

BEN FRANKLIN TRANSIT
AND
WASHINGTON STATE UNIVERSITY TRI-CITIES TRANSPORTATION PASS
AGREEMENT #1373

THIS AGREEMENT made and entered into this 15th day of July 2022, by and between the Washington State University Tri-Cities, 2710 Crimson Way, Richland, WA 99354, as “WSU” and the Ben Franklin Transit, 1000 Columbia Park Trail, Richland, WA 99352, a Washington State municipal corporation, as “BFT” (hereinafter referred to sometimes as “Party” individually or “Parties” jointly).

Whereas, RCW 39.34, the Interlocal Cooperation Act, allows public entities in Washington to enter into cooperative agreements; and

Whereas, WSU and BFT as public transit agencies wish to join together to provide mutual aid to one another in non-emergent times;

Now, therefore, in consideration of the mutual covenants set forth herein, it is hereby agreed as **follows:**

WSU and BFT share the desire to provide a comprehensive transportation pass program that will reduce single occupant vehicle (SOV) commute trips and improve the mobility of students, faculty, and staff at WSU’s Tri-Cities campuses.

BFT is authorized to provide public transportation and generally promote commuting alternatives in Tri Cities.

WSU has a desire to provide incentives and benefits to their students, faculty and staff which promote non-SOV commuting to all WSU's campuses.

WSU and BFT desires that the WSU-PASS program be implemented so that WSU’s students, faculty and staff have access to public transportation services enabling them to commute by non-SOV modes;

AGREEMENT

IN CONSIDERATION of the above Recitals, WSU and BFT further agree:

1.0 PURPOSE

This Agreement establishes, among other things, the various transportation benefits of the WSU-PASS to be provided by Ben Franklin Transit, the terms under which the WSU-PASS Stickers will be produced and distributed.

2.0 DEFINITIONS

The following definitions shall, unless otherwise indicated, apply to the terms of this Agreement and all its attachments.

- 2.1 *Academic Semesters.* The three periods in a year established for their academic purposes.
- 2.2 *Designated Representatives.* The individuals representing the BFT and WSU who are listed in Attachment 1, which may be amended from time to time.
- 2.3 *Eligible Faculty and Staff.* All current faculty and staff of WSU Tri-Cities
- 2.4 *Eligible Students.* All students enrolled at WSU Tri-Cities
- 2.5 *WSU-PASS.* A right-to-ride transit pass that allows WSU Tri-Cities students, faculty and staff to participate in the WSU-PASS program
- 2.6 *WSU-PASS Sticker:* a colored sticker that is approved by Ben Franklin Transit and affixed to the front of the WSU photo ID card as proof of WSU-PASS membership.
- 2.7 The Parties will work together to identify and design dates and sticker colors that will be attached to student IDs and honored by BFT as a University transit pass.

3.0 TERM OF AGREEMENT

This Agreement shall take effect on August 1, 2022. Unless terminated or extended by written agreement of the parties, this Agreement shall automatically renew until terminated by one of the parties.

4.0 DESIGNATED REPRESENTATIVES and LEAD PARTY FUNCTIONS

- 4.1 To promote effective and efficient cooperation and administration of this Agreement, each of the parties shall designate a primary contact person (“Designated Representative”) as identified in Attachment 1. The WSU’s Designated Representative will also be responsible for purposes of the distribution of WSU-PASS Stickers. Either Party may change its Designated Representative by providing written notice to the other party (including revised contact information). WSU and BFT shall provide notice of any changes to their respective Designated Representative contact information. An email shall be sufficient notice.
- 4.2 The Designated Representative shall receive individual invoices and arrange payments to BFT. They shall coordinate all WSU-PASS Sticker distribution, pricing negotiations and other functions as specified in this Agreement.

5.0 WSU-PASS STICKERS

- 5.1 *Eligible Recipients of a WSU-PASS Sticker* WSU shall make reasonable efforts to ensure that only eligible students, faculty and staff members receive WSU-PASS Stickers.
- 5.2 *Production and Distribution of WSU-PASS Stickers.* WSU Campus Security shall be responsible for the production and control of WSU-PASS Stickers. WSU is responsible

for the production and distribution of ID cards to all students, faculty and staff for participation in the WSU-PASS program. The costs associated with these responsibilities shall be borne solely by WSU.

- 5.3 *Security and Replacement of WSU-PASS Stickers.* WSU agrees that they are solely responsible for providing proper storage and security measures for any and all WSU-PASS Stickers. The WSU-PASS Stickers will be considered a non-refundable, non-transferable instrument. BFT shall have no responsibility for replacing lost or stolen WSU-PASS Stickers. WSU shall issue the WSU-PASS Stickers and may, at their cost, provide for any refunds or the replacement of lost or stolen WSU-PASS Stickers, in accordance with their adopted policies. In the event of a loss or theft of WSU-PASS Stickers in the WSU's inventory, WSU shall notify BFT. Both parties will jointly determine an appropriate course of action.
- 5.4 *Reporting.* WSU shall report to BFT within fifteen (15) days of the end of each Academic Semester the actual number of WSU-PASS Stickers issued to WSU students, faculty and staff. BFT coach operators record the number of boardings that are associated with the WSU PASS Stickers usage.
- 5.5 *Transit Access.* BFT shall allow each student, faculty and staff member displaying a valid WSU-PASS Sticker on his/her valid WSU ID card to ride on all parts of the fixed route bus and CONNECT system, excluding paratransit services, without additional charge. WSU-PASS Stickers are not valid on any other agency's system or special event services operated by BFT. BFT shall honor each WSU-PASS sticker issued under this Agreement.
- 5.6 *Confiscation of WSU-PASS Stickers/I.D. Cards.* BFT reserves the right to confiscate WSU-PASS Stickers and WSU ID cards which are not valid or have been altered, duplicated, counterfeited, transferred, or distributed to unauthorized persons or otherwise invalid under the terms of this Agreement. Confiscated WSU-PASS Stickers and WSU ID cards shall be sent immediately to the WSU's Designated Representative along with any available supporting information regarding the reasons for, and date of, the confiscation.

6.0 PRICING

The costs associated with this Agreement are specified in the following, *Products, Pricing and Terms*; except as otherwise provided below, these costs shall remain in effect for the term of this Agreement. The pricing is set at \$0.40 a boarding and will be capped at \$20,000 per year. This cap will be reevaluated each year based on enrollment, by semester. WSU has three semesters per year which include Fall, Spring, and a shorter, Summer semester. Final costs will be determined by BFT by verifying pass usage (e.g., individual boardings) each semester. BFT reserves the right to adjust the price per boarding annually on the anniversary date of the agreement. In the event BFT determines a price adjustment is necessary and any such adjustment will result in an increased cost to WSU, BFT will provide 60 advance notice to WSU.

7.0 PAYMENTS AND BILLING

Invoice and Payment. BFT shall present invoices every semester to WSU's Designated Representatives listed in Attachment 1. WSU shall make payments in full to BFT within sixty (60) days.

8.0 FUNDING CONTINGENCY

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, WSU may terminate this Agreement under the "Termination for Convenience" clause without advance notice, subject to renegotiation under those new funding limitations and conditions.

9.0 PLANNING AND MARKETING ACTIVITIES

9.1 *Information and Distribution.* BFT will supply rider information to WSU in a timely manner.

9.2 *Transit Service Planning.* For the duration of this Agreement, BFT will consult with WSU in the planning of future transit services affecting the campus to the extent feasible. Planning efforts will include exploring strategies to best match transit capacity to demand on routes serving WSU.

10.0 TERMINATION

10.1 *Termination for Default.* The parties may terminate this Agreement for default in the event any other party fails to perform a material obligation under this Agreement. Termination shall be effected by serving a notice of termination by certified mail, return receipt requested, on the other parties setting forth the manner in which a party is in default and the effective date of termination, which shall not be less than thirty (30) calendar days after the date of the notice; provided, however, such termination shall not take effect if the default has been cured within seven (7) calendar days after the date of the notice of termination.

10.2 *Termination for Convenience.* Either party may terminate this agreement for convenience by providing written notice of termination no less than thirty (30) calendar days prior to the anniversary of the effective date. Termination for convenience shall be effective upon the anniversary date.

10.3 Notwithstanding any termination of the Agreement, the parties shall remain liable to satisfy and comply with all of their obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

11.0 FORCE MAJEURE

Any Party to this Agreement shall be excused from performance of any responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: any incidence of fire, flood, snow,

earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; pandemic or other widespread public health emergency; or national fuel shortage (“Force Majeure Event”); when satisfactory evidence of such cause is presented to the other party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the party not performing. In no event should this provision eliminate the obligation of WSU to make payment to the BFT pursuant to the terms of this Agreement.

12.0 PROHIBITED DISCRIMINATION

The parties shall not discriminate based on race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, physical disability, or any other protected classification in the administration of its transportation program, or the performance of any acts under this Agreement. The parties shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

13.0 COMPLIANCE WITH APPLICABLE LAW

The parties shall be solely responsible for their respective compliance with all applicable federal, state and local laws, regulations, resolutions and ordinances, including but not limited to any provisions relating to the provision of compensation, benefits or services to their respective employees or others (e.g. including but not limited to transportation fringe benefits) and any reporting, tax withholding or other obligations related thereto. The parties expressly acknowledge and agree that: (a) no legal, accounting, tax or other advice has been provided by any party to another; and (b) it has not relied on any representations or statements by another party and will not rely on them to provide any legal, accounting, tax or other advice with regard to the provision of compensation, benefits or services to their respective employees or others (e.g. including but not limited to transportation fringe benefits) and any reporting, withholding or other obligations related thereto.

14.0 LEGAL RELATIONS

14.1 *No Partnership, Agency or Employment Relationship Formed.* The Parties are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees.

14.2 *Limitation on Liability.* Each Party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents related to any loss of use, loss of time, loss of profits, loss of privacy, loss of data, loss of goodwill, inconvenience, commercial loss, loss of anticipated savings, wasted management time or labor, or any special, consequential, indirect, incidental, or punitive damages, when such damages arise out of or are related to this Agreement. Neither Party shall be construed to be the officer, agent, or employee of the other. In the event the need for litigation arises in the administration of the terms of this Agreement, each Party shall bear its own costs and attorney fees.

14.4 Provided, however, nothing in this Agreement shall be construed to require any Party to defend, indemnify and hold harmless against any liability to the extent it arises from or is caused by the negligence or fault of the other party, agents, employees and/or officers.

14.4 *No Waiver.* The Parties agree that any failure by one of them to exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law will not be taken to be deemed to be a waiver or modification of the that Party's rights and remedies and that those rights or remedies will still be available to that Party.

14.5 *Governing Law and Forum.* This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each Party hereto that this contract shall be governed by laws of the State of Washington, both as to interpretation and performance.

Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be initiated and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

14.6 *Attorneys' Fees and Costs.* In the event of litigation between the Parties each Party shall bear its own attorney fees and litigation expenses and costs.

15.0 AUTHORITY TO EXECUTE

Each Party to this Agreement represents and warrants that: (i) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (ii) the person(s) executing this Agreement below on the Party's behalf is/are duly authorized to do so and that the signatures of such person(s) is/are legally sufficient to bind the Party hereunder.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

WASHINGTON STATE UNIVERSITY TRI-CITIES

Recommended BY:  Date: _____

Approved BY:  Date: 7/28/2022

BEN FRANKLIN TRANSIT

BY:  Date: 15 July, 2022
Edwin Frost (Jul 15, 2022 15:05 PDT)
Edwin G. Frost, Interim General Manager

**ATTACHMENT 1
DESIGNATED REPRESENTATIVES**

	WSU- Primary	BFT - Primary
Name	Scott Tomren	Kevin Sliger
Title	Director, Campus Safety & Security	Planner
Address	2710 Crimson Way	1000 Columbia Park Trail
	Richland, WA 99354	Richland, WA 99352
Telephone	509-372-7163	509-734-5107
Cell Phone		
Fax		
E-Mail	stomren@wsu.edu	ksliger@bft.org
Name		
Title		
Address		
Telephone		
Cell Phone		
Fax		
E-Mail		