

<b>Operating Grant Agreement</b>													
<b>Program Type:</b>	<input type="checkbox"/> Consolidated Grant <input type="checkbox"/> Transit Projects (TIER) <input checked="" type="checkbox"/> Regional Mobility Grant <input type="checkbox"/> Transit Coordination												
<b>Funding Sources:</b>	<input checked="" type="checkbox"/> State Funds <input type="checkbox"/> Federal Funds <input type="checkbox"/> State/Federal Funds												
<b>Washington State Department of Transportation</b> Public Transportation Division 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387  WSDOT Contact: Tom Hanson 360-705-7919	<b>Contractor:</b> <b>Intercity Transit</b> PO Box 659 Olympia, WA 98507-0659  Contact Person: Ann Freeman-Manzanares 360-705-5838												
<b>Term of Project:</b> July 1, 2017 through June 30, 2019	<b>Federal ID #:</b> 91-1119706												
<b>Scope of Project:</b> Scope of Project as set forth in Exhibit I, Scope of Work and Budget	<b>Project Title:</b> Project Title as set forth in Exhibit I, Scope of Work and Budget												
<b>Service Area:</b> As defined in attached Exhibit I	<b>Project Costs:</b>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: right;">Federal Funds</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">0</td> </tr> <tr> <td style="text-align: right;">State Funds</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">993,320</td> </tr> <tr> <td style="text-align: right;">Contractor Funds</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">510,716</td> </tr> <tr> <td style="text-align: right;"><b>Total Project Cost</b></td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>1,504,036</b></td> </tr> </table>	Federal Funds	\$	0	State Funds	\$	993,320	Contractor Funds	\$	510,716	<b>Total Project Cost</b>	<b>\$</b>	<b>1,504,036</b>
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State Funds		\$	993,320										
Contractor Funds		\$	510,716										
<b>Total Project Cost</b>	<b>\$</b>	<b>1,504,036</b>											
<b>CFDA #:</b> N/A													
<b>DUNS:</b> 050154525													
<b>Agreement Number:</b> GCB2823													

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter "WSDOT," and the Contractor identified above, hereinafter the "CONTRACTOR," individually the "PARTY" and collectively the "PARTIES."

WHEREAS, pursuant to chapter 44.48 RCW the Legislative Evaluation and Accountability Program (LEAP) Committee provides analysis and monitoring of state expenditures, budgets and related fiscal matters and consults with Legislative committees;

WHEREAS, the State of Washington in its Sessions Laws of 2017 Chapter 313 Section 220 (1), (2), (4), (5), (8) and (9) provides Rural Mobility, Paratransit/Special Needs, Regional Mobility, Transit Coordination, Transit Projects and other special proviso funding through the multimodal transportation account, rural mobility grant program account, and regional mobility program account, as identified in the budget through its 2017-2019 biennial appropriations to WSDOT;

WHEREAS, WSDOT Public Transportation Division administers Regional Mobility Grant Program funds to provide assistance solely for transportation projects as identified in LEAP Transportation Document 2017-2 ALL PROJECTS as developed on April 20, 2017, Program- Public Transportation Program (V);

NOW, THEREFORE, in consideration of the terms, conditions, performances and mutual covenants herein set forth and the attached Exhibit I, "Scope of Work and Budget," which are incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

#### Section 1

##### Purpose of Agreement

A. The purpose of this AGREEMENT is for WSDOT to provide operating funds to the CONTRACTOR for public transportation services that meet the needs of persons in the State of Washington, hereinafter known as the "Project."

B. If this AGREEMENT includes any funding with federal funds, in addition to the requirements of Sections 1 through 33 of the AGREEMENT the CONTRACTOR will also comply with all requirements imposed by, or pursuant to 49 USC chapter 53, all other applicable federal laws, regulations and requirements and the requirements set forth in Exhibit II, Federal Provisions for this AGREEMENT that Includes Federal Funds (Grant Agreement), a copy of which is attached hereto and by this reference incorporated into this AGREEMENT, "Federal Provisions."

**Section 2**  
**Scope of Project**

The CONTRACTOR shall undertake and complete the Project described and detailed in Exhibit I, "Scope of Work and Budget," which is by this reference fully incorporated herein as if fully set out in this AGREEMENT and operate the service within the area described in the caption space header titled "Service Area," in accordance with the terms and conditions of this AGREEMENT. The caption space header titled "Service Area" and all caption space headers are by this reference incorporated herein as if fully set out in this AGREEMENT.

**Section 3**  
**Term of Project**

The CONTRACTOR shall commence, perform, and complete the Project within the time defined in the caption space header titled "Term of Project" on this AGREEMENT regardless of the date of signature and execution of this AGREEMENT, unless terminated as provided herein.

**Section 4**  
**General Compliance Assurance**

If the Consolidated Grant check box is marked in the caption space header titled, "Program Type", the CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm> , which by this reference is fully incorporated herein.

If the Regional Mobility Grant, Transit Project (TIER) or Transit Coordination check box is marked in the caption space header titled, "Program Type", the CONTRACTOR agrees to comply with all instructions as prescribed in the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/regional-mobility-grants-program-guidebook.htm> which by this reference is fully incorporated herein. The CONTRACTOR agrees that WSDOT, and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the CONTRACTOR with respect to the provisions of this AGREEMENT but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT.

**Section 5**  
**Contractor's Share of Project Costs**

A. The total Project cost shall not exceed the amounts detailed in the caption space header titled "Project Costs." The CONTRACTOR agrees to expend eligible funds, together with any "Contractor Funds" allocated for the Project, in an amount sufficient to complete the Project as detailed in Exhibit I, "Scope of Work and Budget." The CONTRACTOR further agrees that there shall be no reduction in the amount specified as the "Contractor Funds" unless there is a concurrent proportional reduction in the "State Funds", and/or if the AGREEMENT includes federal funds, in the "Federal Funds", or WSDOT pre-approves the reduction in writing. If at any time the CONTRACTOR becomes aware that the cost which it expects to incur in the performance of this AGREEMENT will exceed or be less than the amount identified as "Total Project Cost" in the caption space header titled "Project Costs," the CONTRACTOR shall notify WSDOT in writing within thirty (30) business days of making that determination. Nothing in Section 5(A), shall preclude the requirements specified in Section 6 (C) for payments at the end of the biennium.

B. Minimum Match: The CONTRACTOR is required to provide a minimum match of funds for the Project as identified in the caption space header titled, "Project Costs," reflected in the Contractor Funds. Any reduction in match will result in a proportional reduction in grant funds.

**Section 6**  
**Payment**

A. State and/or federal funds shall be used to reimburse the CONTRACTOR for allowable expenses incurred in completing the Project as described in Exhibit I, "Scope of Work and Budget." Allowable Project expenses shall be determined by WSDOT as described in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable. In no event shall the total amount reimbursed by WSDOT exceed "State Funds" and/or "Federal Funds" identified in the caption space header titled "Project Costs," above.

B. Payment will be made by WSDOT on a reimbursable basis for actual net Project costs incurred within the timeframe in the caption space titled "Term of Project." Such costs to be reimbursed shall be calculated as described in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable. WSDOT shall make no payments for costs incurred

prior to the beginning or after the ending dates shown in the caption space titled "Term of Project". The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once a month and no less than once per quarter. If approved by WSDOT, said invoices shall be paid by WSDOT within thirty (30) days. Payment is subject to the submission to and approval by WSDOT of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to WSDOT must include a record of the actual costs.

C. **State Fiscal Year End Closure Requirement (RCW 43.88):** The CONTRACTOR shall submit an invoice for completed work in the same state fiscal period, as defined in RCW 43.88, starting on July 1 and ending on June 30 the following year within the timeframe set forth in the caption space header of this AGREEMENT entitled "Term of Project" during which the work was performed. Reimbursement requests must be received by July 15 of each state fiscal period. If the CONTRACTOR is unable to provide an invoice by this date, the CONTRACTOR shall provide an estimate of the charges to be billed so WSDOT may accrue the expenditures in the proper fiscal period. Any subsequent reimbursement request submitted will be limited to the amount accrued as set forth in this section. Any payment request received after the timeframe prescribed above will not be eligible for reimbursement.

## Section 7

### Assignments and Subcontracts

A. Unless otherwise authorized in advance and in writing by WSDOT, the CONTRACTOR shall not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT.

B. The CONTRACTOR agrees to include Section 4, Sections 7 through 17, Section 20 and Section 23 of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished under this AGREEMENT. It is further agreed that those clauses shall not be modified in any such subcontract, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

Statement of Financial Assistance:

"This AGREEMENT is subject to the appropriations of the State of Washington."

## Section 8

### Reports

A. The CONTRACTOR shall prepare quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in WSDOT's *Consolidated Grants Program Guidebook*, and any amendments thereto, or the *Regional Mobility Grants Program Guidebook*, and any amendments thereto, whichever is applicable, or as requested by WSDOT. Due to Legislative and WSDOT reporting requirements, any required quarterly progress reports shall be submitted for the duration of the AGREEMENT period regardless of whether the underlying funding sources have been exhausted. Post-grant annual performance reporting may also be required as prescribed in the aforementioned guidebook. Those reports include, but are not limited to:

1. Project Passenger Trips Provided
2. Project Service Hours Provided
3. Project Revenue Service Miles Provided
4. Narrative Progress Report
5. Financial Status/Summaries of the Project.

B. If the project is receiving Transit Coordination, Tier or Regional Mobility grant funds, in addition to the requirements from subsection A, the CONTRACTOR shall submit a mutually agreeable Performance Measurement Plan to WSDOT.

C. **Remedies for Misuse or Noncompliance.** The CONTRACTOR shall not use the Project or any part thereof in a manner different from that described in Exhibit I, Project Scope, Schedule and Budget, as set forth in Section 2 of the AGREEMENT. If WSDOT determines that the Project has been used in a manner different from Exhibit I, Project Scope, Schedule and Budget, WSDOT may direct the CONTRACTOR to repay WSDOT the State funded share of the "Project Costs." WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

## Section 9

### No Obligation by the State Government

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability for WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof.

## Section 10

### Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of WSDOT.

## Section 11

### Ethics

**A. Relationships with Employees and Officers of WSDOT.** The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall CONTRACTOR rent or purchase any equipment and materials from any employee or officer of WSDOT.

**B. Employment of Former WSDOT Employees.** The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

## Section 12

### Compliance with Laws and Regulations

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in chapter 49.60 RCW. Except when a federal statute or regulation preempts state or local law, no provision of the AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. If any provision or compliance with any provision of this AGREEMENT violate state or local law, or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

## Section 13

### Environmental Requirements

The CONTRACTOR agrees to comply with all applicable requirements of chapter 43.21C RCW "State Environmental Policy Act" (SEPA).

## Section 14

### Accounting Records

**A. Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible and available to WSDOT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

**B. Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.

## Section 15

### Audits, Inspection, and Retention of Records

**A. Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the term of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

**B. General Audit Requirements.** The CONTRACTOR agrees to obtain any other audits required by WSDOT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

**C. Inspection.** The CONTRACTOR agrees to permit WSDOT and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and

accounts of the CONTRACTOR and its subcontractors pertaining to the Project. The CONTRACTOR agrees to require each third party to permit WSDOT, and the State Auditor or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project

**Section 16**  
**Labor Provisions**

**Overtime Requirements.** No CONTRACTOR or subcontractor contracting for any part of the Project work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.

**Section 17**  
**Changed Conditions Affecting Performance**

The CONTRACTOR hereby agrees to immediately notify WSDOT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project in accordance with the provisions of this AGREEMENT.

**Section 18**  
**Coordination of Special Needs Transportation**

It is the policy of WSDOT to actively support coordination of special needs transportation in the state. As a condition of assistance, the CONTRACTOR is required to participate in local coordinated planning as led by CONTRACTOR's relevant Metropolitan Planning Organization (MPO) and/or Regional Transportation Planning Organization (RTPO). Persons with special transportation needs means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

*Transit Projects and Regional Mobility Grant funded projects are explicitly excluded from the provisions of Section 18 – Coordination of Special Needs Transportation.*

**Section 19**  
**Disputes**

**A. Disputes.** Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Public Transportation Division Assistant Director or designee. This decision shall be final and conclusive unless within ten (10) days from the date of CONTRACTOR's receipt of WSDOT's written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Director of the Public Transportation Division or the Director's designee. The CONTRACTOR's appeal shall be decided in writing by the Director of the Public Transportation Division within thirty (30) days of receipt of the appeal by the Director of the Public Transportation Division or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

**B. Performance During Dispute.** Unless otherwise directed by WSDOT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.

**C. Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.

**D. Rights and Remedies.** All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by the WSDOT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Section 20**  
**Termination**

**A. Termination for Convenience.** WSDOT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated.

Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite funding becomes unavailable through failure of appropriation or otherwise;
2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
3. The CONTRACTOR is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
4. The CONTRACTOR is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
5. The State Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project;
6. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to WSDOT. If the CONTRACTOR has any property in its possession belonging to WSDOT, the CONTRACTOR will account for the same, and dispose of it in the manner WSDOT directs.

**B. Termination for Default.** WSDOT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

1. Takes any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or
4. Fails to perform in the manner called for in this AGREEMENT or fails, to comply with, or is in violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by WSDOT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, WSDOT may: (a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or (b) treat the termination as a termination for convenience.

**C.** WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

**D.** In the event that WSDOT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

**E.** If this AGREEMENT is terminated, whether for convenience or for default, before the specified end date set forth in the caption header, "Term of Project", WSDOT and the CONTRACTOR shall execute an amendment to this AGREEMENT identifying the termination date and the reason for termination.

#### **Section 21**

#### **Forbearance by WSDOT Not a Waiver**

Any forbearance by WSDOT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**Section 22**  
**Lack of Waiver**

In no event shall any WSDOT payment of grant funds to the CONTRACTOR constitute or be construed as a waiver by WSDOT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default.

**Section 23**  
**Limitation of Liability**

A. The CONTRACTOR shall indemnify and hold harmless WSDOT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against WSDOT, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify and hold harmless or defend the WSDOT, its agents, employees or officers to the extent that claims are caused by the sole negligent acts or omissions of the WSDOT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT. B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of WSDOT.

C. The CONTRACTOR specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

D. In the event either the CONTRACTOR or WSDOT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

**Section 24**  
**Agreement Modifications**

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by the persons authorized to bind from each of the PARTIES. Provided, however, that changes to the federal award identification number, DUNS, project title, federal ID number, CFDA number, milestones, UPIN the contact person of either PARTY, or dollar amount changes that do not affect the project total cost, will not require a written amendment, but will be approved and documented by WSDOT through an administrative revision. WSDOT shall notify the CONTRACTOR of the revision in writing.

**Section 25**  
**WSDOT Advice**

The CONTRACTOR bears complete responsibility for the administration and success of the Project as it is defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from WSDOT on problems that may arise, the offering of WSDOT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project, and WSDOT shall not be held liable for offering advice to the CONTRACTOR.

**Section 26**  
**Venue and Process**

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

**Section 27**

**Subrogation**

A. **Prior to Subrogation.** WSDOT may require the CONTRACTOR to take such action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to any equipment, property, or transportation program in which WSDOT has a financial interest.

B. **Subrogation.** WSDOT may require the CONTRACTOR to assign to WSDOT all right of recovery against any person or organization for loss, to the extent of WSDOT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to prejudice the rights of WSDOT.

C. **Duties of the CONTRACTOR.** If WSDOT has exercised its right of subrogation, the CONTRACTOR shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT. The CONTRACTOR shall attend hearings and trials as requested by WSDOT, assist in securing and giving evidence as requested by WSDOT, and obtain the attendance of witnesses as requested by WSDOT.

**Section 28**

**Counterparts**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONTRACTOR does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements and their supporting materials contained and/or mentioned herein, and does hereby accept WSDOT's grant and agrees to all of the terms and conditions thereof.

**Section 29**

**Complete Agreement**

This document contains all covenants, stipulations, and provisions agreed upon by WSDOT. No agent or representative of WSDOT has authority to make, and WSDOT shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

**Section 30**

**Severability**

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

**Section 31**

**Order of Precedence**

Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

1. Federal law
2. Exhibit II, Federal Provisions, if applicable
3. State law
4. This AGREEMENT
5. Exhibit I

**Section 32**

**Execution**

This AGREEMENT is executed by the Director, Public Transportation Division, State of Washington, Department of Transportation or the Director's designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the State of Washington, Department of Transportation, in the capacity as Director, Public Transportation Division, or as a designee.

**Section 33**

**Binding Agreement**

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and or entity(ies) to the obligations set forth herein.

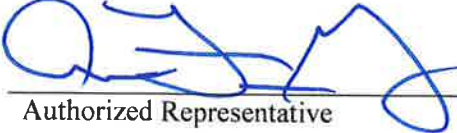


IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year signed last below.

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

CONTRACTOR

  
\_\_\_\_\_  
Brian Lagerberg, Director  
Public Transportation Division

  
\_\_\_\_\_  
Authorized Representative

General Manager

Title

Ann Freeman-Manzanares

Print Name

12-22-17  
\_\_\_\_\_  
Date

12/20/17  
\_\_\_\_\_  
Date

APPROVED AS TO FORM BY:

Susan Cruise  
\_\_\_\_\_  
Assistant Attorney General

6/28/2017  
\_\_\_\_\_  
Date

**Exhibit I  
SCOPE OF WORK AND BUDGET**

Current Total Project Cost	
Federal Funds	\$ 0
State Funds	\$ 993,320
Contractor's Funds	\$ 510,716
Total Project Cost	\$1,504,036

**Funding by Project**

**Project: Route 612 Express Service Expansion  
UPIN: 20170001**

**Scope of Work:** This project will add 13 new express trips to the current Express 612 along the I-5 corridor between Thurston County (Olympia/Lacey) and Pierce County (Lakewood/Tacoma).

Funds	Current Funds	Projected Funds	Total Project Cost
State Regional Mobility Funds	\$ 993,320	\$1,049,546	\$2,042,866
Contractor's Funds	\$ 510,716	\$ 0	\$ 510,716
Total	\$1,504,036	\$1,049,546	\$2,553,582

**Budget:** *Current Funds reflect total funding appropriated by the Washington State Legislature for this Project in the 2017-2019 biennium. Contractor's Funds reflect the total commitment over the life of the project, and will be adjusted at the end of each fiscal period based on actual expenditures. Projected RMG Funds are subject to appropriation by the Washington State Legislature during the 2017 – 2019 biennium. Any such projected funds thus appropriated in the 2017-2019 biennium for this Project will be added to this AGREEMENT, subject to CONTRACTOR's compliance with this AGREEMENT and after any such appropriation is enacted into law, by written amendment to the AGREEMENT signed by both Parties. If any such projected funds are not appropriated for the Project by the Legislature in the 2017-2019 biennium, the provisions of Section 20.A, Termination for Convenience, shall apply and WSDOT will not be financially responsible for any operating funding assistance or costs incurred by CONTRACTOR for the Project beyond the Current Funds appropriated for the 2017-2019 biennium.*