WHATCOM TRANSPORTATION AUTHORITY
PROPERTY USE AGREEMENT

This Property Use Agreement (Agreement) is made by and between WHATCOM TRANSPORTATION AUTHORITY (WTA) and the PORT OF BELLINGHAM (Port) for purposes of operating a bus route and installing a bus shelter on Port property. The parties agree as follows:

1. **Premises**. The Port grants WTA the right to use West Bakerview Road, approximately 300' east of the Airport Way and Mitchell Way intersection, Bellingham, Washington for the purpose of operating a transit route 7 days a week, except designated holidays. In addition, WTA will locate and install one bus stop and bus shelter on West Bakerview Road on property east of the right turn lane entering the Woodstone parking lot. (hereinafter "Premises". The Premises are depicted on Exhibit A "" attached hereto and by this reference made a part of this Agreement.

2. **Term**. The Term of the Agreement shall be from March 19, 2017, to continue year to year thereafter, unless 30 days' written notice to terminate is given by either party.

3. **Improvements and Maintenance**. WTA may supply and install a bus shelter, with Port permission, at the bus stop. WTA is responsible for obtaining all necessary permits and for installation of the bus shelter according to all applicable codes and regulations. The bus shelter will be the property of WTA, and WTA is responsible for maintenance, upkeep, and has authority to enforce appropriate behavior at its location[1].

4. **Consideration**. WTA shall not be required to pay the Port for use of the Port's Premises described on Exhibit A. The parties recognize that the additional visitation to Port properties and the increased economic activity resulting therefrom constitutes adequate consideration for the use of the Port's Premises.

5. **Shuttle Service.** The Port authorizes the airport parking lot shuttle contractor to pick up and drop off WTA riders to/from the above bus stop upon request at no charge. The Port will provide a phone number for WTA riders to call from the bus shelter alerting shuttle drivers of their need for pick up. WTA will provide language to the Port for posting in the airport terminal building instructing WTA riders how to contact a shuttle driver and request a ride back to the bus stop. WTA acknowledges that parking shuttle riders accessing the parking lots have priority over WTA riders. WTA riders can only be taken between the specified bus stop and the airport terminal on the shuttle, not to and from other locations in the area. Both parties acknowledge that the parking shuttle service will be provided to WTA riders upon request at any time during shuttle operating hours.

6. **Maintenance**. 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 the bus shelter and its amenities in a safe and clean condition. WTA shall repair any damages to the area being used for the bus shelter (other than normal wear and tear).

[1] RCW 9.91.025

7. **Towing of Vehicles**. For any vehicle blocking the bus stop, 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 the Port harmless from any and all claims arising out of the towing of vehicles at the request of WTA.

8.1 The Port 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.

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

9.1 WTA and the Port expressly each waive, as respects the other only, all immunity and limitation on liability 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.

Port Date 2-7-17

WTA Date 1/20/17

9.2 To the extent allowed by law, WTA and its successors and assigns will defend and indemnify the Port 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 WTA, its agents, contractors, or employees. The obligations in this paragraph shall not include such claims, costs, damages or expenses to the extent caused solely by the negligent acts of the Port 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) the Port, 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's agents or employees.

9.3 To the extent allowed by law, the Port and its successors and assigns will defend and indemnify the 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 the Port its agents, contractors, or employees. The obligations in this paragraph shall not include such claims, costs, damages or expenses to the extent caused solely by the negligent acts of the 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) the WTA, its agents, contractors, or employees and (b) the Port 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 the Ports agents or employees.

9.4 At all times during the term of this Agreement, the WTA shall maintain an insurance policy of self insurance (or a commercial liability insurance policy as provided in section 8.4) providing public liability coverage for defense and indemnity of property damage (including damage to Port 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 the Port as an additional insured as to WTA operations covered by this Agreement. WTA shall provide to the Port evidence reasonably acceptable to the Port of its self-insured status and the status of the Port as an additional insured.

9.5 In the event that WTA, after commencement of this Agreement, elects to terminate its self-insured status and secure commercial liability coverage, WTA will promptly notify the Port, and provide a certificate of insurance and a certificate naming the Port as an "additional insured" from an insurer licensed to conduct business in the State of Washington. The insurance shall have not less than the coverages specified in section 8.4 above.

9. **Governmental Charges**. WTA shall not be responsible for any taxes, assessments, or governmental charges of any kind which may be levied against the Premises except those required for the installation of a bus shelter.

10. **Termination**. WTA will discontinue its use of the Premises on termination of this Agreement, will remove all signs and structures placed on the premises by WTA, and will repair any damage to the premises caused by their removal, and will restore the Premises to as good a condition as existed prior to the execution of this Agreement no later than 30 days after termination of the Agreement.

11. **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 Port: Port of Bellingham
Post Office Box 1677
Bellingham, WA 98227-1677

To WTA: Whatcom Transportation Authority
4111 Bakerview Spur
Bellingham, WA 98226

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.

12. **Accommodation**. The parties agree to make reasonable accommodations and work together to resolve problems that may arise from time to time. Upon seven (7) days' advance notice to WTA, or such lesser time as may be acceptable to the WTA, the Port may secure the use of the Premises on a limited number of dates to allow for construction on surrounding property or special events. In this event, the Port will designate an alternate bus stop location.

13. **Equal Opportunity**. WTA agrees that in the conduct of activities on the Premises, 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.

14. **Survival**. All obligations of WTA, as provided for in the Agreement, shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement, which require performance beyond the termination date, shall survive the termination date of this Agreement.

15. **Entire Agreement**. This document contains the entire agreement between the parties and supersedes all other statements or understanding between the parties.

This Agreement is dated this 7th day of February, 2017

WHATCOM TRANSPORTATION AUTHORITY

Peter L. Stark
Whatcom Transportation Authority

PORT OF BELLINGHAM

President

Secretary

Port of Bellingham – WTA Property Use Agreement Airport Stop Appendix A

