Memorandum Of Agreement

PARTIES: GARFIELD COUNTY & CITY OF POMEROY

SUBJECT: Agreement to Form and Participate in a County Public Transportation Authority.

THIS AGREEMENT is made and entered into by and between, Garfield County, a political subdivision of the State of Washington, hereinafter referred to as “the County,” and the City of Pomeroy, a Municipal Corporation of the State of Washington, hereinafter referred to as “the City.”

RECITALS:

WHEREAS, the County is a municipal corporation of the state of Washington, organized and existing pursuant to Title 36 RCW; and

WHEREAS, the City is a municipal corporation of the State of Washington, organized and existing pursuant to Title 35A RCW; and

WHEREAS, pursuant to Chapter 39.34 RCW, local governmental entities are permitted to make the most efficient use of their respective powers by contracting and cooperating with other localities on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, The County Board of Commissioners, resolved to develop the Garfield County Transportation Authority (“Transportation Authority”) through passage of Resolution # 14113, as authorized under RCW 36.57.020, on 11-07-2016 (date); and

WHEREAS, The City Council of the City of Pomeroy, resolved to join with Garfield County Board of Commissioners in the development of the Transportation Authority through passage of Resolution # 14113, and

WHEREAS, pursuant to RCW 36.57.020, the Transportation Authority shall embrace all the territory within a the County and all cities and towns therein (including the City); and

WHEREAS, pursuant to RCW 36.57.030, shall be governed by a Board of Directors (“Board”) consisting of three (3) County Commissioners and the Mayor of the City; and

WHEREAS, pursuant to RCW 36.57.060, the County and each city or town included in the Transportation Authority will be required to contribute such sums towards the expense for maintaining and operating the Transportation Authority as shall be agreed upon between them; and
WHEREAS, pursuant to RCW 36.57.070 the Transportation Authority is required to adopt a public transportation plan, which plan shall be a general comprehensive plan designed to best serve the residents of the entire County and including a plan for long-term financing as is authorized in RCW 82.14.045; and

WHEREAS, pursuant to RCW 36.57.080, the Transportation Authority will function to provide public transportation, which is a "county purpose"; and

WHEREAS, pursuant to RCW 36.57.080, the Transportation Authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation in and throughout the County; and

WHEREAS, the Transportation Authority will be assuming all contractual obligations of the Garfield County Rural Transportation Department; and

WHEREAS, the Transportation Authority will be operating as an independent organization and separate junior taxing district subject to all the requirements, rights and privileges thereof,

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I
PURPOSE

1.01 PURPOSE. The purpose of this Agreement is to set forth the terms and conditions under which the County and the City will agree to the formation and subsequent voluntary participation in the Transportation Authority.

1.02 The terms and conditions provided in this Agreement shall be adopted by Resolution by the Transportation Authority within 60 (sixty) days of the first meeting of the Board.

ARTICLE II
ADMINISTRATION

2.01 ADMINISTRATOR. The following are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 City representative shall be the Mayor or his or her authorized designee.

2.03 County’s representative shall be the Chairman of the Board of County Commissioners.
ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 **DURATION AND RENEWAL.** This Agreement shall be effective upon execution by both parties and shall continue through December 31, 2016 unless earlier terminated in writing by either party as further set forth herein. Thereafter, this Agreement shall automatically renew annually on January 1st unless terminated by either party as further set forth herein.

ARTICLE IV
COMPENSATION

4.01 **COMPENSATION.** With the exception of payments made by the parties to the Transportation Authority as further set forth herein, unless otherwise agreed in writing in advance, no compensation shall be due or paid to either the City or the County as a result of this Agreement.

ARTICLE V
PERFORMANCE OF AGREEMENT

5.01 **COMPLIANCE WITH ALL LAWS.** Each party, including the Transportation Authority, shall comply with all federal, state, and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages, hours, working conditions, confidentiality, disabilities, and discrimination.

5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party, including the Transportation Authority, shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review and audit by any party or its designee, the Washington State Auditor's Office, and members of the general public pursuant to the Washington state Public Records Act, Chapter 42.56 RCW, as existing or hereafter amended. Each party, including the Transportation Authority, shall retain all such books, records, documents and other materials for the applicable retention period under federal and Washington law. Each party, including the Transportation Authority, shall cooperate with any other party to facilitate review and production of records requested for any lawful purpose.

5.03 **ON-SITE INSPECTIONS.** Any party or their authorized designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances.

5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.07 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Garfield shall be to the Garfield County Commissioners, P.O. Box 278, Pomeroy, Washington 99347. Notice to City of Pomeroy shall be to the City of Pomeroy, PO Box 370, Pomeroy, WA 99347

**ARTICLE VI**

**INDEMNIFICATION**

6.01 **CITY INDEMNIFICATION.** The City agrees to and shall defend, indemnify and hold harmless the County, its appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney’s fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, agents or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to the property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the City, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials, agents or employees. It is further provided that no liability shall attach to County by reason of entering into this contract, except as expressly provided herein.

6.02 **COUNTY INDEMNIFICATION.** The County agrees to and shall defend, indemnify and hold harmless the City, its appointed and elective officers, agents and employees, from and against all loss or expense including but not limited to judgments, settlements, attorney’s fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, agents or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the County, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected

Memorandum of Agreement – Garfield County Transportation Authority

Page 4 of 8
officials, agents or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

6.03 **TRANSPORTATION AUTHORITY INDEMNIFICATION.** The parties further acknowledge and agree that, upon formation of the Transportation Authority, the Transportation Authority shall be included in the mutual and reciprocal indemnifications provided herein. The Transportation Authority shall further be required to execute a document or agreement confirming its agreement to indemnify, defend, and hold harmless the City and County as contemplated and set forth herein.

**ARTICLE VII**

**DISPUTES**

7.01 **TIME.** Time is of the essence of this Agreement.

7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington. The Garfield County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

7.03 **ATTORNEY’S FEES.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney’s fees incurred in that action, arbitration or proceeding.

**ARTICLE VIII**

**TERMINATION**

8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party’s last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, subject to the requirements in Section 9.02 below, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**ARTICLE IX**

**FINANCIAL CONSIDERATIONS**

9.01 **VOLUNTARY PARTICIPATION.** The County and the City, hereby agree to the voluntarily formation of and participation in the Transportation Authority as members as
authorized under RCW 36.57.030, provided that no additional obligations or liabilities
are attached to such membership or participation, beyond what is mutually agreed upon
between the County, City and the Transportation Authority.

9.02 **CITY CONTRIBUTIONS.** The City currently pays or contributes $4,000.00 per year to
the Garfield County Rural Transportation operations. Following formation of the
Transportation Authority, except as otherwise set forth in Section 9.04, and unless or
until the either party terminates membership in the Transportation Authority, the City will
cease its payments to the Garfield County Rural Transportation Operations (which will
cease to exist upon formation of the Transportation Authority) and will instead provide a
payment or contribution in the amount of $4,000.00 per year in to the Transportation
Authority. The City shall make the payment or contribution directly to the County
Auditor, on behalf of the Transportation Authority, on or before January 31 of each year
of this Agreement. In the event the Agreement is terminated prior to the expiration of
any term, the City’s contribution shall be pro-rated for each month and the City shall be
reimbursed for the pro-rated amount that would have been due for the remaining term
of the Agreement. The City payment or contribution set forth herein shall not increase
without the consent of the City Council of the City, which consent may be reasonably
withheld.

9.03 **COUNTY CONTRIBUTIONS.** Except as otherwise set forth in Section 9.04 below, the
County will provide any and all remaining cash payments or contributions required to
cover basic operating expenses of the Transportation Authority which are not
adequately covered by grants and other cash contributions (including the City
contribution pursuant to Section 9.02 above). The County’s payment or contribution
requirements shall not increase without the consent of the Board of County
Commissioners.

9.04 **CONTRIBUTIONS LIMITED.** In the event the City and County, on behalf of the
Transportation Authority, exercises the authority to impose sales and use taxes under
RCW 82.14.045, the County’s and City’s contributed funds set forth above may be
reduced or eliminated completely, depending on the financial need of the
Transportation Authority.

**ARTICLE X**

**GENERAL PROVISIONS**

10.01 **OBLIGATIONS AND LIABILITIES.** The Transportation Authority, acting as an
independent organization, shall in no way attach any obligation or liabilities to either
County or the City, beyond what is specifically agreed upon by the County or the City.

10.02 **INSURANCE REQUIRED.** The Transportation Authority shall be required to provide
the necessary liability insurance as to protect the members of the organization, the
County, the City, as well as cover the any other asset or liability, including but not
limited to vehicles, building, equipment, employees, and public. The County and City
shall each procure and maintain their own policies of liability insurance covering their
respective operations pursuant to this Agreement, which policies of insurance shall be secondary to insurance maintained and provided by the Transportation Authority.

10.03 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** This Agreement may be changed, modified, amended or waived only by written agreement signed by the parties’ authorized representatives and adopted by resolution of each party’s legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

10.04 **ASSIGNMENT.** No party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

10.05 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and condition of this Agreement are declared severable.

10.06 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

10.07 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this agreement this 7th day of November, 2016

APPROVED:

CITY OF POMEROY

POMEROY, WASHINGTON

Mayor, G. Paul Miller

IN WITNESS WHEREOF, the parties have executed this Agreement this 7th day of November, 2016

APPROVED:

BOARD OF COUNTY
COMMISSIONERS,
GARFIELD COUNTY, WASHINGTON

Chair, Wynne McCabe
Memorandum of Agreement – Garfield County Transportation Authority