

102727

BOOK 104 PAGE 344

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CERTIFICATE OF WATER RIGHT

- Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE June 19, 1978	APPLICATION NUMBER S 2-24923	PERMIT NUMBER S 2-24923 P	CERTIFICATE NUMBER S 2-24923 C
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NAME
JAMES P. BOYD

ADDRESS (STREET) (CITY) (STATE) (ZIP CODE)
Rt. 2 Box 277 Portland Oregon 97231

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown, but is limited to an amount actually beneficially used.

PUBLIC WATER TO BE APPROPRIATED

SOURCE
unnamed spring (stream)

TRIBUTARY OF (IF SURFACE WATERS)
Little White Salmon River

MAXIMUM CUBIC FEET PER SECOND 1	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR 1
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QUANTITY, TYPE OF USE, PERIOD OF USE
1 acre-feet per year domestic supply for 1 home continuously

non-consumptive power generation continuously

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL
1100 feet south and 1300 feet east from the West Quarter corner of Section 15.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) NW $\frac{1}{4}$ SW $\frac{1}{4}$	SECTION 15	TOWNSHIP N. 3	RANGE (E. OR W.) W.M. 9 E	W.R.I.A. 29	COUNTY Skamania
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
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LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, T. 3 N., R. 9 E.W.M.

FILED FOR RECORD
SKAMANIA COUNTY WASH
BY *Gary H. Olsson*
FEB 26 10 40 AM '87
AUDITOR
GARY H. OLSSON

Registered 6
Indexed 6
Indirect 6
Filmed
Mailed

(SEE REVERSE SIDE)

CERTIFICATE

PROVISIONS

The Water Resources Act of 1971 specifies certain criteria regarding utilization and management of the waters of the State in the best public interest. Issuance of this certificate was based on sufficient waters available, at least during portions of the year. However, it is pointed out to the certificate holder that his use of the water may be subject to regulation at certain times, based on the necessity to maintain water quantities sufficient for preservation of the natural environment.

Diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch. Water approach velocity to the screen shall be less than 1 foot per second and approaching 0.5 foot per second, as measured one foot in front of the screen.

UNOFFICIAL COPY

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in RCW 90.03.380, 90.03.390, and 90.44.020.

This certificate of water right is specifically subject to relinquishment for nonuse of water as provided in RCW 90.14.180.

Given under my hand and the seal of this office at Olympia, Washington, this 24th day of February, 1987.

Andrea Beatty Riniker, Director
Department of Ecology

by *Clark Haberman*
Clark Haberman, Regional Manager

ENGINEERING DATA
OK *U13*

FOR COUNTY USE ONLY

MEMO

Date 27 Feb 87

To: Spencer County Ind. Div

From: Paul Skoble, (306) 753-3407

PUBLIC TRANSPORTATION & PLANNING

Subject: joint agreement

- | | |
|---|---|
| <input type="checkbox"/> FOR YOUR INFORMATION | <input type="checkbox"/> PREPARE REPLY FOR MY SIGNATURE |
| <input type="checkbox"/> PER YOUR REQUEST | <input type="checkbox"/> TAKE APPROPRIATE ACTION |
| <input type="checkbox"/> PER OUR CONVERSATION | <input type="checkbox"/> RETURN TO ME |
| <input type="checkbox"/> FOR YOUR COMMENTS | <input type="checkbox"/> FOR YOUR FILES |
| <input type="checkbox"/> REPLY DIRECT | |

REMARKS:

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION CAPITAL ASSISTANCE
FOR NONURBANIZED AREAS

THIS AGREEMENT, entered into by the State of Washington Department of Transportation (hereinafter referred to as the "Department") and the County of Skamania * * * * *, (hereinafter referred to as the "Contractor"), WITNESSETH THAT:

Section 18 of the Urban Mass Transportation Act of 1964, as amended, provides for funding assistance to operators of public transportation services for the specific purpose of providing transportation services meeting the needs of residents of nonurbanized areas; and

The Governor of the State of Washington, in accordance with a request by the Urban Mass Transportation Administration (hereinafter referred to as "UMTA"), has designated the Department to evaluate and select projects proposed by operators of public transportation; and to coordinate the resulting funding assistance.

The Department and Contractor desire to secure and utilize the funding assistance from Section 18 of the Urban Mass Transportation Act of 1964, as amended, for the transportation needs of the residents of nonurbanized areas of the State of Washington;

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

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of transportation services to the residents of non-urbanized areas (hereinafter referred to as "Project") by the Contractor and to state the terms, conditions and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2. Scope of Project. The Contractor shall undertake and complete the Project as described herewith:

The Contractor shall purchase the equipment described in Section 30(a) of this Agreement to transport the elderly and handicapped residents in the area described in Section 30(b) of this Agreement. The use of this equipment shall be consistent with that indicated in the Contractor's July 30, 1986 application to the Department, as clarified in the September 25, 1986 public hearing held in Stevenson.

Section 3. Time of Performance. The project period of this Agreement shall begin on the date of execution of this Agreement and continue through the useful life of Project Equipment defined in Section 30(a) of this Agreement. The Contractor may not unilaterally terminate the Project. The Contractor must promptly give written notice to the Department of any complete or partial termination of the Project.

Section 4. Contractor's Share of Project Costs. The cost of the Project shall be in the amount indicated in Section 30(c) of this Agreement and shall be borne in the manner described therein. The Contractor agrees to expend eligible funds in an amount

sufficient, together with the federal funds allocated for the Project, to assure payment of the Total Project Cost. The Contractor further agrees that there shall be no reduction in the amount specified as the Contractor's Share unless there is a concurrent proportional reduction in the Federal Share to maintain the percentage ratio indicated as shown in Section 30(c).

Section 5. Purchases. The Contractor shall make purchases of any equipment, materials or services pursuant to this Agreement through the procurement procedures identified in UMTA Circular 4220.1A "Third Party Contracting Guidelines" which by this reference is incorporated herein; any reference therein to "grantee" shall mean the Contractor. The Department reserves the right to approve any procedure proposed to be made by any Contractor for such purchases. Such purchases are subject to the provisions of Section 165, Surface Transportation Assistance Act of 1982, "Buy America."

Section 6. Inspection Upon Delivery. The Contractor shall inspect Project equipment purchased pursuant to this Agreement at the time such equipment is delivered to the Contractor. Upon receipt and acceptance of Project equipment the Contractor agrees that it shall be conclusively presumed, as between the Department and the Contractor, that the Contractor has fully inspected and acknowledged that such equipment is in good condition and repair, and that the Contractor is satisfied with such equipment.

Section 7. Miscellaneous Charges and Conditions. The Contractor shall pay all storage charges, parking charges, and fines, as well as any fees (including vehicle registrational license, and inspection fees), or taxes which may be imposed with respect to said vehicle by a fully constituted governmental authority as the result of the Contractor's use or intended use of the Project equipment. All replacement, repairs, or substitution of parts or equipment shall be at the cost and expense of the Contractor and shall be accessions to the Project equipment and subject to this Agreement.

Section 8. Use of Project Equipment. The Contractor agrees that the Project equipment shall be used for the provision of transportation service within the area described in Section 30(b) of this Agreement for the equipment's useful life. 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. The Contractor shall keep satisfactory records with regard to the use of the Project equipment and submit to the Department upon request such information as is required in order to assure compliance with this section and shall notify the Department, at least one day in advance of any cases where the Project equipment is used in a manner substantially different from that described in this Agreement.

Section 9. Maintenance of Project Equipment. All service, materials, and repairs in connection with the use and operation of the Project equipment during its useful life are at the Contractor's expense. The Contractor agrees to 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 manufacturer's warranty. The Department shall not be liable for repairs, nor shall any such repairs be charged to it. The Contractor shall comply with the Property Management Standards identified as OMB Circular A102 Attachment N, which by this reference is incorporated herein; any reference therein to "grantee" shall mean the Contractor.

Section 10. Liens on Equipment and Property. The Department shall hold legal title to any vehicles or equipment the Contractor acquires or file a lien against any property the Contractor modifies using the Federal Share identified in Section 30(c) of this Agreement. The legal title or lien shall cover 80% of the disposable value of the vehicles, equipment, or property and may be satisfied only by proper disposal of the vehicles, equipment, or property in a manner determined by the Department.

Section 11. Insurance and Loss or Damage. The Contractor, at its own expense, shall obtain automobile collision, fire and theft insurance or comparable coverage protecting the full value of any vehicles or equipment acquired or property modified using the Federal Share identified in Section 30(c) of this Agreement. In the event of loss or damage, the Contractor shall within sixty days either (1), replace the lost equipment or property, or (2), remit 80% of the insurance proceeds to the Department to satisfy the requirements of Section 10 of this Agreement; or (3), have the damaged equipment placed in good repair in a workmanlike manner and back in operation. If the Contractor chooses the second option and has not received the insurance proceeds within the above sixty (60) day period, then he shall remit such proceeds to the Department as soon thereafter as the proceeds are received. In the event of loss or damage to equipment or other property in which the Department has a financial interest, the Contractor shall proceed to protect that property from further loss or damage.

The insurance policy shall name the Contractor as insured, and it may not be cancelled or altered without at least thirty days prior written notice to the Department and to the Contractor.

Section 12. Damage and Loss Reports. In the event Project equipment is damaged in an amount greater than Five Hundred Dollars (\$500.00), damaged so as to incapacitate the equipment, or stolen or otherwise lost from use, the Contractor shall notify the Department within three (3) working days after the occasion of such event, detailing the circumstances thereof, and the Contractor's intentions regarding the repair or replacement of the Project equipment.

Section 13. Limitation of Liability. The Contractor shall indemnify and hold the Department, its agents, employees, and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of whatsoever kind or nature (hereafter "claims") brought against the Department arising out of or incident to the execution, performance, or failure to perform of or under this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the Contractor, its agents, employees, and/or officers and (b) the Department, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, employees, and/or officers; and provided further that nothing herein shall require the Contractor to hold harmless or defend the Department, its agents, employees, and/or officers from any claims arising from the sole negligence of the Department, its agents, employees, and/or officers.

Section 14. Contracts Under This Agreement. Unless otherwise authorized in advance in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its right and responsibilities under this Agreement, lease or lend the Project

equipment or any part thereof to be used by anyone not under the Contractor's supervision.

Section 15. Agreement Modifications. Either party may request changes in these provisions. Such changes which 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.

Section 16. Termination for Public Convenience. The Department may terminate the contract in whole, or from time to time in part, whenever:

(a) The requisite federal funding becomes unavailable through failure of appropriation or otherwise;

(b) The UMTA declares its agreement with the Department for this project null or void, or for any other reason seeks refund or return of the moneys it has provided to the Department for this project. In this instance, the Contractor shall return all moneys reimbursed to it by the Department within sixty (60) days of its receipt of a certified letter to this effect from the Department;

(c) The Contractor is prevented from proceeding with the work 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;

(d) The Contractor is prevented from proceeding with the work by reason of a preliminary, special or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor;

(e) The Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in Section 3 of this Agreement;

(f) The Department determines that such termination is in the best interests of the state; or

(g) The Department may terminate the project and cancel this Agreement if in the sole opinion of the state the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.

Section 17. Interest of Members of or Delegates to Congress. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 18. Prohibited Interest. No member, officer, or employee of the Contractor during his or her tenure in office or employment or one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 19. Equal Employment Opportunity. In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex, national origin, or handicap, except for a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are

treated during their employment, without regard to their race, creed, marital status, age, color, sex, national origin, or handicap, except for a bona fide occupational qualification. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship.

Section 20. Non-Discrimination Assurances. The Contractor hereby agrees that as a condition to receiving any federal financial assistance pursuant to this Agreement, it will comply with Title VI of the Civil Rights Act of 1964, 78 Sta. 252, 42 U.S.C. 2000d through 2000e-16 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Sub-Title A, Office of the Secretary, Part 21, Transportation--the effectuation of the Act (hereinafter referred to as the Regulations), and other pertinent directives, to the end that, in accordance with the Act, Regulations, and other directives, no person in the United States shall, on the grounds of sex, race, color, marital status, age, creed, national origin, or handicap except for a bona fide occupational qualification, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance pursuant to this Agreement. The Contractor hereby assures that it will promptly take any measure necessary to effectuate this condition precedent. It is understood that the Contractor shall be deemed the "recipient" as that term is used in the Act or the Regulations referred to in this paragraph.

More specifically, and without limiting the above general assurance, the Contractor hereby gives the following specific assurances with respect to the Project to be undertaken pursuant to this Agreement:

(a) The Contractor shall insert the following notification in all solicitations for bids for work or materials subject to Regulations promulgated in connection with this project, or more generally by the U.S. Department of Transportation for other purposes, and, in an adapted form in all proposals for negotiation agreements:

"(Name of Contractor), in accordance with Title VI of the Civil Rights Act of 1964, and Title 49 Code of Federal Regulations, Department of Transportation, Sub-Title A, Part 21, "Non-Discrimination in Federally Assisted Programs of the Department of Transportation," issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of sex, race, color, marital status, age, creed, national origin, or handicap except for a bona fide occupational qualification in consideration for an award."

(b) The Contractor assures that all fixed facility construction or alteration and all new equipment included in the Project comply with applicable regulations regarding "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", set forth in 49 C.F.R. Part 27, and any amendments thereto.

Section 21. Small, Disadvantaged and Women's Business Enterprise. The following provisions are applicable:

(a) **Policy.** It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises, as defined in 49 C.F.R. Part 23, shall have the

maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 23 apply to this Agreement.

(b) DBE obligation. The Contractor and any sub-contractors agree to ensure that disadvantaged business enterprises as defined in 49 C.F.R. Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard the Contractor and any sub-contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Contractor and any sub-contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.

Section 22. General Federal Compliance Assurances. The Contractor agrees to, and shall provide for such methods of administration for the project that are found by the Secretary of Transportation, or the official to whom the Secretary delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to the Act, the Regulations, and this assurance. The Contractor agrees to comply with the provisions of OMB Circular A-102. The Contractor agrees to comply with such instructions the Department may issue to comply with the requirements of United States and Washington State law. The Contractor agrees that the United States, any agency thereof, the Secretary of Transportation and any of the Secretary's designees, have not only the right to monitor the compliance of the Contractor with the provisions of this assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance. It is understood by the Contractor this assurance obligates the Contractor for the period during which federal assistance is extended to the project, except where the federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Contractor or any transferee for the longer of the following periods: (i) the period during which the property is used for the purpose for which the federal assistance is extended, or for another purpose involving the provision of similar service or benefits; or (ii) the period during which the Contractor retains ownership or possession of the property.

Section 23. Project Records. The Contractor shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. To facilitate the administration of the Project, separate accounts shall be established and maintained within the Contractor's existing accounting system or set up independently. Such accounts are referred to herein collectively as the "Project Account." The Contractor shall charge to a Project Account all eligible costs of the Project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department, shall not be considered eligible costs. All costs, charged to the Project, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

Section 24. Audits, Inspection and Retention of Records. The Department, the U.S. Department of Transportation, UMTA, the State Auditor, and the Inspector General

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 contract. 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 contract. Such rights shall last for the longer of the following periods (a) the period during which any property acquired with funds provided pursuant to this contract is used for purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Contractor retains ownership or possession of such property. All documents, papers, accounting records and other material pertaining to costs incurred in connection with the project shall be retained by the Contractor for three years from the date of completion of the project to facilitate any audits or inspections. Furthermore, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. OMB Circular A-128 shall supersede OMB Circular A-102, Attachment P, for purposes of this section.

Section 25. Acceptance of Special Section 13(c) Warranty. The Contractor agrees to be bound by the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program", dated May 31, 1979. It is understood that said warranty is to be construed in a manner consistent with the first sentence of the third paragraph on page 2 of a letter from the U.S. Department of Labor to the Chief Counsel, Washington State Department of Transportation, dated February 25, 1980, a copy of which is attached hereto and by this reference is incorporated herein. All sections and provisions of the warranty are hereby incorporated into this Agreement. For the purpose of the Warranty, all references made to the "Recipient" and to the "Public Body" shall be construed to mean the Contractor, and in instances of subcontracts, when only references to the "Recipient" shall include the subcontractor.

Section 26. Subcontract Inclusions. The Contractor shall include in all subcontracts entered into pursuant to this Agreement Sections 17-26. 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 contract is subject to a financial assistance contract between the Washington State Department of Transportation and the U.S. Urban Mass Transportation Administration.

Section 27. Reimbursement. The Department, using funds made available to it from the grant made to it by the UMTA shall reimburse the Contractor's allowable expenses incurred in completing the project described in Section 2. Allowable Project expenses shall be determined by the Department. In no event shall the total amount reimbursed by the Department hereunder exceed the federal share identified in Section 30c.

Section 28. Reimbursement Conditions.

(a) Payment will be made by the Department on an incremental reimbursable basis (either monthly or quarterly). Payment is subject to the submission to and approval by the Department of appropriate state vouchers, progress reports, and financial

summaries. Any financial summaries submitted to the Department must include a certification that costs have been incurred in the performance of the contract and a record of the actual costs.

(b) In submitting vouchers requesting reimbursement, expenses should be identified as capital equipment, separated by unit items for cost of the capital items.

Section 29. Reports. The Contractor shall prepare reports describing usage of Project equipment, other related information and for such periods of time, and frequency as may be prescribed by the Department.

Section 30. Special Conditions.

(a) Definition of Project Equipment. The following equipment shall be defined as the Project equipment within this Agreement:

One (1) 12 - passenger van modified for handicapped persons' use.

(b) Operation of Project Equipment. The Contractor shall restrict the operation of Project equipment to the following geographical areas:

Skamania County.

(c) Cost of the Project. The maximum cost of the Project shall be as follows:

Federal Share	\$ 15,417.00 (80%)
Contractor's Share	\$ 3,854.25 (20%)
Total Project Cost	\$ 19,271.25 (100%)

If at any time the Contractor becomes aware that the cost which it expects to incur in the performance of the Agreement will exceed or be substantially less than the Total Project Cost amount, the Contractor must notify the Department promptly in writing to that effect.

Section 31. Lack of Waiver. In no event shall the making by the Department of any payment of grant funds to the Contractor constitute or be construed as a waiver by the Department of any breach of covenants, or any default which may exist on the part of the Contractor; the making of any such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

Section 32. Department 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. Although Contractors are encouraged to seek the advice and opinions of the Department on problems that may arise, the giving of such advice shall not shift the responsibility of the Contractor for the administration and success of the Project.

Section 33. Department's Rights Prior to Subrogation. The Department 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 equipment or other property in which the Department has a financial interest.

Section 34. Subrogation. The Department may require the Contractor to assign all right of recovery against any person or organization for loss to the extent of the Department's loss. Upon assignment, the Contractor shall execute and deliver and do whatever else is necessary to secure the Department's rights. The Contractor shall do nothing after the loss to prejudice the rights of the Department.

Section 35. Duties of Contractor in Instances of Subrogation. When the Department has exercised its right of subrogation the Contractor shall cooperate with the Department and, upon the Department's request, assist in the conduct of suits and in enforcing any right against any person or organization who may be liable to the Department due to property damage to which this grant agreement applies, and the Contractor shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

Section 36. Remedies. The Contractor shall not use any Project equipment in a manner different from that described in Section 2 of this Agreement. If the Department determines the Project equipment has been used in a manner different from that described in Section 2, the Department may direct the Contractor to dispose Project equipment acquired by the Contractor pursuant to Section 30(a) in accordance with UMTA procedures. The Department may also withhold Grant payments where it determines that a Contractor has failed to comply with any provision of this Agreement. If federal participation and funding is either reduced or cancelled as a result of a breach by the Contractor, the Contractor is then liable for all damages from the breach, even though those damages exceed the price payable under the contract.

Section 37. Remedies Cumulative. All remedies provided in this document are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised concurrently, independently or successively.

Section 38. Forbearance by Department Not a Waiver. Any forbearance by the Department 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 39. Disputes. Any factual disputes between the Department and the Contractor in regard to this Agreement not disposed of by this Agreement, shall be referred for determination to the Secretary of Transportation, or his designee, whose decision shall be final and binding.

Section 40. Venue and Process. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in the superior court of the State of Washington situated in Thurston County. The Contractor hereby accepts the issuing and service of process by registered mail at the mailing address the Department has for the Contractor.

Section 41. Independent Contractor. The Contractor shall be deemed an independent contractor for all purposes, and the employees of the Contractor or any of

its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of the Department.

Section 42. Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 43. Execution and Acceptance. 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 the Department's grant and agrees to all of the terms and conditions thereof.

Section 44. Effective Invalidation of Any Provision Hereof. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision, or part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this contract. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 45. Execution. This Agreement is executed by James P. Toohey, Assistant Secretary for Planning, Research and Public Transportation, State of Washington, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the state of Washington, in his capacity as Assistant Secretary for Planning, Research, and Public Transportation, State of Washington, pursuant to authority as aforesaid.

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

STATE OF WASHINGTON
Department of Transportation

By: *James P. Toohy*
James P. Toohy
Assistant Secretary for
Planning, Research and
Public Transportation

Date: February 27 1957

Approved as to Form

KENNETH O. EIKENBERRY
Attorney General
State of Washington

By: *R. K. V.*
Assistant Attorney General

Any modification, change, or revision
to this Agreement requires the further
approval as to form of the Office
of the Attorney General.

1:AGMT 7

RKV

COUNTY OF SKAMANIA

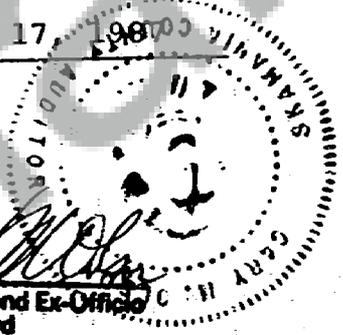
(Contractor)

By: *H. Hendrickson*
Chairman, Board of County
Commissioners

Date: February 17, 1957

ATTEST:

Gary H. ...
Sk. Co. Auditor and Ex-Officio
Clerk of the Board



MAR 3 1980

U.S. Department of Labor

Labor-Management Services Administration
Washington, DC 20216

Reply to the Attention of:



FEB 26 1980

Thomas R. Garlington, Esquire
Senior Assistant Attorney General
Office of the Attorney General
State of Washington
Temple of Justice
Olympia, Washington 98504

Dear Mr. Garlington:

This letter is in response to your November 29, 1979 letter addressed to Mr. Lynn Franks of our staff with which you also enclosed an informal legal opinion addressed to Mr. Robert Nielson, Assistant Secretary of Public Transportation and Planning. You have suggested on behalf of the Washington State Department of Transportation inclusion of additional language into the Special Section 13(c) Warranty which would have the effect of absolving the State of any financial liability under the arrangement.

The informal legal opinion indicates that upon the basis of your examination of the Special Section 13(c) Warranty, you believe that the state administering agency has either liability as a principal, or as a guarantor of the recipient's performance of the Warranty obligations. You also indicate that you have found no express authorization for the State of Washington to undertake such liabilities for payment of benefits to protected surface transportation employees, and you conclude that the State may not execute a Section 18 project application.

A condition for receipt of Federal assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, requires the Secretary of Labor to certify that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by such assistance. To satisfy Section 13(c) labor protections in connection with grants under Section 18 of the UMT Act and to conform with the legislative intent to reduce "red tape", the Secretary of Labor, in consultation with the Federal Highway Administration and other affected interest groups, developed the Special Section 13(c) Warranty. The Secretary of Labor has certified the Special Warranty as providing protections which satisfy the requirements of Section 13(c) of the UMT Act.

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Paragraph (5) of the Special Warranty states that "the Recipient or other legally responsible party designated by the Public Body will be financially responsible for the application of these conditions. . . ." As stated in the Guidebook, which explains the contents and use of the Special Warranty, it is our opinion that when the Public Body is not designated as the legally responsible party, then the Public Body assumes no special obligations that are not otherwise part of its normal obligations as a grant administering agency. This is no different than under the Section 5 operating assistance program where a Public Body acts as a conduit of the funds to a private operator.

The Special Warranty in and of itself does not increase a state's liability. In addition, the fact that a state acts as a conduit in the funding of particular projects in no way adds to its obligations. Any liabilities which a state may have with respect to Section 13(c) protections when it chooses to have a designated legally responsible party provide the protections depend exclusively upon state or federal contract law.

It is not our intent to place the State in the role of the guarantor for protections in instances where a legally and financially responsible Recipient defaults on its obligations. You and other attorneys for the State are in the best position to assess what impediments, if any, exist under your state law with respect to WSDOT's potential financial liabilities. The Department of Labor cannot, in any event, absolve the State, as signatory to the contract of assistance, of any potential liability which might exist.

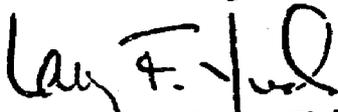
Although other states also have expressed concerns about Section 13(c) liabilities and obligations during their processing of Section 18 grants, in excess of 190 projects have been processed to date in 25 states on the basis of acceptance of the Warranty. In every instance the recipient has accepted Section 13(c) responsibilities. In resolving difficulties over Section 13(c) some states have used hold harmless clauses while others used specific language defining the financially responsible parties for the projects. You may wish to examine your state laws to determine whether any of these approaches or similar ones are viable in permitting Washington, like a number of other states, to participate in the Section 18 program.

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If you have any questions about the contents of this letter or approaches which have been successfully used in adopting the Warranty, please contact Mr. Lynn Franks of our office who is responsible for handling Section 13(c) matters for the State of Washington.

Sincerely,



Lary F. Yus, Chief
Division of Employee
Protections

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