

Federal/State Capital Construction Grant Agreement	
Washington State Department of Transportation Public Transportation Division 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387 WSDOT Contact: Shamus Misek 360-705-7346	Contractor: Mason County Transportation Authority PO Box 1880 Shelton, WA 98584 Contact Person: Mike Oliver 360-426-9434
Term of Project: July 1, 2014 through useful life of the Project	ID #: 91-1554133
Scope of Project: Scope of Project as set forth in Exhibit I, Scope of Project and Budget.	Project Title: Capital Construction project as set forth in Exhibit I, Scope of Work CFDA: 20.526 (§5339)
Service Area: As defined in attached Exhibit I	Project Costs: <div style="text-align: right;"> Federal Funds \$ 185,350 State Funds \$ 0 Contractor Funds \$ 61,783 <hr/> Total Project Cost \$ 247,133 </div>
Agreement Number: GCB1949	

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter “WSDOT,” and the above Contractor, hereinafter “CONTRACTOR,” individually the “PARTY” and collectively the “PARTIES,” WITNESSETH THAT:

WHEREAS, Federal funding is authorized under the Moving Ahead for Progress in the 21st Century Act (MAP-21), Enacted as Public Law 112-141, July 6, 2012; or other Federal laws the Federal Transit Administration (FTA) administers to the extent FTA so determines;

WHEREAS, funding is authorized under 49 USC § 5339, Bus and Bus Facilities, and any subsequent amendments and resolutions thereto;

NOW, THEREFORE, in consideration of the terms, conditions, performances and mutual covenants herein set forth and the attached Exhibit I, “Scope of Project and Budget,” IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1

Purpose of Agreement

The purpose of this AGREEMENT is for WSDOT to provide capital funding to the CONTRACTOR for the design, acquisition, construction, and/or improvements of capital facilities and infrastructure to be used in the provision of public transportation services that meet the needs of persons in the State of Washington, hereinafter referred to as the “Project.” Reference to the “Project” shall include all such capital facilities, infrastructure and associated equipment designed, acquired, constructed, improved or installed under this AGREEMENT.

Section 2

Scope of Project

The CONTRACTOR agrees to perform the work and complete the Project as described and detailed in Exhibit I, “Scope of Project and Budget,” which is by this reference fully incorporated herein as if fully set out in this AGREEMENT, and to perform the Project 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 Project period shall begin on the date shown in the caption space header titled "Term of Project" and shall continue through the useful life of the Project regardless of the date of signature and execution of this AGREEMENT, unless terminated as provided herein. The useful life of the constructed Project will be determined by using the North American Industry Classification System (NAICS) code tables or as FTA identifies in writing.

Section 4 Contractor's Share of Project Costs

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 Project and Budget." The CONTRACTOR further agrees that there shall be no reduction in any amount specified as the Contractor's Funds unless there is a concurrent proportional reduction 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 three (3) business days of making that determination. The CONTRACTOR agrees that "Project Costs" eligible for federal participation, including Contractor Funds used as match to other FTA funds, must comply with the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments", or OMB Circular A-122 Revised, "Cost Principles for Non-Profit Organizations" or Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, Subpart 31.2, "Contracts with Commercial Organizations," whichever is appropriate.

Section 5 Payment

A. WSDOT, using FTA funds, shall reimburse the CONTRACTOR for allowable expenses incurred in completing the Project described in Exhibit I, "Scope of Project and Budget." Allowable Project expenses shall be determined by WSDOT as described in WSDOT's *Guide to Managing Your Public Transportation Grant*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>. In no event shall the total amount reimbursed by WSDOT exceed the "Federal Funds" identified in the caption space header titled "Project Costs," above.

B. Payment will be made by WSDOT on a reimbursable basis. Such costs to be reimbursed shall be calculated as described in WSDOT's *Guide to Managing Your Public Transportation Grant*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>. 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 receipt of the invoice. 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.

Section 6 Inspection of the Project

The CONTRACTOR shall inspect the Project pursuant as required during construction and upon Project completion. Upon receipt and acceptance of the Project, the CONTRACTOR agrees that it has fully

inspected the Project and accepts it as in good condition and repair, and is satisfied with the Project and that the Project complies with all regulations, rules, and laws.

Section 7

Miscellaneous Charges and Conditions

The CONTRACTOR shall pay all late fees and fines, as well as any fees and taxes and WSDOT shall not reimburse CONTRACTOR for any such fees and/or fines under this AGREEMENT. Retail sales or use tax, which may be imposed with respect to any portion said Project by a duly constituted governmental authority as the result of the CONTRACTOR's use or intended use of the Project is eligible for reimbursement. Required inspection fees conducted by third party subcontractors on the Project or any portion thereof for acceptance are eligible for reimbursement. All replacements, repairs, or substitutions of parts of any portion of the Project shall be at the cost and expense of the CONTRACTOR

Section 8

Assignments, Subcontracts, and Leases

A. Unless otherwise authorized in advance and in writing by WSDOT, the CONTRACTOR will not assign any portion of the Project under this AGREEMENT or execute any contract, amendment, or change order thereto pertaining to the Project, 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 or any portion thereof to be used by anyone not under the CONTRACTOR's direct supervision.

B. The CONTRACTOR agrees to include Sections 9 through 31 and Section 39 of this AGREEMENT in each subcontract financed in whole or in part with Federal assistance provided by FTA; 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, subject to the limitations set forth in Section 22.E.3 of 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 a financial assistance contract between the Washington State Department of Transportation and the Federal Transit Administration and the appropriations of the State of Washington.”

C. The CONTRACTOR must make full and prompt payment to subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from WSDOT (49 CFR 26.29) , even if such FTA requirements conflict with state laws.

Section 9

Reports and Use of the Project

A. The CONTRACTOR agrees that the Project shall be used for the provision of transportation service as set forth in Exhibit I, “Scope of Project and Budget” within the area described in the caption space titled “Service Area,” above, for the Project's useful life according to Section 3, Term of Project. The CONTRACTOR further agrees that it will not use or permit the use of the Project in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project or any portion thereof to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay the design, acquisition, construction or improvement of the capital facilities and infrastructure of the Project or any portion thereof, and/or unreasonably delay putting the constructed Project into service or fail to use the Project or any portion thereof during the useful life of that Project, the CONTRACTOR agrees that it may be required to refund the entire amount of the “Federal Funds” expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project or any portion thereof is withdrawn from Project use or when the Project is used in a manner substantially different from that identified in the “Scope of Project and Budget.” If the Project is permanently removed from transportation service, the CONTRACTOR agrees to immediately contact WSDOT for instructions regarding the disposal of the Project.

B. Reports. The CONTRACTOR shall prepare quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in WSDOT's *Guide to Managing Your Transportation Grant*, 2011 version, and any amendments thereto, or as requested by WSDOT. The CONTRACTOR shall keep satisfactory written records with regard to the use of Project design, acquisition, construction and/or improvement of the Project and the subsequent use of the Project and shall submit the following reports in a format and at such times as prescribed by WSDOT through the useful life of the Project:

1. Reports regarding the progress of the design, acquisition, construction and/or improvement of the Project.

Reports describing the current usage of Project and other data which WSDOT and the Federal Transit Administration ("FTA") may request.

2. In the event any portion of the Project sustains disabling damage as defined in WSDOT's *Guide to Managing Your Public Transportation Grant*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, and/or use of the Project 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 and FTA and which may include but are not limited to:

a) Drug Abuse and Alcohol Abuse Testing compliance reports as required in this AGREEMENT

b) Goods and services purchased from Disadvantaged Business Enterprises.

C. Program Income. The CONTRACTOR shall comply with Program Income provisions in 49 CFR § 18.25 or 49 CFR § 19.24, whichever is applicable, and prepare a quarterly report of the gross income, as defined in WSDOT's *Guide to Managing Your Public Transportation Grant*, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, and any amendments thereto, received by CONTRACTOR that is directly generated by the Project activity supported by the funding in this AGREEMENT.

D. Remedies for Misuse or Noncompliance. The CONTRACTOR shall not perform or use the Project in a manner different from that set forth in Exhibit I, "Scope of Project and Budget," and the "Service Area" identified in the AGREEMENT. If WSDOT determines that the Project has been used in a manner different from that set forth in Exhibit I, "Scope of Project and Budget," and the "Service Area" identified in the AGREEMENT, WSDOT may direct the CONTRACTOR to dispose of the Project acquired and/or constructed with Federal funds by the CONTRACTOR in accordance with FTA procedures. WSDOT may also withhold Grant payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT. If Federal participation and funding is either reduced or canceled as a result of a breach by the CONTRACTOR, the CONTRACTOR is then liable for all damages from the breach, even though those damages exceed the price payable under this AGREEMENT

Section 10

Maintenance of Project

CONTRACTORS who are transit agencies must have a Transit Asset Management Plan (AMP), as required by 49 USC § 5326, and certified by WSDOT. All other CONTRACTORS must have a written AMP to WSDOT by October 1, 2014, or prior to the receipt of their first grant funded vehicle. The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project to ensure the Project assets are maintained in a state of good repair. All service, materials, and repairs in connection with the use and operation of the Project shall be at the CONTRACTOR's expense. The CONTRACTOR shall, at a minimum, service the Project and replace parts at intervals recommended by the manufacturer consistent with the CONTRACTOR's AMP. The CONTRACTOR agrees to comply with the property management standards identified in 49 CFR §§ 18.31 through 18.34 or 49 CFR §§ 19.30 through 19.37, whichever is appropriate, including any amendments thereto, and with other applicable Federal regulations in accordance with Federal directives, which by this reference is incorporated herein to the

AGREEMENT; and any reference therein to “grantee” shall mean the CONTRACTOR. Any exception to the requirements of 49 CFR §§ 18.31 through 18.34 or 49 CFR §§ 19.30 through 19.37 requires the express approval of WSDOT in writing. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 11

General Compliance Assurance

The CONTRACTOR agrees to give reasonable guarantees that it and its subcontractors, lessees and any third-party contractors under this AGREEMENT, will comply with all requirements imposed by, or pursuant to, 49 U.S.C. Chapter 53 and other applicable Federal regulations. The CONTRACTOR agrees to comply with the provisions of 49 CFR Part 18 or 49 CFR Part 19 or FAR, 48 CFR Chapter 1, subpart 31 whichever is applicable, and cost principles as defined in OMB circulars A-87 and A-122. The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT’s *Guide to Managing Your Public Transportation Grant*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>. The CONTRACTOR agrees that the United States, any agency thereof, WSDOT and any of WSDOT’s representatives, have not only the right to monitor the compliance of the CONTRACTOR with the provisions of this Assurance, but also have the right to seek judicial enforcement with regard to any matter arising under Federal transit laws and regulations, and this Assurance.

Section 12

Procurement

The CONTRACTOR shall make purchases of any portion of the Project pursuant to this AGREEMENT through procurement procedures approved in advance by WSDOT and consistent with the following provisions:

A. General Procurement Requirements. The CONTRACTOR shall comply with third-party procurement requirements of 49 U.S.C. Chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with the United States Department of Transportation (U.S. DOT) third-party procurement regulations of 49 CFR § 18.36 or 49 CFR § 19.40 through 19.48 and other applicable Federal regulations pertaining to third-party procurements and subsequent amendments thereto. The CONTRACTOR shall also comply with the provisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to “Grantee” shall mean CONTRACTOR. The CONTRACTOR agrees that it may not use FTA assistance to support its third-party procurements unless there is satisfactory compliance with Federal laws and regulations.

B. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the CONTRACTOR agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not expending or otherwise using any Federal assistance awarded from FTA funds to support a procurement using exclusionary or discriminatory specifications.

D. Preference for United States Products and Services. To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

1. **Buy America.** The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, “Buy America Requirements,” 49 CFR Part 661, and any later amendments thereto.
2. **Cargo Preference—Use of United States-Flag Vessels.** The CONTRACTOR agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference—U.S.-Flag Vessels,” 46 CFR Part 381, to the extent those regulations apply to the Project.

3. **Fly America.** The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR §§ 301-10.131 through 301-10.143.

E. **Geographic Restrictions.** The CONTRACTOR agrees to not use any state or local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

F. **Preference for Recycled Products.** To the extent applicable, The CONTRACTOR agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247, which implements section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

G. **National Intelligent Transportation Systems Architecture and Standards.** To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by 23 U.S.C. § 517(d), and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” *66 Fed. Reg. 1455 et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

H. **Bonding – Construction Activities.** The CONTRACTOR agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent the FTA determines otherwise in writing.

I. **Architectural Engineering or Related Services.** In accordance with 49 U.S.C § 5325(b), the CONTRACTOR agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C Chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. Chapter 53:

1. When procuring architectural engineering, or related services, the CONTRACTOR agrees that it and its sub-contractors at any tier will: (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under Chapter 11 of Title 40, United States Code, or (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.

2. Upon awarding a contract for architectural engineering or related services, the CONTRACTOR agrees that it and its subcontractors at any tier will: (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31. (b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute. (c) Apply the firm’s indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm’s indirect cost rates are accepted as described in Section 12, I.2(b) herein. (d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the CONTRACTOR agrees and assures that it and the members of any group of entities sharing cost or rate data as described in Section 12, I.2(c) herein shall:

- i. Notify any affected firm before requesting or using that data,
- ii. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and

- iii. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

J. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the CONTRACTOR may use design-build procurements to implement its Project(s) after it has complied with all applicable requirements established by the Federal Government, whether through Federal laws or regulations in accordance with applicable Federal directives, except to the extent the Federal Government determines otherwise in writing.

K. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), the CONTRACTOR may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. Chapter 53, and in accordance with any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

L. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the CONTRACTOR agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement. Before awarding a third party contract, the CONTRACTOR agrees to consider:

1. The third party contractor's integrity,
2. The third party contractor's compliance with public policy,
3. The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(1)(2), if any, and
4. The third party contractor's financial and technical resources.

M. Government Orders. In case any lawful government authority shall make any order with respect to the Project or any portion thereof, or the PARTIES hereto or either PARTY, 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 13 Real Property

For real property acquired with Federal assistance, the CONTRACTOR agrees as follows:

A. Real Property Acquisition Protections. Irrespective of Federal participation in real property acquisition costs under the Project, the CONTRACTOR agrees to all of the following:

1. It will provide fair and equitable treatment to owners of real property or interests in real property that must be acquired as a result of a Project funded by FTA, and
2. It will comply with:

(a) 49 U.S.C. § 5324(b), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*, and

(b) U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

B. Covenant Assuring Nondiscrimination. The CONTRACTOR agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

C. Recording Title to Real Property. To the extent required by FTA, the CONTRACTOR agrees to record the Federal interest in title to real property used in connection with the Project.

D. FTA Approval of Changes in Real Property Ownership. The CONTRACTOR agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

Section 14

Construction

Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees as follows:

A. **Drafting, Review, and Approval of Construction Plans and Specifications.** The CONTRACTOR agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

B. **Seismic Safety.** The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

C. **Supervision of Construction.** The CONTRACTOR agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

D. **Construction Reports.** The CONTRACTOR agrees to provide progress reports and other information and data as may be required by FTA or by the State in which the construction takes place.

E. **Major Capital Investments Project Regulations and Guidance.** To the extent applicable, the CONTRACTOR agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any amendments thereto, and to follow FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects," August 1, 2007, any later revisions thereto, and FTA regulations, "Major Capital Investment Projects," 49 C.F.R. part 611.

Section 15

Incorporation of Federal Terms

A. **Purchasing.** This AGREEMENT's provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth herein. All contractual provisions required by FTA, 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 WSDOT request, which would cause WSDOT to be in violation of any FTA term or condition.

B. **Federal Changes.** The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, whether or not they are referenced in this AGREEMENT and include any amendments promulgated by the FTA, during the term of this AGREEMENT. The CONTRACTOR's failure to so comply shall constitute a material breach of this AGREEMENT.

C. **Special Provisions by MAP-21 Authorized Program.** Recipient agrees to follow the applicable edition of FTA Circular, "Bus and Bus Facilities Guidance Facilities: Guidance and Application Instructions" when it is issued

Section 16

No Obligation by the Federal Government

A. WSDOT and the CONTRACTOR acknowledge and agree that regardless of any concurrence or approval by the Federal Government of the solicitation or award of this AGREEMENT, the Federal Government is not a party to this AGREEMENT unless it provides its express written consent. The Federal Government shall not be subject to any obligations or liabilities to the CONTRACTOR, subcontractor, lessee, or any other participant at any tier of the Project (whether or not a PARTY to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT.

B. No contract between the CONTRACTOR and its subcontractors, lessees, or any other participant at any tier of the Project shall create any obligation or liability of 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. The CONTRACTOR hereby agrees to include this provision 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 17

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 18

Ethics

A. **Code of Ethics.** The CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts, subagreements, leases, third-party contracts, or other arrangements supported by federal assistance. The code or standards shall provide that the CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subcontractor, lessee, sub-recipient, or participant at any tier of the Project, or agent thereof. The CONTRACTOR may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These codes or standards shall prohibit the CONTRACTOR's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the CONTRACTOR's officers, employees, board members, or agents, or by subcontractors, lessees, sub-recipients, other participants, or their agents. The CONTRACTOR must fully comply with all the requirements and obligations of Chapter 42.52 RCW that govern ethics in state and local governments.

1. **Personal Conflict of Interest.** The CONTRACTOR's code or standards shall prohibit the CONTRACTOR's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm or entity selected for award:

- a) The employee, officer, board member, or agent;
- b) Any member of his or her immediate family;
- c) His or her partner; or
- d) An organization that employs, or is about to employ, any of the above.

2. **Organizational Conflict of Interest.** The CONTRACTOR's code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third-party contract, subagreement, lease, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the subrecipient, lessee, third-party contractor, or other participant at any tier of the Project or impair its objectivity in performing the work under this AGREEMENT.

B. **Debarment and Suspension.** The CONTRACTOR agrees to comply, and assures the compliance of each sub-recipient, lessee, third-party contractor, or other participant at any tier of the Project, with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment" 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The CONTRACTOR agrees to, and assures that its subrecipients, lessees, third-party contractors, and other participants at any tier of the Project will search the "Excluded Parties Listing

System” records at <http://sam.gov/> before entering into any third subagreement, lease, third-party contract, or other arrangement in connection with the Project, and will include a similar term or condition in each of its lower-tier covered transactions.

C. **Bonus or Commission.** The CONTRACTOR affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for federal financial assistance for this Project.

D. **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 the CONTRACTOR rent or purchase any equipment and materials from any employee or officer of WSDOT.

E. **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.

F. **Restrictions on Lobbying.** The CONTRACTOR agrees to:

1. Comply with 31 U.S.C. § 1352(a) and will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant AGREEMENT or Cooperative Agreement; and
2. Comply, and assure compliance by each subcontractor at any tier, each lessee at any tier and each sub-recipient at any tier, with applicable requirements of U.S. DOT regulations, “New Restriction on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. § 1352; and
3. Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a state legislature on legislation or appropriations, except through proper, official channels.

G. **Employee Political Activity.** To the extent applicable, the CONTRACTOR agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and §§ 7324 through 7326, and Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR Part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal Funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 49 U.S.C. § 5307 (k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving assistance pursuant to the MAP-21 provisions and/or receiving FTA assistance to whom the Hatch Act does not otherwise apply.

H. **False or Fraudulent Statements or Claims.** The CONTRACTOR acknowledges and agrees that:

1. Civil Fraud: The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by executing this AGREEMENT, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by this AGREEMENT. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR to the extent the Federal Government deems appropriate.
2. Criminal Fraud: If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this Project authorized under 49 U.S.C. Chapter 53 or any other federal law, the Federal Government reserves the

right to impose on the CONTRACTOR the penalties of 49 U.S.C. §5323(1), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

I. **Trafficking in Persons.** To the extent applicable, the CONTRACTOR agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 3.g of FTA Master Agreement (19) dated October 1, 2013, which by this reference is incorporated herein as if fully set out in this AGREEMENT, and any amendments thereto, which is accessible at <http://www.fta.dot.gov/documents/19-Master.pdf> consistent with U.S. OMB guidance, “Trafficking in Persons: Grants and Cooperative Agreements,” 2 CFR Part 175.

Section 19

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.

Section 20

Civil Rights

The CONTRACTOR shall comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. **Nondiscrimination in Federal Transit Programs.** The CONTRACTOR agrees to comply, and assures compliance by each third-party contractor, lessee or other participant at any tier, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, religion, national origin, sex, disability, or age, and prohibits discrimination in employment or business opportunity;

B. **Nondiscrimination-Title VI of the Civil Rights Act.** The CONTRACTOR agrees to comply, and assure compliance by each third-party contractor at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*; and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act”, 49 CFR Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance; and U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 CFR § 50.3, and any other applicable Federal directives that may be issued;

C. **Equal Employment Opportunity.** The CONTRACTOR agrees to comply, and assures compliance by each third-party contractor, lessee or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. §5332, with requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and any implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. 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, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, 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. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

2. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the CONTRACTOR agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of 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 No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

3. If the CONTRACTOR is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this AGREEMENT. Failure by the CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of federal financial assistance, or other measures that may affect the CONTRACTOR's eligibility to obtain future federal financial assistance for transportation projects.

D. Nondiscrimination on the Basis of Sex. The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.* and with any implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

E. Nondiscrimination on the basis of Age. The CONTRACTOR agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance", 45 CFR Part 90, which prohibits discrimination on the basis of age.

2. The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act" 29 CFR Part 1625.

F. Disabilities-Employment. 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

G. Disabilities-Access. The CONTRACTOR agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following: U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; U.S. DOT regulations, "Nondiscrimination on the Basis of

Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38; U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35; U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36; U.S. GSA regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19; U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630; U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled,” 47 CFR Part 64, Subpart F; U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, “Electronic and Information Technology Accessibility Standards” 36 CFR Part 1194; FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 U.S.C. §§ 1101 *et seq.*; with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 U.S.C. §§ 4541 *et seq.*; and comply with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments to these laws. The CONTRACTOR understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this AGREEMENT.

I. Access to Services for Persons with Limited English Proficiency. The CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and with provisions of U.S. DOT Notice “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.

J. Environmental Justice. The CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations”, 42 U.S.C. § 4321 note; and DOT Order 5610.2, “Department of Transportation Actions to address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377 *et seq.*, April 15, 1997, and the most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Statutes. The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination and other nondiscrimination statute(s) that may apply to the Project including Chapter 49.60 RCW.

Section 21 Participation of Disadvantaged Business Enterprises

To the extent applicable, the CONTRACTOR shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

A. The CONTRACTOR agrees to comply with section 1101(b) of MAP-21, 23 U.S.C. §101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of

Transportation Financial Assistance Programs,” 49 CFR Part 26; and Federal transit law, specifically 49 USC § 5332.

B. The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third-party contract, or sub-agreement supported with federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third-party contracts and sub-agreements supported with federal assistance derived from the U.S. DOT. The CONTRACTOR’s DBE program, as required by 49 CFR Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of this AGREEMENT. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR 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, 31 U.S.C. §§ 3801 et seq.

Section 22

Energy Conservation and Environmental Requirements

A. **Energy Conservation.** The CONTRACTOR shall comply with the mandatory standards and policies relating to energy efficiency standards and policies within the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq., and any amendments thereto. To the extent applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 CFR Part 622, Subpart C.

B. **Environmental Protection.** The CONTRACTOR agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335; Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 through 1508; joint Federal Highway Administration (FHWA)/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622, and subsequent Federal environmental protection regulations that may be promulgated. The CONTRACTOR agrees to comply with 23 U.S.C. §§ 139 and 326 as applicable, and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576 et seq., November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

C. **Clean Water.** The recipient agrees to comply with all applicable Federal laws and regulations and follow Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, 42 U.S.C. §§ 300f through 300j-6, and 42 U.S.C. § 7606, including any revisions thereto. In the event that the Federal Funds identified in the caption space header of this AGREEMENT entitled “Project Costs”, exceed \$100,000, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act.

D. **Clean Air.** The recipient agrees to comply with all applicable Federal laws and regulations and follow Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and 40 CFR parts 85, 86, 93 and 600, and any revisions thereto. In the event that the federal share, identified in “Project Costs” of this AGREEMENT exceeds \$100,000, the CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act.

E. **Violating Facilities.** The CONTRACTOR agrees to:

1. Refrain from using any violating facilities.
2. Report each violation to WSDOT and understands and agrees that WSDOT will, in turn, report each violation to the FTA and to the appropriate EPA Regional Office.
3. Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

F. **Use of Certain Public Lands.** The CONTRACTOR agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The CONTRACTOR also agrees to comply with joint FHWA/FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

G. **Wild and Scenic Rivers.** The CONTRACTOR agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, “Wild and Scenic Rivers,” 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, “Management Areas,” 43 C.F.R. Part 8350.

H. **Coastal Zone Management.** The CONTRACTOR agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

I. **Wetlands.** The CONTRACTOR agrees to facilitate compliance with the protections for wetlands of Executive Order No. 11990, as amended, “Protection of Wetlands,” at 42 U.S.C. § 4321 note.

J. **Floodplains.** The CONTRACTOR agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, “Floodplain Management,” 42 U.S.C. § 4321 note.

K. **Endangered Species and Fisheries Conservation.** The CONTRACTOR agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*

L. **Historic Preservation.** The CONTRACTOR agrees as follows:

1. The CONTRACTOR agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.
2. The CONTRACTOR agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows: (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties. (b) The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

M. **Indian Sacred Sites.** The CONTRACTOR agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, “Indian

Sacred Sites,” 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

N. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the CONTRACTOR agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622, among others. The CONTRACTOR agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (i.e., environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303). The CONTRACTOR also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The CONTRACTOR agrees that those environmental mitigation measures are incorporated by reference and made part of this AGREEMENT or Cooperative Agreement for the Project. The CONTRACTOR also agrees that any deferred mitigation measures will be incorporated by reference and made part of this AGREEMENT or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The CONTRACTOR agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 23

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, in accordance with applicable federal regulations and other requirements that FTA may impose. 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 and FTA upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

B. Funds Received or Made Available for the Project. The CONTRACTOR agrees to deposit in a financial institution, all Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of this Grant AGREEMENT or Cooperative AGREEMENT and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

C. Documentation of Project Costs. 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.

D. Checks, Orders, and Vouchers. The CONTRACTOR agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 24

Audits, Inspection, and Retention of Records

A. Submission of Proceedings, Contracts, Agreements, and Other Documents. During the course 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, both paper and electronic, relating to the Project as WSDOT may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 18 or 19, whichever is applicable. 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 perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 CFR § 18.26 or 19.26, whichever is applicable, these audits must comply with OMB Circular A-133, Revised, “Audits of States, Local Governments, and Non-Profit Organizations,” and the latest applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT, and any further revision or supplement thereto. The CONTRACTOR agrees that audits will be carried out in accordance with U.S. General Accounting Office “Government Auditing Standards”. The CONTRACTOR agrees to obtain any other audits required by the Federal Government or WSDOT. Project closeout will not alter the CONTRACTOR’s audit responsibilities.

C. Inspection. The CONTRACTOR agrees to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work materials, payrolls, maintenance records, and other data and records, 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 contractor whose contract award is not based on competitive bidding procedures as defined by the United States Department of Transportation to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, 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 as required by 49 U.S.C. § 5325(g).

Section 25

Labor Provisions

A. Construction Activities. The CONTRACTOR agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following laws and regulations providing protections for construction employees:

1. **Contract Work Hours and Safety Standards Act.** The CONTRACTOR shall comply with, and shall require the compliance by each subcontractor at any tier, any applicable employee protection requirements for non-construction employees as defined by the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3701 *et seq.*, and specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702 and USDOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)” at 29 CFR. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 CFR Part 1926;

2. **Davis-Bacon Act, as amended,** 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and

3. **Copeland “Anti-Kickback” Act, as amended,** 18 U.S.C. § 874, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

B. Fair Labor Standards Act. The CONTRACTOR agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing work involving commerce, and apply to any local government employees that are public transit authority employees. The CONTRACTOR shall comply with the Fair Labor Standards Act’s minimum wage and overtime requirements for employees performing work in connection with the Project.

C. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract 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 40 hours in such workweek.

D. Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of six (6) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349 as amended by 40 U.S.C. §§ 3141 *et seq.*, and pursuant to 49 U.S.C. §5333(a) *et seq.*, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349, as amended by 40 U.S.C. § 3141 *et seq.* and pursuant to 49 U.S.C. § 5333(a), the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

E. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (C) of this section.

F. Withholding for unpaid wages and liquidated damages. The CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (E) of this section.

G. Public Transportation Employee Protective Agreement. To the extent required by Federal Law, the CONTRACTOR agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333 (b), in accordance with the USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215 and any amendments thereto. These terms and conditions are identified in USDOL's certification of public transportation employee protective arrangements to FTA. The CONTRACTOR agrees to implement the Project in accordance with the conditions stated in that USDOL certification, which certification and any documents

cited therein are incorporated by reference and made part of this AGREEMENT. The CONTRACTOR also agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of this AGREEMENT and any alternative comparable arrangements specified by USDOL for application to the Project, in accordance with USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215, and any revision thereto.

Section 26

Liens on the Project

In addition to any Federal interest in title to the Project, WSDOT shall hold legal title to the Project the CONTRACTOR acquires, improves and/or constructs with Federal funds and have legal ownership to any portion of the Project the CONTRACTOR acquires or modifies using the "Federal Funds" identified in the caption space of this AGREEMENT titled "Project Costs". The CONTRACTOR accepts WSDOT's legal title to the Project and any portion thereof during its useful life and agrees that it shall not use the Project or any portion thereof as collateral, nor shall the CONTRACTOR encumber the Project in any way. The Contractor shall follow the terms stated in Section 9A regarding use and disposal of the Project and/or any portion thereof. WSDOT's lien shall equal the proportional Federal funded share, as identified in this AGREEMENT, of the disposable value of the Project and any portion thereof. Satisfaction of WSDOT's lien may be satisfied only by proper disposal of the Project and any portion thereof in a manner determined by WSDOT.

Section 27

Loss or Damage to Project

- A. During the useful life of the Project, the CONTRACTOR, at its own expense, shall cover any loss, theft, damage, or destruction of the Project or any portion thereof using either of the following methods:
1. The CONTRACTOR shall maintain or cause to be maintained property insurance covering risk of direct physical loss on the Project or any portion thereof adequate to cover the value of the Project during the course of construction and after occupancy. To the extent applicable, the CONTRACTOR agrees to comply with flood insurance purchase provisions of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a). With respect to any project involving construction, the CONTRACTOR shall supply proof of such coverage to WSDOT; or
 2. The CONTRACTOR shall provide a written certificate of self-insurance to WSDOT. The CONTRACTOR will cover from its own resources the costs of repairing or replacing any Project or any portion thereof if it is stolen, damaged, or destroyed in any manner.
- B. During the useful life of the Project, if the damage to the Project 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 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 and place it back into service.
- C. During the useful life of the Project, if the Project 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 and/or any portion thereof; or
 2. Does not intend to replace the lost Project and/or any portion thereof.
- D. If WSDOT determines that the total loss occurred under circumstances in which the CONTRACTOR fulfilled its obligations under this AGREEMENT, WSDOT would either pay or rebate to the CONTRACTOR its proportionate share of such proceeds received, or take such other action with respect to such proceeds, as FTA shall allow.

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 28

Planning and Private Enterprise

FTA Requirements. The CONTRACTOR agrees to implement the Project in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(l); joint Federal Highway Administration (FHWA)/ FTA regulations, "Statewide Transportation Planning: Metropolitan Transportation Planning," 23 CFR Part 450 and 49 CFR Part 613; and any amendments thereto, and with FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, to the extent that these regulations are consistent with the MAP-21 amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations. To the extent feasible, the CONTRACTOR agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and non-profit organizations that receive Federal assistance for non-emergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services. During the implementation of the Project, the CONTRACTOR agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 29

Substance Abuse

A. **Drug and Alcohol Testing.** If receiving FTA 5309 and/or FTA 5311 funding, CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the U.S. DOT or its operating administrations and WSDOT to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to submit annually the Management Information System (MIS) reports to WSDOT each year during the term identified in the caption space header above titled "the Term of Project."

B. **Drug-free Workplace.** To the extent applicable, the CONTRACTOR agrees to comply with the Federal regulations and guidance related to the Drug Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*, and any amendments thereto, 2 CFR Part 182, and 49 CFR Part 32, and to FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655 and 49 U.S.C. § 5331.

C. **Privacy Act.** The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions pertaining to substance abuse contained in the Civil Rights clause of this AGREEMENT.

Section 30

Federal "\$1 Coin" Requirements

To the extent required by the Federal Government, the CONTRACTOR agrees to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the CONTRACTOR's equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in the connection with that use. The CONTRACTOR also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

Section 31

Safe Operation of Motor Vehicles

As applicable, CONTRACTOR is encouraged to comply with the following provisions::

A. Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note. CONTRACTOR is encouraged to adopt and promote on-the-job seat belt use policies and programs for personnel that operate company-owned vehicles.

B. Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," and DOT Order 3902.10, "Text Messaging While Driving." CONTRACTOR is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving. CONTRACTOR is also encouraged to conduct workplace safety initiatives in a manner commensurate with its size.

Section 32

Freedom of Information Act

CONTRACTOR understands and agrees that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, applies to the information and documents, both paper and electronic, submitted to WSDOT, FTA and U.S. DOT. The CONTRACTOR should therefore be aware that all applications and materials submitted that are related to PROJECT will become agency records and are subject to public release through individual FOIA or state public disclosure requests.

Section 33

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.

Section 34

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 amendments shall not be binding or valid unless signed by the persons authorized to bind each of the PARTIES.

Section 35

Changed Conditions Affecting Performance

The CONTRACTOR hereby agrees to immediately notify WSDOT in writing of any change in conditions or law, or of any other event, including any current or prospective dispute, which may adversely affect WSDOT's interest in the Project or affect CONTRACTOR's ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 36

Universal Identifier

CONTRACTOR shall, in accordance with 2 CFR Part 25, obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number as a universal identifier for Federal financial assistance recipients.

Section 37

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 Assistant Director or the Assistant Director's designee. This decision shall be final and conclusive unless within ten (10) days from the date of the 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 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 38

State and Local Law

Except when a Federal statute or regulation pre-empts state and/or local law, regulation or ordinance, no provision of this 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, regulation or ordinance. Thus if any provision or compliance with any provision of this AGREEMENT violate state or local law, regulation or ordinance, or would require the CONTRACTOR to violate state or local law, regulation or ordinance, 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 39

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 federal financial assistance provided herein, at any time by written notice to the other PARTY in accordance with 49 CFR Part 18 § 18.44 or 49 CFR Part 19 § 19.61, whichever is applicable. 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. WSDOT and/or the CONTRACTOR may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite federal 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 federal 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;
5. The Federal Government and/or State Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of federal financial assistance for the Project; or
6. The Federal Government terminates this AGREEMENT due to a determination that the CONTRACTOR has: (a) willfully misused Federal assistance Funds by failing to make adequate progress on the Project, (b) failed to make reasonable and appropriate use of the Project real property or any part of the Project, or (c) failed to comply with the terms of this AGREEMENT. In the event of a termination under this subsection, and the Federal Government exercises its right to require WSDOT to refund any or all of the Federal Funds provided for the Project, the CONTRACTOR shall return all monies reimbursed to it by WSDOT, in the amount required by the Federal Government, within sixty (60) days of its receipt of a certified letter from WSDOT.
7. In the case of termination for convenience under subsections A.1 through A.5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT which 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 federal 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 the AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates.
3. Abuses or misuses the Project, including, but not limited to:
 - a) Failure to maintain Project according to the applicable building code and/or 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 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 or any portion thereof.
4. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; 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.

Section 40

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 41

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 42

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, and subcontractors arising out of, in connection with or incident to the negligent acts omissions of the CONTRACTOR, its agents, employees and officers. 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. 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 the AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

Section 43

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 of 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 44

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 CONTRACTOR hereby accepts the issuing and service of process by registered mail at the mailing address shown in the caption space headers above of this AGREEMENT titled CONTRACTOR and Washington State Department of Transportation. The PARTIES agree that the laws of the state of Washington shall apply.

Section 45 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, any portion thereof, or other property in which WSDOT has a financial interest.

B. **Subrogation.** WSDOT may require the CONTRACTOR to assign to it 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 or any portion thereof. 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 46 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 47 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 48 Severability

If any covenant or provision of this AGREEMENT or any provision of any document incorporated by reference shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision of this AGREEMENT which can be given effect without such voided provision or covenant, and any portion thereof which in itself is valid if such remainder conforms to the terms and requirements of applicable law and to this end the provisions of this AGREEMENT are declared to be severable. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 49 Section Headings

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this AGREEMENT.

**Section 50
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 51
Binding Agreement**

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agencies or entities to the obligations set forth herein.

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

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

CONTRACTOR

By: _____
Brian Lagerberg, Director
Public Transportation Division

By: _____
Authorized Representative

Title: _____

Print Name: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: Susan Cruise
Assistant Attorney General

Date: October 14, 2014

Exhibit I
SCOPE OF PROJECT AND BUDGET

Total Project Cost	
Federal Funds	\$ 185,350
State Funds	\$ 0
Contractor's Funds	\$ 61,783
Total Project Cost	\$ 247,133

Funding by Project:

PROJECT A

Scope of Work: To provide capital funding assistance for the engineering and construction to repair and replace the roof for the administrative building #1 and maintenance on building #2 at the base facility located in Shelton.

Funding	Percentage	Totals
FTA 5339	75%	\$ 185,350
Contractor's Share	25%	\$ 61,783
Total Project Cost	100%	\$ 247,133

Budget: *Funding and percentages identified reflects total project funds.* Capital funding allocations are for the purchase of the Project Equipment specified.

Milestone Description	Estimated Completion Date
RFP/IFB Issued	12/21/2014
Contract Award	3/31/2014
Contract Complete	8/30/2014