

WASHINGTON STATE TRANSIT BUS COOPERATIVE AGREEMENT

BETWEEN

XXXXXX

AND

WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

This Washington State Transit Bus Cooperative Agreement (“Agreement”) is made and entered into by and between the State of **XXXX** acting by and through the **XXXXX** (“**XXX**”) (“Participant” or “Party”) and the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and is dated and effective as **DATE**.

RECITALS

- A. Pursuant to Legislative authorization, Participants regulate the use of transportation infrastructure in their respective jurisdictions. Participants distribute and approve FTA funds and assists and approves of Transit Bus purchases from entities in their respective states.
- B. Pursuant to legislative authorization, Enterprise Services was established to provide centralized leadership in efficiently and cost-effectively managing resources necessary to support the delivery of state government services. In particular, the Legislature tasked Enterprise Services with implementing a world-class, customer-focused centralized procurement function. See 2011 LAWS OF WASHINGTON 1st sp. s. c 43 § 101.
- C. Pursuant to legislative authorization, Enterprise Services has authority to enter into statewide contracts on behalf of the State of Washington which contracts may be utilized by state agencies and certain additional users (e.g., local governments, federal agencies, tribes, and public benefit nonprofit organizations) as authorized by Enterprise Services. See RCW 39.26.080(3) and 39.26.050(1).
- D. Pursuant to legislative authorization, Enterprise Services is authorized, on behalf of the State of Washington, to engage in cooperative purchasing with one or more states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state, in accordance with an agreement entered into between the participants to create contracts through a competitive solicitation process. See RCW 39.26.060.
- E. The Parties desire to collaborate to utilize the Participants’ substantive expertise and Enterprise Services’ procurement expertise and authority to create a cost-effective, efficient, value-added procurement solution to enable authorized purchasers to procure Transit Buses and related goods/services.
- F. Pursuant to Section 3019 of the FAST Act, grantees of Federal Transit Administration (“FTA”) funds may enter into cooperative procurement contracts between a State and one or more vendors; and under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. Grantees may participate in a cooperative procurement

contract without regard to whether the grantee is located in the same State as the Parties to the contract.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. **TERM.** The term of this Agreement is sixty (60) months, commencing April 15, 2021 and ending April 14, 2026; *Provided*, however, that the term of this Agreement shall renew automatically for subsequent one (1) year periods unless either party gives the other written notice of termination at least (90) days prior to expiration of the current term; and *Provided further*, that, in no event shall this Agreement expire or terminate while any Contract developed pursuant hereto remains in effect.
2. **SCOPE & AUTHORITY.** This Agreement is designed to enable Washington's central procurement authority and multiple states' substantive experts for Transit Buses and related goods/services to collaborate such that the Participants realize the synergies of their combined authority and expertise to procure and deliver Transit Buses and related goods/services through cooperative Statewide Contracts ("Contracts") with transit bus manufacturers, component manufacturers, and service providers. Such Contracts shall be available for use by all Washington state agencies as well as any authorized Washington State Transit Bus Cooperative Agreement member and any authorized Washington State Transit Bus Cooperative Purchasing Agreement.
3. **ROLES/RESPONSIBILITIES.** The parties shall collaborate to develop, solicit, award, and manage Contract(s) for Transit Buses and related goods/services.
 - a. **PARTICIPANTS.**
 - i. Participant shall have contract management responsibilities for the Contract(s) pertaining to vendor outreach, local agency outreach within their respective state, and approval of local agency purchases using FTA funds. Participant, in its reasonable discretion, shall make available such resources as appropriate to enable the timely accomplishment of the intended objectives set forth in this Agreement.
 - ii. Participants shall collect input and feedback from local agencies customers and collaboratively work with Enterprise Services to ensure that the same inform the Contract.
 - iii. Participants shall provide resources and consultation regarding bus purchases in their respective state, the approval process for use of FTA funds in purchases, and relevant information from local agencies.
 - iv. Participants shall have responsibility to provide necessary information for Enterprise Services to manage the resulting Contract, including confirmation of FTA funds, local purchaser tracking, and data reporting.
 - b. **ENTERPRISE SERVICES.**
 - i. As Washington state's center of procurement expertise for Contracts, Enterprise Services, at a minimum, shall collaborate with Participants to develop contract specifications, contractor requirements, cost estimates, quantity estimates,

applicable certification standards, and evaluation criteria to design a competitive procurement to produce Contract(s) for Transit Buses and related goods/services.

- ii. In addition, Enterprise Services shall have procurement responsibility to solicit and award such Contract(s). Enterprise Services, in its reasonable discretion, shall make available such resources as appropriate to enable the timely accomplishment of the intended objectives set forth in this Agreement.
 - iii. Enterprise Services shall have responsibility to manage the resulting Contract(s), maintain accurate purchasing information and facilitate vendor contract sales reporting and invoicing for vendor management fee payment.
 - iv. Enterprise Services shall have responsibility to maintain state and federal records for the procurement and resulting Contracts.
 - v. In the event of vendor suspension and/or termination, Enterprise Services first shall consult with Participants.
4. **PARTICIPATION.** The resulting Contracts for Transit Buses and respective goods/services shall be available for use by all states, state agencies, local governments, local government agencies, federal agencies, or tribes located in the state which enter a Washington State Transit State Cooperative Purchasing Agreement, as authorized in RCW 39.26.060(1). In addition, as authorized in RCW 39.26.050(1), any eligible entity that has executed a Contract Usage Agreement with Enterprise Services shall be authorized to use such Contract.
5. **FEES/COSTS.** The Contract for Transit Buses shall include a vendor management fee payable to Enterprise Services. Such vendor management fee shall be the Contract cost recovery mechanism as required by RCW 39.26.050(2). This fee is paid by Contractors on the contracts to DES at the rate listed in the respective contract. For clarification that rate is 1% of total purchases for light and medium bus purchases and 0.15% of total purchases for heavy duty or similar bus purchases.
6. **WASHINGTON STATE TRANSIT BUS COOPERATIVE/CONTRACT WEBSITE.** The Parties shall collaborate to increase awareness of and access to the Contracts for Transit Buses and related goods/services. At a minimum, the Parties shall ensure that the Contracts for Transit Buses is accessible through an Enterprise Services website.
7. **AGREEMENT MANAGEMENT.** The Parties hereby designate the following agreement administrators as the respective single points of contact for purposes of this Agreement, each of whom shall be the principal contact for business activities under this Agreement. The Parties may change administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the Parties may specify in writing:

Enterprise Services

Attn: David Mgebroff
Contracts & Procurement Division
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-8049
Email: david.mgebroff@des.wa.gov

XXXXXXX

Attn:

Tel: (XXX) XXX-XXX
Email:

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

8. RECORDS RETENTION & PUBLIC RECORDS.

- a. **RECORDS RETENTION.** Enterprise Services shall each maintain records and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance and payment of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both Parties, other personnel duly authorized by either party, the Office of the State Auditor, and officials authorized by law. Such records shall be retained for a period of six (6) years following expiration or termination of this Agreement or final payment for any service placed against this Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- b. **PUBLIC INFORMATION.** This Agreement and all related records are subject to public disclosure as required by the relevant public records act of the Participant's jurisdiction. No party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under a Participants' public records act, without first providing notice to the other party within ten (10) business days of the receipt of the request. The Parties will discuss appropriate actions to be taken, including release of the requested information, seeking a protective order, or other action prior to the release of records. Should one party choose to seek a protective order, it shall do so at its sole expense.

9. **RESPONSIBILITY OF THE PARTIES.** Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third party claims.

10. **DISPUTE RESOLUTION.** To the extent practicable, the Parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this Agreement as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The Parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve any such dispute. If, however, a dispute persists and cannot reasonably be resolved, it may be escalated within each organization. In such circumstance, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the

other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the Parties cannot then agree on a resolution of the dispute, the Parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the Parties cannot agree on a mutual resolution within fifteen (15) business days, any party may resort to court to resolve the dispute.

11. GENERAL PROVISIONS.

- a. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- b. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- c. **AUTHORITY.** Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- d. **NO AGENCY.** The Parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- e. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- f. **CAPTIONS & HEADINGS.** The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.
- g. **ELECTRONIC SIGNATURES.** An electronic signature or electronic record of this Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

- h. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the Parties shall not affect the validity thereof so long as all the Parties hereto execute a counterpart of this Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

STATE OF XXXX
XXXXXX

By: _____
Name: Jaime Rossman
Title: Assistant Director

By: _____
Name:
Title: