

RESOLUTION NO. 5628

A RESOLUTION ACCEPTING THE OREGON DEPARTMENT OF TRANSPORTATION, PUBLIC TRANSIT DIVISION, RURAL AND SMALL URBAN AREAS, SECTION 5311, OPERATING ASSISTANCE GRANTS FOR FISCAL YEAR 2008-2009

WHEREAS, the state of Oregon Department of Transportation, Public Transit Division, has submitted the 2008-2009 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; and

WHEREAS, Oregon Local Budget Law provides that expenditures in the year of receipt of grants, gifts, bequests or devices transferred to the local government in trust for a specific purpose may be made after enactment of a resolution or ordinance authorizing the expenditure (ORS 294.326(3)).

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council accepts the Section 5311 Operating Assistance Grants in an amount not to exceed \$225,792 for Albany Transit System and an amount not to exceed \$167,208 for the Linn-Benton Loop Transit System for the fiscal year 2008-2009; and

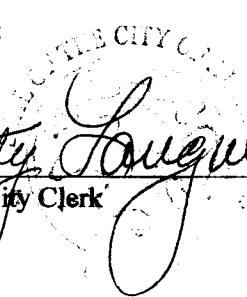
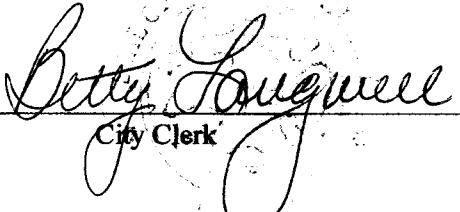
BE IT FURTHER RESOLVED that the Albany City Council accepts these grants and authorizes the Public Works Director to execute the agreements and conditions for their acceptance.

DATED AND EFFECTIVE THIS 25TH DAY OF JUNE 2008.



Mayor

ATTEST:

City Clerk

**PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION**

STATE GRANT AGREEMENT NO. 24832

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 A, hereinafter referred to as the "**Project**", attached hereto and by this reference made a part hereof.

RECITALS

1. By the authority granted in Oregon Revised Statutes (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, ORS, Oregon Administrative Rules (OAR), and Federal Transit Administration (FTA) regulations such as those contained in ORS 323.455, ORS 391.800 through 391.830 and FTA Circular 9040.1F, 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.

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 **\$298,160.00**. Maximum allowable reimbursement shall be either **56.08%** of eligible costs or **\$167,208.00**, whichever is less.
2. This Agreement shall begin on **July 1, 2008** or upon execution by all parties, whichever date is later, and shall expire, unless otherwise terminated, on **June 30, 2009**.

The following documents, **Agreement Obligations and General Provisions, Exhibit A: Project Description and Budget, and Exhibit B: Financial Information**, are attached hereto and by this reference made a part of this Agreement. The following document is incorporated by reference: **Fiscal Year 2008 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements**.

Misc. Contracts and Agreements
Agreement No. 24832
Rural and Small Urban Areas (5311) Formula

These certifications and assurances are used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 2008. These certifications and assurances include all annual certifications required by 49 U.S.C. § 5311 Rural and Small Urban Areas Program.

SIGNATURE PAGE TO FOLLOW

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 Administrator:

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
PO Box 490
Albany, Oregon 97321

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

Diane Taniguchi-Dennis
Signature (Legally designated representative)

Michael R. Ward
Signature

Diane Taniguchi-Dennis
Name (printed or typed)

Michael R. Ward
Name

Public Works Director 6/30/08
Title Date

Administrator 7/1/2008
Title Date

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

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 A, 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 A 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 OAR Chapter 125 for the Oregon Department of Administrative Services and ORS and in conformance to FTA Circular 4220.1E, *Third Party Contracting Requirements*, ensuring that:
 - a. all applicable clauses required by Federal Statute, executive orders and their implementing regulations are included in each competitive procurement;
 - b. all procurement transactions are conducted in a manner providing full and open competition;
 - c. 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);
 - d. contracts will not exceed a period of five (5) years without prior approval of FTA;
 - e. architectural and engineering procurements are based on Brooks Act procedures unless the State of Oregon has adopted a statute that governs such procurements.
3. If Recipient enters into a subagreement or contract for services or purchases associated with this Agreement, Recipient is responsible for submission of any such draft subagreement or contract to State for review and approval. Recipient is also responsible to obtain State approval of any procurement process prior to solicitation, which approval shall not be unreasonably held. Best Practices Procurement Manual, a technical aid prepared by the FTA, is available on the FTA website: www.fta.dot.gov for further assistance.
4. 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, 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) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Misc. Contracts and Agreements
Agreement No. 24832
Rural and Small Urban Areas (5311) Formula

5. Recipient shall maintain all required records for at least six (6) years after State's final payment.
6. To receive reimbursement as described in Section II, Paragraph A, of this Agreement, Recipient shall submit quarterly progress reports, unless an alternative reporting schedule is mutually agreed upon by Recipient and State. 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.
7. 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, and Quarter 4 is April through June. Reports are due to State, Public Transit Division, 555 13th St. NE Suite 3, Salem OR 97301 no later than forty-five (45) days after the last day of the quarter.
8. 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.
9. Notwithstanding the foregoing defense obligations under the paragraph above, 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 Recipient 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 government 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.
10. 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.
11. All employers, including Recipient, that employ subject workers who 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.

12. 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.
13. 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 subagreements. 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.
14. 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 the 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.).
15. Any recipient of grant funds, pursuant to this Agreement with State, shall assume sole liability for that Recipient's breach of the conditions of this Agreement, and shall, upon Recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available, 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, And 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 the 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.

3. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Oregon Secretary of State's Audits Division in response to allegations with respect to the funds expended under this Agreement. Recipient's liability for any costs incurred under this provision is not limited to the grant amount defined by the Terms of Agreement, and is binding whether or not the allegations are substantiated. It is also mutually agreed and understood that any audit costs incurred as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

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 subrecipients and contractors. To the extent applicable, Federal requirements extend to the third party contractors and their contracts at every tier, and subrecipients and their subagreements at every tier. The specific requirements for particular grant funds are found in the Master Agreement that is signed and attested to by State. The FTA 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 accessing the FTA website: www.fta.dot.gov.

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.

1. Recipient 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 (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27, *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance* which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient has, or will have the necessary legal, financial, and managerial capacity to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. § 5311; and to implement and manage the Project.

Misc. Contracts and Agreements
Agreement No. 24832
Rural and Small Urban Areas (5311) Formula

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 U.S.C. § 5333(b).
6. Recipient will comply with applicable provisions of 49 CFR 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 of FTA believes "creates a serious hazard of death or injury" in accordance with Section 22 of the Federal Transit Act, as amended.
8. Recipient will comply with the applicable provisions of 49 CFR 26 related to Disadvantaged Business Enterprises and report quarterly to State. Each contract Recipient signs with the contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, subrecipient 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 is will comply with 49 CFR 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 officer or employee of any Federal department or agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant, cooperative agreement or any other Federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, *Disclosure Form to Report Lobbying* and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.
11. Recipients, subrecipients 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 655); and Procedures of Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40). Recipient agrees to comply with, and ensures the compliance of its employees, subrecipients and contractors with information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 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 appropriation or limitation of 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 of both parties. 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:
 - 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 ten (10) days or such longer period as State may authorize; or
 - 3. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - 4. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - 5. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the activities described in Exhibit A of the Agreement are no longer allowable or no longer eligible for funding proposed by this Agreement; or

Misc. Contracts and Agreements
Agreement No. 24832
Rural and Small Urban Areas (5311) Formula

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. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
- C. Recipient shall keep proper and complete books of record and account and maintain all fiscal records related to the Agreement and the Project in accordance with generally accepted accounting principles, generally accepted governmental accounting standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its sub recipients and subcontractors complies with these requirements. 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 six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for reasonable costs of copies is reimbursable by State.
- D. This Agreement may be revised or amended by a supplemental written agreement between the parties and executed with the same formalities as this Agreement.
- E. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- F. This Agreement and attached 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
PROJECT DESCRIPTION AND BUDGET

| Project Description | Grant Amount | Local Share | Project Total |
|--|---------------------|---------------------|----------------------|
| General Public Transportation | \$167,208.00 | \$130,952.00 | \$298,160.00 |
| TOTAL | \$167,208.00 | \$130,952.00 | \$298,160.00 |
| Expanded Project Description | | | |
| This grant provides funding for general public transportation services between Albany and Corvallis. Commuter service is offered Monday through Saturday. Estimated ridership is 88,000 passenger trips. | | | |

EXHIBIT B
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 U.S.C. § 5311 Program | Total Federal Funding \$167,208.00 |
| Federal Catalogue Number: 20.509 | |
| 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 |



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation
Public Transit Division
Mill Creek Office Building
555 13th Street NE, Suite 3
Salem, OR 97301-4179
Telephone (503) 986-3300
FAX (503) 986-4189
www.oregon.gov/odot/pt

July 14, 2008

Ted Frazier
City of Albany
PO Box 490
Albany OR 97321

Re: ODOT Grant Agreement Number: 24832

Dear Mr. Frazier:

Enclosed is an original executed grant agreement number **24832** between **ODOT - Public Transit Division and City of Albany** for your records.

Please call me at 503-986-4414 if you have questions or require additional information.

Sincerely,

Patricia Isley

For:

Sharon Peerenboom
Rural & Small City Program Manager
Sharon.k.peerenboom@odot.state.or.us

Enclosure:

**PUBLIC TRANSIT DIVISION
OREGON DEPARTMENT OF TRANSPORTATION**

STATE GRANT AGREEMENT NO. 24811

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 A, hereinafter referred to as the **"Project"**, attached hereto and by this reference made a part hereof.

RECITALS

1. By the authority granted in Oregon Revised Statutes (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, ORS, Oregon Administrative Rules (OAR), and Federal Transit Administration (FTA) regulations such as those contained in ORS 323.455, ORS 391.800 through 391.830 and FTA Circular 9040.1F, 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.

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 **\$402,625.00**. Maximum allowable reimbursement shall be either **56.08%** of eligible costs or **\$225,792.00**, whichever is less.
2. This Agreement shall begin on **July 1, 2008** or upon execution by all parties, whichever date is later, and shall expire, unless otherwise terminated, on **June 30, 2009**.

The following documents, **Agreement Obligations and General Provisions, Exhibit A: Project Description and Budget, and Exhibit B: Financial Information**, are attached hereto and by this reference made a part of this Agreement. The following document is incorporated by reference: **Fiscal Year 2008 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements**.

Misc. Contracts and Agreements
Agreement No. 24811
Rural and Small Urban Areas (5311) Formula

These certifications and assurances are used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 2008. These certifications and assurances include all annual certifications required by 49 U.S.C. § 5311 Rural and Small Urban Areas Program.

SIGNATURE PAGE TO FOLLOW

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 Administrator:

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
PO Box 490
Albany, Oregon 97321

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

Diane Taniguchi-Dennis
Signature (Legally designated representative)

Michael R. Ward
Signature

Diane Taniguchi-Dennis
Name (printed or typed)

Michael R. Ward
Name

Public Works Director 6/30/08
Title Date

Administrator 7/1/2008
Title Date

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

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 A, 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 A 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 OAR Chapter 125 for the Oregon Department of Administrative Services and ORS and in conformance to FTA Circular 4220.1E, *Third Party Contracting Requirements*, ensuring that:
 - a. all applicable clauses required by Federal Statute, executive orders and their implementing regulations are included in each competitive procurement;
 - b. all procurement transactions are conducted in a manner providing full and open competition;
 - c. 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);
 - d. contracts will not exceed a period of five (5) years without prior approval of FTA;
 - e. architectural and engineering procurements are based on Brooks Act procedures unless the State of Oregon has adopted a statute that governs such procurements.
3. If Recipient enters into a subagreement or contract for services or purchases associated with this Agreement, Recipient is responsible for submission of any such draft subagreement or contract to State for review and approval. Recipient is also responsible to obtain State approval of any procurement process prior to solicitation, which approval shall not be unreasonably held. Best Practices Procurement Manual, a technical aid prepared by the FTA, is available on the FTA website: www.fta.dot.gov for further assistance.
4. 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270, 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) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. Recipient shall maintain all required records for at least six (6) years after State's final payment.
6. To receive reimbursement as described in Section II, Paragraph A, of this Agreement, Recipient shall submit quarterly progress reports, unless an alternative reporting schedule is mutually agreed upon by Recipient and State. 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.
7. 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, and Quarter 4 is April through June. Reports are due to State, Public Transit Division, 555 13th St. NE Suite 3, Salem OR 97301 no later than forty-five (45) days after the last day of the quarter.
8. 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.
9. Notwithstanding the foregoing defense obligations under the paragraph above, 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 Recipient 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 government 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.
10. 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.
11. All employers, including Recipient, that employ subject workers who 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.

12. 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.
13. 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 subagreements. 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.
14. 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 the 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.).
15. Any recipient of grant funds, pursuant to this Agreement with State, shall assume sole liability for that Recipient's breach of the conditions of this Agreement, and shall, upon Recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available, 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, And 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 the 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.

3. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Oregon Secretary of State's Audits Division in response to allegations with respect to the funds expended under this Agreement. Recipient's liability for any costs incurred under this provision is not limited to the grant amount defined by the Terms of Agreement, and is binding whether or not the allegations are substantiated. It is also mutually agreed and understood that any audit costs incurred as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

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 subrecipients and contractors. To the extent applicable, Federal requirements extend to the third party contractors and their contracts at every tier, and subrecipients and their subagreements at every tier. The specific requirements for particular grant funds are found in the Master Agreement that is signed and attested to by State. The FTA 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 accessing the FTA website: www.fta.dot.gov.

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.

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 State 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27, *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance* which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient has, or will have the necessary legal, financial, and managerial capacity to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. § 5311; and to implement and manage the Project.

Misc. Contracts and Agreements
Agreement No. 24811
Rural and Small Urban Areas (5311) Formula

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 U.S.C. § 5333(b).
6. Recipient will comply with applicable provisions of 49 CFR 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 of FTA believes "creates a serious hazard of death or injury" in accordance with Section 22 of the Federal Transit Act, as amended.
8. Recipient will comply with the applicable provisions of 49 CFR 26 related to Disadvantaged Business Enterprises and report quarterly to State. Each contract Recipient signs with the contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, subrecipient 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 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 officer or employee of any Federal department or agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant, cooperative agreement or any other Federal award. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, *Disclosure Form to Report Lobbying* and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.
11. Recipients, subrecipients 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 655); and Procedures of Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40). Recipient agrees to comply with, and ensures the compliance of its employees, subrecipients and contractors with information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 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 appropriation or limitation of 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 of both parties. 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:
 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 ten (10) days or such longer period as State may authorize; or
 3. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 4. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 5. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the activities described in Exhibit A 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. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
- C. Recipient shall keep proper and complete books of record and account and maintain all fiscal records related to the Agreement and the Project in accordance with generally accepted accounting principles, generally accepted governmental accounting standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its sub recipients and subcontractors complies with these requirements. 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 six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for reasonable costs of copies is reimbursable by State.
- D. This Agreement may be revised or amended by a supplemental written agreement between the parties and executed with the same formalities as this Agreement.
- E. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- F. This Agreement and attached 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
PROJECT DESCRIPTION AND BUDGET

| Project Description | Grant Amount | Local Share | Project Total |
|--|---------------------|---------------------|----------------------|
| General Public Transportation | \$225,792.00 | \$176,833.00 | \$402,625.00 |
| TOTAL | \$225,792.00 | \$176,833.00 | \$402,625.00 |
| Expanded Project Description | | | |
| This grant provides funding for general public transportation in the City of Albany. Fixed route service is provided within the city limits of Albany plus some urban growth boundary areas. Service is provided Monday through Friday. Estimated ridership is 74,000 passenger trips. | | | |

EXHIBIT B
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 U.S.C. § 5311 Program | Total Federal Funding \$225,792.00 |
| Federal Catalogue Number: 20.509 | |
| 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 |



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation
Public Transit Division
Mill Creek Office Building
555 13th Street NE, Suite 3
Salem, OR 97301-4179
Telephone (503) 986-3300
FAX (503) 986-4189
www.oregon.gov/odot/pt

July 14, 2008

Ted Frazier
City of Albany
P.O. Box 490
Albany OR 97321

Re: ODOT Grant Agreement Number: 24811

Dear Mr. Frazier:

Enclosed is an original executed grant agreement number **24811** between **ODOT - Public Transit Division and City of Albany** for your records.

Please call me at 503-986-4414 if you have questions or require additional information.

Sincerely,

Patricia Isley

For:

Sharon Peerenboom
Rural & Small City Program Manager
Sharon.k.peerenboom@odot.state.or.us

Enclosure: