

RAIL AND PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

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

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2019** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2021** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Subcontractor Insurance

Exhibit D: Summary of Federal Requirements, incorporating by reference Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement

Exhibit E: Information required by 2 CFR 200.331(a), may be accessed at <http://www.oregon.gov/odot/pt/>, Oregon Public Transit Information System (OPTIS), as the information becomes available

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

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **\$1,129,518.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$960,090.00** in Grant Funds for eligible costs described in Section 6.a. hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <http://www.oregon.gov/odot/pt/>. If Recipient is unable to access OPTIS, reports must be delivered to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be

necessary to comply with federal or state reporting requirements.

6. Disbursement and Recovery of Grant Funds.

- a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9.a. of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.
- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.
 - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
- c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Recipient shall return all Misexpended Funds to State promptly after State's written demand and no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 14 days after the earlier of expiration or termination of this Agreement.

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

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor

accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

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

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.
- d. **Audit Requirements.**
 - i. Recipients receiving federal funds in excess of \$750,000 are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Rail and Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDReporting@odot.state.or.us, a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
 - ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient agrees to provide State with a copy of any signed subagreement upon request by State. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to State within ten (10) days of its being discovered.
- b. Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: www.fta.dot.gov/grants/13054_6037.html
- c. **Subagreement indemnity; insurance**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

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

Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement. Any insurance obtained by the other party to Recipient's subagreements, if any, shall not relieve Recipient of the requirements of Section 11 of this Agreement. The other party to any subagreement with Recipient, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.

- d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:
 - i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
 - ii. all procurement transactions are conducted in a manner providing full and open competition;

- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);
- iv. construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C.125.

e. Additional requirements

- i. Recipient shall comply with 49 CFR sections 37.77(c) and 37.105 regarding "Certification of Equivalent Service" when purchasing vehicles under this Agreement. If non-accessible vehicles, as defined by the Americans with Disabilities Act, are being purchased for use by a public entity in demand responsive service for the general public, Recipient will certify to State at the time of applying for a project that, when viewed in its entirety, the demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service.
- ii. Recipient shall comply with 49 CFR 663 regarding pre-award and post-delivery reviews. Every Recipient purchasing rolling stock or facilities under this Agreement must certify to State that a pre-award and post-delivery review has been conducted in accordance with ODOT requirements. This review ensures compliance to bid specifications including, but not limited to, FTA requirements, State requirements, and Federal Motor Carrier Safety Standards, as applicable to the type of project. Each Recipient's certification must include assurance that required documents have been received from manufacturers or vendors of products, or from both, and that Recipient possesses such documents. Acceptable certification forms are available from State. Recipient must provide certification forms to State when reimbursement is requested for vehicles. For facilities projects, Recipient must provide pre-award certifications to State at time of first payment, and post-delivery certifications upon completion of the post-delivery review, and in no event later than with Recipient's request for final payment.
- iii. Recipient shall comply with 49 CFR 604 in the provision of any charter service provided with vehicles, facilities, or equipment acquired with FTA assistance under this Agreement.
- iv. Recipient shall submit an annual vehicle inspection report to State for any vehicle purchased under this Agreement. Vehicle inspections shall be conducted by a vehicle maintenance technician certified by a nationally recognized organization in the field of vehicle service and maintenance. Reports covering required areas of inspection shall be submitted on forms provided by State.
- v. All drivers of vehicles purchased with FTA funds under this Agreement must complete a standard defensive driving course before operating an FTA-funded vehicle, and are advised to complete a standard defensive driving course before operating a State-funded vehicle.
- vi. Recipient shall maintain all vehicles, equipment, and facilities purchased under this Agreement in good condition per manufacturer's recommendations. Recipients are required to develop preventive maintenance plans for all rolling stock and facilities and to provide the plans to State upon request.
- vii. Recipient shall be the owner of the property for facility construction projects and of vehicles purchased under this Agreement. Such ownership shall be recorded on real property deeds for facility construction projects and on vehicle titles. If Recipient contracts the operation of vehicles to a third party, then the third party may be shown as the owner or lessee with Recipient listed as the second security interest holder or lessor. In all cases, Oregon Department of Transportation, Rail and Public Transit Division shall be shown as the first security interest holder on vehicle titles. If Recipient fails to show Oregon Department of Transportation, Rail and Public Transit Division as the first security interest holder, Recipient shall pay any expenses to re-submit the necessary documents to Oregon Department of Transportation, Driver and Motor Vehicle Services (DMV). If a vehicle is damaged or destroyed at any time when Recipient fails to show Oregon Department of Transportation, Rail and Public Transit Division, as the first security interest holder, Recipient shall be

liable to State for any damage in an amount in the same manner as if Oregon Department of Transportation, Rail and Public Transit Division, were shown as the first security interest holder.

- viii. Recipient shall bear the cost of insuring assets purchased under this Agreement based on risk assessment. Recipient shall maintain, in amounts and form satisfactory to State, such insurance or self-insurance as will be adequate to protect Recipient, vehicle drivers and assistants, vehicle occupants, and property throughout the period of use. The minimum that will be approved by State is comprehensive and collision insurance adequate to repair or replace property and equipment if damaged or destroyed; liability insurance of \$50,000 for property damage, \$200,000 for bodily injury per person, \$500,000 for bodily injury per occasion for maintenance and shop vehicles, and \$1,000,000 for bodily injury per occasion for vehicles providing passenger transportation; uninsured motorist protection; and personal injury protection as required by ORS Chapter 806. Recipient shall be responsible for all deductibles or self-insured retention. Recipient's insurance policy covering assets purchased under this Agreement shall include the Oregon Department of Transportation, Rail and Public Transit Division as an "Additional Insured". In the event of any ambiguity or conflict between this section 9.e.viii. and Exhibit C Insurance Requirements ii. Commercial General Liability and iii. AUTOMOBILE LIABILITY INSURANCE, this section 9.e.viii. shall control.
- ix. Recipient shall file a restrictive covenant with the property deed for all construction projects and purchases of real estate, with the exception of passenger shelters, amenities, and right-of-way infrastructure improvements. The restrictive covenant will limit the use of the building and property to the stated purpose specified in the statement of work associated with this Agreement.
- x. Recipient shall complete all purchases, including installation, and all construction of capital assets funded under this Agreement prior to the Expiration Date of this Agreement. If local circumstances prevent purchase, installation, or construction by the specified date, Recipient will notify State in writing of the circumstances regarding the delay. Such notification must be received at least forty-five (45) days prior to the expiration of the Agreement. Agreement amendment for time will be considered in extenuating circumstances.

10. Termination

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
 - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be

established by Recipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. General Provisions

- a. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

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

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

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that recipient's breach of the

conditions of this Agreement, and shall, upon recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and

state civil rights and rehabilitation statutes, rules and regulations.

- j. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Yamhill County/State of Oregon
Agreement No. 33645

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

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

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

SIGNATURE PAGE TO FOLLOW

Yamhill County/State of Oregon
Agreement No. 33645

Yamhill County, by and through its

By Bill Olson
(Legally designated representative)

Name Bill Olson
(printed)

Date 7-11-2019

By Cosy Kulla

Name Cosy Kulla
(printed)

Date 7-11-2019

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By Walt Olson
Recipient's Legal Counsel

Date 7/14/19

Recipient Contact:

Cynthia Thompson
535 NE 5th St
McMinnville, OR 97128
1 (503) 474-4910
thompsonc@co.yamhill.or.us

State Contact:

Arla Miller
555 13th Street NE
Salem, OR 97301-4179
1 (503) 986-2836
Arla.MILLER@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By H. A. Gard
H. A. (Hal) Gard
Rail and Public Transit Division Administrator

Date 16 July 2019

APPROVAL RECOMMENDED

By Arla Miller

Date 06/19/2019

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

By _____
Assistant Attorney General

Name Marvin Fjordbeck by email
(printed)

Date 03/13/2017

REC'D JUL 1 10 37 AM '19

Accepted by Yamhill County
Board of Commissioners on
7/11/19 by Board Order
19-242

EXHIBIT A

Project Description and Budget

Project Description/Statement of Work

Project Title: 2019-21 R2 5339 Yamhill County				
<i>Vehicle Purchase</i>				
Item #1: Bus STD 40ft				
	Total	Grant Amount	Local Match	Match Type(s)
	\$1,129,518.00	\$960,090.00	\$169,428.00	Local
Sub Total	\$1,129,518.00	\$960,090.00	\$169,428.00	
Grand Total	\$1,129,518.00	\$960,090.00	\$169,428.00	

● **1. PROJECT DESCRIPTION**

Purchase 3 transit vehicles as follows: useful life - 12 years and/or 500,000 miles; approximate length - 35-40 feet; estimated number of seats - 35-40; estimated number of ADA securement stations - 2; fuel type - diesel.

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

The following vehicles has have been approved for replacement in this Agreement:

- 1. V001290; 2010/International/3200 EZ Trans; 1HVBTSKM8AH246819*
- 2. V001292; 2010/International/3200 EZ Trans; 1HVBTSKM4AH246820*
- 3. V001663; 2014/Chevrolet/Champion; 1GB6G5BL8E1198746*

2. PROJECT DELIVERABLES, SCHEDULE and USE

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

*Expected order date: July 1, 2019.
 Expected delivery date: June 30, 2021.*

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

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

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

Recipient will create and maintain a vehicle maintenance plan that utilizes the original

equipment manufacturer (OEM) maintenance requirements for each vehicle and meets FTA transit asset management requirements in 49 CFR 625. Recipient will provide State a copy of the maintenance plan upon request.

3. PROJECT ACCOUNTING and MATCHING FUNDING

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

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

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. Under this Agreement, State will bear the sum remaining after the amount of Recipient's required share of local matching funds is subtracted from the total project expenses. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible.

4. REPORTING and INVOICING REQUIREMENTS

Recipient will provide reporting information as prescribed by State on the vehicles purchased under this Agreement as long as the vehicles remains in public transportation service. Recipient will submit a request for reimbursement in a format provided by State. Reimbursement requests must include the following: a cover letter and copies of all invoices associated with expenses identified for reimbursement and pre-award and post-delivery certification forms documenting compliance to Altoona bus testing, Federal Motor Vehicle Safety Standards, Buy America, and Disadvantaged Business Enterprise requirements.

EXHIBIT B
FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of 2 CFR part 200, subpart F.

This Agreement is financed by the funding source indicated below:

Federal Program	Federal Funding Agency	CFDA Number	Total Federal Funding
9300.1A	U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	20.526 (5339)	\$960,090.00

Administered By Rail and Public Transit Division 555 13th Street NE Salem, OR 97301-4179
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EXHIBIT C

Insurance Requirements

GENERAL - SUBRECIPIENT.

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

TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

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

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

Bodily Injury, Death and Property Damage:

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

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous



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

NOTICE OF CANCELLATION OR CHANGE. The contractor or its Insurer must provide 30 days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

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

GENERAL - RECIPIENT.

Recipient shall: i) obtain insurance specified under TYPES AND AMOUNTS (except TYPES AND AMOUNTS paragraph I applies only to Recipient's subcontractors who employ subject workers) and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State.

TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide Workers' Compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

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

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

Bodily Injury, Death and Property Damage:

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

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability Insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the Recipient's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

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

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

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

EXHIBIT D

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

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

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

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

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Recipient deems appropriate.

5. By executing the Agreement, Recipient and contractors receiving in excess of \$100,000 in federal funds, other than Indian tribes, certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other

federal award as well as the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, cooperative agreement, or other federal award. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement Imposed by Section 1352, Title 31 of the 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. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.