



**Washington State
Department of Transportation**

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September 27, 2019

Ann Freeman-Manzanares
Intercity Transit
PO Box 659
Olympia, WA 98507-0659

Subject: Executed Regional Mobility Grant Program Capital/Operating Agreement
PTD0096

Greetings,

Enclosed is a fully executed agreement WSDOT agreement number PTD0096.

We will email you the personalized reimbursement request and required quarterly progress report form for your agreement. To receive payment, please e-mail your invoice to PTDinvoices@wsdot.wa.gov, and the quarterly progress report form to PTDReports@wsdot.wa.gov, cc'ing Alan Soicher at SoicheA@wsdot.wa.gov.

If you have any questions or need technical assistance, you may contact Alan at 360-333-8946. We look forward to working with you during the course of your project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Halbert'.

Aaron Halbert
Business Analyst
Public Transportation Division

AH

Enclosure



Regional Mobility Grant Program Operating/Capital Equipment and Vehicle Grant Agreement		
Agreement Number	PTD0096	Contractor: Thurston County Transportation Benefit Area Intercity Transit P.O. Box 659 Olympia, WA 98507-0659 Contact: Ann Freeman-Manzanares 360-705-5885
Term of Agreement	July 1, 2019 through the useful life of the Project Equipment	
Vendor #	911119706	
CFDA #	N/A	
DUNS	050154525	
Service Area	As defined in Scope of Work and Budget	

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, the State of Washington in its Sessions Laws of 2019, Chapter 416 Section 220 authorizes funding for Public Transportation Programs and other special proviso funding as identified in the budget through its 2019-2021 biennial appropriations to WSDOT; and

WHEREAS, the CONTRACTOR has requested funds for the above shown project or program, which has been selected by WSDOT for funding assistance.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

SCOPE OF WORK AND BUDGET

Agreement Costs	
Federal Funds	\$ 0
19-21 Current State Funds	\$ 3,084,000
21-23 Projected State Funds	\$ 1,440,000
Total Grant Funds	\$ 3,084,000
Contractor's Funds	\$ 1,251,000
Total Agreement Cost	\$ 4,335,000

Funding by Project

Project A: High Performance Corridor Service Implementation - Phase 1

UPIN # 20190013

Service Area: Thurston County

Scope of Work: Purchase 4 buses to provide high performance peak hour "BRT-light" service, and expand service to reduce travel times.

Note: This is a Capital Equipment project with an Operating component.

Funds	Current Percentage	2019-21 Current Funds	2021-23 Projected Funds	Total Current and Projected Funds
State Regional Mobility Funds	83%	\$ 3,084,000	\$ 1,440,000	\$ 4,524,000
Contractor's Funds	17%	\$ 625,500	\$ 625,500	\$ 1,251,000
Total Project Cost	100%	\$ 3,709,500	\$ 2,065,500	\$ 5,775,000

Budget: Current Funds reflect total funding appropriated by the Washington State Legislature for the Project in the 2019-2021 biennium. Projected Funds are subject to appropriation by the Washington State Legislature, once appropriated, funds will be added to this AGREEMENT by written amendment.

Project Milestones

Vehicle/Equipment Project Activities

Phases	Date
Request for proposals (RFP) or Invitation for bid (IFB) publish date	N/A
Contract Award Date	8/2019
First vehicle delivery date	11/2019
All vehicles accepted	1/2020

Operating Project Activities

Phases	Date
Start service	10/2019
Complete Service	6/2023

Note: The Project Milestone table is for planning purposes. While the total funding and match (contractor's funds) must be maintained, funding may be moved to different phases as mutually agreed upon by both PARTIES.

Section 1
Purpose of Agreement

A. The purpose of this AGREEMENT is for WSDOT to provide funding to the CONTRACTOR for the acquisition and operation of equipment to be used in the provision of public transportation services that meet the needs of persons in the State of Washington.

B. On projects where WSDOT is providing only state funds and the CONTRACTOR is using funds received directly from the federal government as their share or part thereof on the project, the CONTRACTOR must assume full responsibility for complying with all federal rules and regulations. If the CONTRACTOR is found in non-compliance with federal rules and regulations, the CONTRACTOR shall provide a written notification to WSDOT supplying details related to the non-compliance. Both parties will analyze and determine the impact on the scope, schedule, and funding of the project. Remedies required up to and including return of funds will be identified to ensure the project's scope of work is met as intended.

Section 2
Scope of Project

The CONTRACTOR shall undertake and complete the Project(s) described and detailed in the "Scope of Work and Budget," which is by this reference incorporated in this AGREEMENT and operate the Project Equipment 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 in this AGREEMENT.

Section 3
General Compliance Assurance

The CONTRACTOR agrees to comply with all instructions as prescribed in the *Regional Mobility Grants Program Guidebook*, , hereinafter referred to as "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 incorporated herein as if fully set forth in this AGREEMENT.

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 4
Term of Agreement

The Project period shall begin on the date shown in the caption space header titled "Term of Agreement" and shall continue through the useful life of the Project Equipment regardless of the date of signature and execution of this AGREEMENT, unless terminated as provided herein. WSDOT has defined the useful life of vehicle Project Equipment in the Vehicle Disposition Schedule in the Guidebook, and any amendments thereto. Non-vehicle Project Equipment's useful life will be determined by WSDOT taking into consideration the manufacturer's recommended lifecycle and the CONTRACTOR's previous experience with the asset, if any.

Section 5
Contractor's Share of Project Costs

A. The total Project cost shall not exceed the amounts detailed in the "Funding by Project" table. The CONTRACTOR agrees to expend eligible funds, together with any "Contractor Funds" allocated for the Project, in an amount sufficient to complete the Project. 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 "Federal Funds" identified in the "Funding by Project" table, 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" 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 "Funding by Project" table reflected in the Contractor Funds. Any reduction in match will result in a proportional reduction in grant funds.

Section 6

Reimbursement and 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 "Scope of Work and Budget." Allowable Project expenses shall be determined by WSDOT as described in the Guidebook. 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 Agreement." Such costs to be reimbursed shall be calculated as described in the Guidebook. WSDOT shall make no payments for costs incurred prior to the beginning or after the end date of the "Term of the Agreement" as set forth in the caption space header above. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. If approved by WSDOT, said invoices shall be paid by WSDOT within thirty (30) days of submission to WSDOT. 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. 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 Agreement" 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.

D. For vehicle purchases, the Project Equipment titles shall designate WSDOT as the legal owner and the CONTRACTOR as the registered owner through the project period. Subject to the CONTRACTOR's compliance with all terms of this AGREEMENT, WSDOT will release the interest of ownership of the Project Equipment to the CONTRACTOR in writing thirty (30) days from the end of the useful life of the Project Equipment, as defined in the Guidebook.

Section 7

Purchases

The CONTRACTOR shall make purchases of any Project Equipment pursuant to this AGREEMENT through procurement procedures approved in advance in writing by WSDOT and consistent with the following Government Orders provision: In case any lawful government authority shall issue any order with respect to the Project or Project Equipment, or any part thereof, or the PARTIES hereto or either of them, the CONTRACTOR shall cooperate with WSDOT in carrying out such order and will arrange its operation and business so as to enable WSDOT to comply with the terms of the order.

Section 8

Inspection Upon Delivery

The CONTRACTOR shall inspect Project Equipment purchased pursuant to this AGREEMENT at the time of delivery to the CONTRACTOR. The CONTRACTOR has 15 calendar days from delivery to either accept or reject the Project Equipment. If rejected, the CONTRACTOR shall provide a written notice specifying the Project Equipment deficiencies to its vendor and WSDOT, allowing the

vendor a reasonable amount of time to cure the deficiencies or defect. Upon receipt and acceptance of Project Equipment, the CONTRACTOR agrees that it has fully inspected the Project Equipment and accepts it as suitable for the purpose under this AGREEMENT, as being in good condition and state of good repair and that the CONTRACTOR is satisfied with the Project Equipment and that the Project Equipment complies with all regulations, rules, and laws. Payment to the vendor must occur within thirty days of the Project Equipment acceptance.

Section 9

Miscellaneous Charges and Conditions

The CONTRACTOR shall pay and be solely responsible for all storage charges, parking charges, late fees, and fines, as well as any fees (including vehicle registration, license, safety and emission control inspection fees), and taxes, except applicable state sales or use tax, which may be imposed with respect to the Project Equipment by a duly constituted governmental authority as the result of the CONTRACTOR's use or intended use of the Project Equipment. Required visual and road test inspection fees on vehicles for acceptance and software licensing use fees are eligible for reimbursement. All replacements, repairs, or substitutions of parts or Project Equipment shall be at the cost and expense of the CONTRACTOR.

Section 10

Assignments and Subcontracts

A. Unless otherwise authorized in advance and in writing by WSDOT, the CONTRACTOR shall not assign any Project Equipment under this AGREEMENT or execute any contract, amendment, or change order thereto pertaining to the Project Equipment, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT or lease or lend the Project Equipment or any part thereof to be used by anyone not under the CONTRACTOR's direct supervision.

B. The CONTRACTOR agrees to include Sections 10 through 23, and Section 29 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 11

Reports and Use of Project Equipment

A. The CONTRACTOR agrees that the Project Equipment shall be used for the provision of transportation service within the area described in the caption space header titled "Service Area," for the Project Equipment's useful life as set forth in Section 4 – Term of Agreement of this AGREEMENT. The CONTRACTOR further agrees that it will not use or permit the use of the Project Equipment in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project Equipment to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay or fail to use the Project Equipment during the useful life of the Project Equipment, the CONTRACTOR agrees that it may be required to refund up to the entire amount of the state share expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project Equipment is withdrawn from Project use or when Project Equipment is used in a manner substantially different from that identified in "Scope of Work and Budget." If the Project Equipment is permanently removed from transportation service, the CONTRACTOR agrees to immediately contact WSDOT for instructions regarding the disposal of the Project Equipment. For vehicle purchases only, the CONTRACTOR further understands that the Project Equipment shall be used to provide passenger service levels as described below:

1. A minimum of 100 passenger, revenue service miles per vehicle per week: or

2. A minimum of 100 one-way passenger trips per vehicle per week.
- B. **Reports.** The CONTRACTOR shall prepare any required quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in the Guidebook, or as requested by WSDOT. The CONTRACTOR shall keep satisfactory written records with regard to the use of Project Equipment and shall submit the following reports in a format and at such times as prescribed by WSDOT until the useful life of the Project Equipment expires:
 1. Reports describing the current usage of Project Equipment include, but are not limited to:
 - a) Project Passenger Trips Provided
 - b) Project Service Hours Provided
 - c) Project Revenue Service Miles Provided
 - d) Asset Management Plan
 - e) Vehicle or Equipment Inventory
 2. In the event any portion of the Project Equipment sustains disabling damage as defined in the Guidebook, and/or triggers drug and alcohol testing, the CONTRACTOR shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.
 3. The CONTRACTOR shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT.
- C. If the project is receiving Transit Coordination 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.
- D. **Remedies for Misuse or Noncompliance.** The CONTRACTOR shall not use any Project Equipment in a manner different from that described in "Scope of Work and Budget", and the "Service Area" identified in the AGREEMENT header of this AGREEMENT. If WSDOT determines that Project Equipment has been used in a manner different from that described in "Scope of Work and Budget" and/or the "Service Area" identified in the caption space header above, WSDOT may direct the CONTRACTOR to dispose of the Project Equipment acquired by the CONTRACTOR. WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

Section 12

Maintenance of Project Equipment

The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project Equipment to assure it remains in good and operational condition for the useful life of the Project Equipment. All service, materials, and repairs in connection with the use and operation of the Project Equipment during its useful life shall be at the CONTRACTOR's expense. CONTRACTORS who are transit agencies must also have a Transit Asset Management Plan certified by WSDOT. All other CONTRACTORS must have a WSDOT-approved written Vehicle Maintenance Plan or submit one to WSDOT for approval by October 1, 2019, or prior to the receipt of their first grant-funded vehicle. The CONTRACTOR agrees to, at a minimum, service the Project Equipment and replace parts at intervals recommended in the manual provided by the manufacturer of the Project Equipment, or sooner if needed. The CONTRACTOR shall take the Project Equipment to an appropriate service and repair facility for any service and repair under the manufacturer's warranty. WSDOT shall not be liable for repairs. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project Equipment in accordance with Section 19, Audits, Inspection, and Retention of Records. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 13

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 14

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 15

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 16

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 AGREEMENT.

Section 17

Environmental Requirements

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

Section 18

Accounting Records

A. **Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project(s) either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project(s). The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project(s) 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(s).

B. Documentation of Project Costs and Program Income. The CONTRACTOR agrees to support all allowable costs charged to the Project(s), 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(s).

Section 19

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(s) 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(s). 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(s).

Section 20

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 21

Liens on Project Equipment

WSDOT shall be listed as the legal owner on titles and hold titles for all vehicles the CONTRACTOR acquires using federal funds through WSDOT's grant program. WSDOT will have legal ownership to any non-vehicle Project Equipment the CONTRACTOR acquires or modifies using the "Federal and/or State Funds" identified in the "Currency Agreement Costs" table. When the Contractor acquires vehicles using state funds provided through WSDOT's grant program, WSDOT may within its discretion, allow the CONTRACTOR to be listed as the legal owner and hold title. In all cases, WSDOT will maintain a copy of titles for all funded vehicles under this agreement and oversight responsibility on those vehicles through their useful life. The CONTRACTOR accepts WSDOT's legal ownership of the Project Equipment during its useful life as set forth in this Section and agrees that it shall not use the Project Equipment as collateral, nor shall the CONTRACTOR encumber the Project Equipment in any way. The CONTRACTOR shall follow the terms stated in Section 10A regarding use and disposal of all Project Equipment. For non-vehicle Project Equipment, WSDOT's lien shall equal the proportional Federal and/or State funded share, as identified in this

AGREEMENT, of the disposable value of the Project Equipment. Satisfaction of WSDOT's lien may be satisfied only by proper disposal of the Project Equipment in a manner determined by WSDOT

Section 22

Loss or Damage to Project Equipment

A. The CONTRACTOR, at its own expense, shall cover any loss, theft, damage, or destruction of the Project Equipment using either of the following methods:

1. The CONTRACTOR shall maintain comprehensive and collision insurance for vehicles and property insurance for non-vehicle equipment adequate to cover the value of the Project Equipment; the CONTRACTOR shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT with the first request for reimbursement, and supply proof of renewal, annually thereafter; or

2. The CONTRACTOR shall provide a written certificate of self-insurance to WSDOT with the first request for reimbursement, annually thereafter. The CONTRACTOR will cover from its own resources the costs of repairing or replacing any Project Equipment, if it is stolen, damaged, or destroyed in any manner.

B. If the damage to the Project Equipment does not result in a total loss, payments for damage shall be paid directly to the CONTRACTOR. The CONTRACTOR shall, within thirty (30) days, either:

1. Devote all of the insurance proceeds received to repair the Project Equipment and place it back in service, and the CONTRACTOR shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or

2. In the event the CONTRACTOR certified to self- insurance, devote all funds necessary to repair the Project Equipment and place it back into service.

C. If the Project Equipment is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to WSDOT. The CONTRACTOR shall within sixty (60) days of loss, theft, or damage, notify WSDOT that it either:

1. Intends to replace the lost Project Equipment; or

2. Does not intend to replace the lost Project Equipment.

D. If WSDOT determines that the total loss occurred under circumstances in which the CONTRACTOR fulfilled its obligations under this AGREEMENT then WSDOT will either pay, or rebate, to the CONTRACTOR its proportionate share of such proceeds paid to WSDOT.

E. Coverage, if obtained or provided by the CONTRACTOR in compliance with this section, shall not be deemed as having relieved the CONTRACTOR of any liability in excess of such coverage as required by the limitation of liability section of this AGREEMENT, or otherwise.

Section 23

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(s) in accordance with the provisions of this AGREEMENT.

Section 24

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.

Regional Mobility Grant funded projects are explicitly excluded from the provisions of Section 24 – Coordination of Special Needs Transportation.

Section 25 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 26 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. 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(s) would not produce beneficial results commensurate with the further expenditure of funds;
3. The CONTRACTOR is prevented from proceeding with the Project(s) 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(s) 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(s) would not be adequately served by the continuation of financial assistance for the Project(s);
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. Abuses or misuses the Project Equipment, including, but not limited to:
 - a) Failure to maintain the Project Equipment according to the manufacturer's standards;
 - b) Failure to repair damages or replace defective or broken parts in a timely manner;
 - c) Failure to take any action which could affect the ability of the Project Equipment to perform its designated function or takes any action which could shorten its useful life for Project use or otherwise; or
 - d) Failure to make reasonable and appropriate use of the Project real property, facilities, or equipment.
4. Fails to make reasonable progress on the Project(s) or other violation of this AGREEMENT that endangers substantial performance of the Project(s); or
5. 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 Agreement", WSDOT and the CONTRACTOR shall execute an amendment to this AGREEMENT identifying the termination date and the reason for termination.

Section 27

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 28
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 29
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 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 30
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 31
WSDOT Advice

The CONTRACTOR bears complete responsibility for the administration and success of the Project(s) as 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 32

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 33

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 the Project Equipment or other property 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 is 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 due to damage of Project Equipment. 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 34

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 35

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 36

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 37
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 and Rail Division, or as a designee.

**Section 38
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 I, Federal Provisions, if applicable
3. State law
4. This AGREEMENT

**Section 39
Agreement Close Out**

The CONTRACTOR shall notify WSDOT if the AGREEMENT is completed prior to the end date set forth in the caption header, "Term of Agreement" by written notification and in its capital Quarterly Progress Report, as referenced in the Guidebook, in which the project is completed. WSDOT will prepare an amendment to modify the AGREEMENT to reflect the actual amount spent and the project completion date. WSDOT will send a close out letter to the CONTRACTOR.

**Section 40
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

AmFreeman-Monzoneres
Print Name

9-27-19
Date

Sept 18, 2019
Date

