SUBRECIPIENT AGREEMENT BETWEEN WHATCOM TRANSPORTATION AUTHORITY AND WHATCOM COUNCIL OF GOVERNMENTS FOR FINANCIAL ASSISTANCE THROUGH A REGIONAL MOBILITY GRANT FOR USE ON THE WHATCOM SMARTS TRIP PROJECT

THIS SUBRECIPIENT AGREEMENT BETWEEN WHATCOM TRANSPORTATION AUTHORITY AND WHATCOM COUNCIL OF GOVERNMENTS FOR FINANCIAL ASSISTANCE THROUGH A REGIONAL MOBILITY GRANT FOR USE ON THE WHATCOM SMARTS TRIP PROJECT ("Agreement") is entered this 1 day of December, 2023 by and between the WHATCOM TRANSPORTATION AUTHORITY ("WTA") and WHATCOM COUNCIL OF GOVERNMENTS ("Subrecipient"), pursuant to the following agreed facts:

WHEREAS WTA is a public transportation authority operating under RCW Chapter 36.57A, and in this capacity, provides regional public transportation within Whatcom County, Washington; and

WHEREAS Subrecipient is a regional agency established and operating under the authority of RCW 36.64.080; and

WHEREAS, the Parties have worked collectively to advance the use of alternative modes of transportation within Whatcom County, and in particular to establish a community-wide education and increase the use of public transportation and active transportation, under the program commonly known as Whatcom Smart Trips ("WST"); and

WHEREAS, WTA has secured funding intended to be used by or in association with Subrecipient for the WST, including from the Washington State Department of Transportation's ("DOT") Regional Mobility Grant ("DOT Grant"), and/or by and through the Federal Transit Administration's ("FTA") Grant ("FTA Grant"); and

WHEREAS additional funds for WST is expected to be contributed by WTA, Subrecipient and other local municipalities ("Local Funding"); and

WHEREAS this Agreement shall establish uniform guidelines for Subrecipient's management and use of all funds from the DOT Grant, the FTA Grant, and Local Funding (collectively "Funds").

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, the Parties hereto agree as follows.

I. AGREEMENT TERM

This Agreement shall become effective July 1, 2023 and end on June 30, 2027, subject to extension upon mutual agreement of the Parties or to coincide with any DOT Grant extension, whichever is later ("Term").

II. ACTIVITIES & ELIGIBLE EXPENSES

A. Activities

Subrecipient shall be responsible for administering all efforts relating to the WST in a manner satisfactory to WTA, and consistent with the standards required in association with the DOT Grant, the FTA Grant, the terms, and conditions associated with receipt of any Local Funding, and with the terms and conditions set out herein.

B. Eligible Expenses and Use of Funds

Eligible Expenses for the purpose of this agreement will follow WSDOT Public Transportation State Grant Programs Guidebook for the applicable project type.

All Funds are to be used as approved by WTA, and generally allocated pursuant to that WST budget that is attached hereto and incorporated by reference as Exhibit A ("Budget"). Funds shall either be disbursed to Subrecipient by WTA in the form of a reimbursement and/or WTA may provide funding to Subrecipient for it to use to pay "Eligible Expenses" incurred by Subrecipient as described in the Budget. "Eligible Expenses" shall not include lost revenue.

All Eligible Expenses funded or reimbursed by WTA to Subrecipient are not considered to be grants but are "other financial assistance" under 2 C.F.R. 200.40. Subrecipient further agrees to utilize available Funds to supplement rather than supplant funds otherwise available.

III. AMOUNT OF FUNDS

The total amount of Funds subject to this Agreement is estimated to be Eight Hundred Forty Eight Thousand Seven Hundred Seventy One dollars ($848,771.00/100). Neither DOT nor FTA are liable for claims or damages arising from Subrecipient's performance of this Agreement.

IV. NOTICES

Notices to either party under this Agreement shall be delivered in writing via email, personal delivery, or if deposited in the Unites States mail, registered or certified return receipt requested. Notices sent via email shall be considered received three (3) business days after original transmission.

Notices to WTA	Notices to Subrecipient
ATTN: Procurement 4011 Bakerview Spur Bellingham, WA 98226 Procurement @ridewta.com	ATTN: Executive Director 314 E. Champion Street Bellingham WA 98225 Hugh@wcog.org

V. TERMS & CONDITIONS

The following requirements are applicable to all activities undertaken with the Funds.

A. Compliance

Subrecipient shall at all times comply with applicable state, federal and local laws and regulations relating to its operations, and also the following:

- WSDOT Public Transportation State Grant Programs Guidebook
- The terms and condition of the DOT Grant as set out in Exhibit B, which is attached hereto and incorporated by reference,
- The terms and conditions of the FTA Grant as set out in Exhibit C, which is attached hereto and incorporated by reference,
- 2 C.F.R. 200.303 regarding internal controls.
- 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
- 2 CFR 200, Subpart F regarding audit requirements.
- WSDOT-Local Agency Guidance Manual, Chapter 28 – Title VI.
- All other applicable federal laws, regulations, and policies governing the funds provided under this Agreement.

Should there be any conflict between federal requirements, the terms of this Agreement and/or state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

B. Hold Harmless, Indemnification and Duty to Defend

Subrecipient shall defend and indemnify, and hold harmless WTA, the state of Washington, the FTA, WSDOT, agencies of the state and all officials, agents, and employees thereof against any claim or liability of any nature in connection with or arising in any manner out of this Agreement or its services provided under this Agreement, including, without limitation, any breach of covenants, representations, certifications, and warranties made by WTA in connection with the application or the provisions of the DOT Grant and/or the FTA Grant, and any determination by the FTA, the United States Treasury, Washington State Department of Transportation ("WSDOT"), the State of Washington, any other governmental authority or court, that WTA's administration or expenditure of any of the Funds was inconsistent with, or in violation of any applicable law, the grants, and/or any applicable regulations and guidance issued in connection therewith.

"Claim" as used in this Agreement, means any financial loss, claim, suit, action, damage, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Subrecipient's obligations to indemnify, defend, and hold harmless WTA and any of

the above shall extend and apply to any claim by Subrecipient's agents, employees, representatives, or any subgrantee/subcontractor or its employees, and to this limited extent, Subrecipient waives any exclusive remedy immunity under RCW Title 51.

Subrecipient's obligations to indemnify, defend, and hold harmless WTA and any of the above shall extend to any claim arising out of or incident to Subrecipient's or subgrantee's/subcontractor's performance or failure to perform, and such obligations shall not be eliminated or reduced by any actual or alleged concurrent negligence of WTA or any of the above, or their agents, agencies, employees, and officials.

C. Misrepresentations & Noncompliance

Subrecipient certifies, warrants, and affirms that all representations and other information contained in all materials associated with the WST program, any request for funding, or request for reimbursement are and will be true, correct, and complete, to the best of Subrecipient's knowledge, as of the date of this Agreement and at the time of making any representation. Subrecipient acknowledges that all such representations and information have been relied on by the WTA to provide the funding under this Agreement.

Subrecipient shall promptly notify WTA, in writing, of the occurrence of any event or any material change in circumstances which would make any Subrecipient representation or information untrue or incorrect or otherwise impair Subrecipient's ability to fulfill Subrecipient's obligations under this Agreement.

D. Insurance

Subrecipient shall provide proof of insurance to WTA on an annual basis.

Subrecipient shall ensure any contractors utilized for this Agreement secure and maintain insurance and list WTA as additional insured. Subrecipient shall provide copies of Contractor proof of insurance within five (5) business days of any WTA request.

Contractor insurance is to be placed with insurer authorized to conduct business in the state of Washington with a current A.M. Best rating of no less than A: VII unless otherwise approved by WTA.

E. Amendments

This Agreement may be amended at any time only by a written instrument signed by both Parties. Notwithstanding the above, WTA may, in its discretion, unilaterally amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, so long as the amendment does not result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement.

This Agreement is subject to all Federal statutes, Federal regulations, RCWs, Washington

Administrative Codes (WAC), and other requirement associated with the DOT Grant and/or FTA Grant, applicable to this Agreement. Any provision of the Agreement which conflicts with federal or state statutes/regulations, or any requirement imposed as part of the DOT Grant, or the FTA Grant is hereby amended to conform to the provisions of federal and state law and regulations. Such amendment of the Agreement will be effective on the effective date of the statute, regulation or requirement necessitating it and will be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. WTA will provide notice of such amendment required by this paragraph when it becomes aware of the amendment. Subrecipient agrees to accept and execute any and all amendments offered by WTA needed to effectuate Federal statute or regulation, RCW, WAC, and/or requirement of the DOT Grant or FTA Grant.

F. Suspension or Termination

WTA may suspend or terminate this Agreement for any reason, including, but not limited to, a loss of funding or if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and Federal awarding agency guidelines, policies or directives as may become applicable at any time.

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement.

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Subrecipient of reports to WTA that are incorrect or incomplete in any material respect.

G. Assignment and Subcontracts

Subrecipient may not assign this Agreement or any of its rights to any other party without written consent of WTA. Subrecipient's may not enter any subcontract associated with this Agreement without WTA's prior written approval and agreement by the subcontractor to be bound to the provisions of this Agreement.

H. Program Fraud & False or Fraudulent Statements or Related Acts

Subrecipient and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.

I. Debarment, Suspension and Voluntary Exclusion

1. Subrecipient is subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

2. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

3. Subrecipient certifies that neither it nor any of its subrecipients or contractors are debarred or suspended in accordance with the regulations and requirements stated above.

J. Governing Law and Venue

This Agreement shall be interpreted under, and governed by, the laws of the State of Washington, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in Superior Court for the State of Washington, Whatcom County, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.

K. Relationship of Parties

Subrecipient shall at all times be an independent contractor to WTA and shall not have any authority to bind WTA to any obligations or agreements. Neither party shall be construed to be the agent, employee, representative, joint venture, or partner of the other. Subrecipient and its employees or agents will not hold themselves out as, nor claim to be, an agent, officer, or employee of WTA, nor will they claim any of the rights, privileges or benefits which might accrue to WTA.

L. Taxes

Subrecipient shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability in association with its employees or that may result from its actions under this Agreement.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Subrecipient will comply with appropriate accounting principles and procedures, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Expenses. Such efforts shall at least include the following:

1. Expend and account for the Federal award in accordance with state and federal laws. In addition, the Subrecipient's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of an Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

2. Subrecipient shall have a financial management system that provide s the following:

i. Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received.

ii. Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in 2 C.F.R. § 200.327 Financial reporting and 2 C.F.R. § 200.328 Monitoring and reporting program performance.

iii. Records that identify adequately the source and application of Funds for federally funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

iv. Effective control over, and accountability for, all Funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 2 C.F.R. § 200.303 Internal controls.

v. Comparison of expenditures with budget amounts for each Federal award.

vi. Written procedures to implement the requirements of 2 C.F.R. § 200.305 Payment.

vii. Written procedures for determining the allowability of costs in accordance with 2 C.F.R. Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

viii. Subrecipient shall also follow 2 CFR § 200.333 Retention requirements for records; 2 C.F.R § 200.334 Requests for transfer of records; 2 C.F.R. § 200.335 Methods for collection, transmission, and storage of information; 2 C.F.R. § 200.336 Access to records; and 2

C.F.R. § 200.337 Restrictions on public access to records.

3. Subrecipient must have internal controls that comply with 2 CFR Part 200.303, including in the following manner:

i. Subrecipient shall establish and maintain effective internal control over any Federal award that provides reasonable assurance that the Subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

ii. Comply with Federal statutes, regulations, and the terms and conditions of the Subrecipient agreement.

iii. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

iv. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or WTA designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality. Such measures shall comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82.

4. Pursuant to 2 C.F.R. § 200.318, Subrecipient must have or adopt procurement procedures that meet any state requirements, and the standards identified in 2 C.F.R §§ 200.317-.327.

B. Duplication of Benefits

If Subrecipient receives duplicate benefits from another source, Subrecipient must refund the benefits provided by WTA back to WTA.

C. Access to Records

As required by 2 C.F.R. 200.33 l(a)(5), WTA, or any duly authorized representative of WTA, shall have the right of access to any records, documents, financial statements, papers, or other records of Subrecipient that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to Subrecipient under this Agreement. The right of access also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents, and to Subrecipient's facilities and operations. The right of access shall last as long as the records are retained.

D. Examination, Audit and Monitoring

1. WTA shall provide technical assistance to Subrecipient, to the extent practicable, regarding compliance with federal program requirements throughout the Term.

2. WTA will monitor the performance of services and evaluate accomplishments and compliance with the terms of this Agreement throughout the Term. Monitoring may include a visit to the project site or to the Subrecipient organization.

3. WTA will monitor the performance of the Subrecipient in attempts to mitigate fraud, waste, abuse, or non-performance based on goals and performance standards as stated with all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under this agreement further defined by 2 CFR 200.331. Substandard performance as determined by WTA will constitute noncompliance with this Agreement. If corrective action is not taken by the Subrecipient within a reasonable period of time after being notified by WTA, contract suspension or termination procedures will be initiated.

4. Subrecipient shall cooperate with WTA or its agent in the evaluation of Subrecipient's performance under this Agreement and make available all information reasonably required by any such evaluation process.

5. Subrecipient shall respond timely and accurately to requests from WTA to provide information necessary to respond to inquiries from DOT and FTA or other entities having authority to make such request.

6. Subrecipient shall notify WTA in advance of any state or other formal inspections, audits, accreditation, or program reviews and provide to WTA copies of said review, including any final written plan of correction or other written response, within thirty (30) days of receipt.

7. This section shall remain effective pursuant to 24 CFR 570.570.

8. If Subrecipient expends a total, from all income sources, of Seven Hundred and Fifty Thousand Dollars, ($750,000.00) or more of federal funds per fiscal year, Subrecipient shall have a single or program-specific audit conducted of its financial statement and condition, regarding the performance of this Agreement, readily delineating the Funds received from WTA. The audit shall comply with the regulations at 2 CFR Part 200, including the following:

i. Subrecipient shall submit its audit report, including any "Management Letter" and/or all other correspondences referred to in the audit report, along with Subrecipient's response to the audit and corrective action plan, if any, no later than thirty (30) days after completion of the audit. The independent auditor's working papers shall be made available for WTA review, upon request by WTA.

ii. Failure to engage auditors and provide proof of such engagement prior to the due date of the audit report to WTA shall be considered contractual non-performance. In such event, WTA reserves the right to withhold not more than one hundred fifty percent (150%) of the reasonably estimated cost of the required audit from reimbursement due at the end of the audit year or final reimbursement pending compliance with this section of this Agreement. This subsection shall survive the termination or other expiration of the Agreement.

iii. If Subrecipient expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards, Subrecipient records must be available for review or audit by appropriate officials of WTA, DOT, and Government Accountability Office (GAO).

iv. If Subrecipient is exempt from Federal audit requirements yet has an annual independent fiscal audit conducted of its financial statement and condition, the Subrecipient shall submit the completed independent audit and audit report to WTA within thirty (30) days of completion.

E. Record Retention

Subrecipient shall retain sufficient records, which may include, but are not limited to financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Agreement to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of (6) years from the date of submission of the final expenditure report. Records shall be made available upon request to WTA, and state and federal auditors. If any audit, claim, litigation, or other legal action involving the records is started before expiration of the six (6) year period, the records shall be retained until completion and resolution of all issues arising in such audit or until the end of the six (6) year period, whichever is later.

F. Monitoring & Compliance

WTA shall evaluate Subrecipient's risk of noncompliance and monitor the activities of Subrecipient as necessary to ensure that the Funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement.

Monitoring of Subrecipient may include reviewing invoices for eligible expenses, reviewing payroll logs, applicable contracts, purchase orders, contract administration files and other documentation that may be requested by WTA to substantiate eligible expenses. Failure to submit proper documentation verifying eligible expenses may result in termination of this Agreement and recoupment of awarded funds from the Subrecipient.

The Subrecipient shall be audited as required by 2 C.F.R. Part 200 Subpart F-Audit Requirements and shall provide a copy of the audit to WTA. WTA may take enforcement action against noncompliant Subrecipient as described in 2 C.F.R. 200.338 Remedies for noncompliance of this part and in program regulations.

G. Political Activity and Lobbying

No portion of the Funds shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence or defeat of any ballot issue. No member or delegate to the Congress of the United States of America nor any other Federal official shall be admitted to any share or part of the Federal monies that comprise the Funds provided by

this Agreement. Subrecipient will comply with the requirements of 31 U.S.C. § 1352 that prohibit the use of Federally appropriated funds to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Subrecipient lobbying activity funded by other than federally appropriated funds shall be reported.

Subrecipient shall require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub- grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

VII. PAYMENT & REPORTING PROCEDURES

WTA will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with the allocations and disbursement policies set forth under 2 CFR 200 Subpart E- Cost Principles, and the procedures set out below.

A. Submission of Invoices

Subrecipient shall submit an itemized invoice showing all amounts allegedly due and owing from the Funds, along with copies of receipts, underlying invoices, and other records to substantiate all invoiced amounts, to:

ACCOUNTS PAYABLE
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 9826
ap@ridewta.com

Invoices are due to ap@ridewta.com no later than the 10th of the month following the end of each quarter. (e.g. Quarter 1 – Due no later than April 10).

B. Payment by WTA

WTA shall process any invoice, including by requesting any additional information needed from Subrecipient, and pay uncontested amounts within net thirty (30) days of the receipt and acceptance of billing information from Subrecipient. WTA may withhold payment of an invoice for a reasonable amount of time beyond thirty (30) days if it has not received documents or information requested from Subrecipient to support the invoice.

C. Certification

Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

D. Duplication of Billed Costs or Payments for Service

Subrecipient shall not bill WTA for services performed or provided under this Agreement, and WTA shall not be obligated to pay Subrecipient, if the Subrecipient has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract.

E. Untimely and Unbudgeted Amount

Costs incurred by Subrecipient prior to the effective date of or after the expiration date of this Agreement, ineligible costs, or costs not contained in the Budget shall only be paid subject to WTA's discretion.

F. Amendment to Budget

Revisions to the Budget must be approved by WTA in writing.

G. Conflict of Interests

Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. Such standards shall comply with the requirements of RCW Chapter 42.23. At all material times, no employee, officer, or agent of Subrecipient may participate in the selection, award, or administration of a contract supported by a Federal award if he/she has a real or apparent conflict of interest. Under this standard, a conflict of interest would arise if the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

H. Reporting Obligations

Subrecipient shall prepare, complete, and submit reports and other information as required by WTA to demonstrate compliance with applicable regulations, eligibility of activities and costs, and this Agreement. Such shall include the following:

1. Report to WTA and obtain approval of the procurement process employed by Subrecipient prior to awarding a contract for professional or construction services or purchase of materials.

2. Prepare and submit to WTA, when applicable, construction specifications, project plans, bid packets and other documentation prior to the execution of that project component. Prior to solicitation of any bids the Subrecipient will obtain from WTA, the appropriate federal wage rates, and labor standards documentation to be included in the bid package for any projects covered under the Davis-Bacon Act.

3. Obtain and submit records acquired from construction contractors and subcontractors, that document compliance with the Davis-Bacon Act, as amended, the Copeland Act, the Contract Work Hours and Safety Standards Act and Prevailing Wages, RCW 39.12.

4. Include identification of WTA on all printed materials, including signage, books, reports, pamphlets, brochures, posters, and articles, published, and circulated for the purpose of describing, evaluating, or publicizing WST services or activities funded under this Agreement.

5. Submit project progress, project benefit, and project financial reports within timelines.

6. At the earliest date during and/or after completion of the project, submit to WTA an audit report of the project, for the project period if applicable.

7. Reports will be submitted in the formats provided by the WTA which are attached to this Agreement as Exhibit E (Quarterly progress reports). Recipient shall provide any other report as requested by WTA or agreed upon between the parties during the Term.

8. Additional reports may be requested from the Subrecipient for any reason, including, if necessary to comply with federal requirements.

VIII. ATTACHMENTS

All attachments to this Agreement are incorporated as if set out fully. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

This Agreement contains the following attachments:

- Exhibit A – Budget.
- Exhibit B – DOT Grant.
- Exhibit C – [this exhibit left blank]
- Exhibit D – [this exhibit left blank].
- Exhibit E – Quarterly Progress Reports; and

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

X. WAIVER

WTA's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of WTA to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. CERTIFICATION, REPRESENTATIONS, AND WARRANTIES

Subrecipient hereby certifies, represents, and warrants that it has the authority and approval from its governing body, if applicable, to execute this Agreement and request reimbursement from WTA from the Funds. Subrecipient further certifies, represents, and warrants that amounts received from the Funds will be used only to cover those costs and expenses associated with WST.

Subrecipient understands any award of funds pursuant to this Agreement must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure and that the Subrecipient has reviewed the guidance established by U.S. Department of the Treasury and certify costs meet the required guidance. Any funds expended by the Subrecipient in any manner that does not adhere to official federal guidance shall be returned to WTA or subject to claw back rights.

XII. REIMBURSEMENT OF OVERPAYMENTS

Subrecipient shall not be reimbursed more than the amount of the allowable costs of performance of this Agreement. If WTA, or any other state or federal agency determines that Subrecipient has received payments under this Agreement in excess of that to which it is entitled, or that were used for a purpose other than WST, or otherwise not in conformity with the Agreement, WTA shall recoup those payments, together with interest, as provided at 2 CFR Part 200, from what would otherwise be liability under this Agreement. If the Subrecipient receives a notice of overpayment, which WTA shall timely provide, Subrecipient may protest the overpayment determination pursuant to the Dispute Resolution Section of this Agreement. Failure to invoke said section within fifteen (15) calendar days of receipt of a notice of overpayment will result in an overpayment debt against the Subrecipient.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties relating to the WST or funding of Subrecipient as to the WST. This Agreement is subject to actual receipt by WTA of the DOT Grant, the FTA Grant and other sources of money that

makes up the Funds. WTA has no legal requirement to provide any money to Subrecipient, or to pay any invoices submitted by Subrecipient, except by and through the Funds.

XIV. SIGNATURE AUTHORITY

The following specific officers/officials, or their authorized designees, are required to sign this Agreement on behalf of Subrecipient. Note: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Subrecipient must be attached to the Agreement for review by WTA.

XV. CONDITION PRECEDENT

WTA's obligations under this Agreement are expressly conditioned upon being awarded the DOT Grant and/or FTA Grant, and the actual receipt of funds pursuant to the DOT Grant, FTA Grant, and other funding sources.

XVI. DISPUTE RESOLUTION

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be subject to the following sequential process.

A. Mediation

If either party believes that the other has or is in breach of this Agreement, then it will first provide written notice to the allegedly breaching party, which sets out the particular alleged breach(es) and those actions it believes need to be taken to cure such breach(es). The alleged breaching party shall respond to such notice within a reasonable time, either by taking corrective actions or by providing a written response if it disagrees that it is in breach of the Agreement or the proposed actions to cure the breach(es). Thereafter, the disagreeing parties shall make a good faith and reasonable effort to resolve any disagreement relating to the alleged breaches or the actions to be taken to cure the breach(es), on their own. If the parties cannot resolve the dispute on their own, then they shall participate in a mediation with a mediator to be mutually selected by the parties. The fees and costs of the mediator shall be proportionally shared by the disagreeing parties.

B. Arbitration

If mediation is unsuccessful, then any dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise shall be subject to arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) Commercial Arbitration Rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if

EXHIBIT A - BUDGET

Eligible Expenses.

Eligible Cost Test.

WTA shall determine whether or not an expense is eligible using the Washington State Department of Commerce's five-part cost test as presented below. If all responses for the particular incurred cost are "true" for all five statements below, WTA may deem the cost is eligible:

(a) The expense is connected to the WST.

(b) The expense is "necessary".

(c) The expense is not to fill a shortfall in government revenues.

(d) The expense is not funded through another budget line-item, allotment, or allocation; and

(e) The expense would not exist but for the WST program or would be for a "substantially different" purpose.