

WHATCOM TRANSPORTATION AUTHORITY PROPERTY USE AGREEMENT

This Property Use Agreement (Agreement) is made by and between WHATCOM TRANSPORTATION AUTHORITY (WTA) and CATHOLIC COMMUNITY SERVICES (OWNER) for purposes of operating a bus route, locating bus stops or pullouts, and/or for installing a bus shelter on the OWNER's property as described in EXHIBIT A. The parties agree as follows:

1. **Property.** OWNER owns that real property that is legally described in EXHIBIT A, which is attached hereto and incorporated by reference (PROPERTY). OWNER grants WTA the non-exclusive right to use the Property for the purpose of WTA's operation of a transit route, up to 7 days a week, except on designated holidays. The particulars of such use of the Property, including the location of the such use and the nature of such use, is/are identified as follows (USE):

Catholic Community Services
515 Lakeway Drive
Bellingham, WA 98226

2. **Term.** The Term of the Agreement shall be from the execution date of this Agreement and to continue year to year thereafter, subject to the right of either party to terminate by providing 30 days written notice to terminate.
3. **Improvements and Maintenance.** WTA may supply and install bus shelters at its sole expense, with OWNER permission, at designated bus stop(s) located on the Property. WTA is responsible for obtaining all necessary permits and for any installation of bus shelters according to all applicable codes and regulations. Any bus shelter(s) will be the property of WTA, and WTA is responsible for maintenance and upkeep. WTA has authority to enforce appropriate behavior in relationship with its use of the Property.¹


WTA shall only be responsible for maintenance of pavement markings, signs and other improvements which it installs. WTA shall, at its sole cost and expense, maintain the area set aside for any bus shelter and its amenities in a safe and clean condition. WTA shall repair any damages its use causes to the area being used for any bus shelter (other than normal wear and tear).

4. **Consideration.** WTA shall not be required to pay any monetary amount to OWNER for use of Property described on Exhibit A. The parties recognize that the additional visitation to the Property and the increased economic activity resulting therefrom constitutes adequate consideration for WTA's use of the Property.
5. **Towing of Vehicles.** For any vehicle blocking any allowed use of the Property by WTA, WTA may order such vehicle to be towed away at the vehicles owner's expense and risk after 6:00 AM and before 6:00 PM weekdays, except for holidays. WTA agrees to defend, indemnify, and hold OWNER harmless from any and all claims arising out of the towing of vehicles at the request of WTA. OWNER reserves the right, but shall not have the obligation, to order vehicles to be towed away at vehicles owner's expense and risk during the hours of 6:00 PM to 6:00 AM.


¹ RCW 9.91.025

6. **Insurance & Liability.** With regard to insurance and liability for property damage and personal injury the following provisions shall apply.

- 6.1 For purposes of their indemnity obligations set out herein only, WTA and OWNER expressly each waive, as respects the other only, all immunity and limitation on liability based upon an exclusivity provision under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. BY INITIALING BELOW, THE PARTIES CERTIFY THAT THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.


OWNER

Date 6/2/2020


WTA

Date 5/29/20

- 6.2 To the greatest extent allowed by law, WTA and its successors and assigns will defend, hold harmless and indemnify OWNER and his/her/its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the negligent acts or omissions of WTA, its agents, contractors, or employees and arising out of WTA's use of the Property. The obligations in this paragraph shall not include such claims, costs, damages or expenses to the extent caused solely by the negligent acts of OWNER or his/her/its authorized agents or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent negligent acts of (a) OWNER, his/her/its agents, contractors, or employees and (b) WTA, its agents, contractors, or employees, or involves those actions covered by Chapter 4.24.115 RCW, the indemnity provision shall be valid and enforceable only to the extent of the negligent acts of WTA, or its agents, contractors, or employees.
- 6.3 To the greatest extent allowed by law, OWNER and his/her/its successors and assigns will defend, hold harmless and indemnify WTA and its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the negligent acts or omissions of OWNER his/her/its agents, contractors, or employees, and arising out of his/her/its use or ownership of the Property. The obligations in this paragraph shall not include such claims, costs, damages or expenses to the extent caused solely by the negligent acts of WTA or its authorized agents or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent negligent acts of (a) WTA, its agents, contractors, or employees and (b) OWNER his/her/its agents, contractors, or employees, or involves those actions covered by Chapter 4.24.115 RCW, the indemnity provision shall be valid and enforceable only to the extent of the negligent acts of OWNER, or his/her/its agents, contractors, or employees.

- 6.4 At all times during the term of this Agreement, WTA shall maintain an insurance policy or coverage through the Washington State Transit Insurance Pool of self-insurance (or a commercial liability insurance policy as provided in section 8.4) providing public general liability coverage for defense and indemnity of property damage (including damage to OWNER property) and personal injury of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Two Million Dollars (\$2,000,000.00) per policy period and name OWNER as an additional insured as to WTA operations covered by this Agreement. WTA shall provide evidence reasonably acceptable to OWNER.
7. **Governmental Charges.** WTA shall not be responsible for any taxes, assessments, fees, charges, costs or governmental charges of any kind which may be levied against the Property, or relate to the Property or for any utilities or other services associated with the Property, except those required for the installation of a bus shelter.
8. **Termination.** WTA will discontinue its use of the Property on termination of this Agreement by either party, will remove all signs and structures placed on the Property by WTA, repair any damage to the Property caused by their removal, and restore the Property to as good a condition as existed prior to the execution of this Agreement, normal wear and tear excepted, no later than thirty (30) days after termination of the Agreement.
9. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

To OWNER: Catholic Community Services
ATTN: Will Rice
515 Lakeway Drive
Bellingham, WA 98226
WillR@ccsww.org

To WTA: Whatcom Transportation Authority
ATTN: Procurement
4011 Bakerview Spur
Bellingham, WA 98226
procurement@ridewta.com
360-788-9332

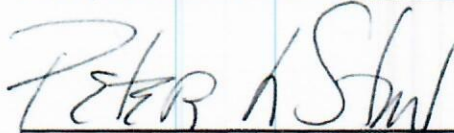
Or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

10. **Cooperation.** The parties agree to make reasonable efforts and work together to resolve problems that may arise from time to time. The parties will make reasonable efforts to avoid unreasonably interfering with the other party's use of the Property. OWNER shall keep the area used by WTA on the Property vacant. Upon seven (7)

days' advance notice to WTA, or such lesser time as may be acceptable to WTA, OWNER may secure the use of the Property on a limited number of dates to allow for construction on surrounding property or special events. In this event, OWNER will designate an alternate bus stop location.

11. **Equal Opportunity.** WTA agrees that in the conduct of activities on the Property, it will be an equal opportunity employer in accordance with Title VII of the Civil Rights Act of 1964, 42 USC §2000 et seq. and shall comply with all requirements of the ADA.
12. **Survival.** All clauses of this Agreement, which require performance beyond the termination date, shall survive the termination date of this Agreement, including, but not limited to, the duty for the parties to defend, hold harmless and indemnify the other.
13. **Entire Agreement.** This document contains the entire agreement between the parties and supersedes all other statements or understanding between the parties.
14. **Governing Law, Venue, Attorneys' Fees and Costs.** This Agreement shall be construed under the laws of the State of Washington. Any action to interpret or enforce this Agreement shall be commenced in the Superior Court for the State of Washington, Whatcom County. In any action to interpret or enforce this Agreement, the prevailing party shall be entitled to an award of his/her/its attorneys' fees and costs from the non-prevailing party.
15. **Liens.** WTA shall keep the Property free from any liens in relationship to its use and shall promptly see that any obligation securing any lien shall be paid and the lien removed.
16. **No Partnership or Agency Relationship.** OWNER shall not in any way shape or form be an agent or partner with WTA and shall not have any right or authority to bind WTA in any way or to in any way act in its interest.
17. **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.
18. **Modifications.** This Agreement may only be modified or amended through written mutual agreement of the parties.

This Agreement is dated this 27 day of MAY, 2020


Peter L. Stark, General Manager
Whatcom Transportation Authority


Will Rice
Catholic Community Services

**WHATCOM TRANSPORTATION AUTHORITY
PROPERTY USE AGREEMENT
EXHIBIT A**

LEGAL DESCRIPTION

LOTS 14, 15, 16 AND 17, BLOCK 8, YORK ADDITION TO THE TOWN OF WHATCOM, AS PER THE MAP THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 52, RECORDS OF WHATCOM COUNTY, WASHINGTON, EXCEPT THE WESTERLY 6 FEET OF SAID LOT 14.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Stop Location:

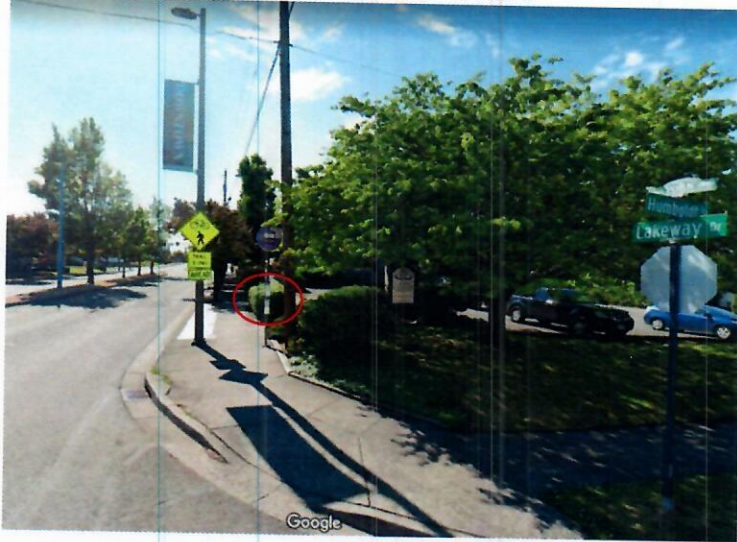
Top view.



South facing, shelter in red



West facing with shelter location in red



Intended shelter location

