



Contract Coversheet

Contract: C2300139
Amendment: N/A

Supplier Whatcom Transportation	Department Public Works	Originator Becky Fager
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Classification Interlocal Agreement	Project Name COB-WTA ILA Annual Upgrades at all WTA Bus Stops	Project Manager
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Original Amount \$375,000.00	Maximum Amount	Total Amendment Change	Current Amendment Amount
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Type SM - Services/Mixed	Structure ST - Standard	Agreement Type STANDARD - Standard Contract Agreement/Terms
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Termination Date	Amended Termination Date	Compliance Type Insurance not required
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Retainage %	Retainage Comments
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Renewal Date	Renewal Notes
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Additional Contract Notes:

Whatcom Transportation Authority. Council approved 12/12/22.

Contacts:

Freeman Anthony - fanthony@cob.org

**TRANSPORTATION FUND GRANT AGREEMENT
CITY OF BELLINGHAM
WHATCOM TRANSPORTATION AUTHORITY
ANNUAL ADA UPGRADES AT ALL WTA BUS STOPS CITYWIDE**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the CITY OF BELLINGHAM, a first-class city of the State of Washington (the "City"), and the WHATCOM TRANSPORTATION AUTHORITY, a Washington Public Transportation Benefit Area ("WTA") (collectively, the "Parties"), pursuant to the Washington Interlocal Cooperation Act, Chapter 39.34 Revised Code of Washington ("RCW").

RECITALS

WHEREAS, WTA is the governing body of a Public Transportation Benefit Area ("PTBA") created pursuant to Chapter 36.57A RCW for the purpose of providing public transportation services within its PTBA boundary, which includes the City of Bellingham; and

WHEREAS, the City has adopted a Climate Action Plan which includes the goal of reducing carbon emissions from transportation within the City; and

WHEREAS, the City maintains a Transportation Fund with revenue derived from the two-tenths of one percent (0.002) sales and use tax collected pursuant to RCW 82.14.0455 to fund certain transportation projects identified in the City's Six-Year Transportation Improvement Program ("TIP"), including Project No. 3 – Clean Energy Transportation; and

WHEREAS, Project No. 3 of the TIP is an umbrella category comprised of transportation projects and programs that support the City's Climate Action Plan and WTA's public transit system in the City; and

WHEREAS, Project No. 3(b) in the 2022-2027 TIP is "Annual ADA Upgrades at all WTA Bus Stops Citywide" with an estimated cost of \$750,000 ("Project"); and

WHEREAS, the Project is therefore eligible to receive a Transportation Fund grant and WTA has the legal authority to receive such grant and to perform the Project pursuant to the terms of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Project.** The scope of work for the Project is generally described as follows: Perform ADA upgrades at up to 200 bus stops throughout the City over the course of approximately five (5) years.
2. **Grant.** The City agrees to provide grant funding to the Project in the amount of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) ("Grant Amount"), which shall be disbursed to WTA pursuant to the terms and conditions of this Agreement. WTA shall be responsible for all costs incurred on the Project in excess of the Grant Amount. The Grant Amount may be increased only upon mutual written agreement of the Parties.

3. **Project Ownership and Administration.** Any transportation improvements and all work product produced for the Project shall be owned by WTA. WTA shall be solely responsible for all aspects of the Project, including, but not limited to, the following:

3.1 *Procurement and Contracting.* WTA shall enter into an agreement with an independent contractor to perform the Project or otherwise provide for the work to be completed by WTA's own employees. WTA shall comply with its procurement rules to the extent that the Project involves independent contractors. WTA shall be solely responsible for making contractual payments to any independent contractor working on the Project. If WTA uses its own employees, it shall be solely responsible for paying wages and benefits associated with such work. The City shall not be liable to any third party for payment of labor or materials on the Project.

3.2 *Prevailing Wage.* WTA shall comply with prevailing wage law(s), if applicable, to the work on the Project, including, where required by Washington state law, payment of prevailing wages and timely filing with the Washington State Department of Labor and Industries of an Intent to Pay Prevailing Wages and Affidavit of Wages Paid.

3.3 *Insurance.* WTA shall contractually require its independent contractor on the Project, if any, to obtain and maintain customary insurance coverages for the type of work being performed on the Project, including naming the WTA and the City as additional insureds. WTA shall obtain from its contractor a certificate of insurance and additional insured endorsement evidencing compliance with the requirements of this Section and shall retain said documents for a period of three (3) years following Project completion. Said documents shall be provided to the City upon request.

4. **Project Documentation.** WTA agrees to make reasonable progress on the Project and submit timely Project documentation as follows:

4.1 Prior to the commencement of work on the Project, WTA shall submit a "Project Work Plan" to the City that includes the following elements: (a) a detailed scope of work for the Project, (b) a cost estimate for the Project and (c) a timeline for the Project, including projected commencement and completion dates ("Project Work Plan"). The City shall promptly review and approve the Project Work Plan within ten (10) business days or return it to WTA with requested changes. Recognizing that the work on this Project will be performed at over 200 discrete locations over the course of approximately five (5) years, WTA may instead elect to submit an annual Project Work Plan covering only the work to be performed during the upcoming year covered by such plan.

4.2 Upon completing work on the Project, WTA shall submit a project closeout letter to the City, which shall certify Project completion and include a final accounting statement for the Project showing how the Grant Amount was expended ("Project Closeout Letter").

5. **Payment and Withdrawal of Grant Funds.** The City shall disburse the Grant Amount to WTA on a reimbursement basis in one lump sum at the end of the Project or in installments throughout the Project, at WTA's option. Payment shall be made within thirty (30) calendar days of receipt of an invoice (or invoices) supported by a standard accounting statement reporting WTA's payment of costs chargeable against the Grant Amount. Any of

the Grant Amount not expended on the Project within **six (6) years** of the Effective Date of this Agreement (the "Project Completion Deadline") shall no longer be available to WTA. The Project Completion Deadline may be extended only upon mutual written agreement of the Parties.

6. **Records Maintenance.** WTA shall maintain records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three (3) years from the Project Closeout Letter. The financial records shall be made available at no cost to representatives of the City or any other governmental agency with jurisdiction to audit the Project or grant provided herein, at such reasonable times and places as the City or other auditing authority shall designate.

7. **Term of Agreement.** This Agreement shall be effective upon execution by the Parties and shall continue until all of the Grant Amount is disbursed to WTA, or released back to the City, unless earlier terminated pursuant to Section 7.

8. **Non-compliance, Default and Termination.**

8.1 Non-compliance.

- a) If the City determines that WTA has failed to comply with the material terms and conditions of this Agreement or the Project Work Plan, the City shall notify WTA in writing of the alleged noncompliance. WTA shall provide a written response within fourteen (14) calendar days of receipt of such notice, which shall include either (i) a detailed plan to correct the non-compliance, (ii) a request to amend the Project Work Plan, or (iii) a denial.
- b) WTA shall have thirty (30) calendar days from its written response to the City to make reasonable progress toward (i) coming into compliance with this Agreement or its Project Work Plan, or (ii) securing any City-approved amendment to the Project Work Plan.
- c) If WTA disputes non-compliance, the City shall promptly investigate the dispute. The City may in its sole discretion require WTA to stop incurring additional Project costs during the investigation that would otherwise be chargeable against the Grant Amount. WTA shall be solely obligated to pay any additional costs that it elects to incur during such suspension of work.

8.2 Default. WTA is in default if:

- a) WTA is not making reasonable progress toward coming into compliance with this Agreement and/or the Project Work Plan, including any approved amendments thereto; and
- b) After investigation of any denial, the City confirms WTA's noncompliance.

8.3 Termination

- a) *For Cause.* In the event of default, the City shall deliver a written notice of termination of this Agreement to WTA. Upon receipt of such notice, WTA shall immediately stop incurring costs chargeable against the Grant Amount or be prepared to pay such costs on its own. The City shall disburse the Grant Amount only to the extent necessary to reimburse WTA for eligible costs incurred prior to the date of termination.
- b) *For Convenience.* In the event that the City's funding is reduced or limited in any way after the effective date of this Agreement but prior to disbursement of all of the Grant Amount, the City may summarily terminate this Agreement without further liability to WTA other than payment for grant eligible work completed on the Project prior to the date of termination or amounts that is otherwise obligated to pay on the Project at the time of such termination.

9. **Dispute Resolution.** The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

9.1 The Parties shall make good faith efforts to quickly and collaboratively resolve disputes informally through good faith discussions.

9.2 In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The Parties shall share equally in the costs of the mediator.

9.3 The Parties shall have no right to seek relief in a court of law unless and until the dispute resolution process set forth above has been exhausted.

10. **Governance, Venue, and Attorneys Fees.** The Agreement shall be governed by the laws of the State of Washington and venue of any action brought hereunder shall be in the Superior Court for the State of Washington, Whatcom County. Each Party shall bear its own attorneys' fees and costs.

11. **Indemnification.** To the fullest extent permitted by law, each party shall defend, indemnify and hold harmless the other party from claims, demands, damages, causes of action, or suits of any kind arising from such party's acts or omissions under this Agreement. For purposes of this provision the term "party" includes the party itself and its employees, agents, consultants, subconsultants, contractors and subcontractors. Such duty to defend, indemnify and hold harmless shall extend to and apply to any claim demand, damages, causes of action, or suit made by the indemnifying party's employee, and to this limited extent only, the parties waive any exclusivity protection afforded by the Washington State Industrial Insurance Act, RCW Title 51. Nothing herein requires a party to waive exclusivity protections in any action brought against that party by one of its own employees.

12. **Party Representatives.** The City designates **Chris Comeau** as its representative for this Agreement. The WTA designates **Magan Waltari** as its representative for this Agreement.

13. **Notice.** Any notice which a party is required or may desire to give the other party shall be in writing and may be delivered (a) by United States mail or (b) by email, provided that such telecopy shall be immediately followed by delivery of such notice pursuant to clause (a) above. Any such notice shall be addressed as follows, subject to the right of a party to designate a different address by itself by notice similarly given:

For the City:

Chris Comeau
City of Bellingham
104 West Magnolia – Suite 109
Bellingham, WA 98225
ccomeau@cob.org

For WTA:

Magan Waltari
4011 Bakerview Spur
Bellingham, WA 98226
maganw@ridewta.com

14. **Independent Capacity.** The City and WTA are independent governments. Except as expressly provided herein, neither Party shall be liable for the acts or omissions of the other or their respective public officials, employees, or agents.

15. **Entire Agreement and Modifications.** This Agreement shall constitute the entire agreement between the Parties and supersedes all previous written or oral agreements between the Parties. Any amendment or modification of this Agreement shall only be enforceable through a written document executed by both parties.

16. **Compliance with Applicable Laws.** The Parties shall abide by all applicable federal, state and local laws, ordinances and rules when performing under the terms of this Agreement.

EXECUTED this ____ day of _____ 20____, for the **WHATCOM TRANSPORTATION AUTHORITY**, by:

Les Reardanz

Signed: Sunday, December 11, 2022

General Manager

EXECUTED this the 28th day of February 2023, for the CITY OF BELLINGHAM
by:





Mayor

Attest:



Finance Director

Departmental Approval:



Department Head

Approved as to Form:



Office of the City Attorney