

**SUBRECIPIENT AGREEMENT BETWEEN WHATCOM TRANSPORTATION
AUTHORITY AND WHATCOM COUNCIL OF GOVERNMENTS FOR
FINANCIAL ASSISTANCE THROUGH A REGIONAL MOBILITY GRANT FOR
USE ON THE WHATCOM SMARTS TRIP PROJECT**

THIS SUBRECIPIENT AGREEMENT BETWEEN WHATCOM TRANSPORTATION AUTHORITY AND WHATCOM COUNCIL OF GOVERNMENTS FOR FINANCIAL ASSISTANCE THROUGH A REGIONAL MOBILITY GRANT FOR USE ON THE WHATCOM SMARTS TRIP PROJECT (“Agreement”) is entered this 1 day of December, 2023 by and between the WHATCOM TRANSPORTATION AUTHORITY (“WTA”) and WHATCOM COUNCIL OF GOVERNMENTS (“Subrecipient”), pursuant to the following agreed facts:

WHEREAS WTA is a public transportation authority operating under RCW Chapter 36.57A, and in this capacity, provides regional public transportation within Whatcom County, Washington; and

WHEREAS Subrecipient is a regional agency established and operating under the authority of RCW 36.64.080; and

WHEREAS, the Parties have worked collectively to advance the use of alternative modes of transportation within Whatcom County, and in particular to establish a community-wide education and increase the use of public transportation and active transportation, under the program commonly known as Whatcom Smart Trips (“WST”); and

WHEREAS, WTA has secured funding intended to be used by or in association with Subrecipient for the WST, including from the Washington State Department of Transportation’s (“DOT”) Regional Mobility Grant (“DOT Grant”), and/or by and through the Federal Transit Administration’s (“FTA”) Grant (“FTA Grant”); and

WHEREAS additional funds for WST is expected to be contributed by WTA, Subrecipient and other local municipalities (“Local Funding”); and

WHEREAS this Agreement shall establish uniform guidelines for Subrecipient’s management and use of all funds from the DOT Grant, the FTA Grant, and Local Funding (collectively “Funds”).

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, the Parties hereto agree as follows.

I. AGREEMENT TERM

This Agreement shall become effective July 1, 2023 and end on June 30, 2027, subject to extension upon mutual agreement of the Parties or to coincide with any DOT Grant extension, whichever is later (“Term”).

II. ACTIVITIES & ELIGIBLE EXPENSES

A. Activities

Subrecipient shall be responsible for administering all efforts relating to the WST in a manner satisfactory to WTA, and consistent with the standards required in association with the DOT Grant, the FTA Grant, the terms, and conditions associated with receipt of any Local Funding, and with the terms and conditions set out herein.

B. Eligible Expenses and Use of Funds

Eligible Expenses for the purpose of this agreement will follow WSDOT Public Transportation State Grant Programs Guidebook for the applicable project type.

All Funds are to be used as approved by WTA, and generally allocated pursuant to that WST budget that is attached hereto and incorporated by reference as Exhibit A (“Budget”). Funds shall either be disbursed to Subrecipient by WTA in the form of a reimbursement and/or WTA may provide funding to Subrecipient for it to use to pay “Eligible Expenses” incurred by Subrecipient as described in the Budget. “Eligible Expenses” shall not include lost revenue.

All Eligible Expenses funded or reimbursed by WTA to Subrecipient are not considered to be grants but are "other financial assistance" under 2 C.F.R. 200.40. Subrecipient further agrees to utilize available Funds to supplement rather than supplant funds otherwise available.

III. AMOUNT OF FUNDS

The total amount of Funds subject to this Agreement is estimated to be Eight Hundred Forty Eight Thousand Seven Hundred Seventy One dollars (\$848,771.00/100). Neither DOT nor FTA are liable for claims or damages arising from Subrecipient’s performance of this Agreement.

IV. NOTICES

Notices to either party under this Agreement shall be delivered in writing via email, personal delivery, or if deposited in the Unites States mail, registered or certified return receipt requested. Notices sent via email shall be considered received three (3) business days after original transmission.

Notices to WTA ATTN: Procurement 4011 Bakerview Spur Bellingham, WA 98226 Procurement @ridewta.com	Notices to Subrecipient ATTN: Executive Director 314 E. Champion Street Bellingham WA 98225 Hugh@wcog.org
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V. TERMS & CONDITIONS

The following requirements are applicable to all activities undertaken with the Funds.

A. Compliance

Subrecipient shall at all times comply with applicable state, federal and local laws and regulations relating to its operations, and also the following:

- WSDOT Public Transportation State Grant Programs Guidebook
- The terms and condition of the DOT Grant as set out in Exhibit B, which is attached hereto and incorporated by reference,
- The terms and conditions of the FTA Grant as set out in Exhibit C, which is attached hereto and incorporated by reference,
- 2 C.F.R. 200.303 regarding internal controls.
- 2 C.F.R. 200.330 through 200.332 regarding subrecipient monitoring and management.
- 2 CFR 200, Subpart F regarding audit requirements.
- WSDOT-Local Agency Guidance Manual, Chapter 28 – Title VI.
- All other applicable federal laws, regulations, and policies governing the funds provided under this Agreement.

Should there be any conflict between federal requirements, the terms of this Agreement and/or state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

B. Hold Harmless, Indemnification and Duty to Defend

Subrecipient shall defend and indemnify, and hold harmless WTA, the state of Washington, the FTA, WSDOT, agencies of the state and all officials, agents, and employees thereof against any claim or liability of any nature in connection with or arising in any manner out of this Agreement or its services provided under this Agreement, including, without limitation, any breach of covenants, representations, certifications, and warranties made by WTA in connection with the application or the provisions of the DOT Grant and/or the FTA Grant, and any determination by the FTA, the United States Treasury, Washington State Department of Transportation (“WSDOT”), the State of Washington, any other governmental authority or court, that WTA’s administration or expenditure of any of the Funds was inconsistent with, or in violation of any applicable law, the grants, and/or any applicable regulations and guidance issued in connection therewith.

“Claim” as used in this Agreement, means any financial loss, claim, suit, action, damage, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

Subrecipient’s obligations to indemnify, defend, and hold harmless WTA and any of

the above shall extend and apply to any claim by Subrecipient's agents, employees, representatives, or any subgrantee/subcontractor or its employees, and to this limited extent, Subrecipient waives any exclusive remedy immunity under RCW Title 51.

Subrecipient's obligations to indemnify, defend, and hold harmless WTA and any of the above shall extend to any claim arising out of or incident to Subrecipient's or subgrantee's/subcontractor's performance or failure to perform, and such obligations shall not be eliminated or reduced by any actual or alleged concurrent negligence of WTA or any of the above, or their agents, agencies, employees, and officials.

C. Misrepresentations & Noncompliance

Subrecipient certifies, warrants, and affirms that all representations and other information contained in all materials associated with the WST program, any request for funding, or request for reimbursement are and will be true, correct, and complete, to the best of Subrecipient's knowledge, as of the date of this Agreement and at the time of making any representation. Subrecipient acknowledges that all such representations and information have been relied on by the WTA to provide the funding under this Agreement.

Subrecipient shall promptly notify WTA, in writing, of the occurrence of any event or any material change in circumstances which would make any Subrecipient representation or information untrue or incorrect or otherwise impair Subrecipient's ability to fulfill Subrecipient's obligations under this Agreement.

D. Insurance

Subrecipient shall provide proof of insurance to WTA on an annual basis.

Subrecipient shall ensure any contractors utilized for this Agreement secure and maintain insurance and list WTA as additional insured. Subrecipient shall provide copies of Contractor proof of insurance within five (5) business days of any WTA request.

Contractor insurance is to be placed with insurer authorized to conduct business in the state of Washington with a current A.M. Best rating of no less than A: VII unless otherwise approved by WTA.

E. Amendments

This Agreement may be amended at any time only by a written instrument signed by both Parties. Notwithstanding the above, WTA may, in its discretion, unilaterally amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, so long as the amendment does not result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement.

This Agreement is subject to all Federal statutes, Federal regulations, RCWs, Washington

Administrative Codes (WAC), and other requirement associated with the DOT Grant and/or FTA Grant, applicable to this Agreement. Any provision of the Agreement which conflicts with federal or state statutes/regulations, or any requirement imposed as part of the DOT Grant, or the FTA Grant is hereby amended to conform to the provisions of federal and state law and regulations. Such amendment of the Agreement will be effective on the effective date of the statute, regulation or requirement necessitating it and will be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. WTA will provide notice of such amendment required by this paragraph when it becomes aware of the amendment. Subrecipient agrees to accept and execute any and all amendments offered by WTA needed to effectuate Federal statute or regulation, RCW, WAC, and/or requirement of the DOT Grant or FTA Grant.

F. Suspension or Termination

WTA may suspend or terminate this Agreement for any reason, including, but not limited to, a loss of funding or if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and Federal awarding agency guidelines, policies or directives as may become applicable at any time.
2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement.
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient of reports to WTA that are incorrect or incomplete in any material respect.

G. Assignment and Subcontracts

Subrecipient may not assign this Agreement or any of its rights to any other party without written consent of WTA. Subrecipient's may not enter any subcontract associated with this Agreement without WTA's prior written approval and agreement by the subcontractor to be bound to the provisions of this Agreement.

H. Program Fraud & False or Fraudulent Statements or Related Acts

Subrecipient and any subcontractors must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, which shall apply to the activities and actions of Subrecipient and any subcontractors pertaining to any matter resulting from a contract.

I. Debarment, Suspension and Voluntary Exclusion

1. Subrecipient is subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

2. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the Systems of Award Management ("SAM") Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

3. Subrecipient certifies that neither it nor any of its subrecipients or contractors are debarred or suspended in accordance with the regulations and requirements stated above.

J. Governing Law and Venue

This Agreement shall be interpreted under, and governed by, the laws of the State of Washington, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in Superior Court for the State of Washington, Whatcom County, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.

K. Relationship of Parties

Subrecipient shall at all times be an independent contractor to WTA and shall not have any authority to bind WTA to any obligations or agreements. Neither party shall be construed to be the agent, employee, representative, joint venture, or partner of the other. Subrecipient and its employees or agents will not hold themselves out as, nor claim to be, an agent, officer, or employee of WTA, nor will they claim any of the rights, privileges or benefits which might accrue to WTA.

L. Taxes

Subrecipient shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability in association with its employees or that may result from its actions under this Agreement.

VI. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Subrecipient will comply with appropriate accounting principles and procedures, utilize adequate internal controls, and maintain necessary source documentation for all Eligible Expenses. Such efforts shall at least include the following:

1. Expend and account for the Federal award in accordance with state and federal laws. In addition, the Subrecipient's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of an Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

2. Subrecipient shall have a financial management system that provide s the following:

i. Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received.

ii. Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in 2 C.F.R. § 200.327 Financial reporting and 2 C.F.R. § 200.328 Monitoring and reporting program performance.

iii. Records that identify adequately the source and application of Funds for federally funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

iv. Effective control over, and accountability for, all Funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 2 C.F.R. § 200.303 Internal controls.

v. Comparison of expenditures with budget amounts for each Federal award.

vi. Written procedures to implement the requirements of 2 C.F.R. § 200.305 Payment.

vii. Written procedures for determining the allowability of costs in accordance with 2 C.F.R. Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

viii. Subrecipient shall also follow 2 CFR § 200.333 Retention requirements for records; 2 C.F.R § 200.334 Requests for transfer of records; 2 C.F.R. § 200.335 Methods for collection, transmission, and storage of information; 2 C.F.R. § 200.336 Access to records; and 2

C.F.R. § 200.337 Restrictions on public access to records.

3. Subrecipient must have internal controls that comply with 2 CFR Part 200.303, including in the following manner:

i. Subrecipient shall establish and maintain effective internal control over any Federal award that provides reasonable assurance that the Subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

ii. Comply with Federal statutes, regulations, and the terms and conditions of the Subrecipient agreement.

iii. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

iv. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or WTA designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality. Such measures shall comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82.

4. Pursuant to 2 C.F.R. § 200.318, Subrecipient must have or adopt procurement procedures that meet any state requirements, and the standards identified in 2 C.F.R §§ 200.317-.327.

B. Duplication of Benefits

If Subrecipient receives duplicate benefits from another source, Subrecipient must refund the benefits provided by WTA back to WTA.

C. Access to Records

As required by 2 C.F.R. 200.33 l(a)(5), WTA, or any duly authorized representative of WTA, shall have the right of access to any records, documents, financial statements, papers, or other records of Subrecipient that are pertinent to this Agreement, in order to comply with any audits pertaining to funds allocated to Subrecipient under this Agreement. The right of access also includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents, and to Subrecipient's facilities and operations. The right of access shall last as long as the records are retained.

D. Examination, Audit and Monitoring

1. WTA shall provide technical assistance to Subrecipient, to the extent practicable, regarding compliance with federal program requirements throughout the Term.

2. WTA will monitor the performance of services and evaluate accomplishments and compliance with the terms of this Agreement throughout the Term. Monitoring may include a visit to the project site or to the Subrecipient organization.

3. WTA will monitor the performance of the Subrecipient in attempts to mitigate fraud, waste, abuse, or non-performance based on goals and performance standards as stated with all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under this agreement further defined by 2 CFR 200.331. Substandard performance as determined by WTA will constitute noncompliance with this Agreement. If corrective action is not taken by the Subrecipient within a reasonable period of time after being notified by WTA, contract suspension or termination procedures will be initiated.

4. Subrecipient shall cooperate with WTA or its agent in the evaluation of Subrecipient's performance under this Agreement and make available all information reasonably required by any such evaluation process.

5. Subrecipient shall respond timely and accurately to requests from WTA to provide information necessary to respond to inquiries from DOT and FTA or other entities having authority to make such request.

6. Subrecipient shall notify WTA in advance of any state or other formal inspections, audits, accreditation, or program reviews and provide to WTA copies of said review, including any final written plan of correction or other written response, within thirty (30) days of receipt.

7. This section shall remain effective pursuant to 24 CFR 570.570.

8. If Subrecipient expends a total, from all income sources, of Seven Hundred and Fifty Thousand Dollars, (\$750,000.00) or more of federal funds per fiscal year, Subrecipient shall have a single or program-specific audit conducted of its financial statement and condition, regarding the performance of this Agreement, readily delineating the Funds received from WTA. The audit shall comply with the regulations at 2 CFR Part 200, including the following:

i. Subrecipient shall submit its audit report, including any "Management Letter" and/or all other correspondences referred to in the audit report, along with Subrecipient's response to the audit and corrective action plan, if any, no later than thirty (30) days after completion of the audit. The independent auditor's working papers shall be made available for WTA review, upon request by WTA.

ii. Failure to engage auditors and provide proof of such engagement prior to the due date of the audit report to WTA shall be considered contractual non-performance. In such event, WTA reserves the right to withhold not more than one hundred fifty percent (150%) of the reasonably estimated cost of the required audit from reimbursement due at the end of the audit year or final reimbursement pending compliance with this section of this Agreement. This subsection shall survive the termination or other expiration of the Agreement.

iii. If Subrecipient expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards, Subrecipient records must be available for review or audit by appropriate officials of WTA, DOT, and Government Accountability Office (GAO).

iv. If Subrecipient is exempt from Federal audit requirements yet has an annual independent fiscal audit conducted of its financial statement and condition, the Subrecipient shall submit the completed independent audit and audit report to WTA within thirty (30) days of completion.

E. Record Retention

Subrecipient shall retain sufficient records, which may include, but are not limited to financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to the Agreement to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of (6) years from the date of submission of the final expenditure report. Records shall be made available upon request to WTA, and state and federal auditors. If any audit, claim, litigation, or other legal action involving the records is started before expiration of the six (6) year period, the records shall be retained until completion and resolution of all issues arising in such audit or until the end of the six (6) year period, whichever is later.

F. Monitoring & Compliance

WTA shall evaluate Subrecipient's risk of noncompliance and monitor the activities of Subrecipient as necessary to ensure that the Funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement.

Monitoring of Subrecipient may include reviewing invoices for eligible expenses, reviewing payroll logs, applicable contracts, purchase orders, contract administration files and other documentation that may be requested by WTA to substantiate eligible expenses. Failure to submit proper documentation verifying eligible expenses may result in termination of this Agreement and recoupment of awarded funds from the Subrecipient.

The Subrecipient shall be audited as required by 2 C.F.R. Part 200 Subpart F-Audit Requirements and shall provide a copy of the audit to WTA. WTA may take enforcement action against noncompliant Subrecipient as described in 2 C.F.R. 200.338 Remedies for noncompliance of this part and in program regulations.

G. Political Activity and Lobbying

No portion of the Funds shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence or defeat of any ballot issue. No member or delegate to the Congress of the United States of America nor any other Federal official shall be admitted to any share or part of the Federal monies that comprise the Funds provided by

this Agreement. Subrecipient will comply with the requirements of 31 U.S.C. § 1352 that prohibit the use of Federally appropriated funds to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Subrecipient lobbying activity funded by other than federally appropriated funds shall be reported.

Subrecipient shall require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

VII. PAYMENT & REPORTING PROCEDURES

WTA will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with the allocations and disbursement policies set forth under 2 CFR 200 Subpart E- Cost Principles, and the procedures set out below.

A. Submission of Invoices

Subrecipient shall submit an itemized invoice showing all amounts allegedly due and owing from the Funds, along with copies of receipts, underlying invoices, and other records to substantiate all invoiced amounts, to:

ACCOUNTS PAYABLE
Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 9826
ap@ridewta.com

Invoices are due to ap@ridewta.com no later than the 10th of the month following the end of each quarter. (e.g. Quarter 1 – Due no later than April 10).

B. Payment by WTA

WTA shall process any invoice, including by requesting any additional information needed from Subrecipient, and pay uncontested amounts within net thirty (30) days of the receipt and acceptance of billing information from Subrecipient. WTA may withhold payment of an invoice for a reasonable amount of time beyond thirty (30) days if it has not received documents or information requested from Subrecipient to support the invoice.

C. Certification

Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

D. Duplication of Billed Costs or Payments for Service

Subrecipient shall not bill WTA for services performed or provided under this Agreement, and WTA shall not be obligated to pay Subrecipient, if the Subrecipient has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract.

E. Untimely and Unbudgeted Amount

Costs incurred by Subrecipient prior to the effective date of or after the expiration date of this Agreement, ineligible costs, or costs not contained in the Budget shall only be paid subject to WTA's discretion.

F. Amendment to Budget

Revisions to the Budget must be approved by WTA in writing.

G. Conflict of Interests

Subrecipient shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. Such standards shall comply with the requirements of RCW Chapter 42.23. At all material times, no employee, officer, or agent of Subrecipient may participate in the selection, award, or administration of a contract supported by a Federal award if he/she has a real or apparent conflict of interest. Under this standard, a conflict of interest would arise if the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

H. Reporting Obligations

Subrecipient shall prepare, complete, and submit reports and other information as required by WTA to demonstrate compliance with applicable regulations, eligibility of activities and costs, and this Agreement. Such shall include the following:

1. Report to WTA and obtain approval of the procurement process employed by Subrecipient prior to awarding a contract for professional or construction services or purchase of materials.

2. Prepare and submit to WTA, when applicable, construction specifications, project plans, bid packets and other documentation prior to the execution of that project component. Prior to solicitation of any bids the Subrecipient will obtain from WTA, the appropriate federal wage rates, and labor standards documentation to be included in the bid package for any projects covered under the Davis-Bacon Act.

3. Obtain and submit records acquired from construction contractors and subcontractors, that document compliance with the Davis-Bacon Act, as amended, the Copeland Act, the Contract Work Hours and Safety Standards Act and Prevailing Wages, RCW 39.12.

4. Include identification of WTA on all printed materials, including signage, books, reports, pamphlets, brochures, posters, and articles, published, and circulated for the purpose of describing, evaluating, or publicizing WST services or activities funded under this Agreement.

5. Submit project progress, project benefit, and project financial reports within timelines.

6. At the earliest date during and/or after completion of the project, submit to WTA an audit report of the project, for the project period if applicable.

7. Reports will be submitted in the formats provided by the WTA which are attached to this Agreement as Exhibit E (Quarterly progress reports). Recipient shall provide any other report as requested by WTA or agreed upon between the parties during the Term.

8. Additional reports may be requested from the Subrecipient for any reason, including, if necessary to comply with federal requirements.

VIII. ATTACHMENTS

All attachments to this Agreement are incorporated as if set out fully. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

This Agreement contains the following attachments:

- Exhibit A – Budget.
- Exhibit B – DOT Grant.
- Exhibit C – [this exhibit left blank]
- Exhibit D – [this exhibit left blank].
- Exhibit E – Quarterly Progress Reports; and

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

X. WAIVER

WTA's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of WTA to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. CERTIFICATION, REPRESENTATIONS, AND WARRANTIES

Subrecipient hereby certifies, represents, and warrants that it has the authority and approval from its governing body, if applicable, to execute this Agreement and request reimbursement from WTA from the Funds. Subrecipient further certifies, represents, and warrants that amounts received from the Funds will be used only to cover those costs and expenses associated with WST.

Subrecipient understands any award of funds pursuant to this Agreement must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure and that the Subrecipient has reviewed the guidance established by U.S. Department of the Treasury and certify costs meet the required guidance. Any funds expended by the Subrecipient in any manner that does not adhere to official federal guidance shall be returned to WTA or subject to claw back rights.

XII. REIMBURSEMENT OF OVERPAYMENTS

Subrecipient shall not be reimbursed more than the amount of the allowable costs of performance of this Agreement. If WTA, or any other state or federal agency determines that Subrecipient has received payments under this Agreement in excess of that to which it is entitled, or that were used for a purpose other than WST, or otherwise not in conformity with the Agreement, WTA shall recoup those payments, together with interest, as provided at 2 CFR Part 200, from what would otherwise be liability under this Agreement. If the Subrecipient receives a notice of overpayment, which WTA shall timely provide, Subrecipient may protest the overpayment determination pursuant to the Dispute Resolution Section of this Agreement. Failure to invoke said section within fifteen (15) calendar days of receipt of a notice of overpayment will result in an overpayment debt against the Subrecipient.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Parties relating to the WST or funding of Subrecipient as to the WST. This Agreement is subject to actual receipt by WTA of the DOT Grant, the FTA Grant and other sources of money that

makes up the Funds. WTA has no legal requirement to provide any money to Subrecipient, or to pay any invoices submitted by Subrecipient, except by and through the Funds.

XIV. SIGNATURE AUTHORITY

The following specific officers/officials, or their authorized designees, are required to sign this Agreement on behalf of Subrecipient. Note: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Subrecipient must be attached to the Agreement for review by WTA.

XV. CONDITION PRECEDENT

WTA's obligations under this Agreement are expressly conditioned upon being awarded the DOT Grant and/or FTA Grant, and the actual receipt of funds pursuant to the DOT Grant, FTA Grant, and other funding sources.

XVI. DISPUTE RESOLUTION

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be subject to the following sequential process.

A. Mediation

If either party believes that the other has or is in breach of this Agreement, then it will first provide written notice to the allegedly breaching party, which sets out the particular alleged breach(es) and those actions it believes need to be taken to cure such breach(es). The alleged breaching party shall respond to such notice within a reasonable time, either by taking corrective actions or by providing a written response if it disagrees that it is in breach of the Agreement or the proposed actions to cure the breach(es). Thereafter, the disagreeing parties shall make a good faith and reasonable effort to resolve any disagreement relating to the alleged breaches or the actions to be taken to cure the breach(es), on their own. If the parties cannot resolve the dispute on their own, then they shall participate in a mediation with a mediator to be mutually selected by the parties. The fees and costs of the mediator shall be proportionally shared by the disagreeing parties.

B. Arbitration

If mediation is unsuccessful, then any dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise shall be subject to arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) Commercial Arbitration Rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if

not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator may award damages, injunctive relief, equitable relief (including specific performance), or any other remedy that would be available from a court but shall not have the power to award punitive or consequential damages. Each party shall pay all of its own costs, attorneys' fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement on the dates hereafter set forth below.

WHATCOM TRANSPORTATION AUTHORITY

Les Reardanz

Signed: Thursday, November 30, 2023

Les Reardanz
General Manager

WHATCOM COUNCIL OF GOVERNMENTS

Hugh Conroy

Signed: Thursday, November 30, 2023

By: Hugh Conroy
Its: Director of Planning

EXHIBIT A - BUDGET

Eligible Expenses.

Eligible Cost Test.

WTA shall determine whether or not an expense is eligible using the Washington State Department of Commerce's five-part cost test as presented below. If all responses for the particular incurred cost are "true" for all five statements below, WTA may deem the cost is eligible:

- (a) The expense is connected to the WST.
- (b) The expense is "necessary".
- (c) The expense is not to fill a shortfall in government revenues.
- (d) The expense is not funded through another budget line-item, allotment, or allocation; and
- (e) The expense would not exist but for the WST program or would be for a "substantially different" purpose.

Budget

Operating

Project Activity	Useful Life Years (1.5 x the length of grant)	23-25 RMG	25-27 RMG	Other State	Local	Federal	Other	Total Project
		Funds	Funds	Funds	Funds	Funds	Funds	

No Data for Table

Operating Budget Summary

Total Operating Requested Amount: \$0.00

Total Operating Match Amount: \$0.00

Transportation Demand Management (TDM)

23-25 RMG Funds	25-27 RMG Funds	Other State Funds	Local Funds	Federal Funds	Other Funds	Total Project
\$408,800.00	\$408,800.00	\$306,000.00	\$430,236.00	\$360,936.00	\$0.00	\$1,914,772.00
\$408,800.00	\$408,800.00	\$306,000.00	\$430,236.00	\$360,936.00	\$0.00	\$1,914,772.00

TDM Budget Summary

Total TDM Requested Amount: \$817,600.00

Total TDM Match Amount: \$1,097,172.00

Vehicle / Equipment

Project Activity	Fuel Type	Useful Life	If Specialty Vehicle or ITS Useful Life	23-25	25-27	Other	Local	Federal	Other	Total Project
				Regional Mobility Grant Funds	Regional Mobility Grant Funds	State Funds				

No Data for Table

Vehicle / Equipment Budget Summary

Total Vehicle / Equipment Requested Amount: \$0.00

Total Vehicle / Equipment Match Amount: \$0.00

Construction - Design / Preliminary Engineering Phase

Project Activity	23-25 RMG Funds	25-27 RMG Funds	Other State Funds	Local Funds	Federal Funds	Other Funds	Total Project
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No Data for Table

Construction - Right of Way Phase

Project Activity	Useful Life	23-25 RMG Funds	25-27 RMG Funds	Other State Funds	Local Funds	Federal Funds	Other Funds	Total Project
	Length of Lease							

No Data for Table

Construction - Construction Phase

Project Activity	23-25 RMG Funds	25-27 RMG Funds	Other State Funds	Local Funds	Federal Funds	Other Funds	Total Project
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No Data for Table

Construction Budget Summary

Total Construction Requested Amount: \$0.00

Total Construction Match Amount: \$0.00

Description & Status of Matching Funds

Identify the specific sources and status of matching funds for your project.

If you have not secured the matching funds yet, describe the measures you will take to mitigate the risk of having insufficient funds to implement the project.

Description & Status of Matching Funds*:

Please see Attachment 2. Description and Status of Matching Funds.

Letters from organizations committing matching funds

Description	File Name	Type	Size	Upload Date
Letter of support and commitment of matching funds from City of Bellingham.	Letter of Support from City of Bellingham.pdf	pdf	74 KB	06/28/2022 09:22 AM

Summary

Operating

Oper. Total Project Cost: \$0.00

Percent of Project: 0.00%
The percent of the total project cost represented by operations.

Transportation Demand Management (TDM)

TDM Total Project Cost: \$1,914,772.00

Percent of Project: 100.00%
The percent of the total project cost represented by TDM.

Vehicle / Equipment

Veh./Equip. Total Project Cost:	\$0.00
Percent of Project:	0.00%
	The percent of the total project cost represented by vehicles/equipment.

Construction

Const. Total Project Cost:	\$0.00
Percent of Project:	0.00%
	The percent of the total project cost represented by capital construction.

Grand Total

Requested Amount:	\$817,600.00
Match Amount:	\$1,097,172.00
Total Project:	\$1,914,772.00
Match Percentage:	57.30%

Organizational Capacity

Organizational Capacity

Describe how and with what funds you will maintain the project after Regional Mobility Grant funding expires*:

WST has always depended on funding from multiple partners. This has worked because the program has consistently proved its value. To maintain the project after RMG funding expires, WTA and WCOG intend to keep delivering results that compel continuing financial support. Along with conducting the WST scope of work, WTA and WCOG will also identify other viable funding sources and project delivery partners to fill future funding gaps.

Describe your organization's experience implementing similar projects*:

WTA & WCOG EXPERIENCE. Partnership: As a CTR program administrator since 1996, WCOG expanded on CTR's large employer focus in 2006, and reached out to additional partners like WTA, schools, and directly engaged community members. Transportation Demand Management: Under the WST Program, WTA and WCOG have collaborated for 16 years on public outreach, incentive-based promotion of transit and active transportation modes, travel training, and direct TDM and safety initiatives with regional employers, schools, and more. Funding: WCOG has expanded the list of WST funding partners which, over the program's history, includes WSDOT CTR, WTA, City of Bellingham, Whatcom County, FHWA, USDOT, WA State Legislature, WSDOT Mobility Management, NW Clean Air Agency, Conoco Phillips, Puget Sound Energy, WCOG, and the Port of Bellingham. This list illustrates WCOG's experience tracking multiple funding sources and connecting with enough of them to keep WST going.

Electricity and Biofuels

EXHIBIT B – DOT GRANT

Regional Mobility Grant Program		
Transportation Demand Management Grant Agreement		
Agreement Number	PTD0782	Contractor: Whatcom Transportation Authority 4011 Bakerview Spur Bellingham, WA 98226-8066 Contact: Erin Knudsen Email: erink@ridewta.com
Term of Agreement	July 1, 2023 through June 30, 2027	
Vendor #	911529029	
Service Area	San Juan, Skagit, Whatcom	

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter “WSDOT,” and the Contractor identified above, hereinafter the “CONTRACTOR,” individually the “PARTY” and collectively the “PARTIES.”

WHEREAS, the State of Washington in its Sessions Laws of 2023, Chapter 472 Section 221 authorizes funding for Public Transportation Programs and other special proviso funding as identified in the budget through its 2023-2025 biennial appropriations to WSDOT; and

WHEREAS, WSDOT Public Transportation Division administers Regional Mobility Grant Program funds to provide assistance solely for transportation projects as identified in LEAP Transportation Document 2023-2 ALL PROJECT as developed on April 21, 2023, Program- Public Transportation Program (V);

WHEREAS, the CONTRACTOR has requested funds for the project(s) or program(s) shown under the heading titled “Funding by Project” (hereinafter known as the “Project(s)”) which has been selected by WSDOT for funding assistance.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1
SCOPE OF WORK AND BUDGET

Funding by Project

Project Title: Whatcom Transportation Authority - Whatcom Smart Trips (WST)

UPIN # 20230004

Scope of Work: Expand the reach of the region's transportation demand management program

Funds	Current Percentage	Current Funds	Projected Funds	Total Funds
Regional Mobility	45%	\$ 439,971	\$ 408,800	\$ 848,771
Contractor's Funds	55%	\$ 547,998	\$ 509,174	\$ 1,057,172
Total Project Cost	100%	\$ 987,969	\$ 917,974	\$ 1,905,943

Budget: Current Funds reflect total funding appropriated by the Washington State Legislature for the Project in the 2023-2025 biennium.

Section 2
Purpose of Agreement

The purpose of this AGREEMENT is for WSDOT to provide funds to the CONTRACTOR for public transportation services that meet the needs of persons in the State of Washington.

Section 3
Scope of Project

The CONTRACTOR shall undertake and complete the Project described and detailed in **Section 1- Scope of Work**. The CONTRACTOR shall operate the service within the service area described in Section 1, in accordance with the terms and conditions of this AGREEMENT.

Section 4
Term of Agreement

The CONTRACTOR shall commence, perform, and complete the work identified under this AGREEMENT within the time defined in the caption space header titled "Term of Agreement" on this AGREEMENT regardless of the date of signature and execution of this AGREEMENT unless terminated as provided herein.

Section 5
General Compliance Assurance

The CONTRACTOR agrees to comply with all instructions as prescribed in the *WSDOT Public Transportation State Grant Programs Guidebook*, hereinafter referred to as the "Guidebook", and any amendments thereto, found at <https://wsdot.wa.gov/business-wsdot/grants/public-transportation-grants/manage-your-grant> which by this reference is incorporated herein as if fully set forth in this AGREEMENT.

Section 6
Contractor's Share of Project Costs

- A. The Total Project Cost shall not exceed the amounts detailed in **Section 1**. The CONTRACTOR agrees to expend eligible funds, together with any Contractor's Funds allocated for the Project, in an amount sufficient to complete the Project. The CONTRACTOR agrees to expend eligible funds, together with other funds allocated for the Project, in an amount sufficient to complete the Project as detailed in **Section 1**. If at any time the CONTRACTOR becomes aware that the cost of the Project will exceed or be less than the amount identified in **Section 1**, the CONTRACTOR shall notify WSDOT in writing within thirty (30) calendar days of making that determination. Nothing in **Section 6(A)**, shall preclude the requirements specified in **Section 7 (B)** for payments at the end of the biennium.

- B. **Minimum Match:** The CONTRACTOR is required to provide a minimum match of funds for the Project as identified in **Section 1**, indicated as Contractor's Funds.

Section 7
Reimbursement and Payment

- A. Payment will be made by WSDOT on a reimbursable basis for actual costs and expenditures incurred while performing eligible direct and related indirect Project work during the life of the Project. Payment is subject to the submission to and approval by WSDOT of properly prepared invoices that substantiate the costs and expenses submitted by the CONTRACTOR for reimbursement. Failure to send in progress reports and financial information as required in **Section 9 –Reports** may delay payment. The CONTRACTOR shall submit an invoice detailing and supporting the costs incurred. Such invoices may be submitted no more than once per month and no less than once per year, during the course of this AGREEMENT. If approved by WSDOT, properly prepared invoices shall be paid by WSDOT within thirty (30) days of receipt of the invoice.

- B. The CONTRACTOR shall submit an invoice for completed work in the same state fiscal year in which it was incurred. Pursuant to RCW 43.88.020(12) “fiscal year” is defined as the year beginning July 1st and ending the following June 30th. Reimbursement requests must be received no later than July 15 of the following state fiscal year. If the CONTRACTOR is unable to provide an invoice by this date, the CONTRACTOR shall provide an estimate of the charges to be billed so WSDOT may accrue the expenditures in the proper fiscal year. Any payment request received after the timeframe prescribed above will not be eligible for reimbursement.

Section 8
Assignments and Subcontracts

- A. The CONTRACTOR shall submit to WSDOT a copy of any contract, amendment, or change order thereto pertaining to this Project for review and documentation. This includes any completed Project facilities and/or infrastructure under this AGREEMENT, or other actions obligating the CONTRACTOR in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT, including any leasing and/or lending the Project or any part thereof to be used by anyone, not under the CONTRACTOR’s direct supervision.

- B. The CONTRACTOR agrees to include all applicable sections of the AGREEMENT such as **Section 5, Sections 8 through 20, and Section 27**, of this AGREEMENT in each subcontract and in all contracts, it enters into for the employment of any individual, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

Section 9 Reports

- A. The CONTRACTOR shall prepare quarterly reports regarding services provided pursuant to this AGREEMENT and other related information as prescribed in the Guidebook, and any amendments thereto, whichever is applicable, or as requested by WSDOT. Due to Legislative and WSDOT reporting requirements, any required quarterly progress reports shall be submitted for the duration of the AGREEMENT period regardless of whether the underlying funding sources have been exhausted. Post-grant annual performance reporting may also be required as prescribed in the Guidebook. Those reports include, but are not limited to:
1. Project Passenger Trips Provided
 2. Project Service Hours Provided
 3. Project Revenue Service Miles Provided
 4. Narrative Progress Report
 5. Financial Status/Summaries of the Project.
- B. Failure to meet any of the above-identified report submittal timelines may result in the CONTRACTOR being considered to be in breach of contract and “Not In Good Standing” as defined in the Guidebook referenced in **Section 5 - General Compliance** of Agreement of this agreement. Failure to meet the above-identified report submittal timelines may also prevent the CONTRACTOR from receiving future PT Rideshare grant funds in the next biennium.

Section 10 Energy Credit

To the extent CONTRACTOR receives any monies from the sale or disposition of energy credits, decarbonization credits, environmental credits, or any other monies through its participation of a like program, CONTRACTOR agrees to reinvest those monies into services and projects consistent with the STATE’S public transportation grant program. CONTRACTOR’S obligation to reinvest these monies under this provision shall be in an amount no less than the proportion of the STATE’S funding of this AGREEMENT.

Section 11 No Obligation by the State Government

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability for WSDOT with regard to this AGREEMENT without WSDOT’s specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof.

Section 12 Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of WSDOT.

Section 13
Ethics

1. Relationships with Employees and Officers of WSDOT. The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall CONTRACTOR knowingly rent or purchase any equipment and materials from any employee or officer of WSDOT.
2. Employment of Former WSDOT Employees. The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or another basis during the period of this AGREEMENT, any professional or technical personnel who are or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without the written consent of WSDOT.

Section 14
Civil rights

The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any WSDOT-assisted contract or in the administration of its public transportation services.

Section 15
Compliance with Laws and Regulations

- A. The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all applicable nondiscrimination provisions in chapter 49.60 RCW.
- B. Additionally, the CONTRACTOR agrees to comply with the following:
 1. SB 5974 Move Ahead Washington
 2. RCW 70A.02 Healthy Environmental for All (HEAL) ACT, and
 3. RCW 70A. 65.260 Climate Commitment ACT.
- C. Except when a federal statute or regulation preempts state or local law, no provision of the AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. If any provision or compliance with any provision of this AGREEMENT violates state or local law or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the AGREEMENT.

Section 16
Environmental and Regulatory Requirements

The CONTRACTOR agrees to secure any necessary local, state, and federal permits and approvals, and comply with all applicable requirements of Chapter 43.21C RCW State Environmental Policy Act (SEPA). The CONTRACTOR agrees to comply with all applicable requirements of Executive Order 21-02, Archaeological and Cultural Resources, for all capital construction projects or land acquisitions not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106).

Section 17
Accounting Records

- A. Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible and available to WSDOT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.
- B. Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.

Section 18
Audits, Inspection, and Retention of Records

- A. Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the performance period of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.
- B. General Audit Requirements.** The CONTRACTOR agrees to obtain any other audits required by WSDOT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. **Inspection.** The CONTRACTOR agrees to permit WSDOT and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its subcontractors pertaining to the Project. The CONTRACTOR agrees to require each third party to permit WSDOT, and the State Auditor or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project.

Section 19 Labor Provisions

Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the Project work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek CONTRACTOR will comply with all applicable provisions of Title 49 RCW, Labor Regulations.

Section 20 Changed Conditions Affecting Performance

The CONTRACTOR hereby agrees to immediately notify WSDOT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 21 Coordination of Special Needs Transportation

It is the policy of WSDOT to actively support the coordination of special needs transportation in the state. As a condition of assistance, the CONTRACTOR is required to participate in local coordinated planning as led by CONTRACTOR's relevant Metropolitan Planning Organization (MPO) and/or Regional Transportation Planning Organization (RTPO). Persons with special transportation needs means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

Section 22
Remedies for Misuse or Noncompliance.

If WSDOT determines that the Project has been used in a manner materially different from **Section 1- Scope of Work**, WSDOT may direct the CONTRACTOR to repay WSDOT the State-funded share of the Project. WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to materially comply with any provision of this AGREEMENT.

Section 23
Disputes

- A. **Disputes.** Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Public Transportation Division Assistant Director or designee. This decision shall be final and conclusive unless within ten (10) days from the date of the CONTRACTOR's receipt of WSDOT's written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Director of the Public Transportation Division or the Director's designee. The CONTRACTOR's appeal shall be decided in writing by the Director of the Public Transportation Division within thirty (30) days of receipt of the appeal by the Director of the Public Transportation Division or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.
- B. **Performance During Dispute.** Unless otherwise directed by WSDOT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.
- C. **Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.
- D. **Rights and Remedies.** All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by WSDOT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Section 24 Termination

- A. Termination for Convenience. WSDOT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:
1. The requisite funding becomes unavailable through the failure of appropriation or otherwise;
 2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
 3. The CONTRACTOR is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of a war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
 4. The CONTRACTOR is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
 5. The State Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project;
- B. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to WSDOT. If the CONTRACTOR has any property in its possession belonging to WSDOT, the CONTRACTOR will account for the same, and dispose of it in the manner WSDOT directs.
- C. Termination for Default. WSDOT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

1. Takes any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
 2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
 3. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or
 4. Fails to perform in the manner called for in this AGREEMENT or fails, to comply with, or is in material violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by WSDOT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, WSDOT may: (a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or (b) treat the termination as a termination for convenience.
- D. WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.
- E. In the event that WSDOT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.
- F. If this AGREEMENT is terminated, whether for convenience or for default, before the specified end date set forth in the caption header, "Term of Agreement", WSDOT and the CONTRACTOR shall execute an amendment to this AGREEMENT identifying the termination date and the reason for termination.

Section 25

Forbearance by WSDOT Not a Waiver

Any forbearance by WSDOT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

Section 26
Lack of Waiver

In no event shall any WSDOT payment of grant funds to the CONTRACTOR constitute or be construed as a waiver by WSDOT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default.

Section 27
Limitation of Liability

- A. The CONTRACTOR shall indemnify, defend, and hold harmless WSDOT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT, arising out of, in connection with or incident to the execution of this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity and defense provision applies to all claims against WSDOT, its agents, employees, and officers arising out of, in connection with, or incident to the negligent acts or omissions of the CONTRACTOR, its agents, employees, officers, and subcontractors of any tier. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify, defend, and hold harmless or defend WSDOT, its agents, employees, or officers to the extent that claims are caused by the sole negligent acts or omissions of WSDOT, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the CONTRACTOR its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity and defense provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.
- B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be the employees of WSDOT.
- C. The CONTRACTOR agrees that its obligations under this AGREEMENT extend to any claim, demand, and/or cause of action by, or on behalf of its employees or agents while performing under this AGREEMENT. For this purpose, the CONTRACTOR, by MUTUAL NEGOTIATION, hereby waives any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions in Title 51 RCW.
- D. In the event either the CONTRACTOR or WSDOT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

Section 28
Agreement Modifications

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such written amendment to this AGREEMENT shall not be binding or valid unless signed by the persons authorized to bind from each of the PARTIES. Provided, however, that changes to the federal award identification number, DUNS, project title, federal ID number, CFDA number, milestones, PIN the contact person of either PARTY, or dollar amount changes that do not affect the Project total cost, will not require a written amendment, but will be approved and documented by WSDOT through an administrative revision. WSDOT shall notify the CONTRACTOR of the revision in writing.

Section 29
WSDOT Advice

The CONTRACTOR bears complete responsibility for the administration and success of the Project as defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from WSDOT on problems that may arise, the offering of WSDOT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project, and WSDOT shall not be held liable for offering advice to the CONTRACTOR.

Section 30
Venue and Process

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

Section 31
Subrogation

- A. Prior to Subrogation. WSDOT may require the CONTRACTOR to take such reasonable action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to the Project Equipment as defined in the scope of work or other property in which WSDOT has a financial interest.
- B. Subrogation. WSDOT may require the CONTRACTOR to assign to WSDOT all rights of recovery against any person or organization for loss, to the extent of WSDOT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else reasonably necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to intentionally prejudice the rights of WSDOT.

C. Duties of the CONTRACTOR. If WSDOT has exercised its right of subrogation, the CONTRACTOR shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT due to damage to Project Equipment. The CONTRACTOR shall attend hearings and trials as requested by WSDOT, assist in securing and giving evidence as requested by WSDOT, and obtain the attendance of witnesses as requested by WSDOT.

Section 32 Counterparts

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.

Section 33 Complete Agreement

This document contains all covenants, stipulations, and provisions agreed upon by the PARTIES. No agent or representative of WSDOT or the CONTRACTOR has authority to make, and neither WSDOT nor the CONTRACTOR shall be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

Section 34 Severability

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 35 Order of Precedence

Any conflict or inconsistency in this AGREEMENT and its attachments will be resolved by giving documents precedence in the following order:

1. State law
2. This AGREEMENT
3. The WSDOT Public Transportation State Grant Programs Guidebook

**Section 36
Execution**

This AGREEMENT is executed by the Director, Public Transportation Division, State of Washington, Department of Transportation, or the Director’s designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the State of Washington, Department of Transportation, in the capacity as Director, Public Transportation Division, or as a designee.

**Section 37
Binding Agreement**

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and or entity(ies) to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the day and year last written below.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

CONTRACTOR

Sayma Rahman

Brian Lagerberg, Director
Public Transportation Division

Les Reardanz

Authorized Representative

General Manager

Title

Les Reardanz

Print Name

11/21/2023

Date

November 20, 2023

Date

EXHIBIT C – FTA GRANT

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EXHIBIT D – INSURANCE OBLIGATIONS

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EXHIBIT E – QUARTERLY PROGRESS REPORTS

Whatcom Counsel of Governments (WCOG)	
Service Description	
Service Location	
	Amount requested
Total	
Operating expense type	
Contracted services	
Vehicle fuel and maintenance	
Other	
Labor and benefits	

Whatcom Smart Trips Scope of Work

Introduction

Whatcom Smart Trips (WST) is the Whatcom region’s transportation demand management (TDM) strategy. The WST program is administered by the Whatcom Council of Governments (WCOG) and collaboratively implemented in partnership with the Whatcom Transportation Authority (WTA).



Consisting of community outreach, education, encouragement, and ongoing communications, WST (WCOG and WTA staff) build and sustain ongoing partnerships with local governments, other public agencies, employers, merchants, and schools to promote transportation by walking, bicycling, sharing rides and riding the bus. The program is designed to benefit people of all ages and focuses on all trip purposes in Whatcom county.

Scope Elements

Public Awareness

The goal of this element is that every person and business in Whatcom County knows what the WST program is; understands the array of transportation options that are available to them, their employers, and customers; and knows how they can easily obtain information or instruction on how to access and use all types of transportation.

This ongoing, overarching, public portrayal of WST is developed and managed in close partnership between WCOG and WTA.

Periodic Coordination Meetings

In addition to ongoing dialog, WCOG and WTA will have at least two programming meetings per calendar year. These meetings will review and establish near-term **marketing/**media-development activities and expectations for editorial review and finalization. E.g., high profile, broad promotion of trip diary and incentive programs or branding updates should be carefully and collaboratively developed while a single web-page or brochure on a specific WST training opportunity (such as riding an e-bike) is not expected to require review by multiple staff.

Minimally, programming meetings are expected to cover:

- Planned/anticipated WST activities for the next 12 months
 - Timeline (including review and approvals schedule)
 - Cost sharing
 - WCOG and WTA staff roles
- Review of other media to be developed for specific WST activities (e.g., a bike class, customized work-site promotions, etc.) that do *not* require as close coordination and review.

Trip Diaries & Incentives

A foundational element of WST is the recruitment of community members to register, start logging Smart Trips, and achieve TDM results through individuals' choices to use non-single occupancy vehicle trips further reinforced by ongoing WST encouragement and incentives (e.g., prize drawings). This scope element is primarily performed by WCOG.

Trip Diaries

Creates awareness of opportunities to make smart trips by allowing people aged 14 and older to record walking, cycling, transit, and ride sharing trips, and miles traveled at www.watcomsmarttrips.org. WCOG Responsibilities include website design and maintenance; materials design and printing; customer service; and data entry.

Incentives

Include discount cards, gift certificates, cash prizes, and recognition for smart trips participants as they reach certain milestones in the number of smart trips made. WCOG Responsibilities include making and maintaining agreements with local merchants; materials design and printing; and materials distribution.

Education

This scope element consists of WST's mobility management work

7th grade bus training (FTA funded)

WCOG staffs and conducts yearly bus education each spring in 7th grade classrooms at all middle schools throughout Whatcom County. Topics cover trip planning, route familiarization, putting a bike on the bus, and rules for riding. Responsibilities include coordination with schools and scheduling; development of presentations and materials; printing; and all classroom duties. WTA supports the creation of program materials and provides a bus and bus driver for hands-on familiarization on site at middle schools. WTA conducts community outreach to create awareness of the 7th grade program.

Senior bus training (FTA funded)

WCOG staff lead guided bus trips featuring useful and interesting destinations. Bus trips are advertised at senior centers and residences. Participants are introduced to individual WTA bus

routes and shown how those routes connect to the rest of the system. Transit guides and maps are shared with participants as well as information about bus passes including Gold Cards. WTA provides bus passes.

Youth summer camps

WCOG staffs and conducts week-long educational camps during summer months teaching 12-14 year-olds to bike, walk, and use the bus for independent transportation. Topics cover riding in traffic, simple bike maintenance, map reading and navigation, trip planning, and bus schedules. Camps are co-sponsored by Bellingham Parks and Recreation.

Bike training classes for groups and individuals

WCOG staff offers free bike training and classes for individuals and small groups. Individuals can sign up for one-on-one instruction including tips for building confidence in riding in traffic, rules of the road, route planning, bike maintenance, and using an e-bike. Staff offers group presentations to businesses, school classes, neighborhood associations, and more.

Work with schools -- principals, teachers, and parent groups

- Promotions of walking, biking, and riding the bus to school
- Curricular integration of transportation system navigation and safety
- Using regional transit services for school events & extra-curricular activities

Provides classroom activities and bicycle skills courses for elementary, middle, and high school students including curricular integration of transportation system navigation and safety. Supports schools with education and encouragement in using active transportation including walking, biking, and riding the bus to school. Responsibilities include recruiting partner teachers and parent volunteers through PTO meetings; teaching class sessions; installing temporary traffic gardents; supporting use of WTA for field trips and after-school activity transportation; materials design and printing.

Employer Partner Activities

Provides assistance to employers who promote Smart Trips to their employees. Responsibilities include: recruitment, training worksite coordinators; materials design and printing; managing First Time Rider passes; development and delivery of employer-partner-specific promotional campaigns including custom promotions for specific sites; leading worksite educational events; and management of required program elements at CTR work sites including but not limited to annual surveys. WTA provides passes for first time riders.

Events and Promotions

- Annual, large-scale promotion
- Bike to Work and School day

WCOG and WTA staff collaborate on planning, promoting, and implementing large scale community wide promotional campaigns and events with the purpose of driving program participation including the registration of new Smart Trips participants and trip logging. Yearly events and roles and responsibilities will be determined at programming meetings.

Community Outreach

WCOG staff provides education, assistance and incentives by partnering with community groups that wish to promote walking, bicycling, sharing rides, and riding the bus. Responsibilities include: communicating through social media; soliciting community groups for speaking engagements; presenting Smart Trips information at community meetings and events; leading guided bicycle rides and bus trips; partnering with organizations who wish to promote Smart Trips to their members and customers; and developing materials needed for these activities. WCOG and WTA represent each other at community events and collaborate on collateral materials.

Emergency Ride Home

WTA provides limited, free taxi service to bus riders and Smart Trips participants who experience an emergency or illness at work. Responsibilities include: managing taxi contract; database design and maintenance; materials design and printing; customer service; and data entry. WCOG promotes this service to employer partners and all Smart Trips participants.

Smart Trips Website

WCOG administers and maintains the WST website. WTA supports various website content and integrates information and tools on its website (ridewta.com) as needed. WCOG is responsible for retaining IT support, data storage, software updates, content updates,

Program Administration, Performance Measurement, and Reporting

- WCOG is responsible for overall administration of the WST program.
- WTA is the recipient of Regional Mobility Grant (RMG) funding for. WCOG and WTA will collaborate to gather data and measure performance relative to vehicle-trip reduction goals presented in the RMG application.
- With regard to the RMG, both WCOG and WTA agree to execute the subrecipient agreement, included with this scope of work as ATTACHMENT 1.