RESOLUTION NO. 1283

A RESOLUTION AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF WILSONVILLE, OREGON FOR PROVIDING MIDDAY TRANSIT SERVICE BETWEEN CANBY AND WILSONVILLE.

WHEREAS, Canby Area Transit and the City were granted $79,993 in Federal Transit Administration Section 5310 funds requiring $9,155 in local match funds to operate a pilot project which would provide midday service between Canby and Wilsonville for one year; and

WHEREAS, Canby Area Transit does not have enough rolling stock to provide the midday service or the resources to continue the service beyond one year; and

WHEREAS, The City of Wilsonville's transit program South Metro Area Rapid Transit (SMART) currently provides commuter service between Canby and Wilsonville; and

WHEREAS, The ODOT Rail and Public Transit Division and the Special Transportation Fund Advisory Committee have been consulted and approve of SMART providing the service described in the grant application and contract; and

WHEREAS, The City of Wilsonville is willing to enter into an IGA with the City of Canby for the provision of midday transit service between Canby and Wilsonville; and

WHEREAS, Improved regional transit service was identified as a priority in recent transit planning efforts in both cities.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City of Canby City Council, as follows:

1. The Mayor and the City Administrator are hereby authorized and directed to make and execute an intergovernmental agreement with the City of Wilsonville for the provision of midday transit service between Canby and Wilsonville utilizing grant funds designated for this purpose.

This Resolution shall take effect on March 21, 2018.

ADOPTED this 21st day of March 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST

Kimberly Scheafer, MMC
City Recorder

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF CANBY, OREGON
AND
CITY OF WILSONVILLE, OREGON

1. Purpose. This agreement is entered into between the City of Canby ("CANBY") and City of Wilsonville ("WILSONVILLE") for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for a cooperative working relationship for the purpose of providing midday transit service between CANBY and WILSONVILLE via South Metro Area Regional Transit (SMART) in partnership with Canby Area Transit (CAT) to increase the frequency of transit service between the cities.

2. History
Until June 28, 2011 CANBY/CAT provided four round trips between the Canby Transit Center and SMART Central during the midday on weekdays. The midday service complemented WILSONVILLE/SMARTs Route 3 service which offers eight round trips per weekday. The CANBY/CAT midday service was eliminated due to funding shortages in 2011.

CANBY has a one-time grant for Federal Transit Administration Section 5310 funds with a total project amount of $89,148.00 from the Oregon Department of Transportation's Rail and Public Transit Division to provide one year of midday service on weekdays between Wilsonville and Canby. The grant is effective until June 30, 2019. See grant agreement no. 31562 attached as Exhibit 6.

Both CANBY and WILSONVILLE recently completed transit planning efforts that identify improved regional transit connections as a priority for residents and users of the two services. On April 2, 2018 CANBY intends to implement an increase in frequency on its Route 99 and improve its connection with the SMART Route 3. At this time, CANBY does not have the resources to make the improvements to its Route 99 and implement midday service to Wilsonville.

The WILSONVILLE planning process identified improved transit connections to Oregon City as a need. The CAT Route 99 service changes will improve the connection between the SMART Route 3 and CAT Route 99. With the CAT Route 99 changes and midday service between Wilsonville and Canby in place riders will have shorter wait times between the two systems and increased opportunity for transit connections between Wilsonville, Canby, Oregon City, Woodburn and Molalla.

3. Scope of Work and Cooperation.

3.1. WILSONVILLE agrees to provide the following:

3.1.1. Provide midday transit service (four round trips) between SMART Central and the Canby Transit Center as identified in *Exhibit 1* attached hereto and incorporated herein.

3.1.2. Provide this service on weekdays beginning July 2, 2018 through and including June 28, 2019 except for:

• Independence Day	July 4
• Labor Day	September 3
• Thanksgiving Day	November 22
• Thanksgiving Holiday Observed	November 23
• Christmas Day	December 25
• New Year's Day	January 1
• Memorial Day	May 27

3.1.3. Submit monthly invoices to CANBY.
3.1.4. Create and distribute a schedule of the service for the public.
3.1.5. Target outreach to seniors and people with disabilities in Wilsonville.
3.1.6. Complete and submit required State of Oregon reports to CANBY.
3.1.7. Conduct research and analysis associated with program development.
3.1.8. Participate in ongoing planning and coordination efforts with CANBY.
3.1.9. Assist CANBY in completing grant applications and other activities designed to promote long term stable funding for transit routes between Wilsonville and Canby.

3.2. CANBY agrees to provide the following:

3.2.1. Assist with service design as appropriate.
3.2.2. Pay invoices timely pursuant to *Exhibit 2: Reporting Requirements*, attached hereto and incorporated herein.
3.2.3. Distribute to the public the schedule of the service created by WILSONVILLE.
3.2.4. Target outreach to seniors and people with disabilities in Canby.
3.2.5. Compile and submit required ODOT's Rail and Public Transit Division reports.
3.2.6. Participate in ongoing planning and coordination efforts with WILSONVILLE.
3.2.7. Assist with completion of grant applications and other activities designed to promote long term stable funding for transit routes between Wilsonville and Canby.
3.2.8. Provide administrative support to WILSONVILLE as needed.

4. Compensation and Record Keeping.

4.1. Compensation. CANBY will compensate the WILSONVILLE for satisfactorily performing the services identified in Section 3 pursuant to *Exhibit 3: Budget* attached to this agreement and incorporated herein. Total maximum compensation under this contract will not exceed **$89,148**.
4.2. Method of Payment. To receive payment, WILSONVILLE will submit invoices and accompanying quarterly reports as required in *Exhibit 2: Reporting Requirements* attached hereto and incorporated herein.
4.3. Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should WILSONVILLE 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, CANBY may immediately withhold payments hereunder. CANBY may continue to withhold payment until WILSONVILLE submits required reports, performs required services, or establishes to CANBY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of WILSONVILLE.

4.4. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this agreement must 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.

4.5. Access to Records. CANBY, the State of Oregon and the federal government and their duly authorized representatives must have access to the books, documents, papers, and records of WILSONVILLE that are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts, and transcripts. Likewise, CANBY, the State of Oregon and the federal government and their duly authorized representatives must have access to the books, documents, papers, and records of WILSONVILLE that are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts, and transcripts.

5. Manner of Performance.

5.1. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CANBY and WILSONVILLE must comply with all federal laws and regulations detailed in *Exhibit 5: Federal Requirements, attached hereto and incorporated herein*, Oregon laws and regulations, local ordinances and rules applicable to this agreement, including, but not limited to, all applicable federal and Oregon civil rights and rehabilitation statutes, rules and regulations, and as listed in *Exhibit 4: Special Requirements*, attached and incorporated into this agreement.

5.2. Precedence. When a requirement is listed both in the agreement and in an exhibit to it, the requirement in the exhibit will take precedence.

5.3. Subcontracts. WILSONVILLE will not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from CANBY.

6. General Provisions.

6.1. Contact. All routine correspondence and communication regarding this agreement, as well as requests for written acknowledgment, will be directed to the following representatives:

For CANBY: Julie Wehling, Transit Director, City of Canby,
PO Box 930, OR 97013
(wehlingj@canbyoregon.gov) (503-266-0751)

For WILSONVILLE: Eric Loomis, Operations Manager, City of Wilsonville, 28879 SW Boberg Rd, Wilsonville, OR 97070 (loomis@ridesmart.com) (503-519-9846)

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

6.2. Indemnification. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, commissioners, councilors, agents and employees, against all claims, demands, actions and suits of any kind or nature for personal injury, death or damage to property arising out of this agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, commissioners, councilors, employees, agents, subcontractors, or anyone over which the party has a right to control. Each party will give the other party immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this agreement. To this end, each party agrees to name each other as additional insured.

6.3. Severability. If any provision of this agreement is found to be unconstitutional, illegal or otherwise unenforceable by a Court or authority of competent jurisdiction, the remainder of this agreement nevertheless will remain in full force and effect and the offending provision will be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable will construe this agreement without such provision, to give effect to the intentions of the parties to the maximum extent possible.

6.4. Modifications. Any modification or change to the terms of this agreement will be effective only when reduced to writing and signed by the governing bodies of both parties, or each of their designated officers or representatives. Any modification or change, including any additional agreement providing descriptions of tasks, standards of performance or costs, will be in writing, will refer specifically to this agreement and will be valid only when approved by the governing bodies of both parties, or each of their designated officers or representatives.

6.5. Integration. This agreement contains the entire agreement between the parties concerning its subject matter.

6.6. Third-Party Beneficiaries. CANBY and WILSONVILLE are the only parties to this agreement and are the only parties entitled to enforce its terms.

6.7. Applicable Law. The laws of the State of Oregon govern this agreement without respect to conflict of laws principles. Any litigation between the parties arising out of or related to this agreement will be conducted exclusively in the Circuit Court for the State of Oregon, Clackamas County. The parties accept the personal jurisdiction of this court.

6.8. Dispute Resolution.

6.8.1. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this agreement will constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the party alleging such default or breach will give the other party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the party will not be considered in default for purposes of termination or instituting legal proceedings.

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

6.9. Term and Termination.

6.9.1. Term. This agreement is effective on July 1, 2018 and will terminate on June 30, 2019, unless the parties agree in writing to extend the agreement.

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

6.9.3. Termination For Cause. Either party may immediately terminate this agreement if that party complied with Section 6.8.1 of this agreement and the other party did not cure its default within the time provided by Section 6.8.1.

6.10. Effective Date. This agreement will only become effective upon approval by the governing bodies of CANBY and WILSONVILLE.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF CANBY

By: Brian Hodson
As Its: Mayor

3-21-2018
Date

CITY OF WILSONVILLE

By: Bryan Cosgrove
As Its: City Manager

3/26/2018
Date

Approved as to Form:

Amanda Guile-Hinman, Asst. City Attorney
City of Wilsonville, Oregon

Date: 3/26/18

EXHIBIT 1

City of Wilsonville – South Metro Area Regional Transit (SMART)
Proposed Schedule for Midday Service between Canby and Wilsonville

PROPOSED ROUTE 3 TO CANBY - MIDDAY SERVICE

3 NORTHBOUND - to SMART Central at Wilsonville Station

MONDAY - FRIDAY (Except holidays)

Canby Transit Center	Cedar/2nd	Arndt/ Airport Rd	Springridge at Charbonneau	SMART Central	WES Train Departure
10:30 AM	10:33 AM	10:39 AM	10:43 AM	10:51 AM	-
12:00 PM	12:03 PM	12:09 PM	12:13 PM	12:21 PM	-
1:30 PM	1:33 PM	1:39 PM	1:43 PM	1:51 PM	-
3:02 PM	3:05 PM	3:11 PM	3:15 PM	3:23 PM	3:28 PM

3 SOUTHBOUND - to Canby Transit Center

MONDAY - FRIDAY (Except holidays)

WES Train Arrival	SMART Central	Arndt/ Airport Rd	Cedar/2nd	Canby Transit Center
9:55 AM	10:00 AM	10:10 AM	10:16 AM	10:19 AM
-	11:30 AM	11:40 AM	11:46 AM	11:49 AM
-	1:00 PM	1:10 PM	1:16 PM	1:19 PM
-	2:37 PM	2:47 PM	2:53 PM	2:56 PM

SMART currently operates commuter service to Canby from approximately 5:30am to 9:15am and 3:30pm to 7:30pm. In fiscal year 2016 SMART provided nearly 4,160 hours of service and carried 10,679 passengers. SMART anticipates providing 1,040 hours for midday service to Canby during the dates agreed upon within this provision, with an estimated 5,000-6,000 passenger trips to be provided.

EXHIBIT 2

REPORTING REQUIREMENTS

Reporting:

WILSONVILLE will submit quarterly reports that include the number of rides, revenue hours, revenue miles and the number of seniors and people with disabilities served during each quarter (July – September 2018), (October – December 2018), (January – March 2019) and (April – June 2019) . Reports will be submitted to CANBY no less than 35 days following the end of each quarter. CANBY will submit the report data to ODOT's Rail and Public Transit Division each quarter.

Invoicing

WILSONVILLE will submit to CANBY a monthly invoices as identified in *Exhibit 3: Budget*, made a part of this contract.

Invoices and required reports may be submitted electronically via e-mail as an attachment. Invoices should include the number of revenue hours provided and the amount of fares collected. The City of Canby pays invoices every other Friday. Invoice payments will be made on the next check-run Friday following the receipt of an invoice.

E-mail address: wehlingj@canbyoregon.gov

EXHIBIT 3

BUDGET

MIDDAY SERVICE TO CANBY						
	Round Trips	Revenue Hours*	Revenue Miles*	Service Cost*	Service Rate	
Daily	8	4	72	$339	Cost/Hour	Cost/Mile
Annual	2,080	1,040	18,720	$88,192	$63.20	$1.20

*Estimated number of revenue hours, miles, and rate based on FY 2016 data.

EXHIBIT 4

SPECIAL REQUIREMENTS

1. WILSONVILLE 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;

   (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 WILSONVILLE is unable to certify to any of the statements in this certification, WILSONVILLE will attach an explanation to this proposal.

2. In case of suspected fraud by applicants, employees, or vendors, WILSONVILLE will cooperate with all appropriate investigative agencies, and will assist in recovering invalid payments.

3. To the extent allowed by law, WILSONVILLE will protect the confidentiality of all information concerning applicants for and recipients of services funded by this agreement and will 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 will be appropriately secured to prevent access by unauthorized persons.

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

4. WILSONVILLE will ensure that no person or group of persons will, on the ground of age, race, color, national origin, primary language, sex, religion, handicap, political affiliation or belief, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by funds delegated under this agreement.

5. WILSONVILLE 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 will, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity covered by this contract.

6. WILSONVILLE will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

7. WILSONVILLE will establish safeguards to prohibit employees and volunteers from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. WILSONVILLE 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 WILSONVILLE's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) WILSONVILLE's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations.

(c) Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by subsection (a) above.

(d) Notifying the employee in the statement required by subsection (a) that as a condition of employment on such contract, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

(e) Notifying the CANBY 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) Agreeing to establish and implement a drug and alcohol testing program that complies with 49 CFR part 655, produce any documentation necessary to establish its compliance with part 655.

(h) Making a good faith effort to continue to maintain a drug-free workplace through implementation of subsections (a) through (h).

Exhibit 5: Federal Requirements

No Obligation by the Federal Government

1. CANBY and WILSONVILLE acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the CANBY, WILSONVILLE, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. WILSONVILLE agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Authority (FTA). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

1. WILSONVILLE acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, WILSONVILLE certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, WILSONVILLE further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on WILSONVILLE to the extent the Federal Government deems appropriate.

2. WILSONVILLE also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on WILSONVILLE, to the extent the Federal Government deems appropriate.

3. WILSONVILLE agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports

Access to Records - The following access to records requirements apply to this Contract:

1. WILSONVILLE agrees to retain complete and readily accessible records related in whole or in part to this AGREEMENT, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

2. WILSONVILLE agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. WILSONVILLE will maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records will be maintained until CANBY, the Federal Transit Administration (FTA) Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

3. WILSONVILLE agrees to provide CANBY, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of WILSONVILLE which are related to performance of this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. WILSONVILLE also agrees to permit any of the foregoing parties (at their own costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

4. WILSONVILLE agrees to permit the FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

Federal Changes

WILSONVILLE shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between CANBY and FTA, as they may be amended or promulgated from time to time during the term of this contract. WILSONVILLE's failure to so comply shall constitute a material breach of this agreement.

Contract Work Hours and Safety Standards

WILSONVILLE will comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 USC § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act; 40 USC § 3701 *et seq.*; and U.S. Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 CFR Part 5).

1. Records Retention. WILSONVILLE will maintain payrolls and basic payroll records during the course of performance of the this agreement and will preserve them for a period of three (3) years from the completion of the agreement for all laborers and mechanics, including guards and watchmen, working on the agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

2. Access to Records. The records maintained pursuant to subsection 1 above will be made available by WILSONVILLE for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and WILSONVILLE will permit such representatives to interview employees during working hours on the job.

Termination

1. The termination clause for this agreement can be found in Section 6.9.
2. **Waiver of Remedies for any Breach**. In the event that CANBY elects to waive its remedies for any breach by WILSONVILLE of any covenant, term or condition of this agreement, such waiver by CANBY shall not limit CANBY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this agreement.

Civil Rights

The following requirements apply to the underlying contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, WILSONVILLE agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, WILSONVILLE agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Equal Employment Opportunity**. The following equal employment opportunity requirements apply to the underlying contract:

   a. *R*

      ace, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq*., and Federal transit laws at 49 U.S.C. § 5332, WILSONVILLE agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq*., (which

implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. WILSONVILLE agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, WILSONVILLE agrees to comply with any implementing requirements FTA may issue.

b. *Age* - In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and federal transit law at 49 USC § 5332, WILSONVILLE agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, WILSONVILLE agrees to comply with any implementing requirements the FTA may issue.

c. *Disabilities* - In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, WILSONVILLE agrees that it will not discriminate against individuals on the basis of disability. In addition, WILSONVILLE agrees to comply with any implementing requirements the FTA may issue.

3. WILSONVILLE also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. WILSONVILLE shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Suspension and Debarment

1. WILSONVILLE must comply with and facilitate compliance with U.S. Department of Transportation regulations, "Nonprocurement Suspension and Debarment" (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" (2 CFR Part 180). WILSONVILLE is required to verify that its principals, affiliates, and any subcontractors are eligible to participate in this federally funded agreement and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

2. WILSONVILLE is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing this agreement, WILSONVILLE has certified as follows:

   The certification in this clause is a material representation of fact relied upon by CANBY. If it is later determined that WILSONVILLE knowingly rendered an erroneous certification, in addition to remedies available to CANBY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. WILSONVILLE agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, throughout the period of this agreement. WILSONVILLE further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Safe Operation of Motor Vehicles.

WILSONVILLE is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-

rented vehicles, or personally operated vehicles. WILSONVILLE agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle WILSONVILLE owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Breaches and Dispute Resolution

1. The clauses regarding breaches and dispute resolution can be found in Sections 6.8 and 6.9 of this agreement.

Lobbying

WILSONVILLE certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of WILSONVILLE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, WILSONVILLE will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. WILSONVILLE will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure

Clean Air

1. WILSONVILLE agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq*. WILSONVILLE agrees to report each violation to CANBY and understands and agrees that CANBY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. WILSONVILLE also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water

1. WILSONVILLE agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq*. WILSONVILLE agrees to report each violation to CANBY and understands and agrees that CANBY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. WILSONVILLE also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Transit Employee Protective Arrangements

1. WILSONVILLE agrees to comply with applicable transit employee protective requirements as follows:

    a. *General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, WILSONVILLE agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor (DOL) guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. WILSONVILLE agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(b), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

b. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(b) for Elderly Individuals and Individuals with Disabilities*

If the agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(b), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, WILSONVILLE agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. WILSONVILLE agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

c. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas*

If the agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, WILSONVILLE agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

2. WILSONVILLE also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Charter Service Operations

WILSONVILLE agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities unless the contractor adheres to the exceptions provided in 49 CFR part 604.6 through 49 CFR part 604.11 and adheres to the reporting requirements of 49 CFR part 604.12.

School Bus Operations

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of

students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Drug and Alcohol Testing

WILSONVILLE agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR part 655, produce any documentation necessary to establish its compliance with 49 CFR part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Oregon Department of Transportation (ODOT) or the City of Canby, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and review the testing process. WILSONVILLE agrees further to certify annually its compliance with 49 CFR part 655 before January 1st and to submit the Management Information System (MIS) reports within 14 days of the ODOT request for MIS submission by inputting the information into in the U.S. Department of Transportation's Drug & Alcohol Testing Management Information System (damis.dot.gov). ODOT, via the City of Canby, will provide login information annually with a specific due date (no later than March 10). Contact the Transit Director for submission instructions (503.266.0751 or wehlingj@canbyoregon.gov). To certify compliance, WILSONVILLE shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. WILSONVILLE agrees further to submit before January 1st a copy of the Policy Statement developed to implement its drug and alcohol testing program.

Energy Conservation

WILSONVILLE agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ADA Access

WILSONVILLE agrees that facilities to be used in public transportation service, or to be designed for use in public transportation service, must comply with 42 U.S.C. Sections 12101 *et seq.* and U.S. Department of Transportation (DOT) regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. USDOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised September 2010, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. USDOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

Exhibit 6; Agreement 31562

RAIL AND PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

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

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **November 1, 2016** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2019** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

   Exhibit A: Project Description and Budget

   Exhibit B: Financial Information

   Exhibit C: Subcontractor Insurance

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

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

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

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **$89,148.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **$89,148.00** in Grant Funds for eligible costs described in Section 6 hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.

5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at http://www.oregon.gov/odot/pt/. If Recipient is unable to access OPTIS, reports must be delivered to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be

necessary to comply with federal or state reporting requirements.

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

   a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.

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

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

      ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.

      iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

      iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.

   c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Recipient shall return all Misexpended Funds to State promptly after State's written demand and no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 14 days after the earlier of expiration or termination of this Agreement.

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

   a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

   b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

   c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor

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

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

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

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

a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.

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

d. **Audit Requirements.**

i. Recipients receiving federal funds in excess of $750,000 are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Rail and Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDReporting@odot.state.or.us, a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.

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

9. **Recipient Subagreements and Procurements**

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

      i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.

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

   b. Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: www.fta.dot.gov/grants/13054_6037.html

   c. **Subagreement indemnity; insurance**

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

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

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

   d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:

      i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;

      ii. all procurement transactions are conducted in a manner providing full and open

competition;

iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);

iv. construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C.125.

10. **Termination**

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

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

ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

iv. The Project would not produce results commensurate with the further expenditure of funds; or

v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.

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

i. The requisite local funding to continue the Project becomes unavailable to Recipient; or

ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. **General Provisions**

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

With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and

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

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

b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

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

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

e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be

given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.

i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than $500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

k. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no

understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

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

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

SIGNATURE PAGE TO FOLLOW

City of Canby, by and through its
City Administrator

By _____
(Legally designated representative)

Name Richard W. Robinson
(printed)

Date 11/1/2016

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

State of Oregon, by and through its Department of Transportation

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

Date 4 Nov 2016

APPROVAL RECOMMENDED

By Karyn Criswell

Date 10/31/2016

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over $150,000)

N/A

Recipient Contact:
Julie Wehling
PO Box 930
Canby, OR 97013
1 (503) 266-0751
wehlingj@~~ci.canby.or.us~~ canbyoregon.gov

State Contact:
Karyn Criswell
555 13th St. NE
Salem, OR 97301-4179
1 (503) 731-8461
Karyn.C.CRISWELL@odot.state.or.us

EXHIBIT A

Project Description and Budget

Project Description/Statement of Work

Project Title: 5310 Discretionary City of Canby 31562 Wilsonville Mid-day Svc *Wilsonville Mid-Day Service*				
Item #1: Contracted Service (5310 only)				
	Total	Grant Amount	Local Match	Match Type(s)
	$89,148.00	$89,148.00	$9,155.00	PTD Paid
Sub Total	$89,148.00	$89,148.00	$9,155.00	
Grand Total	**$89,148.00**	**$89,148.00**	**$9,155.00**	

- *1. PROJECT DESCRIPTION*

  Provides funding to purchase service to provide public transportation to seniors and individuals with disabilities, and the general public and to support the administrative costs required to manage the service contract. Specifically, this Agreement funds contract operation of four mid-day trips between Canby and Wilsonville, Oregon and related indirect and administrative expenses.

  2. PROJECT DELIVERABLES, TASKS and SCHEDULE

  The purchased service will be provided by a contractor or pass-through subrecipient selected by Recipient. The service, schedule, days, hours, and service type shall be determined by Recipient in consultation with the operator of service, the affected community members, and stakeholders identified by Recipient.

  Services will be provided in accordance with the locally adopted Human Services and Transportation Coordinated Plan. Recipient and contractor or pass-through subrecipient will coordinate the delivery of transportation services with other public and private transportation providers to enhance regional services and to avoid duplication of services. Coordinated service may be made available to a variety of potential users, including the general public.

  Recipient may amend the service design at any time in accordance with local demand, funding issues, changes in the Coordinated Plan, or any other situation that requires service to be changed.

  Recipient will actively market the services to the target users. Recipient will oversee and monitor the services and performance of the contractor or pass-through subrecipient.

  Recipient will provide four mid-day trips between Canby and Wilsonville, Oregon which will supplement the eight commuter trips currently provided by SMART.

  The following performance measure will be used to evaluate the effectiveness of the project:

  The service goal for the first year is to provide 6,000 trips over 1,040 hours of service.

  Project milestones:

  Service planning public involvement completed: June 30, 2017

  Year one service starts: July 9, 2018

  Administration may be utilized for either direct or indirect expenses associated with this Agreement.

3. PROJECT ACCOUNTING and SPENDING PLAN

This Agreement covers contracted public transportation provision, as defined under the 49 USC § 5310 program, as described in Circular 9070.1G, Section III-14-e. Generally accepted accounting principles and Recipient's accounting system determine those costs that are to be accounted for as operating costs. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible. The service provider may use capital equipment funded under USDOT- or State-source agreements when performing services rendered through a contract or sub-agreement funded by this Agreement. Depreciation of capital equipment funded from USDOT- or State-source grants is not an eligible expense.

Recipient's current indirect cost rate as it pertains to this Agreement is 0.0 percent. Changes to Recipient's indirect cost rate must be approved by State.

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

Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. All administrative and operating expenses incurred by the contractor or pass-through subrecipient are reimbursable as operating expenses. The required local match share will be subtracted from the project expenses to determine the Agreement share of the project expense.

Recipients may not use assets acquired under this Agreement to compete unfairly with the private sector.

4. REPORTING AND INVOICING REQUIREMENTS

Recipient must provide appropriate reports to State as prescribed. In a discretionary Agreement, Recipient must provide appropriate documentation in order to be reimbursed for expenses.

For labor, supplies, and training expenses, Recipient will provide a summary spreadsheet or payroll reports showing all expenses for reimbursement. Recipient must provide detailed payroll documents or invoices for review as requested by State.

EXHIBIT B

FINANCIAL INFORMATION

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

This Agreement is financed by the funding source indicated below:

Federal Program	**Federal Funding Agency**	**CFDA Number**	**Total Federal Funding**
49 U.S.C. 5310	U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	**20.513 (5310)**	**$79,993.00**
State Program	**State Funding Agency**		**Total State Funding**
ORS 391.800 through ORS 391.830 and OAR Chapter 732, Divisions 5, 10, and 30	Oregon Department of Transportation 355 Capitol St. N.E. Salem, OR 97301-3871		**$9,155.00**

Administered By
Rail and Public Transit Division 555 13th St. NE Salem, OR 97301-4179

EXHIBIT C

Insurance Requirements

GENERAL.

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

TYPES AND AMOUNTS.

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

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

Bodily Injury, Death and Property Damage:

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

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

Bodily Injury, Death and Property Damage:

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

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

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as

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

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

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

EXHIBIT D

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

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

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

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

   The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Recipient deems appropriate.
5. Recipient and contractors receiving in excess of $100,000 in federal funds, other than Indian tribes, must certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal

funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.