

RESOLUTION NO. 5043

A RESOLUTION ACCEPTING THE OREGON DEPARTMENT OF TRANSPORTATION, PUBLIC TRANSIT DIVISION, SMALL CITY AND RURAL AREAS, SECTION 5311, OPERATING ASSISTANCE GRANTS FOR FISCAL YEAR 2004-2005.

WHEREAS, the State of Oregon Department of Transportation, Public Transit Division, has submitted the 2004-2005 annual Section 5311 operating assistance grant agreements for the Albany Transit System and the Linn-Benton Loop Transit System; and

WHEREAS, the City of Albany is the service provider for the Albany Transit System and the Linn-Benton Loop Transit System; and

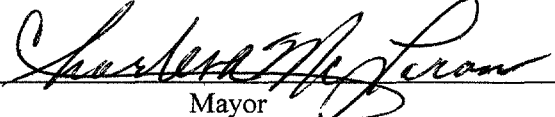
WHEREAS, conditions of obtaining these grants include compliance with the DEPARTMENT OF TRANSPORTATION TITLE VI ASSURANCE and the ANNUAL CIVIL RIGHTS ASSURANCE.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany, Oregon, accepts the Section 5311 Operating Assistance Grants in an amount not to exceed \$90,935 for Albany Transit System and an amount not to exceed \$67,096 for the Linn-Benton Loop Transit System for the fiscal year 2004-2005; and

BE IT FURTHER RESOLVED that the City Council of the City of Albany, Oregon, accepts these grants and authorizes the City Manager to execute the agreements and conditions for their acceptance.

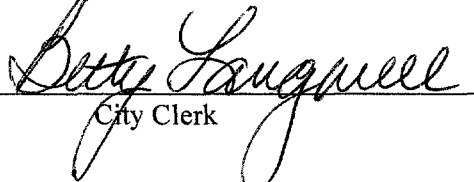
BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage by the Council and approval by the Mayor.

DATED AND EFFECTIVE THIS 8TH DAY OF SEPTEMBER 2004.



Mayor

ATTEST:



City Clerk

PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

STATE GRANT AGREEMENT No. 21924

THIS AGREEMENT is made and entered into by and between **THE STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as “**State**”; and **City of Albany** hereinafter referred to as “**Recipient**”. Recipient enters into this Agreement with State to secure financial assistance to complete the activities described in Exhibit B, hereinafter referred to as the “**Project**”, attached hereto and by this reference made a part hereof.

RECITALS

1. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform. The State of Oregon acting through the Oregon Transportation Commission is authorized to enter into agreements and disburse funds for the purpose of supporting public transportation pursuant to ORS 184.670 to 184.733.
2. This Agreement is based upon, and is subject to, Oregon Revised Statutes (ORS), Oregon Administrative Rules, and Federal Transit Administration (FTA) regulations such as those contained in ORS 323.455, ORS 391.800 through 391.830 and FTA Circular 9040.1E including all associated references and citations. From time to time these laws, rules and regulations may be amended; and State reserves the right to amend this Agreement if it is affected. State will provide thirty days notice of impending changes and will prepare a supplemental agreement incorporating the changes to be executed by the parties.
3. The following documents, **Agreement Obligations and General Provisions, Exhibit A: Financial Information, and Exhibit B: Project Description and Budget** are attached hereto and by this reference made a part of this grant Agreement. The following document is incorporated by reference: **Fiscal Year 2004 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements**. These certifications and assurances are used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 2004. These certifications and assurances include all annual certifications required by 49 USC § 5311 Nonurbanized Area Formula Program.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT:

1. Estimated total project cost is **\$134,192.00**. Maximum allowable reimbursement shall be either **50%** of allowable costs or **\$67,096.00**, whichever is less.
2. This agreement is to begin on **July 1, 2004** and shall expire, unless otherwise terminated, on **June 30, 2005**.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year hereinafter

Agreement Obligations and General Provisions

I. RECIPIENT OBLIGATIONS

A. General Requirements

1. Recipient shall conduct activities in accordance with Exhibit B, Project Description and Budget. Recipient shall notify State in writing of changes in the Project prior to performing any changes and will not perform any changes to the Project listed in Exhibit B without specific written approval from State.
2. Recipient shall make purchases of any equipment, materials, or services pursuant to this Agreement under procedures consistent with Oregon Administrative Rules Chapter 125 for the Oregon Department of Administrative Services and Oregon State Law and in conformance to FTA Circular 4220.1D, *Third Party Contracting Requirements*, ensuring that:
 - all applicable clauses required by Federal Statute, executive orders and their implementing regulations are included in each competitive procurement;
 - all procurement transactions are conducted in a manner providing full and open competition;
 - 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);
 - contracts will not exceed a period of five years without prior approval of FTA, and;
 - Architectural and engineering procurements are based on Brooks Act procedures unless the State of Oregon has adopted a statute that governs such procurements.

Recipient is responsible for submission of any draft sub-agreements and contracts associated with this Agreement to State for review and approval. *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, is available on the FTA website: <www.fta.dot.gov>.

3. Recipient agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Sections 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.
4. Recipient shall maintain all required records for at least three years after State's final payment.

5. To receive reimbursement as described in Section II, Paragraph A of State obligations, Recipient shall submit quarterly progress reports. Reports shall include a detailed statement of revenues and expenditures for each quarter, including documentation of local match contributions. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.

The reporting periods are based on the state fiscal year. Quarter 1 is July through September. Quarter 2 is October through December. Quarter 3 is January through March. Quarter 4 is April through June. Reports are due to Public Transit Division, 555 13th St. NE Suite 3, Salem OR 97301 no later than 45 days after the last day of the quarter.

6. Recipient shall defend, save and hold harmless the State of Oregon, including the Oregon Transportation Commission, State, and their members, officers, agents, and employees from all claims, suits, actions of whatsoever nature resulting from or arising out of the activities of Recipient or its subcontractors, agents or employees under this agreement. Recipient shall not be required to indemnify State for any such liability arising out of negligent acts or omissions of the State of Oregon, its employees, or representatives. This provision is subject to the limitations, if applicable, set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300.

Notwithstanding the foregoing defense obligations under Paragraph 6, neither Recipient nor any attorney engaged by Recipient shall defend any claim in the name of the State of Oregon 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 of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Recipient is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Recipient if the State of Oregon elects to assume its own defense.

7. Recipient shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
8. All employers, including Recipient, that employ subject workers who work under this Agreement 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. Recipient shall ensure that each of its subcontractors complies with these requirements.

9. 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 underlying Agreement.

10. Recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. 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.
11. In accepting this Agreement, Recipient certifies that 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 must provide notice to State if at any time it learns that this certification is erroneous when submitted or if circumstances have changed (new personnel, indictments, convictions, etc.).
12. 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 Federal Transit Administration, 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.

B. Audit Requirements

1. Recipients receiving Federal funds in excess of \$500,000 are subject to audit conducted in accordance with Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, Non-profit Institutions*. Recipient, if affected by this requirement, shall at Recipient's own expense, submit to State, Public Transit Division, 555 13th St. NE, Suite 3, Salem, OR 97301-4179, a copy of its A-133 annual audit covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subcontractor of Recipient responsible for the financial management of funds received under this Agreement.
2. Recipients receiving less than \$500,000 in Federal funds shall, at Recipient's own expense, submit to State, Public Transit Division, 555 13th St. NE, Suite 3, Salem, OR 97301-4179, a copy of any annual audit covering the funds expended under this Agreement by Recipient or any subcontractor of Recipient receiving funds as a result of this Agreement; and a copy of the management letter and any report that accompanies the annual audit covering the funds expended under this Agreement.

C. Other Federal Requirements

One of the principles of contracting with Federal funds received indirectly from the FTA is recognition that, as a condition of receiving the funds, certain specific requirements must be met not only by the Recipient, but also by any sub-recipients and contractors. To the extent applicable, Federal requirements extend to the third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier. The specific requirements for particular grant funds are found in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this grant agreement. Said Master Agreement is available upon request from Public Transit Division by calling (503) 986-3300 or accessing the FTA website: www.fta.dot.gov/library/legal

The following is not a complete list of Federal requirements. Rather it is a summary of various primary requirements associated with the type of transaction covered by this Agreement and the type of funds described in Exhibit A.

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 Stat 252 42 USC 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 27.9, *Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance* which implements the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, and 49 CFR parts 37 and 38.
3. Recipient has, or will have, the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 USC § 5311; and to implement and manage the Project.
4. Recipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.
5. Recipient has complied with the transit employee protective provisions of 49 USC 5333(b).
6. Recipient will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. "Tripper services" that are part of the routine schedule and are open to the general public are not considered to be school bus services.
7. Recipient will correct any condition which State or FTA believes "creates a serious hazard of death or injury" in accordance with Section 22 of the Federal Transit Act of 1964, as amended.

8. Recipient will comply with the applicable provisions of 49 CFR part 26 related to Disadvantaged Business Enterprises and report quarterly to State. Each contract the grantee signs with the contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of State-assisted contracts. Failure by the contractor 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 the Recipient deems appropriate."

9. Recipient has certified to State that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance.
10. Recipient and contractors receiving in excess of \$100,000 in Federal funds must certify to State that they have not and will not use Federal funds to pay for influencing or attempting to influence an office 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.
11. Recipients, sub-recipients and their contractors with safety sensitive employees (except maintenance contractors) shall comply with the drug and alcohol testing regulations as defined by *Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations* (49 CFR part 655); and *Procedures of Transportation Workplace Drug and Alcohol Testing Programs* (49 CFR part 40). Recipient agrees to comply with, and ensures the compliance of its employees, sub-recipients and contractors with information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552.

II. STATE OBLIGATIONS

- A. State shall reimburse eligible costs incurred in carrying out the Project subject to the amounts shown in the Terms of Agreement.
- B. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriated limitation within the current biennial budget.
- C. State reserves the right to withhold payment of funds if there are unresolved audit findings, or inadequate information concerning Recipient's activities. State reserves

the right to reallocate any portion of the Agreement amount which State reasonably believes will not be used by Recipient within the Terms of Agreement.

III. GENERAL PROVISIONS

- A.** This Agreement may be terminated by mutual written consent. State may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Recipient, or at such later date as may be established by State, under any of the following conditions. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
1. If Recipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 2. If Recipient fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize; or
 3. If State fails to receive 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
 4. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 5. Federal or State Laws, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit B of the Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement; or
 6. The Project would not produce results commensurate with the further expenditure of funds; or
 7. 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; or
 8. The commencement, prosecution, or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, illegal; or
 9. Recipient is in default under any provision of this Agreement.
- B.** Recipient acknowledges and agrees that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs

of copies is reimbursable by State.

- C. This Agreement may be revised or amended by a supplemental written agreement between the parties and executed with the same formalities as this Agreement.
- D. This Agreement and attached and referenced exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

EXHIBIT A
FY 2004 – 05 FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of the Office of Management and Budget (OMB) Circular A-133.

This grant is financed by the funding source(s) as indicated below:

Federal Program Title Federal Funds Available through: 49 USC 5311 Small City and Rural Areas Program	State Program Title N/A
Federal Catalogue Number: 20.509	
Federal Grant Number: OR184021	State Grant Number: N/A
Total Federal Funding \$67,096.00	Total State Funding N/A
Federal Funding Agency U.S. Department of Transportation Federal Transit Administration Region X, Suite 3142 Federal Building 915 Second Avenue Seattle, WA 98174	State Funding Agency Oregon Department of Transportation Public Transit Division Mill Creek Building 555 13 th Street NE, Suite 3 Salem, OR 97301-4179

Exhibit B
Part I
Project Description and Budget

Project Description (1)	Agreement Amount	Local Share	Total
STIP Key # 11678 Operating funds for Linn Benton Loop Transit System	\$67,096.00	\$67,096.00	\$134,192.00
TOTAL	\$67,096.00	\$67,096.00	\$134,192.00
Project Description			
Operating funds for City of Albany Transportation Program through Linn Benton Loop Transit System. The service areas are the cities of Albany and Corvallis and the population along state highways 20 and 34 between the two cities. Service type is fixed route commuter service with on-call stops along the highways where safe and reasonable. The service operates Monday-Friday, 6:30 a.m to 7:00 p.m.			

Performance Measures for FY 2004-05

	Current FY 2004	Anticipated FY 2005	% Increase or Decrease
Total Passenger One-Way	60,360	62,000	2% increase
E & D One-Way Trips	10,865	11,160	2% increase
Non- E & D One-Way Trips	49,495	50,840	2% increase
Revenue Service Miles	62,410	62,500	.001 increase
Revenue Operation Hours	3,173	3,200	.008 increase

PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION

STATE GRANT AGREEMENT No. 21905

THIS AGREEMENT is made and entered into by and between **THE STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "**State**"; and **City of Albany** hereinafter referred to as "**Recipient**". Recipient enters into this Agreement with State to secure financial assistance to complete the activities described in Exhibit B, hereinafter referred to as the "**Project**", attached hereto and by this reference made a part hereof.

RECITALS

1. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform. The State of Oregon acting through the Oregon Transportation Commission is authorized to enter into agreements and disburse funds for the purpose of supporting public transportation pursuant to ORS 184.670 to 184.733.
2. This Agreement is based upon, and is subject to, Oregon Revised Statutes (ORS), Oregon Administrative Rules, and Federal Transit Administration (FTA) regulations such as those contained in ORS 323.455, ORS 391.800 through 391.830 and FTA Circular 9040.1E including all associated references and citations. From time to time these laws, rules and regulations may be amended; and State reserves the right to amend this Agreement if it is affected. State will provide thirty days notice of impending changes and will prepare a supplemental agreement incorporating the changes to be executed by the parties.
3. The following documents, **Agreement Obligations and General Provisions, Exhibit A: Financial Information, and Exhibit B: Project Description and Budget** are attached hereto and by this reference made a part of this grant Agreement. The following document is incorporated by reference: **Fiscal Year 2004 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements**. These certifications and assurances are used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 2004. These certifications and assurances include all annual certifications required by 49 USC § 5311 Nonurbanized Area Formula Program.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT:

1. Estimated total project cost is **\$181,870.00**. Maximum allowable reimbursement shall be either **50%** of allowable costs or **90,935.00**, whichever is less.
2. This agreement is to begin on **July 1, 2004** and shall expire, unless otherwise terminated, on **June 30, 2005**.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year hereinafter written.

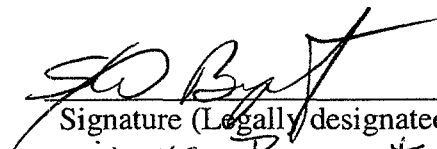
The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On March 18, 2004 the Director approved Subdelegation Order No. 14, which delegates the authority to conduct the following day-to-day operations to the Public Transit Division Manager:

Execute Oregon Transportation Commission intergovernmental agreements and grants for special payments to local governments and other non-profit units and operators of public transportation services for disbursement of state and federal funds for public transit programs. The Division Manager will maintain a listing of all intergovernmental agreements and grants and submit a quarterly report to the OTC.

City of Albany
P O Box 490
Albany, OR 97321

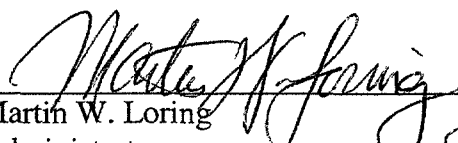
Oregon Department of Transportation
Public Transit Division
555 13th St. NE, Suite 3
Salem, Oregon 97301-4179



Signature (Legally designated representative)
Steve Bryant

Name (printed or typed)
City Manager 9-8-04

Title Date



Martin W. Loring
Administrator

Title Date 9/22/2004

Recipient's Legal Counsel Date
(If required in local process only)

Name (printed or typed)

Signature

Name (printed or typed)

Title Date

Agreement Obligations and General Provisions

I. RECIPIENT OBLIGATIONS

A. General Requirements

1. Recipient shall conduct activities in accordance with Exhibit B, Project Description and Budget. Recipient shall notify State in writing of changes in the Project prior to performing any changes and will not perform any changes to the Project listed in Exhibit B without specific written approval from State.
2. Recipient shall make purchases of any equipment, materials, or services pursuant to this Agreement under procedures consistent with Oregon Administrative Rules Chapter 125 for the Oregon Department of Administrative Services and Oregon State Law and in conformance to FTA Circular 4220.1D, *Third Party Contracting Requirements*, ensuring that:
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6. Recipient shall defend, save and hold harmless the State of Oregon, including the Oregon Transportation Commission, State, and their members, officers, agents, and employees from all claims, suits, actions of whatsoever nature resulting from or arising out of the activities of Recipient or its subcontractors, agents or employees under this agreement. Recipient shall not be required to indemnify State for any such liability arising out of negligent acts or omissions of the State of Oregon, its employees, or representatives. This provision is subject to the limitations, if applicable, set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300.

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10. Recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. 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.
11. In accepting this Agreement, Recipient certifies that 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 must provide notice to State if at any time it learns that this certification is erroneous when submitted or if circumstances have changed (new personnel, indictments, convictions, etc.).
12. 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 Federal Transit Administration, 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.

B. Audit Requirements

1. Recipients receiving Federal funds in excess of \$500,000 are subject to audit conducted in accordance with Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, Non-profit Institutions*. Recipient, if affected by this requirement, shall at Recipient's own expense, submit to State, Public Transit Division, 555 13th St. NE, Suite 3, Salem, OR 97301-4179, a copy of its A-133 annual audit covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subcontractor of Recipient responsible for the financial management of funds received under this Agreement.
2. Recipients receiving less than \$500,000 in Federal funds shall, at Recipient's own expense, submit to State, Public Transit Division, 555 13th St. NE, Suite 3, Salem, OR 97301-4179, a copy of any annual audit covering the funds expended under this Agreement by Recipient or any subcontractor of Recipient receiving funds as a result of this Agreement; and a copy of the management letter and any report that accompanies the annual audit covering the funds expended under this Agreement.

C. Other Federal Requirements

One of the principles of contracting with Federal funds received indirectly from the FTA is recognition that, as a condition of receiving the funds, certain specific requirements must be met not only by the Recipient, but also by any sub-recipients and contractors. To the extent applicable, Federal requirements extend to the third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier. The specific requirements for particular grant funds are found in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this grant agreement. Said Master Agreement is available upon request from Public Transit Division by calling (503) 986-3300 or accessing the FTA website: www.fta.dot.gov/library/legal

The following is not a complete list of Federal requirements. Rather it is a summary of various primary requirements associated with the type of transaction covered by this Agreement and the type of funds described in Exhibit A.

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252 42 USC 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 27.9, *Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance* which implements the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, and 49 CFR parts 37 and 38.
3. Recipient has, or will have, the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 USC § 5311; and to implement and manage the Project.
4. Recipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.
5. Recipient has complied with the transit employee protective provisions of 49 USC 5333(b).
6. Recipient will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. "Tripper services" that are part of the routine schedule and are open to the general public are not considered to be school bus services.

7. Recipient will correct any condition which State or FTA believes "creates a serious hazard of death or injury" in accordance with Section 22 of the Federal Transit Act of 1964, as amended.
8. Recipient will comply with the applicable provisions of 49 CFR part 26 related to Disadvantaged Business Enterprises and report quarterly to State. Each contract the grantee signs with the contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of State-assisted contracts. Failure by the contractor 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 the Recipient deems appropriate.
9. Recipient has certified to State that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance.
10. Recipient and contractors receiving in excess of \$100,000 in Federal funds must certify to State that they have not and will not use Federal funds to pay for influencing or attempting to influence an office 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.
11. Recipients, sub-recipients and their contractors with safety sensitive employees (except maintenance contractors) shall comply with the drug and alcohol testing regulations as defined by *Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations* (49 CFR part 655); and *Procedures of Transportation Workplace Drug and Alcohol Testing Programs* (49 CFR part 40). Recipient agrees to comply with, and ensures the compliance of its employees, sub-recipients and contractors with information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552.

II. STATE OBLIGATIONS

- A. State shall reimburse eligible costs incurred in carrying out the Project subject to the amounts shown in the Terms of Agreement.
- B. State certifies, at the time this Agreement is executed, that sufficient funds are

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available and authorized for expenditure to finance costs of this Agreement within State's current appropriated limitation within the current biennial budget.

- C. State reserves the right to withhold payment of funds if there are unresolved audit findings, or inadequate information concerning Recipient's activities. State reserves the right to reallocate any portion of the Agreement amount which State reasonably believes will not be used by Recipient within the Terms of Agreement.

III. GENERAL PROVISIONS

- A. This Agreement may be terminated by mutual written consent. State may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Recipient, or at such later date as may be established by State, under any of the following conditions. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
1. If Recipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 2. If Recipient fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize; or
 3. If State fails to receive 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
 4. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 5. Federal or State Laws, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities described in Exhibit B of the Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement; or
 6. The Project would not produce results commensurate with the further expenditure of funds; or
 7. 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; or
 8. The commencement, prosecution, or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, illegal; or
 9. Recipient is in default under any provision of this Agreement.

- B.** Recipient acknowledges and agrees that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
- C.** This Agreement may be revised or amended by a supplemental written agreement between the parties and executed with the same formalities as this Agreement.
- D.** This Agreement and attached and referenced exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

EXHIBIT A
FY 2004 – 05 FINANCIAL INFORMATION

The information below will assist auditors to prepare a report in compliance with the requirements of the Office of Management and Budget (OMB) Circular A-133.

This grant is financed by the funding source(s) as indicated below:

Federal Program Title Federal Funds Available through: 49 USC 5311 Small City and Rural Areas Program	State Program Title N/A
Federal Catalogue Number: 20.509	
Federal Grant Number: OR184021	State Grant Number: N/A
Total Federal Funding \$90,935.00	Total State Funding N/A
Federal Funding Agency U.S. Department of Transportation Federal Transit Administration Region X, Suite 3142 Federal Building 915 Second Avenue Seattle, WA 98174	State Funding Agency Oregon Department of Transportation Public Transit Division Mill Creek Building 555 13 th Street NE, Suite 3 Salem, OR 97301-4179

Exhibit B
Part I
Project Description and Budget

Project Description (1)	Agreement Amount	Local Share	Total
STIP Key # 11678 Operating funds for Albany Transit System	\$90,935.00	\$90,935.00	\$181,870.00
TOTAL	\$90,935.00	\$90,935.00	\$181,870.00
Project Description			
Operating funds for City of Albany Transportation Program. Service type is fixed route within the city limits of Albany plus some urban growth boundary territory. The service operates Monday-Friday, 6:30 a.m to 6:30 p.m.			

Performance Measures for FY 2003-04

	Current FY 2004	Anticipated FY 2005	% Increase or Decrease
Total Passenger One-Way	73,000	74,000	1% increase
E & D One-Way Trips	19,764	19,980	1% increase
Non- E & D One-Way Trips	53,436	54,020	1% increase
Revenue Service Miles	73,466	73,466	Flat
Revenue Operation Hours	4,813	4,813	Flat