

RESOLUTION NO. 1449

A RESOLUTION AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH CLACKAMAS COUNTY FOR THE PROVISION AND REIMBURSEMENT OF EXPANDED ELDERLY AND DISABLED DEMAND-RESPONSE TRANSIT SERVICES FOR FISCAL YEARS 2026 AND 2027.

WHEREAS, Oregon Revised Statutes Chapter 190.010 authorizes local governments to enter into intergovernmental agreements for the performance of any and all functions and activities that a party to the agreement has authority to perform;

WHEREAS, Clackamas County and the City of Canby have identified a need for coordinated Elderly and Disabled (E&D) demand-response transit services to improve operational efficiency, collaboration, and service coverage for Canby residents;

WHEREAS, the agreement provides a framework for cooperation between the City and the County for the operation of demand-response transit service within the service boundary area between the Canby Urban Growth Boundary (UGB) and County boundary;

WHEREAS, under this agreement, the City of Canby will provide operational oversight, vehicles, and staffing for demand-response service, while the County will provide reimbursement for eligible expenses up to \$50,000 through June 30, 2027; and

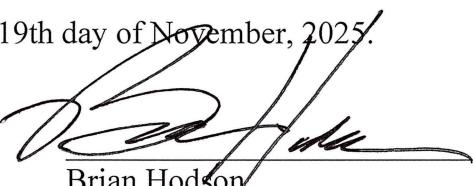
WHEREAS, the City Council finds it in the best interest of the City to approve this intergovernmental agreement to ensure continued access and mobility options for elderly and disabled residents of the Canby area.

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

1. The Interim City Administrator, Randy Ealy, is hereby authorized to execute on behalf of the City of Canby the Intergovernmental Agreement (IGA) with Clackamas County for the provision of Elderly and Disabled demand-response transit services for Fiscal Years 2026 and 2027.
- 2.
3. The IGA, attached hereto as Exhibit "A" and by this reference incorporated herein, shall be effective upon execution and shall remain in effect in accordance with its terms.

This Resolution shall take effect on November 19th, 2025.

ADOPTED by the Canby City Council on the 19th day of November, 2025.



Brian Hodson,
Mayor

ATTEST:



Maya Benham, CMC
City Recorder

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CITY OF CANBY, OR**

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

RECITALS

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

This Agreement provides the basis for a cooperative working relationship for the purpose of providing demand response transit service in partnership with the City's Canby Area Transit ("CAT") transit service to increase operational efficiencies, collaboration, and cost-effective management of both services.

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

TERMS

- 1. Term.** This Agreement shall be effective upon signature and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2027, whichever is sooner. The City may seek reimbursement for eligible costs set forth in Exhibit B incurred on or after July 1, 2025.
- 2. Scope of Work.** The City agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
- 3. Consideration.** The County agrees to reimburse City, from available and authorized funds, a sum not to exceed **Thirty-Three Thousand Four Hundred Sixty Dollars (\$33,460)** for accomplishing the Work required by this Agreement in accordance with Exhibit B.
- 4. Payment.** Unless otherwise specified, the City shall submit monthly invoices for Work performed as required in **Exhibit A** and shall include the total amount billed to date by the City prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to City following the County's review and approval of invoices submitted by City. City shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
- 5. Representations and Warranties.**
 - A. City Representations and Warranties:** City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this

Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.

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

6. **Termination.**

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

7. **Indemnification.**

- A. City shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of City, its subcontractors, agents, or employees. The City agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from

and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the City or the City's employees, subcontractors, or agents.

However, neither City nor any attorney engaged by City shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall City settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

8. **Insurance.** The City agrees to furnish the County with evidence of commercial general liability insurance and auto liability insurance, with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County and TriMet, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate. If self-insured, City shall provide documentation to the County of City's self-insured status by completing the Self-Insurance Certification form provided by the County.
9. **Notices; Contacts.** Any notice provided under this Agreement shall be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail shall be deemed to be given three days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

Kristina Babcock or their designee will act as liaison for the County.

Contact Information:

Kristina Babcock, Transit Services Manager
2051 Kaen Rd, Oregon city, OR 97054
kbabcock@clackamas.us (971-349-0481)

Todd Wood or their designee will act as liaison for the City.

Contact Information:

Todd Wood, Transit Director, City of Canby
195 Hazel Dell Way Suite C, Canby, OR 97013
woodt@canbyoregon.gov (503-266-0751)

10. General Provisions.

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

Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

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

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

- L. No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. Subcontract and Assignment.** City shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve City of any of its duties or obligations under this Agreement.
- N. Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. Time is of the Essence.** City agrees that time is of the essence in the performance this Agreement.
- R. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. Confidentiality.** City acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by

City or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). City agrees to hold Confidential Information in strict confidence, using at least the same degree of care that City uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- U. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- V. Funder Requirements.** City agrees to comply with the funding source requirements contained in Exhibit C, attached hereto and incorporated herein.

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

Clackamas County

Chair, Board of County Commissioners

Date

Approved as to Form:

County Counsel

Date

City of Canby

Interim City Administrator

11-24-25

Date

EXHIBIT A SCOPE OF WORK

City Scope of Work

Subject to the terms of this Agreement, City agrees to provide the following:

- Act as on-sight liaison and provide operational oversight of CAT on behalf of County with shared operations contractor providing immediate communication with the contractor and their employees of policy and contractor functions. This includes contract compliance checks such as payroll, billable hours audit and policy compliance. Participate in contractor-led safety meetings.
- Provide expanded demand response services (riders that meet the eligibility requirements for the City can call and request rides for specific days and times) in the area outline in **Exhibit E**, between the IGA Boundary and Canby UGB.
- Act as on-sight liaison and provide operational oversight on behalf of County with operations contractor (“TransDev”) providing immediate communication with the contractor and their employees of policy and contractor functions. This includes contract compliance checks such as payroll, billable hours audit and policy compliance, and participating in contractor-led safety meetings.
- Work with the County on mutually agreeable policy and program development, in compliance with applicable transit rules and guidelines, and implement as needed, including communicating changes to contractor.
- Submit invoices to County for reimbursement as part of monthly billing.
- Interact with public, including information requests.
- Provide vehicle(s) to be used for demand response services.
- Compile data required for completion of fiscal and grant reports, including tracking performance measures. Collaborate and assist with completion of grant applications and other activities designed to promote long term stable funding.
- Provide necessary staff and other administrative resources necessary to fulfill its obligations under this Agreement.
- Provide demand response services Monday through Friday from 5:00am to 8:15pm.
- Provide demand response service for any persons in the boundary as outlined in Exhibit E that are 65 years old and older and/or people with disabilities. All riders will be required to complete an application.
- Provide demand response rides at a cost of \$1.00 per ride. Deduct these fares from cost on monthly invoice to the County.
- Reimburse County for fees associated with E-Fare technology on Canby Area Transit Vehicles.

- Participate in website update and maintenance meetings as needed to ensure the website remains a quality product for end users.
- Pay required match for Website Maintenance.
- Other tasks and projects as needed.

County Scope of Work

Subject to the terms of this Agreement, County agrees to provide the following:

- Provide ongoing fiscal support to expanded Elderly and Disabled Transportation Services.
- Contract and initially pay Cubic Transportation Systems, Inc. (UMO) for all E-Fare technology on Canby Area Transit Vehicles; all fee's incurred required reimbursement.
- Contract and initially pay Jeff Jimerson Design, Inc (MAC Ave) for all website maintenance fees; required match from City of Canby outline in Exhibit B.
- Complete and submit required reports to funders in a timely manner.
- Reimburse City in accordance with Section 3 of the Agreement for eligible costs incurred, as further described in Exhibit B.
- Provide administrative and operational support as needed.

EXHIBIT B
BUDGET

BUDGET		
	Year 1 7/25 to 6/26	Year 2 7/26 to 6/27
Expanded Elderly and Disabled Transportation	\$ 25,000.00	\$ 25,000.00
TOTAL	\$ 25,000.00	\$ 25,000.00

Total Compensation under this agreement shall not exceed \$50,000

RIDES PROVIDED		
	Year 1 7/25 to 6/26	Year 2 7/26 to 6/27
Expanded Elderly and Disabled Transportation	100	100
TOTAL	100	100

REIMBURSEMENT BUDGET		
	Year 1 7/25 to 6/26	Year 2 7/26 to 6/27
E-Fare Technology via UMO	\$ (7,020.00)	\$ (7,020.00)
Website Maintenance via MAC Ave	\$ (1,250.00)	\$ (1,250.00)
TOTAL	\$ (8,270.00)	\$ (8,270.00)

E-Fare Breakdown		
UMO Per Vehicle Rate	\$ 65.00	
Canby Area Transit Vehicles		9
Total / Month	\$ 585.00	
Total / Year	\$ 7,020.00	

EXHIBIT C
REPORTING REQUIREMENTS

Reporting:

City shall submit on a monthly basis a narrative summary of the work performed on behalf of Canby Area Transit, including progress on any planning or special projects.

Invoicing:

City, through designated staff, shall submit to County a monthly invoice for elderly and disabled demand response services. Any bus rental fees will include a summary of rental use.

Farebox detail will be provided monthly and fares will be deducted from the total bill.

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

E-mail address: kbabcock@clackamas.us

County shall make payment to City within 30 days of receipt of each invoice submitted.

EXHIBIT D
SPECIFIC AGREEMENT PROVISIONS

City (also referred to as “Subrecipient”) shall comply with the provisions as set forth in this Exhibit. Where provided in Exhibit D, Subrecipient shall require each of its lower-tier subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit. To the Extent that these terms conflict with the provisions of the Contract above, the provisions of this Exhibit D shall control.

1. Disbursement and Recovery of STIF Formula Funds.

- A. **Disbursement Generally.** TriMet shall promptly disburse STIF Formula Funds to Subrecipient after the Oregon Department of Transportation provides funding to TriMet in accordance with and subject to approval of the STIF Plan, the terms and conditions of this Agreement, and Subrecipient's compliance with this Agreement. As used in this Section, “promptly,” means within 5 business days of TriMet's receipt of STIF Formula Funds from ODOT, absent a written notification from TriMet to Subrecipient explaining the reason(s) for any delay beyond 5 business days. Subject to the forgoing and based on the current and best available information, TriMet anticipates the following schedule for distribution of STIF Formula funds to Subrecipient:
- i. Upon execution of this Agreement and to the extent TriMet has received funds from ODOT, TriMet shall disburse funds to the Subrecipient as outlined in Exhibit E. TriMet will make disbursements quarterly following receipt from ODOT. ODOT expects to disburse funds to TriMet on January 15, April 15, July 15, and October 15 each year during the STIF Plan Period.
- ii. TriMet will provide a written summary of total funds received and total funds disbursed with each disbursement made under this Agreement to all Subrecipients.
- B. **STIF Plan Budget Revisions.** In the event that Subrecipient determines that funds need to be shifted between tasks within that Subrecipient's Project or between that Subrecipient's Projects as allowed under ODOT published guidance, Subrecipient's Project Manager will submit a transfer request to TriMet's Project Manager for Reporting and Compliance. TriMet will promptly request approval from ODOT on Subrecipient's behalf.
2. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to TriMet as follows:

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the STIF Formula Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement
- (1) have been duly authorized by all necessary action of Subrecipient and
- (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet and County immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- E. **Policies and Procedures.** Subrecipient represents and warrants that it has all of the policies and procedures in place to ensure compliance with OAR 732, Divisions 40 and 42, and to achieve the goals and outcomes specified in the Agreement, including but not limited to program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety

and asset management.

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

3. Retention of Records and Audit Expenses

- A. Retention of Records.** Subrecipient shall retain and keep and require its subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Formula Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient and its subcontractors shall retain the records until the questions are resolved.
- B. Capital Asset Records.** For any Capital Asset purchased with STIF Formula Funds by Subrecipient or a subcontractor, all records relating to such Capital Assets shall be maintained for three years after disposition of the Capital Asset.
- C. Audit Requirements.** Subject to the applicable limits of the Oregon Constitution and the Oregon Tort Claim Act, Subrecipient shall indemnify and hold harmless TriMet and County from the cost of any audits or special investigations to the extent arising from or related to Subrecipient's use of STIF Formula Funds in breach of this Agreement or applicable law. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement. This section does not apply to regular audit and compliance reviews that are conducted pursuant to Section 2 of this Agreement.

4. Subrecipient Sub agreement and Procurement

- A. Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.
 - i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being

discovered.

- B. **Subrecipient's sub agreement(s) shall require the other party to such sub agreement (s) to indemnify, defend, save and hold harmless TriMet, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including reasonable attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that TriMet shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of TriMet, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.**

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

Subrecipient shall require the other party, or parties, to each of its sub agreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in this Agreement.

- C. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project in compliance with all applicable procurement laws and policies.

5. Reserved.

6. General Provisions

- A. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against TriMet or Subrecipient with respect to which the other party may have liability, the notified party must promptly notify the other party in writing of the Third Party Claim and deliver to the other party

a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a party of the notice and copies required in this paragraph and meaningful opportunity for the party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that party's liability with respect to the Third Party Claim.

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

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

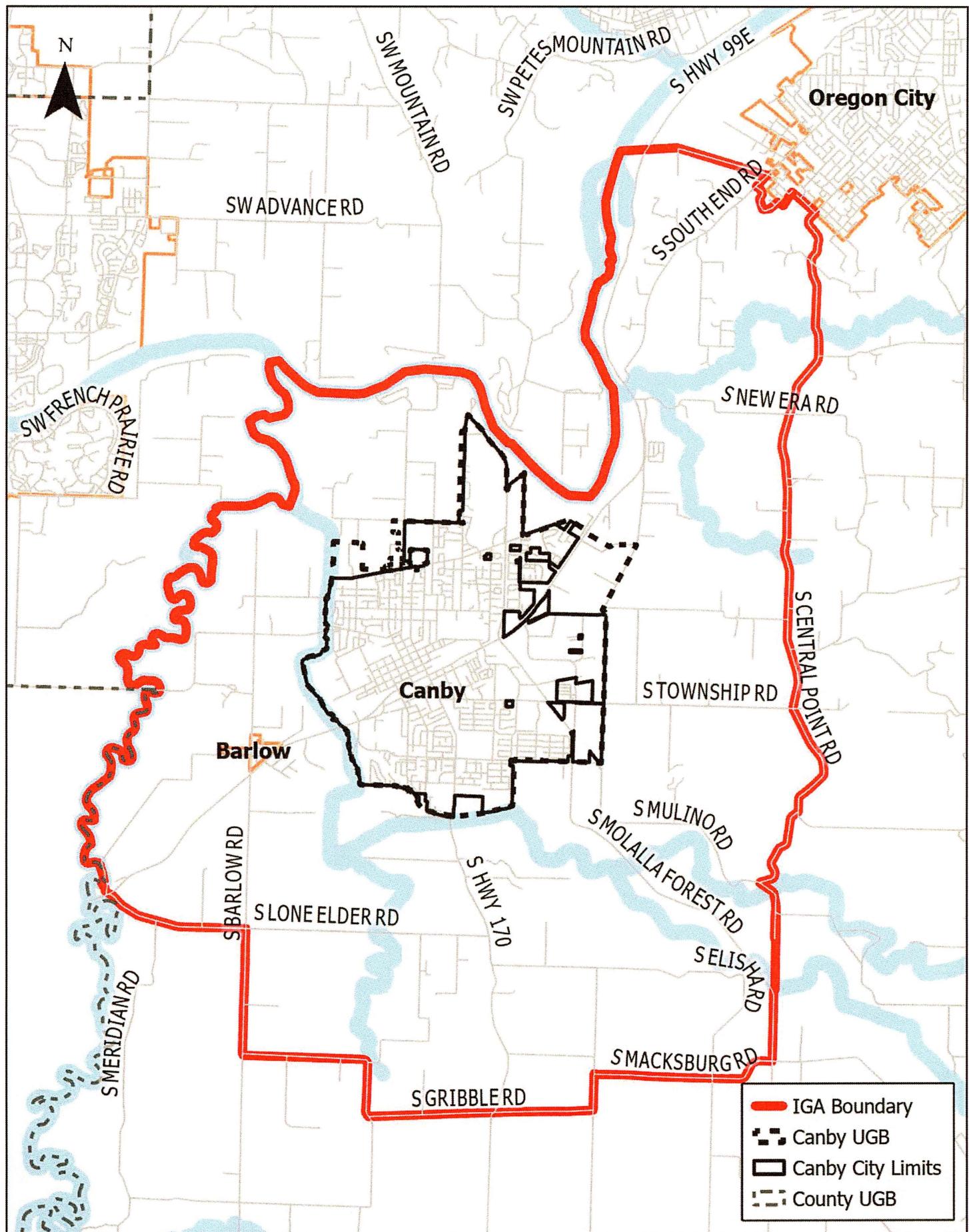
- B. **Duplicate Payment.** Subrecipient is not entitled to compensation or any

other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other party, organization or individual.

- C. No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- D. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 12 Communications of the Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given three days after the date of mailing. If email is used for communications pursuant to the following Sections, either mail or personal delivery must also be employed by the sender to the recipient and the later of the delivery dates is the date that will be used to calculate any timeframes for responses or cure periods for the recipient: Section 5.2; Exhibit A, Sections 1(A), 3(C), 5, and 6(A); and Exhibit C, Section 7.
- E. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- F. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these

requirements. Subrecipient shall include in any subcontracts to perform services pursuant to this Agreement a provision requiring a subcontractor to comply with this Subsection F, and that failure to do so is a material breach of the subcontract with Subrecipient.

- G. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of TriMet. Subrecipient 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 PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the parties.



**Canby Area Transit (CAT) &
Clackamas County
IGA Boundary**

0 1 Miles

Date: May 7, 2024
By: Canby Planning
Source: Clackamas County GIS Portal