

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

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Sandy (“Agency”), an Oregon municipal corporation, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

This Agreement provides that basis for a cooperative working relationship for the purpose of providing a connection between Mt. Hood Express (“MHX”) transit service and the Agency’s SAM transit service to increase operational efficiencies, collaboration and cost effective management of both services in the Mt. Hood corridor.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2025, whichever is later. The City may seek reimbursement for eligible costs set forth in Exhibit B incurred during the period between July 1, 2024, and June 30, 2025.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein (“Work”).
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed **One hundred and Forty-One Thousand Four Hundred Thirty-Five Dollars (\$141,435)** for accomplishing the Work required by this Agreement, as further described in Exhibit A.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County’s review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon default by Agency, County shall have all rights and remedies available to it at law, in equity, or under this Agreement.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its

officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

Either Party may, in its sole discretion and at its sole cost, elect to assume its own defense of a third party claim subject to this Subsection.

8. Insurance.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

- 9. Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

Kristina Babcock, Human Services Supervisor, or their designee will act as liaison for the County.

Contact Information:

kbabcock@clackamas.us (971-349-0481)

Copy to:
County Counsel
2051 Kaen Road, 4th Floor
Oregon City, OR 97045

Andi Howell, Transit Director City of Sandy, or their designee will act as liaison for the Agency.

Contact Information:

ahowell@ci.sandy.or.us (503-489-0925)

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County 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. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County.

- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed,

to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** The State of Oregon, acting by and through its Department of Transportation, is a third-party beneficiary with respect to County's rights and remedies for Work performed by Agency under this Agreement. The State of Oregon, Agency, and County 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, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

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

- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (O), (P), (R), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.

- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.

- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signature Page to Follow]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Commissioner: Tootie Smith, Chair
Commissioner: Ben West
Commissioner: Mark Shull
Commissioner: Paul Savas
Commissioner: Martha Schrader

City of Sandy

Stan Pulliam, Mayor

Signing on Behalf of Mayor & Council

Chair, Board of County Commissioners

Tyler Deems, City Manager

Date

Date

Approved as to form:

Assistant County Counsel

Date

Exhibit A

SCOPE OF WORK

- 1.1.1. Subject to the terms of this Agreement, CITY agrees to provide the following support functions for the MHX.
- 1.1.2. Provide operational oversight on behalf of COUNTY with shared operations contractor (MV Transportation) providing immediate communication with the contractor and their employees of policy and contractor functions. Includes contract compliance checks such as payroll, billable hours audit and policy compliance. Participate in contractor-led safety meetings.
- 1.1.3. Work with the COUNTY on mutually agreeable policy and program development, in compliance with applicable transit rules and guidelines, and implement as needed, including communicating changes to contractor (MV Transportation).
- 1.1.4. Operate 4 hours of bus service on SAM – Gresham Route on Saturdays and ensure connection with the MHX
- 1.1.5. Operate 8 hours of bus service on SAM – Gresham Route on Sundays and ensure connection with the MHX
- 1.1.6. Add 2 runs to the SAM – Estacada Route
- 1.1.7. Interline with the County's Village Shuttle service on all SAM – Estacada Routes
- 1.1.8. Submit invoices to COUNTY for reimbursement as part of monthly billing.
- 1.1.9. Provide oversight of fare collection process, deposit fares in CITY bank account.
- 1.1.10. Update the CITY website and media platforms (Twitter, Facebook), post notices to ITS systems and respond to information requests.
- 1.1.11. Interact with public, including information requests that dispatch staff can't answer
- 1.1.12. Create and post notices and display schedules at the Sandy Operation Center and other locations upon request
- 1.1.13. Create and post notices on MHX vehicles, shelters and other locations. Update county schedules, inventory fare media and order new fare media as needed. Compile data required for fare media accounting.
- 1.1.14. Compile data required for completion of fiscal and grant reports, including tracking performance measures. Collaborate and assist with completion of grant applications and other activities designed to promote long term stable funding.
- 1.1.15. Provide necessary staff and other administrative resources necessary to fulfill its obligations under this Agreement.
- 1.1.16. Other tasks and projects as needed.

1.1.17. Complete and submit required reports to funders in a timely manner.

1.1.18. Provide administrative and operational support as needed.

2. Compensation and Record Keeping.

2.1. Compensation. COUNTY shall compensate the CITY for satisfactorily performing the services identified in Section 2 and in accordance with the *Exhibit B: Budget*, attached hereto and incorporated by this reference herein. Total maximum compensation under this Agreement shall not exceed **\$141,435**. Any continuation or extension of this Agreement after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Agreement, as determined by the COUNTY in its sole administrative discretion.

2.2. Method of Payment. To receive payment, CITY shall submit invoices and accompanying progress reports as required in Exhibit C, Reporting Requirements, attached hereto and incorporated by this reference herein.

2.3. Withholding of Contract Payments. Notwithstanding any other payment provision of this Agreement, should CITY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY may immediately withhold payments hereunder. The COUNTY may continue to withhold payment until CITY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CITY.

2.4. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement and all other pending matters are closed.

2.5. Access to Records. COUNTY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of CITY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CITY, the State of Oregon and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of COUNTY that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

3. Manner of Performance.

3.1. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CITY and COUNTY shall comply with all federal laws and regulations, Oregon laws and regulations, local ordinances and rules applicable to this Agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, attached and incorporated into this Agreement. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein.

3.2. Subcontracts. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from COUNTY.

Exhibit B

BUDGET & SERVICE UNITS

BUDGET	
	Year 1 7/24 to 6/25
SAM - Gresham Saturday service	\$ 21,840.00
SAM - Gresham Sunday service	\$ 43,680.00
SAM - Estacada interlined service	\$ 75,915.00
TOTAL	\$ 141,435.00

RIDES PROVIDED	
	Year 1 7/24 to 6/25
SAM - Gresham Saturday service	1000
SAM - Gresham Sunday service	4000
SAM - Estacada interlined service	4600
TOTAL	9600

Revenue Hour Rate \$105.00/hr

	total hours	rate	
Saturday	208	105	\$ 21,840.00
Sunday	416	105	\$ 43,680.00
Estacada	723	105	\$ 75,915.00

Exhibit C

REPORTING REQUIREMENTS

Reporting:

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

Invoicing

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

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

E-mail address: kbabcock@clackamas.us

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

Exhibit D

SPECIAL REQUIREMENTS

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

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

2. In case of suspected fraud by applicants, employees, or vendors, CITY shall cooperate with all appropriate investigative agencies, and shall assist in recovering invalid payments.
3. CITY shall protect the confidentiality of all information concerning applicants for and recipients of services funded by this agreement and shall not release or disclose any such information except as directly connected with the administration of the particular Clackamas County program(s) or as authorized in writing by the applicant or recipient. All records and files shall be appropriately secured to prevent access by unauthorized persons.
4. CITY shall ensure that all officers, employees, and agents are aware of and comply with this confidentiality requirement.
5. CITY shall ensure that no person or group of persons shall, on the ground of age, race, color, national origin, primary language, sex, religion, handicap, political affiliation or belief, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by funds delegated under this agreement.
6. CITY will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity

covered by this contract.

7. CITY will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).
8. CITY will establish safeguards to prohibit employees and volunteers from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
9. CITY certifies, to the extent required by federal law, that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in CITY's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 - b. Establishing a drug-free awareness program to inform employees about:
 - i. The dangers of drug abuse in the workplace;
 - ii. CITY's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - c. Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by subsection (a) above.
 - d. Notifying the employee in the statement required by subsection (a) that as a condition of employment on such contract, the employee will:
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
 - e. Notifying the County within 10 days after receiving notice under subsection (d)(2) from an employee or otherwise receiving actual notice of such conviction.
 - f. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5154 of the Drug-Free Workplace Act of 1988.
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subsections (a) through (f).

