

MEMORANDUM

TO: Chairperson and Members of the Board of Directors

FROM: Eric Frazier, Director of Operations
Jeff Benson, Safety and Training Supervisor
Magan Waltari, Purchasing & Contracts Coordinator

DATE: November 15, 2018

SUBJECT: Consideration of Entering into an Interlocal Agreement for Police Services with City of Bellingham

RECOMMENDATION

The Executive Committee met on November 8, 2018 and recommended to the Board of Directors that WTA enter into an Interlocal Agreement with City of Bellingham for contracted police services at Bellingham Station. The agreement will be for one year with options to extend yearly based on WTA's needs and the City's ability to provide services.

BACKGROUND

WTA has contracted its security to the City of Bellingham since 1998. In 2013, the agreement was re-drafted to incorporate a variety of changes made between WTA and the City.

Now, WTA and the City wish to enter into a new Interlocal Agreement for police services that will incorporate five (5) years of changes including clearer language. The contract will be more specific about allowable price changes and enables the City to true up WTA's cost in the event of a change in the City's Collective Bargaining Agreement. WTA also has revised the service hours to be later on the week days in an effort to have police presence at Bellingham Station during its busy times. Beginning in 2019, there will be an officer from 3:00 p.m. to 7:00 p.m. on the weekdays and 2:00 p.m. to 5:00 p.m. on Saturday. This is a one hour difference to current service hours.

FISCAL IMPACT

WTA currently pays salary and benefits for one officer to be on site four hours per day on the week days and three hours on Saturdays in addition to a 10% Vehicle and Equipment surcharge. For 2019, the contract will cost WTA \$68,413.66 starting January 1st. The contract cost will be renegotiated by December 1st for each subsequent year the contract is in effect.

**2019 AGREEMENT
CITY OF BELLINGHAM – WHATCOM TRANSPORTATION AUTHORITY**

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington (hereinafter the "City "), and **WHATCOM TRANSPORTATION AUTHORITY**, a Public Transportation Benefit Area as authorized under RCW Chapter 36.57A, (hereinafter "WTA"), in consideration of the mutual covenants herein, agree as follows:

WHEREAS, WTA and City entered into a previous agreement for the City to provide police services to WTA: and,

WHEREAS, the parties desire to update and consolidate those agreements into one agreement: and,

WHEREAS, the parties share concerns regarding public safety and security of transit patrons, employees, equipment, and facilities and believe the assignment of officers to transit stations will be in the public's interest: and,

WHEREAS, RCW 39.34.080 allows municipalities to enter into agreements to provide governmental services; and,

WHEREAS, it is in the best interest of each party hereto to enter into this 2019 Agreement, City of Bellingham – Whatcom Transportation Authority ("Agreement");

NOW, THEREFORE, THE CITY OF BELLINGHAM AND WHATCOM TRANSPORTATION AUTHORITY AGREE AS FOLLOWS:

1. PURPOSE

This Agreement confirms the City's providing of Bellingham Police Department police services as further delineated herein.

2. SCOPE OF SERVICES

2.1 The scope of services is provided in Exhibit A, which is attached hereto and expressly incorporated herein by this reference.

2.2 The City shall retain control and supervision over any officers and equipment assigned to provide services hereunder. Therefore, the parties understand and acknowledge that any assigned officer and any equipment may be detailed to other emergent duties the City's sole discretion based upon reasonable operational necessities.

2.3 The City shall only assign those personnel to perform law enforcement duties hereunder that are fully qualified and authorized under applicable law to perform such activities.

Board Chair Watson reiterated that she wants Ms. Lawson to work with staff.

F. BOARD ACTION - CONSENT AGENDA

F.1 Consideration of Approval of Minutes – October 18, 2018 Board Meeting

F.2 Consideration of Approval of October 1-31, 2018 Expenditures

F.3 Consideration of Award of Contract for Janitorial Services

Recommendation: The Executive Committee met on November 8, 2018 and recommended that the Board of Directors approve a two year contract with Advantage Building Services of Everett, WA for Janitorial and Window Cleaning Services for a total of \$308,000, including a \$10,000 contingency.

F.4 Consideration of Entering into Interlocal Agreement for Police Services with City of Bellingham

Recommendation: The Executive Committee met on November 8, 2018 and recommended to the Board of Directors that WTA enter into an Interlocal Agreement with City of Bellingham for contracted police services at Bellingham Station. The agreement will be for one year with options to extend yearly based on WTA's needs and the City's ability to provide services.

MOTION BY ACKERMAN, SECONDED BY KORTHUIS THAT THE BOARD OF DIRECTORS APPROVE THE CONSENT AGENDA WHICH INCLUDED APPROVAL OF THE MINUTES OF THE OCTOBER 18, 2018 BOARD MEETING, APPROVAL OF THE OCTOBER 1-31, 2018 EXPENDITURES, APPROVAL OF A TWO YEAR CONTRACT WITH ADVANTAGE BUILDING SERVICES OF EVERETT, WA FOR JANITORIAL SERVICES FOR A TOTAL OF \$308,000, INCLUDING A \$10,000 CONTINGENCY, AND AUTHORIZATION TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF BELLINGHAM FOR CONTRACTED POLICE SERVICES AT BELLINGHAM STATION.

The motion passed 7 – 0.

G. BOARD ACTION

G.1 Consideration of Award of Retired Vans

This item was deferred.

- 2.4** The City shall assign at least one commissioned police officer pursuant to this Agreement during the hours of 15:00 to 19:00 hours Monday through Friday and a rotating officer on Saturday, for the hours 14:00 until 17:00.
- 2.5** The officer(s) assigned by the City will be present at the downtown Bellingham Station located at 205 E. Magnolia, Bellingham, WA, during the service hours. The parties agree that an officer may make periodic trips to Cordata Station located at 4194 Cordata Parkway, Bellingham WA, as needed at the officer's discretion or as requested by WTA personnel. It is recognized that, outside of the service hours specified in this Agreement, Officers utilizing the Bellingham Police Transit Office could be called upon to assist WTA personnel in the Bellingham Station.
- 2.6** WTA agrees to provide BPD Officers and agents with unlimited access to an office space at the Bellingham Station ("Bellingham Police Transit Office").
- 2.6.1** WTA will be responsible for the following costs associated with the Bellingham Police Transit Office:
- Power/Utilities (water, electricity and climate control)
 - Janitorial Service
 - Regular Building Maintenance
 - Additional building Maintenance and facility repair as needed.
- 2.6.2** Access is granted to all portions of the Bellingham Station including the WTA Employee lunchroom and restroom facilities.
- 2.6.3** The City retains responsibility to control access to the Bellingham Police Transit Office and maintain the information technology services and phone communications as well as the furnishings within.
- 2.6.4** The City shall not be charged for its use of the Bellingham Police Transit Office under this Agreement. The parties agree that this is good and valuable, and partial consideration for the services provided by the City herein and is of a mutual benefit to both parties.

3. PAYMENT

- 3.1** WTA shall pay the City the annual sum of \$68,413.66 (\$5,701.14 per month) for the provision of the services outlined in Exhibit A. Payments shall be made monthly (starting January 2019) on or before the fifteenth (15th) of the following month for which the services were provided.
- 3.2** Each year that this Agreement is renewed, the payment sum will be renegotiated for the next calendar year during the annual budget process. The annual sum adjustment will not be more than 10% of the prior year unless mutually agreed on by the parties.

The parties agree to work cooperatively during the budget process in order to meet each party's budget development deadlines.

- 3.3** The parties agree that a mid-year price change either increasing or decreasing WTA's cost will be allowed in the event of a wage revision in the City's Collective Bargaining Agreement after budgets are finalized or an officer is assigned to the Transit Office with a wage difference of 10%. Any increase or decrease will be directly proportionate to the cost incurred by the City.

4. TERM

Notwithstanding the dates of signatures hereto, this Agreement shall be effective for an initial term from January 1, 2019 ("Effective Date") and continue through and including December 31, 2019. WTA may, in its discretion, renew this Agreement for another year, subject to the terms and conditions of this Agreement, and subject to mutual agreement on pricing for the services as set out under Section 3.2, and further subject to WTA providing written notice of such renewal by December 1st of the prior year.

5. RELATIONSHIP OF THE PARTIES

The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of employees, and servants during the term of this Agreement, including, but not limited to, all wages, federal withholdings and other employment taxes.

6. INDEMNIFICATION AND INSURANCE

- 6.1** Each party agrees to protect, defend, appear, save harmless and indemnify the other party from and against all claims, suits and actions, including costs and attorney's fees, arising from the intentional or negligent acts or omissions of such party, its agents or employees in the performance of this Agreement, or breach of this Agreement. This duty extends to and includes any claim made by an employee of the indemnifying party, and to this limited extent the parties waive any exclusivity benefits under the Industrial Insurance Act, RCW Title 51.
- 6.2** Each party is insured and will provide a Certificate of Insurance naming the other party as an Additional Insured upon request from the other party.
- 6.3** The parties to this Agreement shall only be liable to third parties for their own negligent acts or omissions, and neither party shall be liable for the negligent acts or omissions of the other party. Neither party assumes any responsibility to the other party for the

consequences of any act or omission of any person, firm, or corporation nor a party to this Agreement.

6.4 This Agreement is intended solely for the benefit of the parties hereto and is not intended to benefit or provide any rights, remedies, duties, or liabilities to any third party.

7. MODIFICATION

No changes or modification of this Agreement shall be valid or binding upon either party to this Agreement unless such changes or modifications are in writing and executed by authorized representatives of both parties.

8. FILING AGREEMENT AND APPROVAL

Notwithstanding any provision herein to the contrary and in compliance with RCW 39.34.040, this Agreement and any modification thereof shall be posted on each party's website and, if not, a copy hereof shall be filed in accordance with RCW 39.34.040: PROVIDED, that any delay in effecting compliance with this section shall not affect the stated term and conditions contained herein. Both parties warrant and represent that this Agreement has been authorized by the governing body of each party to the Agreement.

9. RESPONSIBLE PERSONS:

The person responsible for administration of this Agreement on behalf of each party shall be the Bellingham Police Chief for the City and the Safety and Training Supervisor of WTA. All correspondence, letters, or other notices shall be directed to the foregoing parties at the following addresses/phone numbers:

David Doll, Chief of Police
City of Bellingham
505 Grand Avenue
Bellingham, WA 98225
360-778-8800

Jeffrey Benson, Safety and Training Supervisor
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226
360-788-9374

10. TERMINATION

10.1 This Agreement may be terminated by either party for any reason upon the giving of ninety (90) days written notice to the other, at which time any financial obligation for services rendered prior to termination shall be paid in full. The City shall be excused from performing hereunder the day following the ninety (90) day notice, and WTA shall thereafter be excused from any further obligations to provide the Bellingham Police Transit Office or to pay further amounts.

10.2 Notwithstanding the provisions of Section 10.1, if either party wishes to terminate this agreement for cause on less than ninety (90) days' notice, the terminating party shall provide the other party written notice of the deficient performance hereunder and provide a reasonable opportunity of no less than seven (7) calendar days to cure the deficiency before termination.

11. AUDIT

The City agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles. The WTA may audit these financial records at the City's officers during normal business hours and upon reasonable notice.

12. COMPLIANCE WITH LAWS

The parties agree to comply with all applicable federal, state, and local laws, ordinances, and regulations. To this end, the City agrees to comply with all applicable Federal Transit Administration regulations that the WTA notifies the City are applicable to the services provided herein.

13. DISPUTES

Except as otherwise provided for this Agreement, when a material dispute arises between the parties that cannot be resolved by negotiation between the parties' responsible Persons, who are outlined in Section 9, the parties agree to submit the matter to the Whatcom Dispute Resolution Center for mediation with a mutually agreeable mediator as a condition precedent to any action.

14. DIRECTION AND CONTROL

The parties hereto do not intend to create any separate or legal administrative entity by this Agreement but, rather, intend for this mutual Agreement to govern for the purposes contained herein.

15. STATUS OF AGREEMENTS

Upon the Effective Date of this Agreement, the parties intend for this Agreement to replace any other agreement between the parties relating to the provision of police services, including the agreements executed in 1984, 1998, and 2013. However, this Agreement is not intended to replace, substitute, modify or otherwise amend any other agreement between the City and the WTA on any non-police services matters. Those other agreements continue in effect according to the terms of those agreements.

16. SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this agreement.

17. WAIVER

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the agreement.

18. COUNTERPARTS

Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the Parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

FOR WTA

EXECUTED, this the _____ day of _____, 2018 for **WTA**

Peter L. Stark, General Manager

EXECUTED, this the _____ day of _____, 2018 for the
CITY OF BELLINGHAM.

Kelli Linville, Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

DEPARTMENTAL APPROVAL:

Chief of Police

EXHIBIT A

SCOPE OF WORK

This document is intended to serve as a Scope of Work for both the downtown Bellingham and Cordata transit stations.

In order to meet the goals of the WTA and the Bellingham Police Department("BPD), further a productive and responsive relationship between the agencies, and subject to the operational necessities of BPD operations, guidelines for the duties of officers assigned to Transit duty are described below. These guidelines are not mandatory duties and do not attempt to take away the discretionary decisions of the officers nor are they intended to create any duties, explicit or implicit, to any third parties. Officers assigned hereunder will remain aware of, and responsive to, WTA's rules and regulations pertaining to the conduct, safety, and related safety and security risk to transit patrons, employees, equipment, and facilities.

NOTE: When coming on duty at WTA Stations, Officers are expected to report to/check with the on-duty Station Expediter (WTA code names are Hawkeye at Bellingham Station, North Star at Cordata Station). Officers should also do a WTA radio and channel check with these expeditors.

When going off duty, Officers should advise the on duty Expediter(s).

Officers are asked to periodically check in with the Customer Service representatives at the Bellingham Station.

1. **Officers are expected to be a high profile presence on the Bellingham Station concourse and the public areas of the passenger lobby.** Officers will assist the Station Expeditors (aka Hawkeyes/Northstar) and Supervisors in observing and controlling conduct in WTA areas. The WTA wishes Officers to generally discourage loitering. The Station facilities are for the use of patrons getting on and off the buses or otherwise conducting WTA business. The loitering rule is applied on a case by case basis subject to legal authority and the facts of each situation. By way of guidance, generally if persons are not being a problem, they may remain on the property for a reasonable amount of time. However, if people are gathering in groups only without conducting WTA business, they may be asked to leave the premises.
2. **Officers should have a basic familiarity with bus arrival and departure times.** Officers are encouraged to greet as many buses as possible and to become familiar with the transit schedules and general bus route destinations as officers may be needed to respond to a particular bus or route on short notice. Please note: Officers will often be asked by patrons about the schedule.
3. **Patrol.** When at the downtown Bellingham Transit Station (aka BTS), officers will endeavor to patrol the entire length of the passenger concourse as well as the interior of the lobby several times an hour unless operations require otherwise. When at the Cordata Station officers will endeavor to patrol the entire length of passenger concourse A & B several times an hour unless operations require otherwise. Officers should continually be on the lookout for suspicious packages and behavior. Officers should monitor the activities and amount of time patrons spend in the BTS lobby or on the concourse. Officers may regularly ask questionable persons what bus they are waiting for, and see that they don't spend too much time loitering on WTA properties. Patrons should be waiting for buses either on the concourse or in the BTS lobby.

4. **Customer Service Office** Bus passes are sold at the Customer Service Office in the main Station building. Occasionally significant amounts of cash are kept at that location. Checking the interior of this building regularly will be important as the Customer Service Representatives (CSR's) are often alone in the building. Because of specialized equipment and the detailed duties of the CSR's this business office is generally off limits to all other personal. Occasionally, the CSR's are required to load or unload the change machine. Officers will periodically be asked to accompany a WTA Customer Service Representative while they open the Bellingham Station Change/Cash Machine. This is typically done one day in the afternoon Monday thru Friday.
5. **Cordata Station.** To the extent operationally feasible, at the Officer's discretion, the on duty Officer should periodically, ie once or twice a week, proceed to Cordata Station, either by bus or patrol car to maintain a limited Officer presence and familiarity with that facility in observing and controlling conduct in all WTA Station areas. WTA wishes Officers to generally discourage loitering. The Station facilities are for the use of patrons getting on and off the buses or otherwise conducting WTA business. The loitering rule is applied on a case by case basis subject to legal authority and the facts of each situation. By way of guidance, generally if persons are not being a problem, they may remain on the property for a reasonable amount of time. However, if people are gathering in groups only without conducting WTA business, they may be asked to leave the premises.
6. **WTA Properties.** For purposes of patrol and enforcement , WTA owns and controls all the property described as :
- Bellingham Station, the main passenger lobby and CSR office area; the fenced area around the concourse up to but not including the sidewalk fronting E. Magnolia St.; the sidewalk fronting 1400 Block of Railroad Avenue; and next to the entrance plaza. For reporting purposes, the address of the Bellingham Station is 208 E. Magnolia.
 - Cordata Station, from Short Street, south to the Dairy Queen, from Cordata Parkway, east to metal fence at back of Park & Ride lot. For reporting purposes, the address of the Cordata Station is 4194 Cordata Parkway.
7. **WTA Rules of Conduct.** *See Appendix 1-A Rider Suspension Policy Officers working transit duties are expected to know and will enforce the "Rules of Conduct" listed below for WTA facilities and buses. The officer's enforcement of these "Rules of Conduct" is subject to state law, including officer discretion to arrest. These rules apply to all passengers and patrons of WTA while on WTA properties. WTA properties (including buses) are "semi-private" meaning that, while the public has access and a right to use, WTA reserves the right to establish specific rules of conduct and enforce them on their properties to the extent authorized by law. The following are prohibited acts as per WTA policy:
- 1.) Bicycle riding, skateboarding, or in-line skating
 - 2.) Walking/running in or obstructing the driveways of the Bellingham Station and Cordata Station
 - 3.) Obstructing passenger access to and from buses and buildings
 - 4.) Loitering
 - 5.) Fighting or roughhousing
 - 6.) Panhandling of ANY kind

- 7.) Using abusive language
- 8.) Littering
- 9.) Spitting
- 10.) Smoking or vaping
- 11.) Drug use, intoxication, sales, or distribution
- 12.) Alcohol use or intoxication

8. **Any criminal act or infraction is also prohibited on WTA properties.** *WTA Supervisors prefer that either they or the Station Expediter (Hawkeye at Bellingham terminal or Northstar at Cordata) accompany officers during contact with any patrons for rule violation or criminal/infraction enforcement whenever possible and safe. Whenever possible, the duration of the trespass should be discussed with a WTA Supervisor prior to being enacted. *Also see Unlawful Transit Conduct Law RCW 9.91.025 Appendix 1-B.
9. **Areas of restriction in a Trespass.** Patrons may be trespassed from the Bellingham or Cordata Station only, or from all WTA property and services including bus stop shelters.
10. **Short term Trespasses.** Officers may, in their discretion, place a short term trespass upon a patron, such as a day or two away from the WTA premises, or excluding that person(s) from a certain bus for the day. The Officer may do so without prior approval from a Supervisor but the Officer **should notify a WTA Supervisor or Station Expediter of the action taken so that WTA may monitor the trespassed individual for proper enforcement of the trespass.**
11. **Documentation of a Trespass.** If an individual is trespassed, the Officer will assure the individual is properly informed of the trespass terms. This includes the **Process of Appeal**. For every case of formal trespassing of a patron the following steps will be completed:
- a. Gather all pertinent personal identification information from the individual
 - b. Have a picture taken of the subject by the Station Expediter or WTA Supervisor
 - c. Obtain a Bellingham PD case number
 - d. Appeal . . . person must call the Director of Operations, Eric @360-788-9371
 - e. Pass all information to the WTA Supervisor or Station Expediter

IMPORTANT WTA ADDRESSES:

Bellingham Station: 205 E. Magnolia, Bellingham, WA 98225

Cordata Station: 4194 Cordata Station, Bellingham, WA 98226

WTA Maintenance, Operations, and Administrative Base (MOAB)

4011 Bakerview Spur, Bellingham, WA 98226