

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Approving the )  
Service Agreement between Columbia )  
County and the Council of Seniors ) RESOLUTION NO. 59-02  
to Provide FTA Section 5311 )  
Operating Assistance Funds )  
\_\_\_\_\_)

WHEREAS, the County has been designated as a grant subrecipient for Operating Grants under the Small City and Rural Area Public Transportation Program under 49 U.S.C. Section 5311; and

WHEREAS, the Columbia County Council of Seniors, Inc. (the Council), oversees a county-wide transportation program for the elderly, disabled, and general public known as Columbia County Transportation or COLCO Transportation; and

WHEREAS, the County finds that it is beneficial and in the public interest to enter into agreement with the Council to provide operating assistance funds in order for COLCO Transportation to provide public transportation services to the elderly, disabled and general public within Columbia County, Oregon;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Columbia County approves the Service Agreement between Columbia County and the Columbia County Council of Seniors, Inc., to provide Section 5311 Operating Assistance Funds, a copy of which is attached hereto, labeled Exhibit "A" and incorporated herein by this reference.

2. The Columbia County Board of Commissioners is authorized to sign the agreement on behalf of Columbia County, Oregon.

DATED this 28<sup>th</sup> day of August, 2002.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:  \_\_\_\_\_  
Chair

By:  \_\_\_\_\_  
Commissioner

By:  \_\_\_\_\_  
Commissioner

Approved as to form

By:  \_\_\_\_\_  
Office of County Counsel

**SERVICE AGREEMENT**

(Small Cities and Rural Areas Public Transportation Program - FTA Section 5311)

THIS AGREEMENT is between Columbia County, a political subdivision of the State of Oregon, hereinafter referred to as COUNTY, and the Columbia County Council of Senior Citizens, Inc., dba COLCO Transportation, a private, non-profit organization, hereinafter referred to as COUNCIL.

WHEREAS, COUNTY is an eligible grant subrecipient for Capital and Operating Grants under the Small Cities and Rural Areas Public Transportation Program (FTA Section 5311) administered by the Oregon Department of Transportation (ODOT), Public Transit Division; and

WHEREAS, the COUNCIL oversees a county-wide transportation program for the elderly, disabled, and the general public known as Columbia County Transportation or COLCO Transportation; and

WHEREAS, the COUNTY finds that it is beneficial and in the public interest to enter into this agreement with the COUNCIL to provide public transportation services for the elderly, disabled, and the general public within Columbia County, Oregon;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth herein, COUNTY and COUNCIL agree as follows:

1. **Purpose of Agreement.** The purpose of this agreement is to provide for the undertaking of public transportation services in Columbia County, Oregon, by COUNCIL and to state the terms, conditions and mutual understanding of the parties as to the manner in which this will be undertaken and completed.
2. **Scope of Project.** COUNCIL shall undertake and complete the project as described herein, filed with and approved by the Oregon Department of Transportation, Public Transit Division/TBD (hereinafter referred to as ODOT), and in accordance with the terms and conditions of this agreement.
  - (a) COUNCIL shall perform all services and comply with all conditions agreed to and approved by COUNTY in ODOT Agreement No. 19740 for operating assistance (also referred to herein as the FTA Section 5311 Operating Grant).
  - (b) COUNCIL agrees to complete and submit all reports, grant applications, and related materials to the ODOT as required for the COUNTY to receive and remain eligible for the FTA Section 5311 Operating Grant.
  - (c) COUNCIL agrees to complete and submit to the ODOT all reports and related materials required by COUNTY for the administration of the FTA Section 5311 Operating Grant.
  - (d) COUNCIL agrees to maintain copies of all reports, grants, supplemental grant

information, or other information required by COUNTY or ODOT's FTA Section 5311 Small Cities and Rural Area Public Transportation Program for FY 2002-2003 for a period of not less than three (3) years.

(e) COUNCIL shall limit the use of funds paid under this agreement to activities which substantially conform to the description in Exhibit B of ODOT Agreement Number 19740.

3. **Period of Performance.** This agreement will be in effect **July 1, 2002**, through **June 30, 2003**. The COUNCIL will start and carry on the services described herein with all practical dispatch, in a sound, economical and efficient manner.

4. **Consideration.** COUNTY agrees to pass through to COUNCIL the FTA Section 5311 Operating Grant up to the amount of \$82,923 (eighty-two thousand, nine hundred twenty-three dollars) as provided by ODOT Agreement No. 19740. Portions of said amounts may be paid to COUNCIL on a quarterly basis as state funds are received from ODOT, and are subject to full repayment to COUNTY by COUNCIL for failure of COUNCIL to adhere to the terms and conditions of this agreement. COUNCIL shall not be compensated for work performed under this agreement from any other source. This agreement is subject to the appropriation of funds by COUNTY, and/or the receipt of funds from state and federal sources. In the event sufficient funds shall not be appropriated, and/or received by COUNTY, for the payment of consideration required to be paid under this Agreement, then COUNTY may terminate this Agreement in accordance with Section 19 of this Agreement.

5. **Contract Representatives.** Contract representatives for this agreement shall be:

Rita M. Bernhard  
Room 331, Courthouse  
230 Strand  
St. Helens, OR 97051  
(503) 397-4322

Merri Reamer  
P.O. Box 141  
St. Helens, OR 97051  
(503) 397-4000

All correspondence shall be sent to the above addressees when written notification is necessary. Contract representatives can be changed by providing written notice to the other party at the address listed.

6. **Permits; Certifications; Licenses.** During the term of this agreement, COUNCIL shall obtain and maintain all permits, certifications and licenses necessary for performance of this agreement prior to commencement of work.

7. **Compliance with Codes and Standards.** It shall be the COUNCIL's responsibility to demonstrate compliance with all applicable transportation and motor vehicle laws and codes, and with all other applicable federal, state and local acts, statutes, ordinances, regulations, provisions and rules.

8. **Access to Records.** The COUNTY's duly authorized representative shall have access to the

books, documents, papers, and records of COUNCIL, which are directly pertinent to this specific agreement for the purpose of making audit, examinations, excerpts, and transcripts.

9. **Reports.** COUNCIL shall provide COUNTY with written reports about the progress of the project on the same basis as is required by ODOT.
10. **FTA Section 5311 Program Assurances.** COUNCIL will comply with the ODOT Agreement No. 19740, the applicable Oregon Revised Statutes, Oregon Administrative Rules, and Federal Transit Administration regulations such as those contained in ORS 323.455, 391.800 to 391.830 and FTA Circular 9070.1E, including all associated references and citations, and the certifications and assurances used in connection with federal assistance programs administered by FTA during federal fiscal years 2002 and 2003, including annual certifications required by the 49 U.S.C. Section 5311 Non-Urban Formula.
11. **Other Assurances.** COUNCIL will comply with any other assurances that COUNTY may require.
12. **Lease Agreement.** For \$1.00 and other valuable consideration, receipt of which is acknowledged, COUNTY agrees to continue to lease FTA Section 5311 Capital Grant, STF Grant, and/or Community Transportation Program Grant vehicles and other grant equipment, for which COUNTY has acted as grantee, to COUNCIL for use in the COUNCIL county-wide program. COUNCIL agrees to pay any match money required or other costs associated with the purchase of vehicles or other equipment purchased through the FTA Section 5311 Capital Grant, STF Grant, and/or Community Transportation Program Grant. COUNCIL agrees to continue to comply with the terms and conditions of any such grants, related agreements and programs.
13. **Purchase of Equipment.** The purchase of capital equipment, financed in whole or in part, pursuant to this agreement, if any, shall be undertaken by COUNCIL in accordance with applicable State laws and standards as set forth by ODOT. Project equipment shall be purchased in conformity with the latest approved project budget.
14. **Certification.** At the beginning of each fiscal year, the COUNCIL shall submit to COUNTY a certification that the equipment, if any, is still being used and maintained according to the terms of this agreement.
15. **Approval.** Copies of the resolution adopted by the Board of County Commissioners of Columbia County, Oregon, to execute this agreement on behalf of the COUNTY, and the resolution adopted by COUNCIL's Board of Directors approving this agreement and authorizing its President to execute this agreement on behalf of the COUNCIL, with the dates of approval are attached hereto and incorporated herein by this reference.
16. **Records.** COUNCIL shall keep records as required by the COUNTY and ODOT concerning the use of the equipment, if any, and shall submit to COUNTY and the ODOT such information as is required in order to ensure compliance with this agreement.

17. **Safety.** During the period of this agreement, COUNCIL shall maintain the equipment and facilities at a high level of cleanliness, safety, and mechanical soundness.
18. **Inspection.** COUNCIL shall permit representatives from ODOT, the Comptroller General of the United States, and representatives from COUNTY to inspect all vehicles, facilities, equipment, and all relevant data and records pertaining to the use of the equipment.
19. **Other Transportation Operations.** COUNCIL will not engage in Charter Bus operations, as defined by ODOT, or School Bus operations (exclusive transportation of students and school personnel) in competition with private school operators.
20. **Transportation of Elderly and Disabled Persons.** COUNCIL will provide transportation services to elderly and disabled person that they can use effectively, and will not exclude any person on the basis of a disability from the benefits of transportation.
21. **Training.** COUNCIL agrees that all drivers of equipment leased from COUNTY shall have in their possession a valid Driver's License or a valid Commercial Driver's License (CDL); have an excellent driving record as outlined in the COLCO Transportation Driver's Manual and in the COLCO Transportation Safety Manual; have completed a State of Oregon approved Defensive Driving Course within the past 24 months; have completed an approved Medic First Aid Class and a CPR class within the past 12 months; have completed a P.A.T. Course and other training offered by COUNCIL. COUNCIL maintenance personnel will have a valid Driver's License or valid CDL; however, other training requirements will not apply to persons not authorized to operate COLCO Transportation vehicles. COUNCIL will ensure that maintenance personnel are covered under the vehicle liability insurance policy.
22. **Drug and Alcohol Testing.** COUNCIL agrees that all drivers, supervisors, and employees in safety sensitive positions will be tested for drugs and alcohol as outlined in the COUNCIL's written Drug Testing Policy as follows: Before Hire, Random Testing, Post Accident, Reasonable Suspicion, and Return to Duty. The COUNCIL agrees that drug and alcohol testing of employees will be completed as mandated by federal, state and county regulations.
23. **Labor Protection.** COUNCIL will comply with the regulations issued by the U.S. Department of Transportation and the Department of Labor pursuant to section 13(e) of the Federal Transit Act of 1964, as amended. COUNTY will ensure that the employment conditions of the COUNCIL's employees, and employees of the transportation providers in its area remain the same or improve as a result of aid received under this agreement.
24. **Compliance with Laws, Regulations, Ordinances.** COUNCIL will comply with all federal, state, and local laws, regulations and ordinances applicable to this agreement. In particular, COUNCIL agrees to comply with the following specific regulations: **Non-Discrimination, Disadvantaged Business Enterprises, Equal Employment Opportunity, the Americans with Disabilities Act and the Federal Transit Administration's Drug Abuse and Alcohol Misuse Testing Regulations.** COUNCIL will exclude no person on the grounds of race, religion, color, sex age, or national origin from the benefits that could

be received under this agreement. COUNCIL will provide for full and fair utilization of socially and/or economically disadvantaged business enterprises. COUNCIL will use its best efforts to ensure that DBEs have equal opportunity to compete for work under this agreement.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**DBE Obligation.** The 1987 Surface Transportation and Uniform Relocation Assistance Act (STURAA) requires that small business concerns owned and controlled by socially and economically disadvantaged individuals be given the maximum opportunity to participate in contracts and subcontracts financed by STURAA. STURAA authorized both federal highway and transit funding.

The Oregon Department of Transportation (ODOT) has developed a Disadvantaged Business Enterprise (DBE) program that is implemented by ODOT's Civil Rights section. The DBE program sets goals for participation by minority-owned and women-owned firms, certifies firms qualifying to participate in the program and monitors actual participation in the department's contracts.

ODOT and FTA have set a goal of 10 percent DBE participation in the section's federally funded transit program.

### **EQUAL EMPLOYMENT OPPORTUNITY**

With the execution of this agreement, COUNCIL will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or age. COUNCIL will not discriminate against any employee or applicant for employment because of disability. COUNCIL will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their race, creed, color, sex, national origin, age, or disability. Such action shall include, but not be limited to, the following: employment, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

### **SUBSTANCE ABUSE POLICY**

The Columbia County Council of Senior Citizens, Inc. (COUNCIL), is dedicated to providing safe, dependable, and economical transportation service to our transit system passengers. COLCO Transportation employees are our most valuable resource and it is our goal to provide a healthy, satisfying work environment which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and health manner; (2) create a workplace environment free from adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

25. **Prohibited Interests.** No member, officer, or employee of COUNCIL, during the terms of this agreement or for one year, will have any interest, direct or indirect, in this agreement or the proceeds thereof.

26. **Non-Performance.** Neither party will be held responsible for delay or failure to perform the requirements of this agreement when such delay or failure is due to fire, flood, epidemic, strikes, acts of God, unusually severe weather, legal acts of public authorities or delays or defaults which cannot reasonably be foreseen or provided against.
27. **Independent Contractor.** COUNCIL is engaged hereby as an independent contractor and shall not be considered an employee, agent, partner or representative of COUNTY for any purpose whatsoever. COUNTY does not have the right of direction or control of the manner in which COUNCIL delivers services under this Agreement and does not exercise any control over the activities of the COUNCIL, except the services must be performed in a manner that is consistent with the terms of this agreement. COUNTY shall have no obligation with respect to COUNCIL's debts or any other liabilities of COUNCIL. COUNCIL shall be responsible for furnishing all equipment necessary for the performance of the services required herein. In addition:
- (a) COUNCIL will be solely responsible for payment of any federal or state taxes required as a result of this agreement.
  - (b) This agreement is not intended to entitle COUNCIL to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement to the COUNCIL are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the COUNCIL is presently a member of the Public Employees Retirement System).
  - (c) The COUNCIL is an independent contractor for purposes of the Oregon workers' compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Agreement. If the COUNCIL has the assistance of other persons in the performance of the Agreement, the COUNCIL shall qualify and remain qualified for the term of this Agreement as a carrier-insured or self-insured employer under ORS 656.407. If the COUNCIL performs this Agreement without the assistance of any other person, unless otherwise agreed to by the parties, COUNCIL shall apply for and obtain workers' compensation insurance for himself or herself as a sole proprietor under ORS 656.128.
  - (d) The COUNCIL, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
28. **Statutory Provisions.** Pursuant to the requirements of ORS 279.310 through 279.320 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:

- (a) COUNCIL shall:
- (1) Make payments promptly, as due, to all persons supplying to COUNCIL labor or materials for the prosecution of the work provided for in this Agreement.
  - (2) Pay all contributions or amounts due the Industrial Accident Fund from COUNCIL or any subcontractor incurred in the performance of this Agreement.
  - (3) Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
  - (4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- (b) If COUNCIL fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to COUNCIL or a subcontractor by any person in connection with this Agreement as such claim becomes due, the proper officers representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due COUNCIL by reason of this Agreement.
- (c) Any laborer employed for more than forty (40) hours in any one week shall be paid at least time and one-half pay for all overtime in excess of forty (40) hours a week, except individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C., Sections 201 to 209, from receiving overtime.
- (d) COUNCIL shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness and injury, to the employees of COUNCIL, of all sums which COUNCIL agrees to pay for such services and all monies and sums which COUNCIL collects or deducts from the wages of COUNCIL's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- (e) This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

29. **Nondiscrimination.** COUNCIL agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, handicap or age, suffer discrimination in the performance of this Agreement when employed by COUNCIL. COUNCIL agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.



30. **Assignment; Subcontracts.** The COUNCIL shall not assign, subcontract, delegate or transfer the responsibility for providing services under this agreement, or any interest in this agreement, or any portion thereof, to any other person, firm, corporation or entity whatsoever, without the express, prior written consent of the COUNTY. COUNCIL shall not assign, subcontract or execute any service agreements, amendments, changes or obligate itself with any third party with respect to the use of equipment stated herein or the services provided for herein, unless otherwise authorized by COUNTY.
31. **Waiver.** The failure of the COUNTY to enforce any provision of this agreement shall not constitute a waiver by the COUNTY of that or any other provision of the agreement.
32. **Indemnity.** The COUNCIL shall indemnify, defend, save, and hold harmless the COUNTY and the Oregon Department of Transportation, Public Transit Division, from any and all claims, suits, or actions of any nature, including claims of injury to any person or persons or of damage to property caused directly or indirectly by reason of any error, omission or other negligence, or wrongful acts by Contractor arising out of the performance of this Agreement. This indemnity also applies to any made claims made under the Federal Transit Act of 1964, as amended, Section 13(e). This indemnity does not apply to claims, suits or actions arising solely out of the negligent acts or omissions of the State of Oregon or COUNTY, their officers, agents, or employees.
33. **Insurance.** COUNCIL shall maintain comprehensive general liability insurance and property damage insurance in an amount of not less than \$1,500,000.00 (one million, five hundred thousand dollars) to protect COUNTY, its officers, agents, and employees, COUNCIL employees, vehicle occupants, facilities, and other equipment, throughout the term of this agreement. The cost of all insurance required by COUNTY and the Oregon Department of Transportation, Public Transit Division/TBD shall be paid by COUNCIL. Contractor shall provide County a certificate or certificates of insurance in the amounts described above which names County, its officers, agents and employees as additional insureds. Such certificate or certificates shall include a statement by the insurer that COUNTY shall be given no less than 30 days advance written notification if the policy is going to expire, be terminated, cancelled or modified in any material way. COUNTY shall be named as additional insured on all vehicle insurance policies covering vehicles utilized by COUNCIL where COUNTY has acted as grantee. Contractor shall notify County immediately upon notification to Contractor that any insurance coverage required by this paragraph will be canceled, not renewed or modified in any way.
34. **Termination; Breach.** This agreement may be terminated in whole or in part by mutual consent of both parties or by either party, with or without cause, upon 30 days notice of termination, in writing and delivered by certified mail or in person. In case of termination, COUNCIL shall be required to repay to COUNTY the amount of any funds advanced to COUNCIL which COUNCIL has not earned or expended through the provision of services in accordance with this agreement, but all costs incurred and fees earned by COUNCIL prior to the termination date shall be paid by COUNTY not to exceed the maximum amount stated above and decreased by the additional costs incurred by COUNTY, if any, to correct the work performed.

COUNTY reserves the right to terminate this agreement immediately for any breach of this agreement by COUNCIL which endangers, or would endanger, in the opinion of the COUNTY, the public health, safety, or welfare, or which jeopardizes, or would jeopardize, in the opinion of the COUNTY, COUNTY's financial condition, upon delivery by certified mail or in person of written notice of termination to COUNCIL

In all other cases, COUNTY reserves the right to terminate this agreement immediately for any breach of this agreement by COUNCIL, upon delivery by certified mail or in person of written notice of termination to COUNCIL, or at such later date as may be established by COUNTY, under any of the following conditions:

- (a) If the COUNCIL fails to comply with any of the terms of this agreement and, after receipt of notice of default by COUNTY, fails to correct such failures within 10 days or such longer period as the COUNTY may authorize.
- (b) If any permit, certification or license and required by law or regulations to be obtained and maintained by the COUNCIL in order to provide the service required by this agreement is denied, suspended, revoked, or not renewed.

The rights and remedies of the COUNTY related breach of agreement by the COUNCIL, shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this agreement. Any termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued before such termination.

- 35. **Changes to Agreement.** COUNTY will submit all proposed changes to this agreement to ODOT for prior approval.
- 36. **Time of the Essence.** The parties agree that time is of the essence in this Agreement.
- 37. **Choice of Law.** This Agreement shall be governed by the laws of the State of Oregon.
- 38. **Venue.** Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Columbia County, located in St. Helens, Oregon.
- 39. **Attorneys Fees.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for its own attorneys fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
- 40. **Severability.** If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof.
- 41. **ENTIRE AGREEMENT.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION

OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. COUNCIL, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE(S) BELOW, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS, COUNTY and COUNCIL have executed this agreement by and through a duly authorized representative who has executed this agreement.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

COLUMBIA COUNTY COUNCIL OF  
SENIOR CITIZENS, INC.

By:  8/28/02  
Chair

By: \_\_\_\_\_  
President

By:   
Commissioner

By: *not present*  
Commissioner