



**Public Transportation Division**  
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Commuter Trip Reduction (CTR)			
<b>Agreement Number</b>	PTD0832	<b>Contractor:</b>	<b>City of Vancouver</b>
<b>Term of Project</b>	July 1, 2023 through June 30, 2025		<b>PO Box 9810 Vancouver, WA 98666-9810</b>
<b>Vendor #</b>	SW00084890 0	<b>Contact:</b>	Olivia Holden 360-487-7733 olivia.holden@cityofvancouver.us

**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, RCW 70A.15.4000 through RCW 70A.15.4110 establishes the state’s leadership role, and the requirements and parameters to reduce traffic congestion, fuel use, and air pollution through commute trip reduction programs, including transportation demand management programs for growth and transportation efficiency centers (“GTEC”) in Washington State; and

WHEREAS, the State of Washington in its Sessions Laws of 2023, Chapter 472 Section 221 authorizes funding for Public Transportation Programs and other special proviso funding as identified in the budget through its 2023-2025 biennial appropriations to WSDOT; and

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

**SCOPE OF WORK AND BUDGET**

The CONTRACTOR agrees to provide Transportation Demand Management (TDM) services, primarily used to support local Commute Trip Reduction (CTR) programs associated with the Statewide Commute Trip Reduction Program, including: 1) Development and submission of an Administrative Work Plan by the end of the first quarter of this AGREEMENT that must be approved by WSDOT in writing; and 2) Implementation of the strategies and production of the deliverables outlined in the WSDOT-approved Administrative Work Plan in order to implement a CTR program. The Administrative Work Plan shall be incorporated as an amendment to this AGREEMENT.

Funds	Current Funds
Commuter Trip Reduction (MMA)	\$ 391,900
<b>Total Project Cost</b>	<b>\$ 391,900</b>

**Budget:** Current Funds reflect total funding appropriated by the Washington State Legislature for the Project in the 2023-2025 biennium.

## **Section 2**

### **Purpose of Agreement**

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

## **Section 3**

### **Scope of Project**

The CONTRACTOR agrees to perform all designated tasks of the Project under this AGREEMENT as described in "Scope of Work and Budget".

## **Section 4**

### **Term of Agreement**

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

## **Section 5**

### **General Compliance Assurance**

- A. The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's Commute Trip Reduction Guidebook, hereinafter referred to as the "Guidebook", and any amendments thereto, found at <https://www.wsdot.wa.gov/transit/grants/apply-manage-your-grant> , which by this reference is fully incorporated herein.
- B. 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 6**

### **Administrative Work Plan**

- A. The CONTRACTOR agrees to submit to WSDOT an administrative work plan by the end of the first quarter of this agreement or when the CONTRACTOR submits its first invoice, whichever is sooner. The administrative work plan will include the following elements:
  - a. The work plan shall identify the deliverables, schedule, expected outcomes, performance measures, and strategies associated with this AGREEMENT and other strategies as defined in the approved and locally adopted CTR or GTEC plans. These plans may include but are not limited to, recruiting new employer worksites, reviewing employer programs and providing site-specific suggestions for improved CTR performance, administering surveys, CTR Work Plan reviewing program exemption requests, providing employer training, providing incentives, performing promotion and marketing, and providing emergency ride home and other commuter services.
  - b. The administrative work plan may be amended based on a mutual written agreement between the WSDOT Project Manager and the CONTRACTOR.

**Section 7**  
**CTR or GTEC Plan**

The CONTRACTOR shall prepare and submit a local CTR and/or GTEC plan for each jurisdiction supported by project funds. The plan will meet the standards defined in the "Guidance Document."

**Section 8**  
**Survey Coordination**

The CONTRACTOR agrees to coordinate with WSDOT and its contracting partners for Commute Trip Reduction employer surveys.

**Section 9**  
**Database Updates**

The CONTRACTOR agrees to provide WSDOT and the CONTRACTOR's contracting partners with updated lists of affected or participating worksites, employee transportation coordinators, and jurisdiction contacts, as requested. These updates will be submitted in a format specified by WSDOT.

**Section 10**  
**Use of State Funds for Incentives**

The CONTRACTOR agrees to use State funds provided as part of this AGREEMENT in accordance with incentives guidance that WSDOT shall provide to the CONTRACTOR.

**Section 11**  
**Coordination with Regional Transportation Planning Organizations (RTPO)**

The CONTRACTOR shall coordinate the development and implementation of its CTR and/or GTEC plan and programs with the applicable regional transportation planning organization (RTPO). The CONTRACTOR agrees to notify the RTPO of any substantial changes to its plans and programs that could impact the success of the regional CTR plan. The CONTRACTOR agrees to provide information about the progress of its CTR and/or GTEC plan and programs to the RTPO upon request.

**Section 12**  
**Project Records**

The CONTRACTOR agrees to establish and maintain accounts for the Project in order to sufficiently and properly reflect all eligible direct and related indirect Project costs incurred in the performance of this AGREEMENT. Such accounts are referred to herein collectively as the "Project Account." All costs claimed against the Project Account must be supported by properly executed payrolls, time records, invoices, contracts, and payment vouchers evidencing in sufficient detail the nature and propriety of the costs claimed.

**Section 13**  
**Reimbursement and Payment**

- A. Payment will be made by WSDOT on a reimbursable basis for actual costs and expenditures incurred while performing eligible direct and related indirect Project work during the life of the Project. Payment is subject to the submission to and approval by WSDOT of properly prepared invoices that substantiate the costs and expenses submitted by the CONTRACTOR for reimbursement. Failure to send in progress reports and financial information as required in **Section 16 – “Reports”** may delay payment. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once per month and no less than once per year, during the course of this AGREEMENT. If approved by WSDOT, properly prepared invoices shall be paid by WSDOT within thirty (30) days of receipt of the invoice.
- B. State Fiscal Year End Closure Requirement (RCW 43.88): The CONTRACTOR shall submit an invoice for completed work in the same state fiscal year in which it was incurred. Pursuant to RCW 43.88.020(12) “fiscal year” is defined as the year beginning July 1st and ending the following June 30th. Reimbursement requests must be received no later than July 15 of the following state fiscal year. 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 year. Any payment request received after the timeframe prescribed above will not be eligible for reimbursement.

**Section 14**  
**Assignments and Subcontracts**

- A. The CONTRACTOR shall submit to WSDOT a copy of any contract, amendment, or change order thereto pertaining to this Project for review and documentation. This includes any completed Project facilities and/or infrastructure under this AGREEMENT, or other actions obligating the CONTRACTOR in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT, including any leasing and/or lending the Project or any part thereof to be used by anyone, not under the CONTRACTOR’s direct supervision.
- B. The CONTRACTOR agrees to include all applicable sections of the AGREEMENT such as **Sections 5, 10, 11, and Sections 15 through 27**, of this AGREEMENT in each subcontract and in all contracts, it enters into for the employment of any individual, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

**Section 15**  
**Funding Distribution**

The CONTRACTOR may distribute funds to local jurisdictions to include counties, cities, transit agencies, Transportation Management Associations, Metropolitan Planning Organizations, or other eligible organizations authorized to enter into agreements for the purposes of implementing CTR and/or GTEC, plans as applicable, and as authorized by **RCW 70A.15.4080**, and by ordinances adopted pursuant to **RCW 70A.15.4020(5)**.

## **Section 16 Reports**

The CONTRACTOR shall prepare and submit quarterly, and annual program reports pursuant to this agreement and as prescribed in WSDOT's Transportation Demand Implementation Guidebook. Due to Legislative and WSDOT reporting requirements, any required quarterly progress reports shall be submitted for the duration of the AGREEMENT period regardless of whether the underlying funding sources have been exhausted. Post-grant annual performance reporting may also be required as prescribed in the aforementioned guidebook.

## **Section 17 Implementation Plans**

The CONTRACTOR shall incorporate appropriate sections of the "Scope of Work and Budget" and description of allowable incentives in accordance with the incentives guidance provided to the CONTRACTOR by WSDOT as set forth in **Section 10** of this AGREEMENT, as well as the WSDOT-approved Administrative Work Plan, in all agreements with an eligible contracting partner(s), as necessary, to coordinate the development, implementation, and administration of such CTR and/or GTEC plans, and in compliance with applicable ordinances.

## **Section 18 Energy Credit**

To the extent CONTRACTOR receives any monies from the sale or disposition of energy credits, decarbonization credits, environmental credits, or any other monies through its participation in a like program, CONTRACTOR agrees to reinvest those monies into services and projects consistent with the STATE'S public transportation grant program. CONTRACTOR'S obligation to reinvest these monies under this provision shall be in an amount no less than the proportion of the STATE'S funding of this AGREEMENT.

## **Section 19 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 20 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 21**

### **Ethics**

- A. Relationships with Employees and Officers of WSDOT. The CONTRACTOR shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall CONTRACTOR knowingly rent or purchase any equipment and materials from any employee or officer of WSDOT.
- B. Employment of Former WSDOT Employees. The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

## **Section 22**

### **Civil rights**

The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any WSDOT-assisted contract or in the administration of its public transportation services.

## **Section 23**

### **Compliance with Laws and Regulations**

- A. The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all applicable nondiscrimination provisions in chapter 49.60 RCW.
- B. Additionally, the CONTRACTOR agrees to comply with the following:
  - a. SB 5974 Move Ahead Washington
  - b. RCW 70A.02 Healthy Environmental for All (HEAL) ACT, and
  - c. RCW 70A. 65.260 Climate Commitment ACT.
- C. 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 violates state or local law or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the AGREEMENT.

**Section 24**  
**Environmental and Regulatory Requirements**

The CONTRACTOR agrees to secure any necessary local, state, and federal permits and approvals, and comply with all applicable requirements of Chapter 43.21C RCW State Environmental Policy Act (SEPA). The CONTRACTOR agrees to comply with all applicable requirements of Executive Order 21-02, Archaeological and Cultural Resources, for all capital construction projects or land acquisitions not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106).

**Section 25**  
**Accounting Records**

The CONTRACTOR agrees to establish and maintain accounts for the Project in order to sufficiently and properly reflect all eligible direct and related indirect Project costs incurred in the performance of this AGREEMENT. Such accounts are referred to herein collectively as the "Project Account." All costs claimed against the Project Account must be supported by properly executed payrolls, time records, invoices, contracts, and payment vouchers evidencing in sufficient detail the nature and propriety of the costs claimed.

**Section 26**  
**Audits, Inspections, and Records Retention**

WSDOT, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the CONTRACTOR's records with respect to all matters covered by this AGREEMENT. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, and other matters covered by this AGREEMENT. In order to facilitate any audits and inspections, the CONTRACTOR shall retain all documents, papers, accounting records, and other materials pertaining to this AGREEMENT for six (6) years from the date of completion of the Project or the Project's final payment date. However, in case of audit or litigation extending past that six (6) year's period, then the CONTRACTOR must retain all records until the audit or litigation is completed. The CONTRACTOR shall be responsible to assure that the CONTRACTOR and any subcontractors of the CONTRACTOR comply with the provisions of this section and provide, WSDOT, the State Auditor, and any of their representatives, access to such records within the scope of this AGREEMENT.

**Section 27**  
**Labor Provisions**

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

## **Section 28**

### **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 29**

### **Remedies for Misuse or Noncompliance.**

If WSDOT determines that the funds have been used in a manner materially different from **Section 1**, WSDOT may direct the CONTRACTOR to repay WSDOT the State-funded share of the Project. WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to materially comply with any provision of this AGREEMENT.

## **Section 30**

### **Disputes**

- A. Disputes. Disputes, arising in the performance of this AGREEMENT, which is not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Public Transportation Division's Assistant Director or 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 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.

## **Section 31**

### **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. In the case of partial termination WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, and conditions. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However, if in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:
  - 1. The requisite funding becomes unavailable through failure of appropriation or otherwise;
  - 2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
  - 3. The CONTRACTOR is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of a war or in the interest



of national defense; or an Executive Order of the President or Governor of the state with respect to the preservation of energy resources;

4. The CONTRACTOR is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
5. The state Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project.
6. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to WSDOT. If the CONTRACTOR has any property in its possession belonging to WSDOT, the CONTRACTOR will account for the same, and dispose of it in the manner WSDOT directs.

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

1. Takes any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or
4. Fails to perform in the manner called for in this AGREEMENT or fails, to comply with, or is in violation of, any provision of this AGREEMENT.
5. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. 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 cases, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

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

- E. Any termination of the AGREEMENT, whether for convenience or for default, that requires the AGREEMENT to be terminated or discontinued before the specified end date set forth in the caption header, "Term of Project", shall require WSDOT to amend the AGREEMENT by written amendment to reflect the termination date and reason for termination.

### **Section 32**

#### **Agreement Modifications**

- A. Either PARTY may request changes to this AGREEMENT, including changes in the Scope of Work and Budget. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto, provided, however, that changes to the Project title, UPIN, the contact person of either PARTY, biennial adjustments with no impact to the overall project cost, or adding the Administrative Work Plan, will not require a written amendment, but will be approved and documented by WSDOT through an administrative revision. WSDOT shall notify the CONTRACTOR of any such approved revision in writing.
- B. If an increase in funding by the funding source augments the CONTRACTOR's allocation of funding under this AGREEMENT, the CONTRACTOR and WSDOT agree to enter into a written amendment to this AGREEMENT, providing for an appropriate change in the Scope of Work and Budget and/or the Total Project Cost in order to reflect any such increase in funding.
- C. If a reduction of funding by the funding source reduces the CONTRACTOR's allocation of funding under this AGREEMENT, the CONTRACTOR and WSDOT agree to enter into a written amendment to this AGREEMENT providing for an appropriate change in the Scope of Work and Budget and/or the Total Project Cost in order to reflect any such reduction of funding.

### **Section 33**

#### **Recapture Provision**

In the event that the CONTRACTOR fails to expend State Funds in accordance with state law and/or the provisions of this AGREEMENT, WSDOT reserves the right to recapture State Funds in an amount equivalent to the extent of noncompliance. The CONTRACTOR agrees to repay such State Funds under this recapture provision within thirty (30) days of demand.

### **Section 34**

#### **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 35**

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

which shall in no way impair or prejudice any right or remedy available to CONTRACTOR with respect to any breach or default.

### **Section 36**

#### **Limitation of Liability and Indemnification**

- A. The CONTRACTOR shall indemnify, defend, and hold harmless WSDOT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT, arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity and defense provision applies to all claims against WSDOT, its agents, employees, and officers arising out of, in connection with, or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees, officers, and subcontractors of any tier. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify, defend, and hold harmless or defend WSDOT, its agents, employees, or officers to the extent that claims are caused by the sole negligent acts or omissions of WSDOT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity and defense provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.
- B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of WSDOT.
- C. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR, by mutual negotiation, 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 37**

#### **Agreement Modifications**

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

**Section 38**  
**WSDOT Advice**

The CONTRACTOR bears complete responsibility for the administration and success of the work as it is defined in this AGREEMENT and any amendments thereto. Although the CONTRACTOR may seek the advice of WSDOT, the offering of WSDOT advice shall not modify the CONTRACTOR's rights and obligations under this AGREEMENT and WSDOT shall not be held liable for any advice offered to the CONTRACTOR.

**Section 39**  
**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 40**  
**Subrogation**

- A. **Prior to Subrogation.** WSDOT may require the CONTRACTOR to take such reasonable action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to the Project Equipment as defined in the scope of work 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 reasonably necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to intentionally prejudice the rights of WSDOT.
- C. **Duties of the CONTRACTOR.** If WSDOT has exercised its right of subrogation, the CONTRACTOR shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT 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 41**  
**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 part thereof, that 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 42  
Counterparts**

This AGREEMENT may be 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 in such executed counterpart and does hereby accept State Funds and agrees to all of the terms and conditions thereof.

**Section 43  
Complete Agreement**

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

**Section 44  
Execution**

This AGREEMENT is executed by the Director of the Public Transportation Division, Washington State 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 Washington State Department of Transportation, in his/her capacity as Director of the Public Transportation Division.

**Section 45  
Order of Precedence**

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

1. State law
2. This AGREEMENT
3. CTR Guidebook

**Section 46  
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 47  
Agreement Close Out**

The CONTRACTOR shall notify WSDOT if the AGREEMENT is completed prior to the end date set forth in the caption header, "Term of Agreement". A written notification needs to be provided to WSDOT that the project is complete. WSDOT will prepare an amendment to modify the AGREEMENT to reflect the actual amount spent and the Project completion date.

**Section 48  
Binding Agreement**

The undersigned acknowledges that they are authorized to execute the 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 last signed below.

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION**

**CONTRACTOR**

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

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

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**