

1 **JEFFERSON TRANSIT AUTHORITY**
2 **RESOLUTION 21-11**
3 **PTD0261 East Jefferson Operating Grant Agreement**

4
5 **A RESOLUTION** of the Board of Directors of the Jefferson County Public Transportation
6 *Benefit Area, hereinafter called the "Authority", authorizing the Authority Chair to sign and*
7 *execute Grant Agreement PTD0261 for East Jefferson County.*


8 **WHEREAS**, Jefferson Transit Authority has been awarded Federal operating fund
9 assistance to sustain fixed-route and on-demand ADA services to special needs residents
10 of East Jefferson County; and

11 **WHEREAS**, matching funds have been allocated by the Authority, in coordination
12 with other parties, sufficient to provide the services;

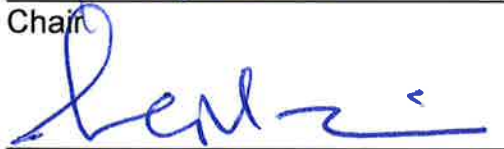
13 **NOW, THEREFORE, BE IT RESOLVED**, that the Chair of the Authority is hereby
14 authorized to sign the Grant Agreement numbered PTD0261 with the Washington State
15 Department of Transportation.

16
17 **CERTIFICATION**

18
19 The undersigned duly qualified Clerk of the Board, acting on behalf of the Jefferson
20 County Public Transportation Benefit Area, certifies that the foregoing is a true and correct
21 copy of a resolution adopted at a legally convened meeting of the Jefferson Transit
22 Authority Board held on August 17, 2021.



Chair



Member

Excused

Member



Vice Chair



Member

Attest:


Clerk of the Board



WSDOT Contact: Elizabeth Safsten

WSDOT E-mail: SafsteE@wsdot.wa.gov

WSDOT Phone: 360-705-6885

Consolidated Grant Program Operating Grant Agreement			
Agreement Number	PTD0261	Contractor:	Jefferson Transit Authority
Term of Agreement	July 1, 2021 through June 30, 2023		
Vendor #	911124781		63 4 Corners Road
CFDA #	20.509 5311 Formula Grants for Rural Areas and Tribal Transit		Port Townsend, WA 98368
DUNS	102852019		
Service Area	Jefferson County	Contact:	Tammi Rubert
		Email:	TRubert@jeffersontransit.com

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 2021, Chapter 333 Section 220 authorizes funding for Public Transportation Programs and other special proviso funding as identified in the budget through its 2021-2023 biennial appropriations to WSDOT; and

WHEREAS, the CONTRACTOR has requested funds for the project(s) or program(s) shown under the heading titled "Funding by Project" (hereinafter known as the "Project(s)") 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:

Section 1
SCOPE OF WORK AND BUDGET

Funding by Project

ProjectTitle: East Jefferson Operating

UPIN # PTCO034

Scope of Work: Sustain fixed-route and on-demand ADA services to special needs residents of East Jefferson County.

Funds	Federal Award Identification #	Current Percentage	Current Funds	Projected Funds	Total Current and Projected Funds
FTA 5311	TBD	28%	\$ 2,238,905		\$ 2,238,905
Contractor's Funds	N/A	72%	\$ 5,649,143		\$ 5,649,143
Total Project Cost		100%	\$ 7,888,048	\$ -	\$ 7,888,048

Budget: *Current Funds reflect total funding appropriated by the Washington State Legislature for the Project in the 2021-2023 biennium.*

Section 2
Purpose of Agreement

A. The purpose of this AGREEMENT is for WSDOT to provide funds to the CONTRACTOR for public transportation services that meet the needs of persons in the State of Washington.

B. If this AGREEMENT includes any funding with federal funds, in addition to the requirements of Sections 1 through 34 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 I, Federal Provisions for this AGREEMENT that Includes Federal Funds (Grant Agreement), which is attached hereto and by this reference incorporated into this AGREEMENT, "Federal Provisions ."

Section 3
Scope of Project

The CONTRACTOR shall undertake and complete the Project described and detailed in Section 1. The CONTRACTOR shall operate the service within the service area described in Section 1, in accordance with the terms and conditions of this AGREEMENT.

Section 4
Term of Agreement

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

Section 5
General Compliance Assurance

The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's *Consolidated Grants Program Guidebook*, hereinafter referred to as the "Guidebook", and any amendments thereto, found at <https://www.wsdot.wa.gov/transit/grants/apply-manage-your-grant>, which by this reference is fully incorporated herein.

Section 6
Contractor's Share of Project Costs

A. The Total Project Cost shall not exceed the amounts detailed in Section 1. The CONTRACTOR agrees to expend eligible funds, together with any Contractor's Funds allocated for the Project, in an amount sufficient to complete the Project. The CONTRACTOR agrees to expend eligible funds, together with other funds allocated for the Project, in an amount sufficient to complete the Project as detailed in Section 1. If at any time the CONTRACTOR becomes aware that the cost of the Project will exceed or be less than the amount identified in Section 1, the CONTRACTOR shall notify WSDOT in writing within thirty (30) calendar days of making that determination. Nothing in Section 6(A), shall preclude the requirements specified in Section 7 (B) 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 Section 1, indicated as Contractor's Funds.

Section 7
Reimbursement and Payment

A. Payment will be made by WSDOT on a reimbursable basis for actual costs and expenditures incurred, while performing eligible direct and related indirect Project work during the life of the Project. Payment is subject to the submission to and approval by WSDOT of properly prepared invoices that substantiate the costs and expenses submitted by CONTRACTOR for reimbursement. Failure to send in progress reports and financial information as required in Section 9 –Reports may delay payment. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once per month and no less than once per year, during the course of this AGREEMENT. If approved by WSDOT, properly prepared invoices shall be paid by WSDOT within thirty (30) days of receipt of the invoice.

B. **State Fiscal Year End Closure Requirement (RCW 43.88):** The CONTRACTOR shall submit an invoice for completed work in the same state fiscal period in which the work was performed. As defined in RCW 43.88, the state fiscal period starts on July 1 and ends on June 30 the following year. 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 expenses 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 8
Assignments and Subcontracts

A. The CONTRACTOR shall submit to WSDOT a copy of any contract, amendment, or change order thereto pertaining to this Project for review and documentation. This includes any completed Project facilities and/or infrastructure under this AGREEMENT, or other actions obligating the CONTRACTOR in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT, including any leasing and/or lending the Project or any part thereof to be used by anyone not under the CONTRACTOR's direct supervision.

B. The CONTRACTOR agrees to include all applicable sections of the AGREEMENT such as Section 5, Sections 8 through 18, Section 21 and Section 24 of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

Section 9
Reports

A. The CONTRACTOR shall prepare quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in the 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. This subsection applies only to projects that are 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.** If WSDOT determines that the Project has been used in a manner materially different from Section 1, WSDOT may direct the CONTRACTOR to repay WSDOT the State funded share of the Project. WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to materially comply with any provision of this AGREEMENT.

Section 10

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 11

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 12

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 knowingly 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 13

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 applicable 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 14
Environmental Requirements

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

Section 15
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 16
Audits, Inspection, and Retention of Records

A. **Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the performance period 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 17
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 all applicable provisions of Title 49 RCW, Labor Regulations.

Section 18

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 19

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 19 – Coordination of Special Needs Transportation.

Section 20

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 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 21

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 material 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 22

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 23

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 24

Limitation of Liability

A. The CONTRACTOR shall indemnify, defend, 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 and defense 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 of any tier. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify, defend, and hold harmless or defend WSDOT, its agents, employees or officers to the extent that claims are caused by the sole negligent acts or omissions of 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 and defense 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 agrees that its obligations under this AGREEMENT extend to any claim, demand, and/or cause of action by, or on behalf of its employees or agents while performing under this AGREEMENT. For this purpose, the CONTRACTOR, by MUTUAL NEGOTIATION,

hereby waives any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions in Title 51 RCW.

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 25
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, PIN 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 26
WSDOT Advice

The CONTRACTOR bears complete responsibility for the administration and success of the Project 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 27
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 28
Subrogation

A. **Prior to Subrogation.** WSDOT may require the CONTRACTOR to take such reasonable 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 reasonably necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to intentionally 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 29
Counterparts**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

**Section 30
Complete Agreement**

This document contains all covenants, stipulations, and provisions agreed upon by the PARTIES. No agent or representative of WSDOT or the CONTRACTOR has authority to make, and neither WSDOT nor the CONTRACTOR shall be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

**Section 31
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 32
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
5. The Guidebook

**Section 33
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 34
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

JTA Authority Board Chair
Title

Kate Dean

Print Name

Date

8.23.21

Date

EXHIBIT I
Summary of Federal Requirements and Incorporating by Reference Annual List of
Certifications and Assurances for FTA Grants and Cooperative Agreements
("Certifications and Assurances") and Federal Transit Administration Master Agreement
("Master Agreement")

Recipient of federal assistance under 49 U.S.C. chapter 53 must submit annually or as part of its application for federal assistance. Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the most current approved Certifications and Assurances available at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>. The Certifications and Assurances are by this reference incorporated herein.

Recipient further agrees to comply with all applicable requirements included in the most current approved Master Agreement. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>.

Note and comply with the following language stated under the master agreement:

"Each provision of this Master Agreement must be interpreted in context with all other provisions of this Master Agreement and the Underlying Agreement. If a single provision is read apart from the rest of this Master Agreement or the Underlying Agreement, that provision might not convey the extent of the Recipient's responsibility to comply with the requirements of this Master Agreement and the Underlying Agreement."

Without limiting the foregoing, the following are some requirements applicable to transactions covered by this AGREEMENT

1. Changes to Federal Requirements - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

2. Civil Rights

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

3. Disadvantaged Business Enterprises

- The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation. No preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.

4. ADA Access - The contractor shall comply with the requirements of 49 CFR FTA C 4710.1 as applicable to this contract. Equal access and the opportunity should be given to individuals with disabilities to fully participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations.

5. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.