights, TriMet shall indemnify Clackamas County and any involved individual officer for damages attributable to the policy or ordinance being unconstitutional and/or a violation of a person's rights. TriMet's defense and indemnification of an individual officer pursuant to this section shall be in accordance with ORS 30.285. As set forth in this section, TriMet shall be liable for the defense and indemnity of claims that allege municipal liability as a result of a TriMet ordinance, policy, custom, rule or regulation, and nothing in this section is intended to override the provisions of this Section that make each party liable for its own actions.

12. **THIRD PARTY BENEFICIARY**

The parties acknowledge and agree that Multnomah County is a third party beneficiary of the indemnity provisions of Section 11 of this Agreement and shall be entitled to enforce its rights under Section 11 of the Agreement as if it were a party hereto.

13. **SEVERABILITY**

The parties agree that if any term or provision of this Agreement, is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

14. **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 all Parties.

15. **COMPLIANCE WITH LAWS**

Each party must comply with all federal, state, and local laws, rules and regulations applicable to this Agreement.

16. **DATA RETENTION**

Each party must have access to the books, documents, and other records of the other parties related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law. Records and documents with respect to matters covered in this Agreement shall be retained for three years after the termination of this Agreement.

17. **SURVIVAL**

The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

18. **AMENDMENT**

This Agreement may be modified at any time by written agreement of authorized representatives of TriMet and Clackamas County.

19. **INSURANCE**

Each party shall be responsible for providing workers' compensation insurance for their respective employees, as required by law, and may elect to commercially insure or self insure for any other liabilities assumed under this Agreement.

20. **FEDERAL FUNDING**

This Agreement is funded in part by a U.S. Department of Homeland Security Grant Agreement between TriMet and the U.S. Department of Homeland Security. This Agreement is subject to all provisions prescribed for third party contracts by that financial assistance agreement as set forth in the attached and incorporated Exhibit 5.

21. **INTEGRATION**

This Agreement as set forth herein incorporates by reference all of the terms and conditions of Exhibits 1 through 5 attached hereto which are made a part of this Agreement and constitutes the entire agreement among the parties.

22. **COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, each of which shall constitute one and the same instrument.

23. **EXECUTION**

This Agreement shall be effective upon completion of (1) all parties signing the Agreement; and (2) Multnomah County executing a Prime Agreement with TriMet for Transit Police Services as described in Section 2 of this Agreement.

SIGNATURE PAGE FOLLOWS

The parties have caused this Agreement to be executed by their duly appointed officers, authorized to bind the party for which they sign.

TRIMET

CLACKAMAS COUNTY

General Manager
TriMet

Authorized Official
Clackamas County

Chair, Tootie Smith

Date

Title

Executive Director, Safety & Security
TriMet

Date

Date

Approved as to form:

TriMet Legal Department

Attorney
Clackamas County

Date

Date

Exhibits:

Exhibit 1 – Transit Police Division Deployment Strategy and Priorities

Exhibit 2 – Transit Police Division Staffing Letter

Exhibit 3 – Transit Police Division Personnel Operations

Exhibit 4 – Billing Requirements

Exhibit 5 – U. S. Department of Homeland Security Grant Requirements

EXHIBIT 1

Transit Services Deployment Strategy and Priorities

GOAL: To build and maintain public confidence in the security and safety of TriMet's transit system through the development and implementation of proactive strategies, practices, and resource allocation and deployment methodologies to help ensure the safety and security of TriMet customers, employees, and the general public as they interact with the transit system.

OBJECTIVES: TriMet's objectives for the TriMet Transit Police Division are:

1. To focus efforts on prevention and pro-active enforcement to maximize visible presence on the system, including the use of outreach strategies and forming partnerships with community elements and service providers.
2. To build and maintain an appropriate level of cooperation and coordination between the TriMet Transit Police Division, contracted security services provider, and TriMet field personnel, i.e., Operators, Fare Inspectors, and Road and Rail Supervisors, including responding to calls for assistance and providing or coordinating follow-up investigation or tactical response.
3. To build a high level of cooperation and coordination between the TriMet Transit Police Division and other federal, state, and local law enforcement agencies.
4. To maintain public confidence in use of transit services.
5. To report related incidents to TriMet.

STRATEGY: The deployment of the TriMet Transit Police Division is to be developed in coordination with TriMet and will take into consideration the identified security needs of TriMet. Coordination will emphasize information sharing and deployment strategies aimed at protecting customers, TriMet employees, and the general public as they interact with the transit system.

PRIORITIES: Deployment priorities for the TriMet Transit Police Division will emphasize:

1. Enforcement: Focusing on TriMet ordinances and State and City laws to help ensure the security of passengers, employees, and TriMet's property by responding timely to transit incidents.
 - a. TriMet has decriminalized fare evasion penalties. Asking TriMet riders for proof of payment (e.g. fare inspection) is not a priority for law enforcement. Fare inspection should almost exclusively be conducted by personnel that are not law enforcement officers.

2. Problem Orienting Policing: Identifying problem areas, routes and/or transit centers/transfer points based on data relative to the greatest needs for preventive action; using-when-ever possible-community policing strategies. When appropriate, coordinate and assist in providing other services, including services for individuals on transit without stable housing and individuals with behavioral, health, or quality of life concerns, as well as services offered by TriMet such as fare relief programs.
3. Community Involvement: It is a priority of TriMet to have our transit policing integrated with the Clackamas County's initiatives on community policing to encourage more direct police involvement with our riders and employees and to have a visible pro-active presence on and around TriMet's public facilities.
4. Visible Presence: On board buses and light rail (MAX) and at transit center/transfer points.
5. Special Event Support: Develop and execute special operations plans, which includes transit security for planned and unplanned events. Participate in incident command posts established by State and local law enforcement agencies to ensure mass transit needs are represented when law enforcement activity may impact transit operations and coordinate efforts between law enforcement and TriMet's Operations Command Center
6. Reporting: Provides periodic and timely reports concerning the TriMet Transit Police Division's work, analyzes crime, part 1 crime data and trends, and related system security and safety data, and makes recommendations to TriMet with respect to strategy, deployment, and resource allocation.
7. Citizen Complaints: All citizen complaints concerning deputies or other personnel from the Multnomah County Sheriff's Office will be referred to the Sheriff with the finding copied to the TriMet Chief of Police. Both parties agree to:
 - a. Maintain a police accountability system as described at subsections (b) through (g) below.
 - b. Provide an accountability system intake point to which the other participating Transit Police jurisdictions ("jurisdictions") can refer or deliver complaints about MCSO deputies working in the Transit Police Division.
 - c. Receive, review and evaluate all complaints referred or delivered by the other jurisdictions concerning its officers or deputies who work in the Transit Police Division.
 - d. Deliver all complaints about an officer or deputy who works in the Transit Police Division received from citizens or generated by peace officers to the accountability system intake point of the subject officer's employing jurisdiction.

- e. Absent a conflict with ORS 181.854(3), permit investigators from other jurisdictions to share information with their counterparts investigating or reviewing an incident involving a Transit Police Division officer.
- f. To the extent it does not conflict with any applicable labor agreement and agency procedures or directives, the following procedure will be used to handle criminal and non-criminal investigations related to law enforcement personnel assigned to the Transit Police:
 - i. Non-Criminal Investigations. Non-criminal complaints received by the Transit Police Division (TPD), Internal Police Review (IPR) or any partner agency will be referred to the respective member's agency for disposition. The member's agency will be the lead agency and will be responsible for processing/investigating the complaint using their policies.
 - ii. Criminal Investigations. Complaints or events that warrant a criminal investigation will be referred to the jurisdiction of occurrence. The jurisdiction of occurrence will become the lead agency. The lead agency will be responsible for processing/investigating the incident using their policies.
 - iii. Cooperation. All TPD agencies acknowledge that investigations should be thorough and completed without unreasonable delay. Agencies will cooperate with the lead agency in an investigation, to the extent allowed by their (partner agency) policies and collective bargaining agreements, to ensure the investigation is thorough and completed in a timely manner.
 - iv. Notifications. When the lead agency receives a complaint or opens an investigation where there is alleged misconduct by a TPD member, the lead agency will notify the Transit Police Chief and the employing agency as soon as possible. At the completion of each investigation the lead agency will apprise the Transit Police Chief and the employing agency of the findings.
- g. Conduct joint investigations when necessary and appropriate.

**EXHIBIT 2
TRANSIT POLICE DIVISION STAFFING LETTER**

(on TriMet letterhead)

(date of letter)

Angie Brandenburg, Sheriff
Clackamas County
2223 Kaen Road
Oregon City, OR 97045

RE: Clackamas County Police Staffing to TriMet Transit Police Division

Dear _____:

This letter is issued pursuant to the March 2021 Agreement between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and Clackamas County, for TriMet Transit Police Services, as amended, to establish or change the number of police officers assigned from the Clackamas County to the TriMet Transit Police Division.

Prior Staffing from (effective date of agreement), , To-Date

- from (effective date of agreement), 2015 to (date) (specify number of officer(s))
- from (date) to (date) etc. (specify revised number of officer(s)) etc.
- from (date) to (effective date of this staffing change) (specify revised number of officer(s))

Staffing from (effective date of this staffing change)

- from (effective date of this staffing change) (specify revised number of officer(s))

Any future change in the number of personnel assigned from the Clackamas County to the TriMet Transit Police Division is subject to mutual agreement by the parties by subsequent letter in similar form.

Sincerely,

Marla Blagg
Executive Director, Safety and Security
TriMet

Agreed to by the Clackamas County:

Agreed to by Multnomah County:

Sheriff

date

Transit Police Commander

date

EXHIBIT 3

TRANSIT POLICE DIVISION PERSONNEL OPERATIONS

It is the intent of this Agreement: (1) to recognize that the TriMet Transit Police Division (Division) is staffed by police officers from multiple jurisdictions, each covered by their respective collective bargaining agreements, but that shifts, days off, vacations and overtime need to be assigned in a fair and equitable manner; (2) to provide for assignment of shifts, days off, vacations and overtime by seniority; (3) to allow for the change of shift hours of operation and to re-allocated positions and days off within certain shifts to maintain an appropriate balance of field strength.

THE PARTIES AGREE THAT:

1. Current and future Clackamas County law enforcement personnel assigned to the Division will use their Clackamas County date of hire seniority as the means to select shifts, days off, vacations and overtime.
2. Current and future Clackamas County officers assigned to the Division will abide by the provisions of this Exhibit 3.
3. Seniority shall be defined as the length of uninterrupted service by the officer in his/her agency within the officer's Civil Service classification following the officer's most recent appointment. Time spent in the Armed Forces, on military leaves of absence, other authorized leaves and time lost because of duty-connected disability shall be included in length of service. If an officer who has been promoted reverts to a position she/he formerly held, the officer's seniority shall be the sum of the seniority earned in the promotional class and in the class to which the officer reverts.
4. Subject to staffing needs and maintaining efficiency of the Division/Detail, seniority shall be the prime factor in the selection of shifts and days off provided the officer is otherwise qualified. Seniority shall govern in the selection of vacation and holidays.
5. In the case of voluntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacations. The transferring officer may not use seniority to bump another officer's shift or days off until 45 days from the date of the written request.
6. In case of involuntary transfer and/or assignment, the seniority of an officer shall apply immediately to the officer's choice concerning holidays and vacation. In the event of an involuntary transfer, the Division shall accommodate the shift and/or days off preferences of transferring officers immediately, and shall not involuntarily bump any other officer for at least thirty (30) days from the time the bumped officer receives notice of the bump. The transferring officer may not use seniority to bump another officer's shift or days off until 30 days from the date of the written request.
7. For the purposes of this Agreement, the phrase "Transferring Officer" shall refer to an officer desiring to change shifts, days off or assignments, or an officer who is involuntarily transferred.

8. The Division shall prepare a form to be used by officers desiring to transfer from one shift, assignment, or day off configuration to another within the same reporting unit. For the purposes of this Agreement, this form shall be referred to as the "Transfer Request Form." The Transfer Request Form shall contain a place for transferring officers to indicate their preferences with respect to shifts and days off.
9. A transferring officer may complete a Transfer Request Form at any time. If the officer is seeking or anticipating a transfer, the officer shall file the Transfer Request Form with a Division Lieutenant. If the officer is seeking a change in days off or shifts which do not involve a transfer between reporting units, the Transfer Request Form shall be filed with the officer's shift commander. The Division will forward a copy of the Transfer Request Form to the location of the anticipated transfer.
10. In the event of a change in days off or shifts that do not involve a change in reporting units, the time frames referred to in Sections 5 and 6 of this Exhibit 3 shall begin to run when the transferring officer submits the Transfer Request Form.
11. When the Division knows that an officer's preferences as indicated on a Transfer Request Form will result in the displacement of the shift or days off of another officer (referred to herein as the Transferred Officer), the Division shall notify the Transferred Officer as soon as possible of the fact that he or she may be bumped.
12. The Division shall accommodate the shift and/or days off preferences of transferring officers on a faster time schedule than that contained in Sections 5 and 6 of this Exhibit 3, if, in the Division's judgment, it is operationally sound to do so, provided that no other affected officer is bumped from his or her days off or shift who objects to the accommodation.
13. An officer may exercise seniority to bump another officer for shift and days off only once in ninety (90) days.
14. **Vacations.** Employees shall be allowed to select two vacation periods on the basis of seniority. Each vacation period must be of a minimum duration of one day. Vacation time shall be scheduled by the Division with due consideration being given to requests from officers which shall be determined among officers of equal rank by seniority; provided, however, that each officer shall be permitted to exercise the right of seniority only once each year. The sign-up deadline for the exercise of seniority in the selection of vacations shall be March 15 for the calendar year running from April 15 through April 14 of the following year.
15. **Holiday Assignment.** Where the shift strength is reduced or increased on holidays, consistent with the needs of the Division, assignments shall be offered to the most senior officer. Except for an emergency, the Division shall provide a minimum of ten (10) days' notice of any deviation from normal shift strength so that officers may plan the use of their time.
 - a. Where shift strength is reduced, the most senior officer scheduled for duty on the shift shall be offered the option of working or not. Where shift strength is increased, the most senior officer on the shift shall be offered the option of working or not.
 - b. For purposes of this section, New Year's Eve and Christmas Eve shall be treated as holidays.

16. **Seniority for Vacation Purposes upon Transfer.** If an officer is involuntarily transferred, the Division shall honor the officer's pre-selected vacation times, and shall not disrupt the pre-selected vacation time for other officers in the division to which the officer is involuntarily transferred. If an officer accepts a voluntary transfer, the Division shall attempt to accommodate, to the extent possible, the officer's pre-selected vacation times.
17. **Shift Overtime.** Where the overtime is not directly related to activities begun by an officer during the officer's regular shift, and where the planned overtime is anticipated to be four (4) hours or more in duration, the overtime shall be offered, in the order of seniority, to officers in the Division. Once each eligible officer has had the opportunity to work shift overtime in a pay period, officers may once again use their seniority to work shift overtime as described above, and the seniority list shall rotate in the same fashion thereafter. The Division shall maintain a list in each reporting unit upon which officers must place their names indicating a willingness to work shift overtime. If an officer is incorrectly passed over for shift overtime, the officer shall be allowed to work a makeup overtime assignment within the next two pay periods following the discovery of the error. The officer and the Division shall mutually agree upon the makeup overtime assignment, which shall not displace another officer's already-selected overtime assignment. An officer who has been incorrectly passed over shall not be otherwise entitled to compensation for the missed overtime.
18. **Work Hours.** An officer will normally be given adequate advance notice of any change in the officer's regular hours of work, except where an emergency (an emergency is defined as an unforeseen event affecting the Division's ability to perform its mission) exists. Notice given less than forty-eight (48) hours (or seventy-two [72] hours under the Four-Ten Plan) before the officer is to begin work under the changed schedule entitles the officer to compensation at the overtime rate for those hours not exceeding eight (8) hours that are earlier, later, or different from the hours the officer last worked in a work day. A police officer is not entitled to compensation under the overtime rate if the officer is otherwise entitled to compensation under the same hours of work, or if shift changes are the result of a voluntary transfer or promotion.
19. **Discipline.** Discipline and discharge Clackamas County law enforcement personnel assigned to the Division will be the responsibility of Clackamas County and in accordance with the Collective Bargaining Agreement between Clackamas County and its law enforcement personnel .
20. **Collective Bargaining Agreement.** All other terms and conditions of any current Collective Bargaining Agreement between Clackamas County and its law enforcement personnel shall remain in effect as to other issues not addressed by this Exhibit 3. In the event of a conflict between such Collective Bargaining Agreement and this Exhibit 3, the provisions of such Collective Bargaining Agreement shall govern.

EXHIBIT 4 BILLING REQUIREMENTS

Microsoft Excel Spreadsheet will be provided that is substantially similar to the following:

TriMet Transit Police Invoice: Name of Agency															
Dates of service: Month and year of billing - by paydate															
Pay dates: begin date - end date															
Pay periods: begin date - end date															
		Regular wages (Actual)							Premium wages (Actual)						
Pay date	Employee Name	Position	Total hours in pay period	Regular hours	OT hours	Longevity	Hourly rate (actual)	Overtime rate (actual)	Total regular pay	K9 Hazard Rate	Patrol	Education	On Call	Dog Handler	Total premium pay
			-	-	-	-	-	-	-	-	-	-	-	-	-
			-	-	-	-	-	-	-	-	-	-	-	-	-
			-	-	-	-	-	-	-	-	-	-	-	-	-
			0.00%	0.00%					0.00%	0.00%	0.00%	0.00%			
Taxes/Benefits (Actual)															
Pay date	Employee Name	Position	Pension - PERS Employee	Pension - PERS Employer	Insurance (Dental & Medical)	Life/STD	Cleaning	Social Security & Medicare	SDI/UC	SUTA	TriMet	Sworn OPSRP for FPDR (X%) all pay	Sworn OPSRP for FPDR (X%) all pay	Sworn Disability for FPDR (X%) all pay	Total Taxes & Benefits
			-	-	-	-	-	-	-	-	-	-	-	-	-
			-	-	-	-	-	-	-	-	-	-	-	-	-
			-	-	-	-	-	-	-	-	-	-	-	-	-
			0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Actual wages/benefits total -															
Admin rate (5%) -															
Total billing -															
Employee Name	Overtime date	Overtime hours	Overtime paid (actual, including benefits)		Overtime description										

**EXHIBIT 5 – TRANSIT SECURITY GRANT PROGRAM (TSGP)
FEDERAL REQUIREMENTS CONTRACT LANGUAGE**

1. No Government Obligation To Third Parties

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

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

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

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

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

3. Audit and Inspection of Records

- A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of TriMet, the U.S. Department of Homeland Security (DHS), and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment under this contract.
- B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Homeland Security (DHS), and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4. Right to Inventions (04/16)

If the contract meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by

Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

5. Equal Employment and Civil Rights (01/18)

Contractor agrees to comply with the following provisions and include in all subcontracts.

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d and Federal transit law, TriMet is a recipient of Federal funds, and as such, prohibits discrimination of any kind. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability .
- B. Equal Employment Opportunity – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contracts” must include the specifications set forth in §60-4.3, in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- C. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements DHS may issue.
- D. Age - In accordance with the Age Discrimination in Employment Act of 1974, as amended, 42 U.S.C Sections 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, the Age Discrimination in Employment Act, 29 U.S.C. Sections 621 et seq., and Equal Employment Opportunity Commission implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- E. Disabilities - In accordance with section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Sections 12101 et seq., and Titles I, II, III, IV, and V of the ADA, the Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- F. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of Department of Homeland Security Requirements

The preceding provisions include, in part, certain standard terms and conditions required by DHS, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DHS, are hereby incorporated by reference. The Contractor shall comply with the applicable DHS Special Conditions set forth in

Appendix A.

7. Debarment and Suspension (04/16)

The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. A contract (or subcontract) award must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR 180.

8. Solid Waste Disposal Act (10/16)

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9. Procurement of Recovered Materials (04/16)

TriMet and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. Recycled Products

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

11. Byrd Anti-Lobbying Amendment (10/16)

Contractor shall not use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, the contractor agrees to comply with the following: (1) Laws, Regulations, Requirements, and Guidance. This includes:

(a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,

(b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and

(c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and

(2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

A. Definitions. As used in this clause,

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

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

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

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

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

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

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

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

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

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

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

one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

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

B. Prohibition

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

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

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

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

(c) For purposes of paragraph B (2) (i) (a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).

(ii) Professional and technical services by Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
 - (d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).
- (iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

- (iv) Professional and technical services by Other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal

aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

12. Dispute Resolution and Remedies (08/16)

12.1 Disputes

SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES CONCERNING THIS AGREEMENT THAT 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 MEDIATION SHALL TAKE PLACE IN PORTLAND, OREGON. 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. THE MEDIATOR'S FEES AND COSTS SHALL BE BORNE EQUALLY BY THE PARTIES.

12.2 Performance During Dispute

Unless otherwise directed by TriMet, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

12.3 Remedies

All claims, counterclaims, disputes and other matters in question between TriMet and the Contractor arising out of or relating to this agreement or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within the State of Oregon in which TriMet is located.

12.4 Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. In the event that TriMet or Contractor fail to act, such failure shall not constitute a waiver of any right or obligation afforded to either party under the Contractor or by law, nor shall any such action or failure to act constitute an approval of or acceptance of any breach there under, except as may be specifically agreed in writing by both parties.

13. Environmental Violations

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

14. Energy Conservation

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

15. Privacy Act

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

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

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

(1) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

16. Cargo Preference

Contractor agrees:

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

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

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

17. Fly America

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

END OF EXHIBIT 5 – FEDERAL REQUIREMENTS

APPENDIX A - DEPARTMENT OF HOMELAND SECURITY SPECIAL CONDITIONS

The U.S. Department of Homeland Security (DHS) requires that a DHS grant recipient require that any contractor employed in completion of a DHS grant project comply with the following standard financial requirements. In addition, any such contractor shall require each of its subcontractors employed in the completion of the project to comply with these requirements.

Administrative Requirements:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-110)

Cost Principles:

- 2 CFR Part 225, Cost Principles for State, Local, and Indian tribal Governments (formerly OMB Circular A-87)
- 2 CFR Part 220, Cost Principles for Educational Institutions (formerly OMB Circular A-21)
- 2 CFR Part 230, Cost Principles for Non-Profit Organizations (formerly OMB Circular A-122)
- Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

Audit Requirements:

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

CERTIFICATION

REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Clackamas County certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Executed this ____ day of _____, 20 ____

By: _____
Authorized Official

Title: Chair, Tootie Smith