

WHATCOM TRANSPORTATION AUTHORITY PROPERTY USE AGREEMENT

This Property Use Agreement (Agreement) is made by and between WHATCOM TRANSPORTATION AUTHORITY (WTA) and TALBOT REAL ESTATE, LLC (OWNER) for purposes of operating a bus route and installing a bus shelter on OWNER property. The parties agree as follows:

1. **Premises.** OWNER grants WTA the right to use property for the purpose of operating a transit route 7 days a week, except on designated holidays. Stop locations is/are identified as:
 - 3102 Newmarket Street, Bellingham, WA
2. **Term.** The Term of the Agreement shall be from, 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 bus shelters, with OWNER permission, at designated bus stop(s). WTA is responsible for obtaining all necessary permits and for installation of the 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, upkeep, and has authority to enforce appropriate behavior at its location¹.

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).

4. **Consideration.** WTA shall not be required to pay OWNER for use of Premises described on Exhibit A. The parties recognize that the additional visitation to OWNER properties and the increased economic activity resulting therefrom constitutes adequate consideration for the use of Premises.
5. **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 OWNER harmless from any and all claims arising out of the towing of vehicles at the request of WTA.
 - 5.1 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.
6. **Insurance & Liability.** With regard to insurance and liability for property damage and personal injury the following provisions shall apply.
 - 6.1 WTA and OWNER expressly each waive, as respects the other only, all immunity and limitation on liability under any industrial insurance act, including Title 51

¹ RCW 9.91.025

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.

MIKB
OWNER
PLS
WTA

Date 1/31/19
Date 2/18/19

- 6.2 To the extent allowed by law, WTA and its successors and assigns will defend and indemnify OWNER 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 OWNER 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) OWNER, 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.
- 6.3 To the extent allowed by law, OWNER and its successors and assigns will defend 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 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 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 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 PARKS & RECs agents or employees.
- 6.4 At all times during the term of this Agreement, 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 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.

- 6.5 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 OWNER, and provide a certificate of insurance and a certificate naming OWNER 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 7.4 above.
7. **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.
8. **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.
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: Talbot Real Estate
 ATTN: Michael Bayless, CEO
 2219 Rimland Drive – Suite 115.
 Bellingham, WA 98226

To WTA: Whatcom Transportation Authority
 4011 Bakerview Spur
 Bellingham, WA 98226

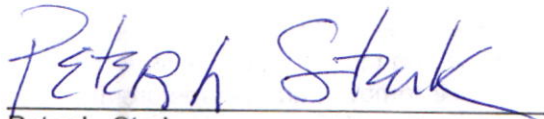
Or such address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt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

10. **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 WTA, OWNER 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, OWNER will designate an alternate bus stop location.
11. **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.
12. **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.

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

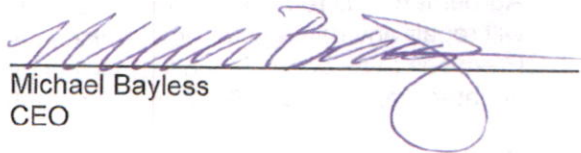
This Agreement is dated this 31 day of JAN, 2019

**WHATCOM TRANSPORTATION
AUTHORITY**



Peter L. Stark
General Manager

TALBOT REAL ESTATE, LLC



Michael Bayless
CEO

