

3/16/2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with The City of Sandy for Support of the Mt. Hood Express Bus Service. Agreement value is \$297,048. Funding is through the State of Oregon, Rail, and Public Transit Division, and \$55,000 budgeted County General Funds.

Previous Board Action/Review	Issues on 3/14/2023		
Performance Clackamas	1. Build public trust through good government by serving vulnerable populations. 2. Ensure safe, healthy, and secure communities by addressing the needs of older adults and veterans.		
Counsel Review	Yes – AN 1/11/23	Procurement Review	No
Contact Person	Brenda Durbin	Contact Phone	503-655-8641

EXECUTIVE SUMMARY:

The Social Services Division of the Health, Housing, and Human Services Department requests approval of an Intergovernmental Agreement with the City of Sandy to provide support for the Mt. Hood Express (MHX) bus service. This agreement provides funding to the City of Sandy to provide staffing to support the operations of the Mt Hood Express, facility rental for the bus service, reimbursement for shop supplies, and preventative maintenance for the MHX vehicles for FY23 and 24. The City and County use a shared operations contractor to provide direct service, and MHX operates out of the City's Transit Operations Center. This partnership has been in place for over seven years.

The Mt Hood Express provides public transit bus service between the City of Sandy, Government Camp, and Timberline, along with other locations in the Mt. Hood area, increasing access to employment and recreation opportunities. In FY21-22, MHX provided 46,850 rides to the general public.

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RECOMMENDATION:

Staff recommends approval of this agreement and requests Tootie Smith, Board Chair, or her designee, sign on behalf of Clackamas County

Respectfully submitted,

Rodney A. Cook

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

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

1. Purpose. This agreement (“Agreement”) is entered into between Clackamas County (“COUNTY”) and the City of Sandy (“CITY”) for the cooperation of units of local government under the authority of ORS 190.010. This Agreement provides the basis for a cooperative working relationship for the purpose of providing administrative support to the COUNTY’s Mt. Hood Express (“MHX”) transit service in partnership with the CITY’s SAM transit service to increase operational efficiencies, collaboration and cost effective management of both services.

2. Scope of Work and Cooperation.
 - 2.1. Subject to the terms of this Agreement, CITY agrees to provide the following support functions for the MHX.
 - 2.1.1. Act as on-sight liaison and provide operational oversight on behalf of COUNTY with shared operations contractor (MV Transportation) providing immediate communication with the contractor and their employees of policy and contractor functions. Includes contract compliance checks such as payroll, billable hours audit and policy compliance. Participate in contractor-led safety meetings.
 - 2.1.2. Work with the COUNTY on mutually agreeable policy and program development, in compliance with applicable transit rules and guidelines, and implement as needed, including communicating changes to contractor (MV Transportation).
 - 2.1.3. Provide coordination and support with COUNTY’s third-party contractor (MV Transportation) for timely maintenance and repair of MHX vehicles. Work with maintenance coordinator regarding MHX vehicle issues, maintenance, cleaning schedule, shop supplies and other issues as needed. Starting upon approval of agreement by both parties, reconcile and pay for preventative maintenance and repair invoices submitted by MV Transportation. Submit invoices to COUNTY for reimbursement as part of monthly billing.
 - 2.1.4. Provide oversight of fare collection process, deposit fares in CITY bank account, and provide reimbursement to COUNTY for fares collected.
 - 2.1.5. Reserve meeting space at the Sandy Operations Center if needed for the Mt Hood Transportation Alliance. Participate in Mt. Hood Transportation Alliance meetings.
 - 2.1.6. Update the MHX website and media platforms (Twitter, Facebook), post notices to ITS systems and respond to information requests.
 - 2.1.7. Interact with public, including information requests that dispatch staff can’t answer
 - 2.1.8. Create and post notices and display schedules at the Sandy Operation Center and other locations upon request
 - 2.1.9. Create and post notices on MHX vehicles, shelters and other locations. Update county schedules, inventory fare media and order new fare media as needed. Compile data required for fare media accounting.

- 2.1.10. Continue oversight, maintenance and updates to the ITS system app and equipment on the MHX service, including troubleshooting and replacement of malfunctioning equipment as well as posting notices as needed.
- 2.1.11. Provide space for office staff, program materials, parking space for riders, parking of buses, vehicle equipment and shop supplies.
- 2.1.12. Provide a vehicle(s) for use by the Mt Hood Express in emergencies when existing Clackamas County owned vehicles are out of service.
- 2.1.13. Compile data required for completion of fiscal and grant reports, including tracking performance measures. Collaborate and assist with completion of grant applications and other activities designed to promote long term stable funding.
- 2.1.14. Provide necessary staff and other administrative resources necessary to fulfill its obligations under this Agreement.
- 2.1.15. Other tasks and projects as needed.

2.2. Subject to the terms of this Agreement, COUNTY agrees to provide the following:

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

3. Compensation and Record Keeping.

- 3.1. Compensation. COUNTY shall compensate the CITY for satisfactorily performing the services identified in Section 2 and in accordance with the *Exhibit B: Budget*, attached hereto and incorporated by this reference herein. Total maximum compensation under this Agreement shall not exceed **\$297,048**. Any continuation or extension of this Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Agreement, as determined by the COUNTY in its sole administrative discretion.

- 3.2. Method of Payment. To receive payment, CITY shall submit invoices and accompanying progress reports as required in *Exhibit A: Reporting Requirements* attached hereto and incorporated by this reference herein.
- 3.3. Withholding of Contract Payments. Notwithstanding any other payment provision of this Agreement, should CITY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY may immediately withhold payments hereunder. The COUNTY may continue to withhold payment until CITY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CITY.
- 3.4. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement and all other pending matters are closed.
- 3.5. Access to Records. COUNTY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CITY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

4. Manner of Performance.

- 4.1. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CITY and COUNTY shall comply with all federal laws and regulations, Oregon laws and regulations, local ordinances and rules applicable to this Agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit 4, attached and incorporated into this Agreement. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein.
- 4.2. Precedence. When a requirement is listed both in the Agreement and in an exhibit to it, the requirement in the exhibit shall take precedence.
- 4.3. Subcontracts. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from COUNTY.

5. General Provisions.

- 5.1. Contact. All routine correspondence and communication regarding this Agreement, as well as requests for written acknowledgment, shall be directed to the following representatives:

For COUNTY: Kristina Babcock, Human Services Supervisor, 2051 Kaen Rd,
Oregon City, OR 97045 (kbabcock@clackamas.us) (971-349-0481)

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

Either party may change the contact or its associated information by giving prior written notice to the other party.

Each party shall give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 5.2. Indemnification. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, commissioners, councilors, agents and employees, against all claims, demands, actions and suits of any kind or nature for personal injury, death or damage to property arising out of this Agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, commissioners, councilors, employees, agents, subcontractors, or anyone over which the party has a right to control. Each party shall give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
- 5.3. Severability. If any provision of this Agreement is found to be unconstitutional, illegal or otherwise unenforceable by a Court or authority of competent jurisdiction, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision, to give effect to the intentions of the parties to the maximum extent possible.
- 5.4. Modifications. Any modification or change to the terms of this Agreement shall be effective only when reduced to writing and approved by the governing bodies of both parties. Any modification or change, including any additional agreement providing descriptions of tasks, standards of performance or costs, shall be in writing, shall refer specifically to this Agreement and shall be valid only when approved by the governing bodies of both parties.
- 5.5. Integration. This Agreement contains the entire agreement between the parties concerning its subject matter.
- 5.6. Third-Party Beneficiaries. The CITY and COUNTY are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 5.7. Applicable Law. The laws of the State of Oregon govern this Agreement without respect to conflict of laws principles. Any litigation between the parties arising out of or related to this Agreement will be conducted exclusively in the Circuit Court for the State of Oregon, Clackamas County. The parties accept the personal jurisdiction of this court.
- 5.8. Dispute Resolution.
 - 5.8.1. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this Agreement shall constitute default. In the event of an alleged default or breach

of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party shall not be considered in default for purposes of termination or instituting legal proceedings.

5.8.2. The parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this Agreement that cannot be resolved by mutual agreement, the parties may mutually agree to mediate the dispute prior to a party commencing litigation. The mediation shall take place in Clackamas County, Oregon. The parties will equally bear the mediator's fees and costs.

5.9. Term and Termination.

5.9.1. Term. This Agreement is effective upon execution by both parties and will terminate on June 30, 2024, unless the parties agree in writing to extend the Agreement. The City may seek reimbursement for eligible costs set forth in Exhibit B incurred on or after July 1, 2022

5.9.2. Termination For Convenience. Either party may terminate this Agreement by providing at least 30 days prior written notice to the other party.

5.9.3. Termination For Cause. Subject to Section 5.8.1 of this Agreement, either party may terminate this Agreement in the event of a breach by the other party. Upon termination for breach, each party shall have all rights and remedies available to it at law, in equity, and under this Agreement.

5.9.4. Termination for Lack of Appropriation. Either party may terminate this Agreement in the event that party fails to receive expenditure authority, including but not limited to receipt of state or federal funds, sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from paying for such work from the planned funding source.

5.10. Effective Date. This Agreement will only become effective upon approval by the governing bodies of COUNTY and CITY.

5.11. Necessary Acts. Each party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement including, but not limited to, any additional requirements imposed by state or federal funding sources.

5.12. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

5.13. Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

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

[SIGNATURES ON FOLLOWING PAGE]

CITY OF SANDY

Stan Pulliam, Mayor

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair

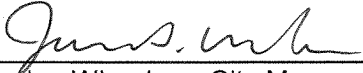
Commissioner: Ben West

Commissioner: Mark Shull

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Mayor & Council



Jordan Wheeler, City Manager

Tootie Smith, Chair

2/22/2023
Date

Date

EXHIBIT A

REPORTING REQUIREMENTS

Reporting:

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

Invoicing

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

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

E-mail address: kbabcock@clackamas.us

COUNTY shall make payment to CITY within 30 days of receipt of each invoice submitted.

EXHIBIT B

BUDGET

	Year 1 (7/22 to 6/23)	Year 2 (7/23 to 6/24)
Staff support for MHX	\$ 13,916	\$ 14,612
Office rental and bus parking	\$ 24,034	\$ 25,236
Staff mileage reimbursement in support of MHX	\$ 500	\$ 500
Program materials	\$ 2,000	\$ 2,000
Vehicle rental	\$ 1,500	\$ 1,500
Shop supplies, misc. equipment, COVID supplies or general program expenses	\$ 5,000	\$ 5,250
ITS equipment and subscriptions	\$ 30,000	\$ 31,000
Preventative maintenace and repair reimbursement for MV charges for MHX vehicles (starting 1/1/23)	\$ 50,000	\$ 90,000
Total	\$ 126,950	\$ 170,098

Total compensation under this agreement shall not exceed \$297,048

EXHIBIT C

SPECIAL REQUIREMENTS

1. CITY certifies to the best of its knowledge and belief that neither it nor any of its principals:
 - (a) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or CITY;
 - (b) Have within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) Have within a three-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the CITY is unable to certify to any of the statements in this certification, such CITY shall attach an explanation to this proposal.

2. In case of suspected fraud by applicants, employees, or vendors, CITY shall cooperate with all appropriate investigative agencies, and shall assist in recovering invalid payments.
3. CITY shall protect the confidentiality of all information concerning applicants for and recipients of services funded by this agreement and shall not release or disclose any such information except as directly connected with the administration of the particular Clackamas County program(s) or as authorized in writing by the applicant or recipient. All records and files shall be appropriately secured to prevent access by unauthorized persons.

CITY shall ensure that all officers, employees, and agents are aware of and comply with this confidentiality requirement.

4. CITY shall ensure that no person or group of persons shall, on the ground of age, race, color, national origin, primary language, sex, religion, handicap, political affiliation or belief, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by funds delegated under this agreement.
5. CITY will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity covered by this contract.
6. CITY will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
7. CITY will establish safeguards to prohibit employees and volunteers from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. CITY certifies, to the extent required by federal law, that it will provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CITY's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 - (b) Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) CITY's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - (c) Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by subsection (a) above.
 - (d) Notifying the employee in the statement required by subsection (a) that as a condition of employment on such contract, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
 - (e) Notifying the County within 10 days after receiving notice under subsection (d)(2) from an employee or otherwise receiving actual notice of such conviction.
 - (f) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5154 of the Drug-Free Workplace Act of 1988.
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of subsections (a) through (f).

