

TRANSPORTATION SERVICES AGREEMENT BETWEEN
THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESRVATION
AND
THE CITY OF HERMISTON

This Services Agreement (this "Agreement") is entered into on June 26, 2023 between the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR"), and the City of Hermiston, a municipal corporation of the State of Oregon ("City").

In consideration of the mutual promises, terms and conditions contained in the agreement, now therefore the parties do hereby agree to the following:

1. SERVICES AND TERM

1.1 Description of Services. The CTUIR will perform the services described in Schedule 1.1 ("Services") and will consult with and advise City on all matters concerning the Services.

1.2 Term. The Services under this Agreement shall commence on July 1, 2023 and termination on June 30, 2025 unless otherwise extended or terminated in accordance with the terms of this Agreement.

2. COMPENSATION/CONSIDERATION AND RELATIONSHIP

2.1 Compensation. City will pay the CTUIR in accordance with the compensation schedule set forth in Schedule 2.1. City will not provide any benefits to CTUIR, and CTUIR will be responsible for obtaining CTUIR's own benefits, including insurance, medical reimbursement, and retirement plans. City's payment of compensation under this Agreement constitutes City's approval and acceptance of the Services to which the payment relates.

2.2 Independent Contractor. The CTUIR agrees to employ, at its own expense, all personnel reasonably necessary to perform the Services required by this agreement. These personnel are not employees of the City. The CTUIR shall ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, state, or federal laws. The CTUIR is an independent contractor. The CTUIR is not an agent or employee of the City. The CTUIR and the City are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

2.3 Taxes and Licenses. City will not withhold any taxes from any payments made to the CTUIR. The CTUIR is be responsible for paying all taxes arising out of or resulting from the performance of the Services, including, without limitation, income, social security, worker's compensation, and employment insurance taxes. The CTUIR will be responsible for obtaining any and all licenses, approvals, and certificates necessary or appropriate to perform the Services.

2.4 Indemnity. The CTUIR shall indemnify, defend, and hold City and its officers, employees, agents and all other affiliated representatives harmless from all claims, lawsuits and actions of whatever nature brought against those parties which arise from the CTUIR's performance of Services or omissions under this Agreement. The CTUIR is not required to indemnify the City for any liability arising out of negligent acts or omissions of the City, their employees, or representatives.

3. TERMINATION

3.1 Termination by Mutual Agreement or Prior Notice. In addition to the terms in **Exhibit A #10**, this Agreement may be terminated at any time by the mutual written agreement of City and the CTUIR. Either party may terminate this Agreement for any reason or no reason by giving the other party one hundred and twenty (120) days' prior written notice of such termination. Upon termination of this Agreement, City will pay the CTUIR any and all amounts accruing or owing to the CTUIR under this Agreement. Conflict of language between the "Agreement" and "Exhibit A" shall be interpreted with greater weight to the "Agreement," so long as such interpretation is not a violation of the law.

3.2 Remedies. If a party fails to perform any obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Agreement, pursue any and all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

4. FEDERAL REQUIREMENTS

4.1 Federal Funding. Some or all of City's funding for this Agreement comes from certain grand funds from the Oregon Department of Transportation (ODOT), and as such all required federal terms and conditions must be, and hereby are, incorporated into this Agreement.

4.2 Requirements for Pass-Through Entities. The provisions of 2 CFR 200.331(a) pertaining to the obligations of a pass through entity receiving federal funds, are hereby incorporated into this agreement as presently exist or as are amended in the future.

4.3 Certifications and Assurances and FTA Master Agreement.

CTUIR must comply with all applicable federal requirements contained in the Certifications and Assurances available at http://www.fta.dot.gov/grants/1ZSZ5_93.html. The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

CTUIR 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 <http://www.fta.dot.gov/documents/2.1-Master.pdf>. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Schedule 2.1:

a. CTUIR 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 ("US DOT") (49 CFR 2.1, Subtitle A). CTUIR 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. CTUIR will report to City 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.

b. CTUIR shall comply with FTA regulations in Title 49 CFR 2.7 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.

c. CTUIR 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 Disadvantaged Business Enterprise ("DBE") program or the requirements of 49 CFR Part 26. CTUIR shall take all necessary and reasonable steps under 49 CFR Part 2.6 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. CTUIR's DBE program, if applicable, as required by 49 CFR part 2.6 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.

d. CTUIR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CTUIR shall carry out applicable requirements of 49 CFR Part 2.6 in the performance of this USDOT-assisted contract. Failure by the CTUIR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

e. CTUIR, a contractor receiving in excess of \$100,000 in federal funds, must certify to City 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. If non-federal funds have been used to support lobbying activities in connection with the Project, CTUIR shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to City 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

4.4 Federally Mandated Insurance Requirements.

CTUIR shall obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of the Services 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 City. City shall not authorize work to begin until the insurance is in full force. Thereafter, City shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. In no event shall City permit work when City is aware that CTUIR is not in compliance with the insurance requirements.

a. 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 City. 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 City:

Bodily Injury, Death and Property Damage: \$1,500,000 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 City:

Bodily Injury, Death and Property Damage: \$1,500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

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

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

d. CERTIFICATE(S) OF INSURANCE. CTUIR shall provide the City a certificate(s) of insurance for all required insurance before the CTUIR performs Services. The certificate(s) or an attached endorsement must specify all entities and individuals who are endorsed on the policy as Additional Insured.

4.5 Federal Regulations and Required Third Party Contract Clauses. The federal regulations and required third party contract clauses outlined in **Exhibit A** are hereby incorporated into this Agreement.

5. MISCELLANEOUS

5.1 Severability. Any provision of this agreement held to be unenforceable will not affect the enforceability of any other provision.

5.2 Notices. All notices must be in writing. A notice is deemed given when personally delivered or delivered by facsimile transmission (with electronic conformation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid to the address of the other party shown below (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

The CTUIR:

To City:

CTUIR Planning Department
Attn: John David "J.D." Tovey III
46411 Timine Way Pendleton,
OR 97801
Fax: _

City of Hermiston
Attn: Byron Smith
180 NE 2nd St.
Hermiston, OR 97838
Fax:

5.3 No General Waiver. The waiver or failure to enforce, insist upon, or comply with any term in this agreement does not constitute a general waiver or relinquishment of that term.

5.4 Entire Agreement/Integration. This agreement supersedes all prior or contemporaneous oral or written agreements between the parties. This Agreement contains the entire agreement between and among the parties regarding the matters set forth herein and is conclusive and binding on and inures to the benefit of the administrators, representatives, employees, agents and successors of each.

5.5 Assignment and Binding Effect. This agreement is not assignable by the CTUIR and binds any successor.

5.6 Force Majeure. The CTUIR's performance of its obligations under this Agreement will be excused by delays due to strikes, labor disputes, lockouts, labor trouble, inability to procure labor or materials (or reasonable substitutes for them), failure of power, governmental sanctions or requirements, restrictions or laws, fire or other damage, war or civil disorder, or any other causes beyond the reasonable control of the CTUIR (each a "Delay Event"). Notwithstanding anything contained in this Agreement to the contrary, The CTUIR will not be liable for any damages, costs, or expenses suffered by City (or any other party) due to the occurrence of any Delay Event including, without limitation, any damages, costs, or expenses City may suffer as a result of a delay in the performance of the Services.

5.7 Governing Law. This Agreement is governed by the laws of the State of Oregon, and venue for any action concerning this Agreement will lie in Umatilla County.

5.8 Amendment and Additional Provisions. No change, amendment, or modification of this agreement is valid unless it is in writing and executed by the parties.

5.10 Mediation. In addition to **Exhibit A #14**, in the event any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and the CTUIR in good faith seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, the Dispute may be settled by mediation by a mediator mutually agreed upon by the parties.

5.11 Interest. If any payment required to be paid by City under this Agreement is not paid when due, all amounts payable will bear interest at eighteen percent (18%) per annum, commencing on the payment due date and ending on the date payment is made in full.

5.12 Saving Clause. If any provision of this Agreement, or application of a provision to any party or circumstance, is held invalid, the remainder of this Agreement, or the application of that provision to other persons or circumstances, must not be affected thereby.

5.13 Further Assurances. The parties agree to execute and deliver any further documents, tangible items, materials and instruments as are necessary or convenient to carry out the terms and purposes of this Agreement.

This agreement is signed as of the date stated in the introductory clause and may be executed in counterparts or by facsimile.

**CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION**

CITY OF HERMISTON

By: _____
Donald G. Sampson
Executive Director

By: _____
[Name, Title]

[INSERT CONTRACTOR'S NAME]

By: _____
[Name, Title]

SCHEDULE 1.1

Description of Services

The CTUIR will perform the following Services:

1. Provide community connector service between Hermiston and other communities within the CTUIR's transportation system Monday through Friday. Specific services include:
 - a. Fixed-Route Intra-City service within Hermiston, which will complete ten circuits through the city between 7am to 7pm daily, Monday through Friday.
 - b. Any and all required Para-Transit Service as is currently, or may in the future be, required by the Federal Transit Authority.
 - c. Intra-City service within Hermiston shall be scheduled so as to connect with a CTUIR transportation system Inter-City service within the Hermiston City Limits at least once per day.

SCHEDULE 2.1

Compensation Schedule

- A. **Compensation.** The CTUIR will provide the services described in Schedule 1.1 as public transportation services. A majority of the funding to pay for these services shall be through the receipt of additional Oregon Department of Transportation (ODOT/5311) grant money specifically for this service. CTUIR will make all applications for, and be the recipient of, this grant funding, while the City will provide all matching funds to cover any costs of the services not covered through grant funding.
- B. **Reserve Balance.** The CTUIR and the City have worked collaboratively to provide public transportation services in Hermiston under the compensation arrangement outlined in 2.1.A since July 1, 2017. To ensure adequate matching funds were available for a new service, the City has, since July 1, 2017, paid CTUIR guaranteed annual funding of \$150,000 from July 1, 2017 through June 30, 2019, as well as \$125,000 from July 1, 2019 through June 30, 2020.

As a result of cost containment, and successful outside grant funding acquisition by CTUIR, the City had accrued a reserve balance on-hand with CTUIR of \$246,978.06 through 6/12/2023. In recognition of the potential for reduced City General Fund Revenue caused by the COVID-19 Pandemic, the parties agreed to draw from the reserve balance to make a one-time reduction of the City's quarterly obligation. It is projected that the reserve balance on-hand with CTUIR, after the City makes its payment for the quarter ending June 30, 2021, will total \$259,478.06.

The City and CTUIR wish to keep a healthy reserve balance to protect this service from future economic downturns, but also wish to scale it to be more commensurate with actual operating costs. Therefore, pricing for the term of this contract will be reduced to more closely align with actual operating costs, and if a shortfall occurs, the difference shall be made-up from the reserve on-hand.

- C. **Quarterly Invoicing.** The CTUIR's performance of Services will be billed quarterly by the CTUIR at the rate of \$6,250 per quarter, for the period outlined under this agreement, within 30 days following the end of each quarter. Any delayed billing will not alleviate City's obligation to pay for Services provided. The CTUIR will submit quarterly invoices to City for the Services performed during the immediately preceding quarter. City will pay the amount due under each invoice within thirty (30) days after City's receipt of the invoice.

Quarter 1: July 1 – September 30, 2023
Quarter 2: October 1 – December 31, 2023
Quarter 3: January 1 – March 31, 2024
Quarter 4: April 1 – June 30, 2024
Quarter 5: July 1 – September 30, 2024
Quarter 6: October 1 – December 31, 2024
Quarter 7: January 1 – March 31, 2025
Quarter 8: April 1 – June 30, 2025

Upon receipt of payment from the City, CTUIR shall deduct the payment amount from the actual cost of service for the quarter. If an amount-owed for the quarter exists, CTUIR shall draw the difference from the reserve balance. If the amount paid exceeds the actual cost of service for the quarter, the difference shall be retained in the reserve fund.

- D. **Total Compensation.** Total compensation from City for this Agreement shall not exceed \$100,000 between July 1, 2023 and June 30, 2025.