

RESOLUTION NO. 2015-30

**A RESOLUTION AUTHORIZING THE MASON TRANSIT AUTHORITY GENERAL
MANAGER TO SIGN WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
AGREEMENT #GCB2282**

WHEREAS, the Mason Transit Authority (MTA) has received notification of the award of funding assistance through the Washington State Regional Mobility Grant Program to execute a Regional Express Commuter Service Project; and

WHEREAS, the Mason Transit Authority has implemented the additional service as of November 2, 2015 with pre-award authority authorized by the Washington State Department of Transportation; and

WHEREAS, GCB2282 sets forth the requirements and guidance for management of the Capital Assistance portion of the 2015 Regional Mobility Grant for the Mason Transit Authority's Regional Commuter Express Service; and

NOW THEREFORE, BE IT RESOLVED that Mason Transit Authority approves Mutual Agreement #GCB2282 with the Washington State Department of Transportation for \$1,468,278.00 which includes a local match of \$293,656.00 in capital assistance for the procurement of three thirty five (35) foot coaches; and

BE IT FURTHER RESOLVED that the Mason Transit Authority authorizes the General Manager to sign and execute agreement GCB2282.

Adopted this 17th day of November, 2015



Mike Olsen, Chair

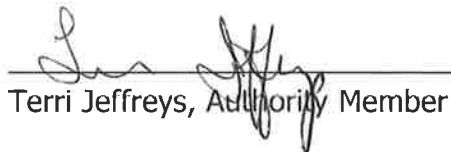


Deborah Petersen, Vice-Chair

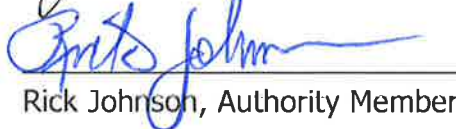
Ginny Beech, Authority Member



John Campbell, Authority Member



Terri Jeffreys, Authority Member



Rick Johnson, Authority Member

Randy Neatherlin, Authority Member

Tim Sheldon, Authority Member

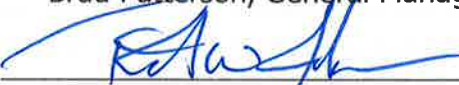


Cheryl Williams, Authority Member


APPROVED AS TO CONTENT:


Brad Patterson, General Manager

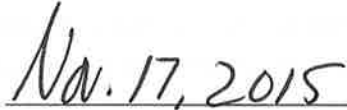
APPROVED AS TO FORM:


Robert W. Johnson, Legal Counsel

ATTEST:


Michele Rosendale, Clerk of the Board

DATE:



State Capital Equipment Grant Agreement	
<input type="checkbox"/> Consolidated Grant Program	<input checked="" type="checkbox"/> Regional Mobility Grant
Washington State Department of Transportation Public Transportation Division 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387 WSDOT Contact: David Chenaur 360-705-7839	Contractor: Mason Transit Authority 790 East Prairie Road Shelton, WA 98584-1265 Contact Person: Brad Patterson 360-426-9434
Term of Project: July 1, 2015, through the useful life of the Project Equipment.	Federal ID #: 91-1554133
Scope of Project: Scope of Project as set forth in Exhibit I, Scope of Work and Budget.	Project Title: Regional Commuter Express Bus Purchase (PIN 2015016)
Service Area: As defined in attached Exhibit I	Project Costs: State Funds 2015-2017 Grant Funds \$ 1,048,069 2017-2019 Projected Grant Funds \$ 126,553 Contractor Funds \$ 293,656 Total Project Cost \$ 1,468,278
Agreement Number: GCB2282	

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

WHEREAS, the State of Washington in its Sessions Laws of 2015, Chapter 10, Section 220 (1), (2), (4) and (5), provides Rural Mobility, Paratransit/Special Needs, and other special proviso funding through the multimodal transportation account, rural mobility grant program account, and regional mobility grant program account, as identified in the budget through its 2015-2017 biennial appropriations to WSDOT;

WHEREAS, the State of Washington in its Sessions Laws of 2015, Chapter 43, Section 207, subsection (2), (3), (4) and (7), added new revenue funds for Paratransit/Special Needs, Paratransit/Special Needs Non-profit, Regional Mobility and other proviso funding through the multimodal transportation account, rural mobility grant program account, and regional mobility program account, as identified in the budget through its 2015-2017 biennial appropriations to WSDOT;

WHEREAS, WSDOT's Public Transportation Division administers the Regional Mobility Grant Program funds to provide assistance solely for transportation projects as identified in LEAP Transportation Document 2015-2 ALL PROJECTS;

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

Section 1

Purpose of Agreement

The purpose of this AGREEMENT is for WSDOT to provide capital funding to the CONTRACTOR for the acquisition of equipment to be used in the provision of public transportation services that meet the needs of persons in the State of Washington, hereinafter known as the "Project."

Section 2

Scope of Project

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

the terms and conditions of this AGREEMENT. The caption space header titled "Service Area" and all caption space headers are by this reference incorporated 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 Equipment regardless of the date of execution of this AGREEMENT, unless terminated as provided herein. WSDOT has defined the useful life of vehicle Project Equipment in the Vehicle Disposition Schedule in its *Guide to Managing Your Public Transportation Grant*, for 2015, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/Guidebook.htm>, and/or WSDOT's, *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto, found at <http://www.wsdot.wa.gov/Transit/Grants/regional-mobility-grants-program-guidebook.htm>, which is by these references are both fully incorporated herein as if fully set out in this AGREEMENT. Non-vehicle Project Equipment's useful life will be determined by WSDOT taking into consideration the manufacturer's recommended lifecycle and the CONTRACTOR's previous experience with the asset, if any.

Section 4

Contractor's Share of Project Costs

A. The total Project cost shall not exceed the amounts detailed in the caption space header titled "Project Costs." The CONTRACTOR agrees to expend eligible funds, together with any "Contractor Funds" allocated for the Project, in an amount sufficient to complete the Project as detailed in Exhibit I, "Scope of Work and Budget." The CONTRACTOR further agrees that there shall be no reduction in the amount specified as the "Contractor Funds" unless there is a concurrent proportional reduction in the "State Funds" 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.

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

Section 5

Payment

A. State funds shall be used to reimburse the CONTRACTOR for allowable expenses incurred in completing the Project as described in Exhibit I, "Scope of Work and Budget." Allowable Project expenses shall be determined by WSDOT as described in WSDOT's *Guide to Managing Your Public Transportation Grant, 2015*, and any amendments thereto, and/or WSDOT's, *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto,. In no event shall the total amount reimbursed by WSDOT exceed "State Funds" identified in the caption space header titled "Project Costs," above.

B. Payment will be made by WSDOT on a reimbursable basis for actual net Project costs incurred within the timeframe in the caption space titled "Term of Project." Such costs to be reimbursed shall be calculated as described in WSDOT's *Guide to Managing Your Public Transportation Grant*, and any amendments thereto, and/or WSDOT's, *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto. WSDOT shall make no payments for costs incurred prior to the beginning or after the end date of the "Term of the Project" as set forth in the caption space header above. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once a month and no less than once per quarter. If approved by WSDOT, said invoices shall be paid by WSDOT within thirty (30) days of submission to WSDOT. Payment is subject to the submission to and approval by WSDOT of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to WSDOT must include a record of the actual costs.

C. The CONTRACTOR shall submit an invoice by July 15, 2016, for any unreimbursed eligible expenditures incurred between July 1, 2015, and June 30, 2016. If the CONTRACTOR is unable to provide an invoice by this date, the CONTRACTOR shall provide an estimate of the charges to be billed so WSDOT may accrue the expenditures in the proper fiscal period. Any subsequent reimbursement request for such period of time submitted will be limited to the amount accrued as set forth in this section. The CONTRACTOR's final payment request must be received by WSDOT by July 15, 2017, within thirty (30) days of the completion of the Project, or within thirty (30) days of the termination of this AGREEMENT, whichever is sooner. Any payment request received after July 15, 2017, will not be eligible for reimbursement.

D. For vehicle purchases, the Project Equipment titles shall designate WSDOT as the legal owner and the CONTRACTOR as the registered owner through the project period. Subject to the CONTRACTOR's compliance with all terms of this AGREEMENT, WSDOT will release the interest of ownership of the Project Equipment to the CONTRACTOR in writing thirty (30) days from the end of the useful life of the Project Equipment, as defined in the *Guide to Managing Your Public Transportation Grant, 2015* and/or *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto.

**Section 6
Purchases**

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

**Section 7
Inspection Upon Delivery**

The CONTRACTOR shall inspect Project Equipment purchased pursuant to this AGREEMENT at the time of delivery to the CONTRACTOR. Upon receipt and acceptance of Project Equipment, the CONTRACTOR agrees that it has fully inspected the Project Equipment and accepts it as being in good condition and repair, and that the CONTRACTOR is satisfied with the Project Equipment and that the Project Equipment complies with all regulations, rules, and laws.

**Section 8
Miscellaneous Charges and Conditions**

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

**Section 9
Assignments and Subcontracts**

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

B. The CONTRACTOR agrees to include Sections 10 through 23 of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished under this AGREEMENT. It is further agreed that those clauses shall not be modified in any such subcontract, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

Statement of Financial Assistance:

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

**Section 10
Reports and Use of Project Equipment**

A. The CONTRACTOR agrees that the Project Equipment shall be used for the provision of transportation service within the area described in the caption space header titled "Service Area," for the Project Equipment's useful life as set forth in Section 3 – Term of Project of this AGREEMENT. The CONTRACTOR further agrees that it will not use or permit the use of the Project Equipment in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project Equipment to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay or fail to use the Project Equipment during the useful life of the Project Equipment, the CONTRACTOR agrees that it may be required to refund up to the entire amount of the state share expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project Equipment

is withdrawn from Project use or when Project Equipment is used in a manner substantially different from that identified in Exhibit I, "Scope of Work and Budget." If the Project Equipment is permanently removed from transportation service, the CONTRACTOR agrees to immediately contact WSDOT for instructions regarding the disposal of the Project Equipment. For vehicle purchases only, the CONTRACTOR further understands that the Project Equipment shall be used to provide passenger service levels as described below:

1. A minimum of 100 passenger, revenue service miles per vehicle per week; or
2. A minimum of 100 one-way passenger trips per vehicle per week.

B. Reports. The CONTRACTOR shall prepare quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in WSDOT's *Guide to Managing Your Public Transportation Grant 2015*, and/or *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendment thereto or as requested by WSDOT. The contractor shall keep satisfactory written records with regard to the use of Project Equipment and shall submit the following reports in a format and at such times as prescribed by WSDOT until the useful life of the Project Equipment expires:

1. Reports describing the current usage of Project Equipment include, but are not limited to:
 - a) Project Passenger Trips Provided
 - b) Project Service Hours Provided
 - c) Project Revenue Service Miles Provided
 - d) Asset Management Plan
 - e) Vehicle or Equipment Inventory

2. In the event any portion of the Project Equipment sustains disabling damage as defined in WSDOT's *Guide to Managing Your Public Transportation Grant, 2015*, and/or WSDOT's, *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto, and/or triggers drug and alcohol testing, the CONTRACTOR shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.

3. The CONTRACTOR shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT.

C. Remedies for Misuse or Noncompliance. The CONTRACTOR shall not use any Project Equipment in a manner different from that described in Exhibit I, Scope of Project and Budget, and the "Service Area" identified in the AGREEMENT header of this AGREEMENT. If WSDOT determines that Project Equipment has been used in a manner different from that described in Exhibit I, Scope of Project and Budget, and/or the "Service Area" identified in the caption space header above, WSDOT may direct the CONTRACTOR to dispose of the Project Equipment acquired by the CONTRACTOR. WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

Section 11

Maintenance of Project Equipment

The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project Equipment to assure it remains in good and operational condition for the useful life of the Project Equipment. All service, materials, and repairs in connection with the use and operation of the Project Equipment during its useful life shall be at the CONTRACTOR's expense. CONTRACTORS who are transit agencies must also have a Transit Asset Management Plan certified by WSDOT. All other CONTRACTORS must have a WSDOT-approved written Vehicle Maintenance Plan or submit one to WSDOT for approval by October 1, 2015, or prior to the receipt of their first grant-funded vehicle. The CONTRACTOR agrees to, at a minimum, service the Project Equipment and replace parts at intervals recommended in the manual provided by the manufacturer of such Equipment, or sooner if needed. The CONTRACTOR shall take the Project Equipment to an appropriate service and repair facility for any service and repair under the manufacturer's warranty. WSDOT shall not be liable for repairs. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project Equipment in accordance with Section 19, Audits, Inspection, and Retention of Records. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 12

General Compliance Assurance

The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's *Guide to Managing Your Public Transportation Grant, 2015*, and/or WSDOT's, *Guide to Managing Your Regional Mobility Grant, 2015*, and any amendments thereto. The CONTRACTOR agrees that WSDOT, and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the CONTRACTOR with respect to the provisions of this

AGREEMENT but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT.

Section 13

No Obligation by the State Government

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

Section 14

Personal Liability of Public Officers

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

Section 15

Ethics

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

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

Section 16

Compliance with Laws and Regulations

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

Section 17

Environmental Protection

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

Section 18

Accounting Records

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

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

Section 19

Audits, Inspection, and Retention of Records

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

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

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

Section 20

Labor Provisions

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

Section 21

Liens on Project Equipment

WSDOT shall hold legal title to all vehicles the CONTRACTOR acquires and have legal ownership of any non-vehicle Project Equipment the CONTRACTOR acquires or modifies using the state share identified in the "Project Costs" of this AGREEMENT. The CONTRACTOR accepts WSDOT's legal ownership of Project Equipment during its useful life and agrees that it shall not use the Project Equipment as collateral, nor shall the CONTRACTOR encumber the Project Equipment in any way. The CONTRACTOR shall follow the terms stated in Section 10A regarding the use and disposal of all Project Equipment. For non-vehicle Project Equipment, WSDOT's lien shall equal the proportional state funded share, as identified in this AGREEMENT, of the disposable value of the Project Equipment. Satisfaction of WSDOT's lien may be satisfied only by proper disposal of the Project Equipment in a manner determined by WSDOT.

Section 22

Loss or Damage to Project Equipment

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

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

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

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

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

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

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

1. Intends to replace the lost Project Equipment; or
2. Does not intend to replace the lost Project Equipment.

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

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

Section 23

Changed Conditions Affecting Performance

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

Section 24

Coordination of Special Needs Transportation

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

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

Section 25

Disputes

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

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

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

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

Section 26

Termination

A. **Termination for Convenience.** WSDOT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by

written notice to the other PARTY. WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

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

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

1. Takes any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Abuses or misuses the Project Equipment, including, but not limited to:
 - a) Failure to maintain the Project Equipment according to the manufacturer's standards;
 - b) Failure to repair damages or replace defective or broken parts in a timely manner;
 - c) Failure to take any action which could affect the ability of the Project Equipment to perform its designated function or takes any action which could shorten its useful life for Project use or otherwise; or
 - d) Failure to make reasonable and appropriate use of the Project real property, facilities, or equipment.
4. Fails to make reasonable progress on the Project 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 27

Forbearance by WSDOT Not a Waiver

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

Section 28

Lack of Waiver

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

Section 29

Limitation of Liability

A. The CONTRACTOR shall indemnify and hold harmless WSDOT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against WSDOT, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees 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 this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

Section 30

Agreement Modifications

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such amendments shall not be binding or valid unless signed by the persons authorized to bind each of the PARTIES.

Section 31

WSDOT Advice

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

Section 32

Venue and Process

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior

Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

Section 33
Subrogation

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

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

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

Section 34
Counterparts

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

Section 35
Complete Agreement

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

Section 36
Severability

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

Section 37
Execution

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

Section 38
Binding Agreement

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

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

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Brian Lagerberg, Director
Public Transportation Division

Date: _____

CONTRACTOR

By: Brad Patterson
Authorized Representative

Title: General Manager

Print Name: Brad Patterson

Date: 11/17/15

APPROVED AS TO FORM

By: Susan Cruise
Assistant Attorney General

Date: July 30, 2015

Exhibit I
SCOPE OF WORK AND BUDGET



Scope of Work: To provide capital funding assistance to purchase three (3) – 35ft, biodiesel, intercity transit coaches for a Regional Commuter Express Bus service in Mason County between the Bremerton Transportation Center at the Ferry Terminal and the downtown Olympia Transit Center.

Funds	2015-2017 Current Funds	2017-2019 Projected Funds	Total Funds Awarded
2015-2017 RMG Funds	\$1,048,069	\$ 0	\$1,048,069
2017-2019 RMG Funds	\$ 0	\$126,553	\$ 126,553
Contractor's Funds (Minimum 20%)	\$ 293,656	\$ 0	\$ 293,656
Total Project Funds	\$1,341,725	\$126,553	\$1,468,278

Budget Notes: *2017-2019 Projected Funds will be added by amendment when the RMG funds become available in the 2017-2019 biennium.*

See Attachment A, Regional Mobility Grant Application, for additional details.

Project Summary

Lead Agency Mason County Public Transportation Benefit Area-DBA Mason Transit Authority (MTA)				
Project Title Regional Express Commuter Bus Service				
Category	2 Yr.	4 Yr.	Grant request for 2015 - 2017	\$1,316,946
CN			Grant request for 2017 - 2019	\$452,113
OP	✓		Total grant request	\$1,769,059
EV			Federal Tax ID#	91-1554133
TDM			Legislative District(s)	6th
Mailing address Mason Transit Authority 790 East Johns Prairie Road Shelton, WA 98584			Address to receive payments (if different) Same	
Grant Administrator Mike Oliver, Development Mgr Phone no. 360-432-5710 Email moliver@masontransit.org			Billing Contact Mary Ann Norquist, Finance Manager Phone no. 360-432-5750 Email mnorquist@masontransit.org	
Summarize the proposed project This project will provide assistance to implement and operate Regional Commuter Express Service needed in Mason County between the Bremerton Transportation Center (ferry terminal) and the Olympia Transit Center. The project will involve the procurement of three 40', biodiesel intercity coaches and provide four years of operating assistance, including funds to market the service.				
Describe specific deliverables Initiation of service; rolling stock procurement; ridership development; VT & VMT reduction verification				
WSDOT Approved Vehicle Trips Reduced (VT)		WSDOT Approved Vehicle Miles Traveled Reduced (VMT)		
VT In Year 1	19760	VMT In Year 1	671840	
VT In Year 4	23920	VMT In Year 4	813280	
This application must be certified by someone authorized to sign contracts on behalf of your organization, such as the board chairperson, or chief executive officer. The grant applications must be signed below to be considered for grant funding.				
I certify, to the best of my knowledge, that the information in this application is true and accurate and that this organization has the necessary fiscal, data collection, and managerial capability to implement and manage the project associated with this application.				
X Brad Patterson, General Manager				Date 20/4/14
Name and Title of Signatory				

Describe the problem this project is designed to solve in relation to both the local public transportation system and the broader regional transportation system. Include the location and the specific congested corridor or situation.

MTA's proposed Regional Express Commuter Service is designed to address two pressing issues centered in Mason County and challenging the Kitsap-Mason-Thurston County regional transportation system:

1. Increased and underserved commuter demand on MTA transit services, and
2. Increased demand on the two major regional corridor connectors, US Highway 101 and Washington State Route 3, between Mason County and Kitsap & Thurston Counties.

For over 21 years, Mason Transit Authority (MTA) has provided out-of-county regular weekday deviated fixed route service for commuters and other riders to Bremerton in Kitsap County (specifically the Bremerton Transportation Center (ferry terminal) and the Olympia Transit Center in Thurston County. These services also provide direct connections to Kitsap, Intercity & Grays Harbor Transit. In addition, MTA operates four worker-driver buses going from Mason County to the Puget Sound Naval Shipyard in Bremerton. While US Highway 101 and Washington State Route 3 have become consistently congested during rush hours, MTA's buses have also become consistently crowded with passengers, with most peak hour runs finding all seats filled and many standees. MTA has worked hard to capture these riders, and while the sustained high gas prices since 2008 have helped keep them onboard, surveys show most of these to be riders of choice, not transit-dependent. If MTA does not soon increase the supply of seats to closer match the demand, these riders may exercise their choice and find a different ride while attracting new riders is not an option if there is no place on the bus for them. Further, while MTA currently gets its riders to where they want to go, for the vast majority of our commuters, the current service, as regular deviated fixed route, is not a very efficient or effective service – you can get to where you want to go, just plan on it taking a fair amount of time, and it starts too late in the morning to get workers to their jobs in Bremerton or Olympia prior to 8:00 AM – thus not being an attractive option to the private automobile.

Further, from many appearances, Mason County has become a collection of bedroom communities servicing Bremerton, Olympia and beyond, with large numbers of state and shipyard workers commuting out of county for their jobs, and this demand for efficient commuting services will only grow with the Shelton Hills development of 1,800 residential lots and multi-family dwelling units soon to be built 20 minutes away from the Washington State Capital complex. Currently, it is estimated by the City of Shelton that 43% of all workers in Mason County. According to a 2013 report, the city with the worst commuting problems in the West isn't Los Angeles, San Francisco or Seattle - it's Shelton, Washington. That's according to On Numbers, the research division of American City Business Journals, which analyzed the commuting patterns in 172 metros and micros throughout the West, based on data from the U.S. Census Bureau's 2011 American Community Survey. According to that report, Shelton has the West's worst commuting index at -25.446, which is worse than runner-up San Francisco/Oakland (-23.601), Los Angeles (-21.889) or Seattle (-20.01). The report indicates that 27.2 percent of Shelton commuters have a commute time of 45 minutes or more to work and their average commute time to work is 31.9 minutes. That compares with 18.2 percent of Seattle commuters with a commute time of 45 minutes or more and an average commute time to work is 27.6 minutes.



Describe how the proposed grant project will address the above problem.

MTA sees the most cost-effective solution to this dilemma of insufficient supply being met by the implementation of regular weekday express (limited stop) rush-hour fixed route commuter-centric service that efficiently moves Mason County commuters north to the Bremerton Transportation Center (ferry terminal) for multi-modal connections to Kitsap Transit (bus and Port Orchard foot ferry) and the Washington State Ferries Bremerton-Seattle service, and south to the Olympia Transit Center for connections to Intercity Transit which provides further connections to Amtrak and Sound Transit. This new service will greatly enhance the connectivity between Kitsap, Mason & Thurston Counties as well as the communities of Bremerton, Belfair, Allyn, Shelton and Olympia. As an express service, stops would be limited to the community of Allyn and park & ride lots along the route:

- o Bremerton Transportation Center
- o Belfair Park & Ride
- o Allyn
- o Pickering Park & Ride
- o Proposed Wallace Kneeland Park & Ride
- o Shelton Matlock Park & Ride
- o Cole Road Park & Ride
- o Kamilche Park & Ride
- o Olympia Transit Center

Deviated service upon demand would also be provided to connect this Regional Express Commuter Service with the Bremerton National Airport on State Route 3, and local demand-response service would also connect it to the nearby Sanderson Field in Shelton. The service would start early enough in the workday for most workers to make connections to Squaxin Island, Grays Harbor, Intercity (including Greyhound) & Kitsap Transit and the Bremerton-Seattle & Port Orchard ferries so they can be at their desks by 8:00 AM, providing improved connectivity and efficiency, better modal connections and enhanced corridor efficiency on State Route 3 while significantly reducing the trip time for current commuters. Three new 40' wi-fi & 2-space bike rack-equipped, ADA compliant intercity coaches operating on biodiesel would be procured for this service, with two in daily operations and one serving as a backup. 2.5 full-time equivalent driving positions would be hired to operate this new service.

Through a 2013-14 year-long analysis of ridership trends and a comprehensive rider survey, MTA firmly believes this new Regional Express Commuter Service would be very successful in attracting ridership and contribute to reducing corridor congestion.

Ridership Projections: Year 1: 80 riders/day; Year 4: 96 riders/day

**Mason Transit Authority
Regional Mobility Grant 2015-2019
Capital and Operating Allocation**

Quarter	Year	Operating Reimbursement	Capital Reimbursement	Total
4th Q	2015	24,707		24,707
1st Q	2016	40,695		40,695
2nd Q	2016	40,695		40,695
3rd Q	2016	40,695		40,695
4th Q	2016	40,695		40,695
1st Q	2017	40,695		40,695
2nd Q	2017	40,695		40,695
Subtotal 1st Biennium		268,877		268,877
3rd Q	2017	40,695	1,174,622	1,215,317
4th Q	2017	40,695		40,695
1st Q	2018	40,695		40,695
2nd Q	2018	40,695		40,695
3rd Q	2018	40,695		40,695
4th Q	2018	40,695		40,695
1st Q	2019	40,695		40,695
2nd Q	2019	40,695		40,695
Subtotal 2nd Biennium		325,560	1,174,622	1,500,182
Total 2015-2019		594,437	1,174,622	1,769,059

Cost of 3 - 35' Buses as of 11/6/15	1,468,278
Less 20% Match	293,656
Reimbursement	<u>1,174,622</u>
Grant Award	1,769,059
Less Capital	1,174,622
Available for Operating	<u>594,437</u>

Expected delivery betw

ween May and July 2017

