

Resolution 2023-078

EXHIBIT A

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Transit Access Fund Grant Agreement

## **TRANSIT ACCESS FUND GRANT AGREEMENT**

This TRANSIT ACCESS FUND GRANT AGREEMENT ("Agreement") is made and entered into between Lummi Nation ("Grantee"), a Sovereign Nation located in Whatcom County, and WHATCOM TRANSPORTATION AUTHORITY (WTA), a Washington Public Transportation Benefit Area ("WTA").

### **RECITALS**

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

**WHEREAS**, the WTA is providing competitively awarded grant funding for local multi-modal transportation projects through the Transit Access Fund ("TAF"); and

**WHEREAS**, The TAF provides funding for qualifying infrastructure projects within a quarter mile walking distance of any WTA bus stop; and

**WHEREAS**, The TAF is a competitively awarded grant that is funded through local WTA funds, and is therefore not subject to any regulations or requirements for the receipt of federal funds, including the obligations of 2 CFR Part 200; and

**WHEREAS**, WTA desires to contribute finances to Grantee's Bicycle Locker and Bus Stop Improvement Project ("PROJECT"), described herein, that addresses and improves transit access within Whatcom County; and

**WHEREAS**, WTA will commit a financial contribution toward the Project, subject to the terms and conditions contained herein.

**NOW, THEREFORE**, for valuable consideration, receipt of which is acknowledged, Grantee and WTA agree as follows:

## TERMS AND CONDITIONS

1. **AGREEMENT DOCUMENTS.** The Agreement documents in order of precedence, and the terms and conditions that will govern this Agreement, are set out herein, and in the following documents, which are incorporated by reference:
  - This Agreement
  - Completed TAF Application and all supporting documents submitted September 28, 2022
  - Project reports

2. **PROJECT.**

The Grantee will provide and install one (1) bicycle locker at each of the following locations:

- Tribal Police station (identified on page one of the site plan submitted with the application incorporated hereto),
- Lummi Indian Business Center
- New Lummi Tribal Health Clinic.

The grantee will construct concrete boarding pads at three (3) WTA bus stops (ID 2542, ID 2543, and ID 3318) to the specifications provided by WTA to ensure compliance with the Americans with Disabilities Act (ADA). If Grantee fails to construct pads according to provided specifications, WTA will withhold TAF monies and Grantee will be responsible for remedying construction at Grantee's cost until pads are constructed correctly. WTA will then release TAF funds once the correction has been confirmed.

The grantee will provide and install one (1) bus shelter at the WTA bus stop adjacent to the New Lummi Tribal Health Clinic (ID 2543).

Work will be completed and fully reimbursed by WTA no later than December 31, 2023.

Grantee shall be responsible to manage, administer, procure and implement the Project. The Project shall be completed in conformity to the plans submitted with its original Application and any details or specifications provided by WTA, including, but not limited to projected dates of work and completion of the Project. Grantee shall provide notice to WTA of any change or modification to the Project and WTA may terminate this Agreement if it determines, in its discretion, that the Project as changed or modified no longer addresses and improves transit access within Whatcom County.

3. **PAYMENTS.**

- 3.1 **Amount.** WTA shall reimburse Grantee, for authorized expenses incurred and paid for on the PROJECT by Grantee, up to and not to exceed the amount of sixty-five thousand dollars and No/100 Dollars (\$65,000) ("WTA

Contribution"). Grantee shall at all times remain directly responsible to pay any and all expenses for the Project, including, but not limited to, any and all other amounts incurred for the PROJECT beyond the WTA Contribution. Expenses and fees included within any Payment Application shall be within the budget and procurement awards of Grantee. Reimbursement by WTA shall be limited to the following categories of expenses and fees: materials, equipment, and construction labor.

- 3.2 Payment Procedure.** Grantee shall submit a Payment Application at the conclusion of the Project work that provides an accounting of all PROJECT expenses that Grantee seeks reimbursement for from WTA, and include a copy of all invoices and other backup documents for such costs and fees, and any other documents requested by WTA. WTA shall pay all approved costs and fees contained in the Payment Application within thirty (30) days of receipt of the Payment Application and supporting invoices and materials. In the event that WTA does not approve any requested costs or fees, WTA will provide a detailed written explanation for such denial. All decisions by WTA on Payment Applications shall be final and uncontestable.

As a condition of final payment, Grantee shall provide an escorted final inspection to WTA.

- 3.3 Reimbursements.** Grantee shall refund any amounts paid by WTA that are for an expense or fee that is reduced, offset, refunded or reimbursed by the original billing party.
- 4. PROJECT REPORTS AND AUDIT.** As a condition of payment, Grantee will be required to submit status reports for the PROJECT once commenced on a monthly basis. WTA reserves the right to inspect the PROJECT at any time and request additional reporting, inspections, or any other information that it requires to ensure PROJECT success and adherence to this Agreement. WTA shall be provided all documents, or access to all documents relating to the PROJECT that may be required by WTA to conduct an audit, or in response to any request during any audit of WTA.
- 5. REPRESENTATIVES.** The parties designate the following persons as the representatives for the Agreement. All notices, demands, requests, consents and approvals that may or are required to be given under this Agreement shall be in writing and directed to:

<b>WTA</b>	<b>OTHER PARTY</b>
Michael Harpool WTA – Transit Planner 4011 Bakerview Spur Bellingham, WA 98226 michaelh@ridewta.com	Kirk Vinish Lummi Nation – Planning/Transit 2565 Kwina Road Bellingham, WA 98226 kirkv@lummi-nsn.gov



6. **NO THIRD PARTY BENEFICIARY.** No other right, privilege, or immunity of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein, except as specifically noted herein.
7. **AMENDMENT.** No modification or amendment of this Agreement may be made except by a written document approved by WTA and the Grantee respectively.
8. **ADDITIONAL ACTS.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the purposes of this Agreement.
9. **NEUTRAL AUTHORSHIP.** Each provision of this Agreement has been reviewed and negotiated and represents the combined work product of both parties hereto. No presumption or other rules of construction that would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
10. **NO LIABILITY, HOLD HARMLESS, DUTY TO DEFEND, AND INDEMNIFY.** WTA and Grantee are independent governments. Grantee has no authority to bind WTA to any agreement or obligation. 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. Grantee shall hold harmless, defend and indemnify WTA from and against any and all claims, demands, judgments, invoices, or actions arising out of the Project, including, but not limited to, any claim for payment of any invoice or other obligation arising out of the Project. Such duty to hold harmless, defend and indemnify shall extend to any claim made by an employee of Grantee, and to this limited extent only, Grantee waives any exclusivity rights under RCW Title 51.
11. **OTHER AGREEMENTS REMAIN BINDING AND ENFORCEABLE.** Unless specifically noted herein, this Agreement does not modify, amend or revoke any existing agreement(s) between WTA and Grantee, and/or other third parties, and each such agreement shall remain binding and enforceable agreements under their respective terms.
12. **GOVERNING LAW, ATTORNEYS' FEES AND VENUE.** This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington. In any action to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs against the other party. The parties agree that in any such action to interpret or enforce this Agreement shall be commenced in the Superior Court for the State

of Washington, Whatcom County, Washington.

13. **ENTIRE AGREEMENT.** The entire agreement between the Grantee and WTA is contained in this Agreement relating to its subject matter (including the recitals, the exhibits and the terms), and this Agreement shall supersede all of their previous understandings and agreements, with respect to the subject matter of this Agreement, provided, however, this Agreement does not supersede or amend any previous written agreements between the Grantee and WTA unless expressly stated herein.
14. **TERMINATION FOR CAUSE.** If any party materially breaches this Agreement, then another party may provide written notice of such breach and such allegedly breaching party shall have thirty (30) days to cure. If the breaching party fails to cure the breach, then this Agreement may be terminated by any party, and any unused funds shall be refunded to the contributing party.
15. **APPROVAL TO ENTER AGREEMENT.** Each party hereby warrants and represents that appropriate action by ordinance, resolution or as otherwise required by law for each governing body of each party has been obtained to approve entry into this Agreement.
16. **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.
17. **ASSIGNMENT:** Grantee may only assign this Agreement subject to the consent of WTA, which shall be within its discretion.
18. **COMPLIANCE WITH LAW:** Grantee shall at all times comply with all laws and regulations in performing the PROJECT, including, but not limited to all procurement obligations.

**Whatcom Transportation Authority**

*Les Reardanz*

Signed: Monday, June 12, 2023

Les Reardanz, General Manager  
4011 Bakerview Spur  
Bellingham, WA 98226

**Lummi Nation**

*Anthony Hillaire*

Anthony Hillaire, Chairman  
2665 Kwina Rd  
Bellingham, WA 98226





# LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 312-2000

## RESOLUTION #2023-078 OF THE LUMMI INDIAN BUSINESS COUNCIL

**TITLE: 2023 Whatcom Transit Authority (WTA) Transit Access Fund Award for the procurement and installation of three bike lockers, one WTA Approved transit bus shelter & sidewalk improvements**

**WHEREAS**, the Lummi Indian Business Council (LIBC) is the duly constituted governing body of the Lummi Nation by the authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington; and

**WHEREAS**, pursuant to Art. VI, Sec. 1 of the Lummi Constitution, the LIBC shall have the power to administer all tribal property and assets, and to delegate its powers to subordinate boards; and

**WHEREAS**, it is the mission of the LIBC *"To Preserve, Promote and Protect our Sche Lang en"* (LIBC Resolution #2012-025); and

**WHEREAS**, safe roads, pathways, transit facilities, and utilities are vital to the health, safety and welfare of all Lummi Tribal members and the general public; and

**WHEREAS**, the LIBC is fully authorized to act on behalf of our members of the Lummi Tribe in matters arising from the Indian Self-Determination Act of 1975, P.L. 93-638, as amended, 25 USC 5301 etSeq; and

**WHEREAS**, the LIBC finds that rebuilding roads, sidewalks, transit facilities and bridges on or which provide access to the Lummi Reservation or Lummi Trust lands to improve the safety and security of Tribal members and nonmembers who use them; and

**WHEREAS**, the Whatcom Transit Authority awarded \$65,000.00 in local WTA grant funding for multi-modal projects through the Transit Access Fund (TAF) which are not subject to regulations or requirement for federal funds, including the obligations of 2 CFR Part 200 and will be reimbursed to the Lummi Indian Business Council upon project completion; and

**WHEREAS**, WTA will contribute finances for LIBC to install bicycle lockers, concrete boarding pads at three WTA transit stops, and install one shelter at agreed upon locations and Lummi Indian Business Council will provide a 10% match estimated to be \$28,670.

**NOW, THEREFORE BE IT RESOLVED**, The LIBC accepts and approves the WTA grant funds, the transit improvements and the 10% match from the Tribal Transportation Improvement Funds; and

**BE IT FINALLY RESOLVED**, that the Chairman (or Vice Chair in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in his absence) is authorized and directed to execute the following certification.

**LUMMI NATION**




**Anthony Hillaire, Chairman  
Lummi Indian Business Council**

**CERTIFICATION**

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #2023-078 was adopted at a **Regular** Meeting of the Council held on the 16<sup>th</sup> day of May, 2023 at which time a quorum of 9 was present by a vote of 8 for, 0 against, and 0 abstention(s).



  
**William Jones, Secretary  
Lummi Indian Business Council**





# Council Operations Action Form

Please turn in with resolution & attachments or with your agenda item, to Council Operations, the Wednesday prior to the Council meeting by

4:30 PM If you have questions contact

[MelissaM@lummi-nsn.gov](mailto:MelissaM@lummi-nsn.gov) or ext. 2139

To be completed by Originator:

<b>Clearances</b>	Initial	Date	Comments	<b>Resolution # 2023-000 78</b>	<b>Agenda Date:</b> 5/10/23
Originator	KV	5/20/23		Title:	Transit Access Fund Award Acceptance ...
ORA	GA	5/11/23		Name of Presenter:	
Depart. Director	KV	5/26/23		<b>Kirk Vinish</b>	
Cultural Department If applicable				Financial impact (if yes attach Executive Summary)	Budgeted Y N # of Pages Attached: 8
CBC Chairperson	MM	5/12/23		<b>Distribution</b> (departments or individuals who will need a copy of the certified resolution Circle all that apply):	
General Manager If applicable				Planning	Economic Development
Treasurer Only if funding needed	CE			Human Resources	Reservation Attorney's
Chairman or Vice Chairman	AH			General Manager	Other:
				<b>Date / Name of Person Dropping off at Council Operations</b>	

Please give a brief narrative of your agenda item: WTA will contribute finances for LIBC to install bicycle lockers, concrete boarding pads at three WTA transit stops, and install one shelter at agreed upon locations and Lummi Indian Business Council will provide a 10% match estimated to be \$28,670

By signing below, I have completed the Action form assuring that there is approval from all listed parties before submitting it to Council Operations also; "Sign here" tabs have also been placed in all areas in need of signature.

Signature of Department: *[Signature]*

Date & Time: 5-10-23

Signature Received by: *[Signature]*

Date & Time: 5/11/23 2:27pm

To be completed by Council Operations staff:

<b>Council Follow Up</b>
Date Sent to Originator or other:
Staff Signature:

Resolution # 2023-000 78