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Health, Housing & Human Services
CLACKAMAS COUNTY

COPY

Richard Swift
Interim Director

August 13, 2015

Board of Commissioners,
Clackamas County

Members of the Board:

Approval of Revenue Agreement #16-0811 with Tri-County Metropolitan Transportation District of Oregon (Tri-Met) to provided Match Funding for Medicaid non-Medical Rides provided by the Clackamas County Transportation Consortium

Purpose/Outcomes	Agreement with Tri-County Metropolitan Transportation District of Oregon (Tri-Met) to provided Match Funding for Medicaid non-Medical Rides provided by the Clackamas County Transportation Consortium.
Dollar Amount and Fiscal Impact	The maximum agreement is $74,984. The contract is funded through the Social Services Division agreement with Tri-County Metropolitan Transportation District of Oregon (Tri-Met).
Funding Source	State funds - no County General Funds are involved.
Safety Impact	None
Duration	Effective July 1, 2015 and terminates on September 14, 2017
Previous Board Action	
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	7345

BACKGROUND:
The Social Services Division of the Health, Housing, and Human Services department requests approval of revenue agreement #16-0811 with Tri-Met. This agreement will provide funding to pay the State of Oregon, Aging and People with Disabilities (APD), cash match for non-medical Medicaid transportation services provided by members of the Clackamas County Transportation Consortium to Medicaid clients residing in Clackamas County.

This agreement provides funding to pay the State Aging and People with Disabilities Services Division's (APD) the required match per one-way ride so that Consortium members receive the full $14.00 per one-way ride for rides provided. The Federal match rate is adjusted annually. The current rate is 29.94%. The balance is funded by Title XIX (Medicaid) Waivered Services funds. All rides must first be authorized by the client's APD case manager in order for Consortium members to receive payment for the service. The goal of the Consortium in providing transportation services is to assist older and disabled county residents in meeting their individual needs. These services assist them in living independently in their own homes for as long as possible.

Total amount of the agreement is $74,984. No County General Funds are involved. This agreement was reviewed and approved by County Counsel on July 31, 2015. This agreement begins July 1, 2015 and continues through September 14, 2017. Tri-County Metropolitan Transportation District of Oregon, as initiator of this agreement, chose to sign after obtaining agreement approval and signature from Clackamas County.

RECOMMENDATION

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

Respectfully submitted,

Richard Swift, Interim Director

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
AGREEMENT 16-0811
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION
SPECIAL TRANSPORTATION FUNDS
ODOT GRANT AGREEMENT NO. 30576

PARTIES:

1. Tri-County Metropolitan Transportation District of Oregon ("TriMet")
2. Clackamas County Social Services ("Provider")

RECITALS:

1. Pursuant to ORS Chapter 391, TriMet is designated to distribute to "providers of transportation," as that term is defined in ORS 391.830(6), State of Oregon Department of Transportation (ODOT), Public Transit Section (Section), Oregon Transportation Network Special Transportation Funds (STF) for the purposes set forth at ORS 391.830(4). Provider is a "provider of transportation" for Clackamas County. The Oregon Department of Transportation (ODOT) Public Transit Division awarded TriMet a Fiscal Year 2016-2017 Special Transportation Fund (STF) Grant Agreement ("Grant Agreement") of which $74,984 is to be utilized as the 38% local match for the Portland region's Title XIX waivered non-medical transportation program in Clackamas County, and distributed to Provider for such purposes.

2. Pursuant to OAR 732-005-0061, TriMet and Provider enter into this Agreement for the sole purpose of disbursing the approved STF funds to Provider as local match for Clackamas County's Title XIX waivered non-medical transportation program.

3. The Parties now desire to enter into this Agreement for disbursement of the local match STF funds to Provider.

AGREEMENTS:

1. General

Provider agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms and conditions of the Grant Agreement, ORS 391.800 through 391.830, and the provisions of OAR Chapter 732 Divisions 5 and 15 as may be amended, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Provider under this Agreement are set forth in Exhibits A and B which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: This Agreement form: Exhibit A; Exhibit B. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the STF funds, and shall be amended to

incorporate those changes.

Provider agrees to comply with all sub-recipient monitoring policies, procedures and other requirements that may be established by TriMet, including but not limited to Title VI compliance.

Provider shall not be relieved of any responsibility for performance of Provider's duties under this Agreement, regardless of any subcontract entered into. Provider shall require any subcontractor performing services under this Agreement to enter into a written agreement with Provider before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732 Divisions 5 and 15, as may be amended, and the terms of this Agreement. Provider shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this Agreement as if the subcontractor were the Provider: Paragraphs 2 through 4, and 6(B).

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

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

Provider shall comply with any Clackamas County accounting, billing and reporting requirements applicable to use of the STF funds.

3. **Reporting Requirements**

Provider shall submit progress reports to TriMet via the established process, for posting on the TriMet website that meets the requirements of Exhibit A. The reporting period shall commence on the date TriMet disburses any STF funds to Provider. Reports shall be due within 45 days following the end of each quarter, or as otherwise directed by TriMet. Copies of the reports shall be sent to Mr. David Trimble, Director, Transportation Programs, TriMet, 2800 N.W. Nela, Portland, Oregon 97210. TriMet may require additional reporting information from the Provider, in TriMet's sole discretion.

4. **Withholding of Funds**

In addition to any other provisions of this Agreement including but not limited to Exhibit A, TriMet may withhold payment of STF funds if the funds are not being used in accordance with ORS 391.800 through 391.830, the Section's OARs or this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the STF. Provider shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes

responsibility for breach of conditions of the STF funding requirements hereunder by Provider, and shall, upon breach of conditions that require TriMet to return funds to the Section, hold harmless and indemnify TriMet for an amount equal to the funds required to be repaid plus any additional costs incurred by TriMet.

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

Provider certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Provider receives STF funds. Provider shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.

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

6. **Independent Contractor/Indemnification**

(A) Provider is an independent contractor for all purposes under this Agreement, and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Provider shall have sole control and supervision over the manner in which the Project is performed, subject only to consistency with the terms of this Agreement, and shall be responsible for determining the appropriate means and manner of executing the Project. Neither Provider, nor its officers, directors, employees, subcontractors or volunteers, are officers, employees or agents of TriMet as those terms are used in ORS 30.265. Neither Provider, nor its directors, officers, employees, subcontractors or volunteers, shall hold themselves out either explicitly or implicitly as officers, employees or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

(B) The parties agree that TriMet shall have no liability of any nature in connection with the Provider's use of the Funds or Provider's provision of transportation services. To the fullest extent permitted by law, Provider agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorneys fees, resulting from or arising out of the activities of Provider, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph (B) shall survive termination or expiration of this Agreement.

7. **Vehicle/ Operator Requirements**

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

Provider shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for operators.

8. Funding

(A) In consideration of the agreements made by Provider under this Agreement and upon TriMet's receipt of the STF funds, TriMet shall disburse to Provider the sum of $3,124 per month for a period of 24 months from the effective date of this Agreement in accordance with the terms of this Agreement. The total amount disbursed by TriMet under this Agreement shall not exceed the sum of $74,984. All STF funds must be expended by Provider no later than June 30, 2017.

(B) The STF funds shall be utilized by Provider solely as local match for Title XIX funds utilized to compensate Provider for provision of waivered non-medical transportation in Clackamas County. Provider shall document eligible use of STF funds through the reports submitted to TriMet's Project Manager in accordance with Exhibit A. The final quarterly report shall be due no later than September 14, 2017. TriMet may, in its sole discretion, suspend disbursement of funds for Provider's failure to submit timely reports or to adequately document eligible use.

(C) In addition to any other remedies provided for under this Agreement, any STF funds disbursed to Provider under this Agreement that are not expended by Provider in accordance with the terms of this Agreement by June 30, 2017 shall be returned to TriMet. Provider shall return any unexpended Funds by paying to TriMet the amount of unexpended Funds no later than July 5, 2017. Provider agrees that TriMet shall have the right in its sole discretion to deduct the amount of any unexpended Funds owed to TriMet under this Paragraph B, from any future payment from TriMet to Provider under any contract or agreement, present or future, between TriMet and Provider. The repayment remedies provided for in this subparagraph C are not exclusive remedies, but are in addition to any other remedies available to TriMet under this Agreement or by law or equity. The provisions set forth in this subparagraph C shall survive termination or expiration of this Agreement.

9. Term

This Agreement shall be in effect from July 1, 2015 through September 14, 2017, unless the

Agreement is terminated earlier as provided in this Agreement.

10. Communications

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

TriMet:

Mr. David Trimble
Director, Transportation Programs
TriMet
2800 NW Nela Street
Portland, Oregon 97210
FAX: (503) 962-8250
trimbled@trimet.org

Provider:

Ms. Teresa Christopherson
Administrative Servcs. Mgr.
Clackamas County Social Services
P.O. Box 2950
Oregon City, OR 97045
FAX: (503) 655-8889
teresachr@co.clackamas.or.us

11. Assignment/Subcontracts

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

12. Mediation

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

13. Entire Agreement/Authority

This Agreement and the attached Exhibits A and B constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of TriMet to enforce any provision of this Agreement shall not constitute a waiver by

TriMet of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

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

Provider:
Clackamas County Social Services
By:_____
Title:_____
Address:_____
_____
Phone/FAX:_____
Federal Employer ID Number:
_____

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

By:_____
Title:_____
Date of Execution: _____

EXHIBIT A
SPECIFIC AGREEMENT PROVISIONS

Provider shall comply and require each of its subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit A.

1. **Project.** The STF Funds disbursed to Provider shall be used solely for local match for Title XIX funds utilized to compensate Provider for provision of waivered non-medical transportation in Clackamas County as set forth in this Agreement.

2. **Progress Reports.** Provider shall submit quarterly progress reports to State with a copy to TriMet's Project Manager 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 TriMet and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at http:// www.oregon.gov/odot/pt/. If Provider is unable to access OPTIS, reports must be delivered to ODOTPTDReporting@odot.TriMet.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. TriMet reserves the right to request such additional information as may be necessary to comply with federal, State or TriMet reporting requirements.

3. **Disbursement and Recovery of Grant Funds.**

   a. **Disbursement Generally.** TriMet shall disburse STF Funds to Provider after State reimburses TriMet in accordance with and subject to Paragraph 6(a) Disbursement Generally of the Grant Agreement.

   b. **Conditions Precedent to Disbursement.** TriMet's obligation to disburse STF Funds to Provider is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

      i. TriMet has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to make the disbursement.

      ii. Provider's representations and warranties set forth in Section 4 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

      iii. Provider is in compliance with the terms of this Agreement.

      iv. All funds previously disbursed have been used in accordance with OAR Chapter 732.

      v. Any audit findings relating to Provider's use of funds under this Agreement or any other agreement with the State or TriMet have been resolved.

   c. **Recovery of Grant Funds.** Any STF Funds disbursed to Provider 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 TriMet. Provider shall return all Misexpended Funds to TriMet promptly in accordance with TriMet's written demand. Provider shall return all Unexpended Funds to TriMet within 5 days after the earlier of expiration or termination of this Agreement.

4. **Representations and Warranties of Provider.** Provider represents and warrants to TriMet as follows:

a. **Organization and Authority.** Provider is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Provider 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 Provider of this Agreement (1) have been duly authorized by all necessary action of Provider 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 Provider'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 Provider is a party or by which Provider 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 Provider of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Provider and constitutes a legal, valid and binding obligation of Provider, 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.** Provider'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 Provider 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. Provider agrees to notify TriMet 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.

5. **Records Maintenance and Access; Audit.**

a. **Records, Access to Records and Facilities.** Provider 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 standards for audits of municipal corporations, non-profit and for profit organizations as applicable. Provider 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), TriMet and their duly authorized representatives shall have access to the books, documents, papers and records of Provider 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 of State, USDOT, FTA, TriMet and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Provider shall permit authorized representatives of TriMet, State, the Secretary of State, USDOT and FTA to perform

site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Provider as part of the Project, and any transportation services rendered by Provider.

b. **Retention of Records.** Provider shall retain and keep and require its subrecipients and subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STF 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 of this Agreement. If there are unresolved audit questions at the end of the six-year period, Provider, its subrecipients and subcontractors shall retain the records until the questions are resolved.

c. **Expenditure Records.** Provider shall document the expenditure of all STF Funds disbursed by TriMet under this Agreement. Provider shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit TriMet to verify how the STF Funds were expended.

d. **Audit Requirements.**

i. Provider shall at Provider's own expense submit to TriMet, and if requested by State or TriMet to the State of Oregon Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDreporting@odot.TriMet.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 Provider(s), and any of Provider's contractor(s), or subcontractor(s) responsible for the financial management of funds received under this Agreement.

ii. Provider shall save, protect and hold harmless TriMet and the State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Provider acknowledges and agrees that any audit costs incurred by Provider as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Provider and TriMet or by the State.

6. **Provider Subagreements and Other Requirements**

a. **Subagreements.** Provider may enter into agreements with contractors or subcontractors (collectively, "subagreements") for performance of the Project.

i. All subagreements must be in writing executed by Provider 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 Provider of its responsibilities under this Agreement.

ii. Provider agrees to provide TriMet with a copy of any signed subagreement upon request by TriMet. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Provider to TriMet within ten (10) days of its being discovered.

b. **Provider and Subagreement indemnity; insurance.**

Provider that is not a unit of local government as defined in ORS 190.003, shall 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 Provider or any of Provider's officers, agents, employees or subcontractors ("Claims"). It is the specific intention 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 Provider from and against any and all Claims.

Neither Provider' nor any attorney engaged by Provider, 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 Provider is prohibited from defending State or that Provider 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 Provider if State elects to assume its own defense.

Provider shall obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

i. **Provider'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 Provider's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The subagreement shall specifically state that it is the specific intention 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 Provider's subagreement(s) from and against any and all Claims.**

Any such indemnification shall also provide that neither Provider's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Provider's Subrecipients(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 Provider's Subrecipient is prohibited from defending State or that Provider's subcontractor 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 Provider's Subrecipient if State elects to assume its own defense.

Provider 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 B to this Agreement.

c. **Procurements.** Provider shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

7. **Termination/Suspension**

a. **Termination by TriMet.** TriMet may terminate or suspend this Agreement, in whole or part, effective upon delivery of written notice to Provider, or at such later date as may be established by TriMet in such written notice, under any of the following conditions, but not limited to those conditions:

i. Provider fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Provider is, for any reason, rendered improbable, impossible, or illegal; or

ii. TriMet fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow TriMet, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if TriMet determines to terminate or suspend for its own convenience; 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. Provider takes any action pertaining to this Agreement without the approval of TriMet and which under the provisions of this Agreement would have required the approval of TriMet.

b. **Termination by Provider.** Provider may terminate this Agreement effective upon delivery of written notice of termination to TriMet, or at such later date as may be established by Provider in such written notice, if:

i. The requisite local funding to continue the Project becomes unavailable to Provider; 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. **Responsibility for Grant Funds.** In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Provider receiving STF Funds, pursuant to this Agreement shall assume sole liability for that Provider's breach of the conditions of this Agreement, and shall, upon Provider's breach of conditions that requires TriMet to return funds to the State, hold harmless and indemnify TriMet for an amount equal to the funds received under this Agreement; or if state or federal law limitations apply to the indemnification ability of the Provider of STF 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.

b. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

c. **Duplicate Payment.** Provider 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, TriMet or any other party, organization or individual.

d. **No Third Party Beneficiaries.** TriMet and Provider 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.

Provider 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 Provider, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

e. **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 Provider's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 10 Communications of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate. 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 TriMet, such facsimile transmission must be confirmed by telephone notice to TriMet Project Manager. 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.

f. **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 TriMet and Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. In no event shall this section be construed as a waiver by TriMet or 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.

g. **Compliance with Law.** Provider 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. Without limiting the generality of the foregoing, Provider 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 ORS659A.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.

h. **Insurance; Workers' Compensation.** All employers, including Provider, 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. Provider shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Provider shall indemnify and hold TriMet harmless including reasonable attorneys fees for breach of this provision.

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Exhibit B
Provider and Subagreement Insurance Requirements

General

Provider shall obtain and provide, and require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Provider for subcontractor's performance under its subagreement : i) insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of this Agreement and of any subagreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and 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 TriMet. Provider shall not commence work under this Agreement, and shall not authorize work to begin under a subagreement until the insurance is in full force. Thereafter, Provider shall monitor continued compliance with the insurance requirements in its subagreements on an annual or more frequent basis. Provider 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 Provider permit work under a subagreement when Provider 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 Provider is a Party.

Provider shall comply with any requirements of TriMet with respect to Provider's compliance with these insurance requirements including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). 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 TriMet. 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 TriMet:

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 TriMet:

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 and TriMet, and their respective officers, employees and agents as Additional Insureds but only with respect to the Provider's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their subagreements. 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 Provider and the subcontractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement for Provider, and the effective date of the subagreement for subcontractors, for a minimum of 24 months following the later of: (i) the Provider's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Provider's acceptance of all services required under the subagreement or, (ii) the expiration of all warranty periods provided under this Agreement with respect to Provider and the subagreement with respect to the subcontrator. Notwithstanding the foregoing 24-month requirement, if the Provider or subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Provider or subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the Provider or subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The Provider or its insurer must provide 30 days' written notice to TriMet 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. Provider shall submit to TriMet a certificate(s) of insurance for all required insurance before the commencement of performance of services. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.