

<p>STAFF REPORT</p> <p>For Meeting of November 14, 2016</p> <p>MAYOR AND MEMBERS OF THE CITY COUNCIL</p>	<p>Agenda Item #</p> <p>NO. 2016-</p> <p>SUBJECT: Public Transit Service Agreement</p>
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Subject

Consider a Public Transit Service Agreement with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to provide fixed-route intra-city bus service within Hermiston.

Summary and Background

This agreement will result in CTUIR (KAYAK Transit) providing and operating a dedicated fixed-route bus system within Hermiston.

Service

- Hourly fixed-route service within Hermiston
- Minimum 9am to 4pm; Monday through Friday
- Free and open to all members of the public
- “Paratransit” – Door-to-Door service for those within the service area who are physically unable to access bus stops or independently navigate the system.

Routing & Stopping Locations

There is no perfect route through the City. A draft of routing and stopping locations were initially developed by KAYAK Transit in an attempt to:

1. Ensure that nearly all of the City’s population is within at least ¼ mile walking distance of a bus stop.
2. Ensure that the bus gets to the top destinations, while still having stops which are close enough to residential areas that people can access the system.
3. Accomplish 1 & 2 within an hourly loop to make sure it is usable.

The proposed routing and stopping locations were reviewed by the Public Transit Advisory Committee for more than 5 hours over the course of two public meetings, where every individual location was closely scrutinized and weighed in relation to its benefit to the overall system. The proposed routing features many changes recommended by the PTAC, including several changes which were a direct result of public comments received. The PTAC at its November 1 meeting unanimously recommended that the City Council approve the proposed routing and stopping locations, with the understanding that KAYAK will work with the City to review and make minor adjustments every quarter, and major adjustments annually.

Public Involvement

There has been extensive public involvement in the development of the proposed bus system, which includes:

- Advertisement for and creation of a Public Transit Advisory Committee, with members representing:
 - (2) Hermiston City Council
 - (1) Hermiston Planning Commission
 - (2) Good Shepherd Medical Center
 - (1) Taxi Program Riders (Eastern Oregon Support Services Brokerage)
 - (1) Hermiston Police
 - (3) Hermiston Chamber of Commerce
 - (2) General Public
- Multiple News Releases, which resulted in newspaper coverage
- Multiple radio stories on FM radio in both Hermiston & Pendleton
- 2 Presentations to the Hispanic Advisory Committee
- 2 Presentations to the Hermiston Chamber of Commerce
- 2 Presentations to the Hospital's "Healthy Communities Coalition"
- 4,000+ interactions with postings to the City's Facebook page
- Physical placement of signs notifying adjacent property owners of the proposed bus stops and routing, which advertised the last PTAC meeting for comment.

Financial Information

Contractual Funding

A large amount of the projected funding for this system depends on Federal 5311 Grants which have not yet been approved, however City and CTUIR Staff have been in regular contact with ODOT, and feel confident in this funding source. To be safe, however, this agreement outlines a very specific process in the event that funding is denied.

The anticipated 5311 Funding would be available July, 2017 through June, 2019. Additionally, the lowest amount that this grant source will issue, if an award is made, is \$100,000 per year. Therefore, Schedule 2.1 of this agreement establishes that the City will cover all system costs between January and July, 2017, but will only cover the difference between grant funds and expenses for the following two fiscal years. In the event that funding is not approved, the City will only commit to continue operating this system through the end of 2017. Since the City will be aware of whether funds have been approved as early as May, 2017, there will be approximately seven months to work with CTUIR and ODOT to identify other funding sources.

While this appears to be a "build it and they will come" approach to acquiring grant funding, the timelines and nature of these funds makes this approach necessary. 5311 Funding applications occur only once every two years. Additionally, transit funding is both very suspicious of "proposed" systems, and very protective of existing systems. By having this system up and operational at the time of application, it allows the City and KAYAK to easily squelch the hundreds of "what if" questions that come with an application for a new system, because we can show that the system is currently in operation. If a system is not in place at the time of application, and the request is denied because there are too many unanswered "what ifs," then the next time that the City will have the opportunity to pursue these funds won't be until Spring of 2019.

FY '16-'17

Revenue

The Public Transit Subcommittee recommended leaving the Taxi Ticket price at \$2 per ticket for FY '16-'17, but recommended that the Council consider raising this price for FY '17-'18. We anticipate no additional grant funding in this year, and are anticipating Taxi Ticket Revenues to remain steady as a "Worst Case Scenario," because for every \$2 we bring in in revenue, the City must subsidize an additional \$4.60. This is the "worst case," because if less ticket revenue is brought in, then expenses will drop more quickly than revenues.

Expense

It appears that the "worst case scenario" under this proposed agreement would still keep this year's Transportation budget under budgeted expenditures. This is possible because Taxi System utilization has declined compared to previous years, and this budget included an additional \$70,000 for system improvements this year.

FY '17-'18

Revenue

There are many variables at work in FY '17-'18, including:

- Taxi Ridership: This is anticipated to decline slightly, as some riders, who can, will shift to the free fixed-route service. However, to be conservative, this decline is only estimated to be slight, as the true level of market share transfer is unknown.
- County Grant Funding: The City Hermiston has historically received ~\$28,000 per year from Umatilla County to assist with our taxi program. Meanwhile, the City of Pendleton has received ~\$50,000 annually through the same program. The main justification given for this discrepancy has been that the City of Pendleton allows residents within 7 miles of their City Limits to access their system, while the City of Hermiston does not. With the addition of the bus system (and required Para-Transit service), residents within an area similar to Hermiston's UGB will be able to access Hermiston's system. Since more people live just within Hermiston's UGB than live within 7 miles of Pendleton, Umatilla County should be expected to provide Hermiston with funding at least similar to Pendleton in FY '17-'18.
- 5311 Grant Funding: If any funding is awarded, it will not be less than \$100,000 per year, however it is currently projected to be \$115,000 per year.

Because changes in any of these variables has a large impact on the financial viability of this service, the Public Transit Advisory Committee recommended that the Council examine the possibility of raising the Taxi Ticket price to \$3 per ticket in FY '17-'18.

Expenses

If the Taxi Ticket Price is held the same, and the other assumptions hold, it is anticipated that the annual City subsidy to pay for both the Taxi System and Bus system will be approximately \$150,000. However, it should be noted that due to fluctuations

over the years, the City's subsidy for the Taxi system alone has fluctuated between \$90,000 and \$140,000 per year.

Alternatives and Recommendation

Alternatives

1. Motion to approve the Public Transit Service Agreement
2. Motion to table the Public Transit Service Agreement

Recommendation

Staff recommends approval of the agreement at this meeting, because KAYAK Transit needs time to hire and train staff in order to begin operations by January 2, 2017.

Requested Action/Motion

Motion to approve

Department Head- Mark Morgan, Assistant City Manager



City Attorney- Blaine Clouten, Deputy City Attorney

S//: Blaine Clouten

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

This Services Agreement (this "Agreement") is entered into on November ____, 2016 between the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR"), and the City of Hermiston, a municipal corporation of the State of Oregon ("City").

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

1. SERVICES AND TERM

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

1.2 Term. The Services under this Agreement shall commence on January 2, 2017 and termination on June 30, 2019 unless otherwise extended or terminated in accordance with the terms of this Agreement.

2. COMPENSATION/CONSIDERATION AND RELATIONSHIP

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

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

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

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

3. TERMINATION

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

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

4. FEDERAL REQUIREMENTS

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

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

4.3 Certifications and Assurances and FTA Master Agreement.

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

CTUIR further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at <http://www.fta.dot.gov/documents/2.1-Master.pdf>. Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Schedule 2.1:

a. CTUIR shall comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252., 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation ("US DOT") (49 CFR 2.1, Subtitle A). CTUIR shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. CTUIR will report to City on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the parties entered into a consent decree.

b. CTUIR shall comply with FTA regulations in Title 49 CFR 2.7 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.

c. CTUIR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its Disadvantaged Business Enterprise ("DBE") program or the requirements of 49 CFR Part 26. CTUIR shall take all necessary and reasonable steps under 49 CFR Part 2.6 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. CTUIR's DBE program, if applicable, as required by 49 CFR part 2.6 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this

program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.

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

e. CTUIR, a contractor receiving in excess of \$100,000 in federal funds, must certify to City that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, CTUIR shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to City at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark

4.4 Federally Mandated Insurance Requirements.

CTUIR shall obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance of the Services commences, and ii) maintain the insurance in full force throughout the duration of this Agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to City. City shall not authorize work to begin until the insurance is in full force. Thereafter, City shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. In no event shall City permit work when City is aware that CTUIR is not in compliance with the insurance requirements.

a. TYPES AND AMOUNTS.

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

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

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

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

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

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

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

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

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

5. MISCELLANEOUS

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

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

The CTUIR:

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

To City:

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

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

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

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

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

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

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

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

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

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

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

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

**CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION**

CITY OF HERMISTON

By: _____
J. David Tovey, Jr.
Executive Director

By: _____
[Name, Title]

[INSERT CONTRACTOR'S NAME]

By: _____
[Name, Title]

SCHEDULE 1.1

Description of Services

The CTUIR will perform the following Services:

1. Provide community connector service between Hermiston and other communities within the CTUIR's transportation system Monday through Friday. Specific services include:
 - a. Fixed-Route Intra-City service within Hermiston, which will complete six circuits through the city between 9am to 4pm daily.
 - b. Any and all required Para-Transit Service as is currently, or may in the future be, required by the Federal Transit Authority.
 - c. Intra-City service within Hermiston shall be scheduled so as to connect with a CTUIR transportation system Inter-City service within the Hermiston City Limits at least twice per day.

SCHEDULE 2.1

Compensation Schedule

1. Compensation. The CTUIR will provide the services described in Schedule 1.1 as an expansion to its existing system. A majority of the funding to pay for this expansion shall be through the receipt of additional Oregon Department of Transportation (ODOT) grant money specifically for this service. CTUIR will make all applications for, and be the recipient of, this grant funding, while the City will provide all matching funds to cover any costs of this service expansion not covered through grant funding.
 - A. Quarterly Invoice- January 2, 2017 through June 30, 2017
The CTUIR's performance of the Services will be billed quarterly by the CTUIR at the rate of \$ 62,500 per quarter for the 1st two quarters of this agreement and \$ 31,250 per quarter for the remainder of this agreement, within 30 days following the end of each quarter. Any delayed billing will not alleviate City's obligation to pay for Services provided. The CTUIR will submit quarterly invoices to City for the Services performed during the immediately preceding quarter. City will pay the amount due under each Invoice within thirty (30) days after City's receipt of the Invoice.
 - B. Quarterly Invoice- July 1, 2017 through June 30, 2019
If CTUIR is awarded additional ODOT grant money specifically for this service in an amount equal to, or greater than, \$100,000 per year, then City will be billed quarterly by the CTUIR at a rate equal to the total amount of service expenses less the amount of service expenses reimbursable through the ODOT grant. This invoice will be issued within 30 days following the end of each quarter. Any delayed billing will not alleviate City's obligation to pay for Services provided. The CTUIR will submit quarterly invoices to City for the Services performed during the immediately preceding quarter. City will pay the amount due under each Invoice within thirty (30) days after City's receipt of the Invoice.

Total compensation from City for this Agreement shall not exceed \$ 150,000 between January 2, 2017 and June 30, 2017, nor shall it exceed \$150,000 per year city fiscal year between July 1, 2017 through June 30, 2019.
 - C. Quarterly Invoice- July 1, 2017 through December 31, 2017
If CTUIR is not awarded additional ODOT grant money specifically for this service in an amount equal to, or greater than, \$100,000 per year, then the City will be billed quarterly by the CTUIR at the rate of \$62,500 per quarter, within 30 days following the end of each quarter. Any delayed billing will not alleviate City's obligation to pay for Services provided. The CTUIR will submit quarterly invoices to City for the Services performed during the immediately preceding quarter. City will pay the amount due under each Invoice within thirty (30) days after City's receipt of the Invoice.

EXHIBITA

FEDERAL REGULATIONS & REQUIRED THIRD-PARTY CONTRACT CLAUSES

ALL OR PART OF THIS AGREEMENT IS FEDERALLY FUNDED. CTUIR shall comply with the following applicable federal regulations in addition to all other specifications, terms and conditions of this Agreement.

1. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

CTUIR 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.

2. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

A. CTUIR 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. CTUIR agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the Federal Transit Administration ("FTA") and the appropriate Environmental Protection Agency ("EPA") Regional Office.

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

3. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Contractors, including CTUIR, who apply or bid for an award of \$100,000 or more, shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 that has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

4. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CPR 18.36 (i)

49 CPR 633.17

The following access to records requirements apply to this Agreement:

A. **CTUIR** agrees to provide City, the PTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of **CTUIR** which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. **CTUIR** also agrees, pursuant to 49 C.P.R. 633.17 to provide the PTA Administrator or his authorized representatives including any Project Management Oversight ("PMO") contractor access to **CTUIR**'s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307,5309 or 5311.

B. Where any purchaser which is the PTA recipient or a subgrantee of the PTA recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the contractor shall make available records related to the contract to the purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

C. **CTUIR** agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

D. **CTUIR** agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three 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 contract, in which case **CTUIR** agrees to maintain same until City, the PTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CPR 18.39(i)(11).

E. FTA does not require the inclusion of these requirements in subcontracts.

5. FEDERAL CHANGES

49 CPR Part 18

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

6. CLEANAIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

A. **CTUIR** 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 — **CTUIR** agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to PTA and the appropriate EPA Regional Office.

B. **CTUIR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by PTA.

7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
40 USC 3701(b)(1)(B)(iii) and (b)(2)
29 CFR 5.2(h)
29 CFR 5.5(b)
49 CFR 18.36(i)(6)

A. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. **Withholding for unpaid wages and liquidated damages-** **CTUIR** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. **Subcontracts-** **CTUIR** or any subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for

compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

B. **CTUIR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by PTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

9. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 3118 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

A. CTUIR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et - **and** U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of this Agreement, CTUIR 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 this Agreement or the PTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, **CTUIR** 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 CTUIR to the extent the Federal Government deems appropriate.

B. **CTUIR** 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 D.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 D.S.C. § 5307(n)(1) on **CTUIR**, to the extent the Federal Government deems appropriate.

C. **CTUIR** 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.

10. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1F

A. Termination for Convenience (General Provision). City may terminate this Agreement, in whole or in part, at any time by written notice to CTUIR when it is in City's best interest. CTUIR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. CTUIR shall promptly submit its termination claim to City to be paid CTUIR. **If** CTUIR has any property in its possession belonging to City, CTUIR will account for the same, and dispose of it in the manner City directs.

B. Termination for Default [Breach or Cause] (General Provision). **If** CTUIR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, CTUIR fails to perform in the manner called for in the contract, or if CTUIR fails to comply with any other provisions of this Agreement, City may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on CTUIR setting forth the manner in which CTUIR is in default. CTUIR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by City that CTUIR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CTUIR, City, after setting up a new delivery of performance schedule, may allow CTUIR to continue work, or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision). City in its sole discretion may, in the case of a termination for breach or default, allow CTUIR ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If CTUIR fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by CTUIR of written notice from City setting forth the nature of said breach or default, City shall have the right to terminate this Agreement without any further obligation to CTUIR. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against CTUIR and its sureties for said breach or default.

D. Waiver of Remedies for any Breach. In the event that City elects to waive its remedies for any breach by CTUIR of any covenant, term or condition of this Agreement, such waiver by City shall not limit City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

E. Termination for Convenience (Professional or Transit Service Contracts). City, by written notice, may terminate this Agreement, in whole or in part, when it is in City's interest. **If** this Agreement is terminated, City shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service). **If** CTUIR fails to deliver supplies or to perform the services within the time specified in this Agreement or any extension or if CTUIR fails to comply with any other provisions of this contract, City may terminate this Agreement for default.

City shall terminate by delivering to CTUIR a notice of termination specifying the nature of the default. **CTUIR** will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Agreement.

If, after termination for failure to fulfill contract obligations, it is determined that **CTUIR** was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of City.

G. Termination for Default (Transportation Services). **If** CTUIR fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Agreement or any extension or if **CTUIR** fails to comply with any other provisions of this Agreement, City may terminate this Agreement for default. City shall terminate by delivering to **CTUIR** a notice of termination specifying the nature of default. **CTUIR** will only be paid the contract price for services performed in accordance with the manner of performance set forth in this Agreement.

If this Agreement is terminated while **CTUIR** has possession of City goods, **CTUIR** shall, upon direction of City, protect and preserve the goods until surrendered to City or its agent. City and **CTUIR** shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause (defined below).

If, after termination for failure to fulfill contract obligations, it is determined that **CTUIR** was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of City.

11. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, **CTUIR** is required to verify that none of **CTUIR**, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

CTUIR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **CTUIR**. **If** it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **CTUIR**, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. PRIVACY ACT

5 U.S.C. 552

The following requirements apply to CTUIR and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. **CTUIR** agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CTUIR agrees to obtain the express consent of the Federal Government before CTUIR or its employees operate a system of records on behalf of the Federal Government. CTUIR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

B. CTUIR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

13. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41CFR Parts 60 et seq.

The following requirements apply to this Agreement:

A. 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, CTUIR 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, CTUIR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying agreement:

(i) Race Color. Creed. National Origin Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CTUIR 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.P.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. CTUIR 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, CTUIR

agrees to comply with any implementing requirements FTA may issue.

(ii) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, CTUIR agrees to Refrain from discrimination against present and prospective employees for reason of age. In addition, CTUIR agrees to comply with any implementing requirements FTA may issue.

(iii) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CTUIR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CTUIR agrees to comply with any implementing requirements FTA may issue.

C. **CTUIR** 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.

14. BREACHES AND DISPUTE RESOLUTION

49 CPR Part 18 PTA Circular 4220.1P

A. **Disputes**. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by City's city manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, CTUIR mails or otherwise furnishes a written appeal to City's city manager. In connection with any such appeal, **CTUIR** shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of City's city manager shall be binding upon CTUIR and CTUIR shall abide by the **decision**.

B. **Performance During Dispute**. Unless otherwise directed by City, CTUIR shall continue performance under this Agreement while matters in dispute are being resolved.

C. **Claims for Damages**. Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

D. **Remedies**. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between City and CTUIR arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Oregon.

E. **Rights and Remedies**. The duties and obligations imposed by this Agreement and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act

by City or CTUIR shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

A. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department Of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DEE) is 10%. The agency's overall goal for DEE participation is .5 %. A separate contract goal has not been established for this procurement.

B. CTUIR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CTUIR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by CTUIR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as City deems appropriate. Each subcontract CTUIR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA
Circular 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, 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 contract. **CTUIR** shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause City to be in violation of the FTA terms and conditions.

17. DRUG AND ALCOHOL TESTING

CTUIR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the USDOT or its operating administrations, the State Oversight Agency of Oregon, or City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CTUIR agrees further to certify annually its compliance with Parts 653 and 654 before July 1st and to submit the Management Information System (MIS) reports before October 1st of each year to the Transportation Business Administrator, 1250 NE Bear Creek Rd., Bend, OR 97701. (To certify compliance CTUIR 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).

