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COMMUTE TRIP REDUCTION PROGRAM IMPLEMENTATION AGREEMENT

between

King County, Department of Transportation, Metro Transit Division

#15-097

and

The City of Woodinville

This Commute Trip Reduction Program Implementation Agreement (the "Agreement") is entered into by and between King County, a home rule charter county of the State of Washington, through its Department of Transportation, Metro Transit Division (the "County" or "Metro Transit") and the City of Woodinville (the "City"), either of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties," for the purpose of implementing the Washington State Commute Trip Reduction Law of 1991.

WHEREAS, the purpose of RCW 70.94.521, *et seq.*, the "Commute Trip Reduction (CTR) Law," is to reduce air pollution, traffic congestion and fuel consumption by encouraging commuters to use alternative modes of transportation, such as buses, carpools, vanpools, bicycles, and walking, instead of single occupancy vehicles ("SOV"); and

WHEREAS the CTR Law requires local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement Commute Trip Reduction ("CTR") plans to reduce vehicle miles traveled per employee and drive alone commute trips; and

WHEREAS, the CTR Law also requires major employers to develop, implement and promote employee transportation programs to encourage their employees to shift away from drive alone commutes; and

WHEREAS, the City has within its jurisdictional boundaries one or more "major employers" and is required by RCW 70.94.527 to develop and implement a commute trip reduction plan; and

WHEREAS, the Parties hereto are authorized to enter into this Agreement pursuant to RCW 70.94.527(5); and

WHEREAS, King County Code Section 28.94.110 also authorizes the King County Executive to enter into agreements with state and local agencies for assistance in implementing the CTR Law; and

WHEREAS, CTR plans developed by local jurisdictions are required to be coordinated and consistent with the CTR plans of adjacent jurisdictions as well as applicable regional plans; and

WHEREAS, the Legislature appropriated funds to provide technical assistance funding to local jurisdictions required to develop and implement commute trip reduction plans; and

WHEREAS, the County in a separate Commute Trip Reduction Act Agreement with the State, Agreement Number GCB2166, is authorized to receive CTR funds on behalf of local jurisdictions in exchange for the County's implementation of Commute Trip Reduction Plans and Programs on behalf of those local jurisdictions and retain such funds as payment for the work performed; and

WHEREAS, the City desires to have the County perform the work necessary to satisfy the City's statutory obligations under the Commute Trip Reduction Act and to retain the City's allocation of state funds as payment for those services; and

WHEREAS, the City and the County desire through this Agreement to implement the CTR Law consistent with the rules established by the state Commute Trip Reduction Board; and

WHEREAS, the City can achieve cost efficiencies and administrative consistency by contracting with the County for CTR implementation;

NOW THEREFORE, in consideration of the terms, conditions, mutual promises and covenants set forth herein, the Parties agree as follows:

1. PURPOSE

The purpose of this Agreement is to establish a mechanism that will allow for certain tasks to be undertaken by the County on behalf of the City to implement the City's obligations under the CTR Law and to set forth the responsibilities of the Parties with respect to that objective.

2. DEFINITIONS

The following definitions shall apply for purposes of this Agreement:

"Administrative Representative" means the primary administrative contact for issues related to this Agreement as designated in Section 9.2 of the Agreement.

"Affected Employer" means an employer required by RCW 70.94.521 and the City's CTR Plan to implement a CTR program (see also "major employer").

"Commute Trip Reduction Plan (CTR Plan)" means a plan adopted by the City designed to reduce the proportion of drive alone commute trips and commute trip vehicle miles and to administer and enforce the CTR programs of affected employers located within its jurisdiction

"Commute Trip Reduction Program (CTR Program)" means a program designed by an Affected Employer to reduce the proportion of drive alone commute trips and vehicle miles traveled by its employees.

"CTR Funds" means state funds appropriated by the state and allocated to counties and cities for implementation of commute trip reduction plans.

"Major Employer" means a private or public employer that employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year, as provided in RCW 70.94.521 (herein also known as an "Affected Employer").

"State" is the Washington State Department of Transportation (WSDOT) unless otherwise noted.

3. DUTIES AND RESPONSIBILITIES

3.1 Provision of CTR Services. Metro Transit will perform the CTR implementation services specified with particularity in the Scope of Work (the "Work") set forth as Exhibit A, which is attached hereto and incorporated herein by this reference.

3.2 Authorization. The City shall authorize and direct the State to reimburse the County directly.

4. PAYMENT AND BILLING

The County will invoice the State on a quarterly basis for direct reimbursement for the CTR functions to be performed pursuant to this agreement.

5. WORK SCHEDULE AND PROGRESS REVIEW

5.1 Progress Reviews. The County will submit a quarterly report of progress and anticipated activities to jurisdiction representatives. On-going, periodic review of issues and materials will also be conducted with the jurisdiction representatives.

5.2 State Evaluation Requirements. At the request of the City, the County will provide information to the State for monitoring or evaluation activities.

6. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall be effective July 1, 2015 and will remain in effect through June 30, 2017, unless earlier terminated pursuant to the terms of this Agreement.

7. TERMINATION

- 7.1 **Termination for Default.** Either Party may terminate this Agreement in the event the other Party fails to perform a material obligation of this Agreement. Written notice of a Party's intention to terminate this Agreement pursuant to this Subsection 7.1 shall be provided to the other Party not less than fifteen (15) calendar days prior to the effective date of termination.
- 7.2 **Termination for Convenience.** Either Party to this Agreement may terminate the Agreement, in whole or in part, for convenience and without cause. Written notice of a Party's intention to terminate this Agreement pursuant to this Subsection 7.2 shall be provided to the other Party not less than thirty (30) days prior to the effective date of termination.
- 7.3 **County Funding and Termination for Non-Appropriation.** Performance of any Work undertaken by the County pursuant to this Agreement in advance of receiving reimbursement by the City beyond the current appropriation year is conditioned upon the appropriation by the County Council of sufficient funds to support the performance of the Work. Should such an appropriation not be approved, the Agreement shall terminate at the close of the current appropriation year. The appropriation year ends on December 31st of each year.
- 7.4 **Termination Due to Loss of State Funding.** If at any time during the Agreement period the State acts to terminate, reduce, modify, or withhold CTR State Funds allotted to the City pursuant to RCW 79.94.544 then either Party may terminate this Agreement by giving thirty (30) days advance written notice to the other Party.

8. CHANGES AND MODIFICATIONS

Either Party may request changes to the provisions of this Agreement. Any such changes must be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement will be valid unless made in writing and signed by authorized representatives of the Parties hereto.

9. NOTIFICATION AND IDENTIFICATION OF CONTACTS

- 9.1 **Administrative Representatives.** Both Parties shall designate an administrative representative to act as the contact person for matters pertaining to this Agreement.

9.2 Contact Persons and Addresses.

For the County: Carol Merrill, Customer Service Supervisor, or Designee
King County Metro Transit
201 S. Jackson St., KSC-TR-0326
Seattle, WA 98104-2615
(206) 477-6052

For the City: Ms. Amy Ensminger, Senior Administrative Assistant
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072
(425) 489-2700

9.3 **Notice.** Any notice or communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the Parties' respective administrative representatives at the addresses identified in Subsection 9.2 of this Agreement.

10. DISPUTE RESOLUTION PROCESS

The Parties, through their designated representatives identified in Subsection 9.2 of this Agreement, shall use their best efforts to resolve any disputes pertaining to this Agreement that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible project managers of both Parties shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of both Parties or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

11. AUDITING OF RECORDS, DOCUMENTS AND REPORTS

The State Auditor shall have full access to and the right to examine during normal business hours, and as often as the State Auditor may reasonably deem necessary, the non-privileged records of the City and the County with respect to the matters covered by this Agreement. Both Parties shall have similar access and rights with respect to the records of the other Party. The Parties' representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Agreement. Such rights last for three (3) years from the date final payment is made hereunder.

12. INDEMNIFICATION AND HOLD HARMLESS

Each Party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, and those of its officers, agents or employees, while performing work pursuant to this Agreement, to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other Parties harmless from any such liability. In the case of negligence of multiple Parties, any damages allowed shall be assessed in proportion to the percentage of negligence attributable to each Party, and each Party shall have the right to seek contribution from the other Parties in proportion to the percentage of negligence attributable to the other Parties.

The City acknowledges it is solely responsible for its compliance with the CTR Act, and for the adoption, implementation, and enforcement of any ordinances, plans, and programs related to the CTR Act. The City shall indemnify and hold King County harmless from, and shall process and defend, at its own expense, any and all claims, demands, suits at law of equity, actions, penalties, losses, damages, or costs arising out of, in connection with, or incidental to any act or omission of the City or any of its officers, employees, subcontractors or agents in adopting or enforcing any ordinances, plans and programs related to the CTR Act.

13. LEGAL RELATIONS

- 13.1 No Third Party Beneficiaries.** It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity.
- 13.2 No Partnership or Joint Venture.** No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.
- 13.3 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 13.4 Jurisdiction and Venue.** The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 13.5 Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, both Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.
- 13.6 Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

- 13.7 Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by duly authorized representatives of the Parties, and attached to the original Agreement.
- 13.8 Assignment.** Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.
- 13.9 Binding on Successors and Assigns.** This Agreement and all of its terms, provisions, conditions, and covenants, together with any exhibits and attachments now or hereafter made a part hereof, shall be binding on the Parties and their respective successors and assigns.
- 13.10 Rights and Remedies.** Both Parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 13.11 Entire Agreement.** This Agreement embodies the Parties' entire understanding and agreement on the issues covered by it, except as may be supplemented by subsequent written amendment to this Agreement, and supersedes any prior negotiations, representations or draft agreements on this matter, either written or oral.
- 13.12 Survival.** The provisions of this Section 13 (Legal Relations) shall survive any termination of this Agreement.

14. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of any responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event should this provision eliminate the obligation of the City to make payment to the County for the Work performed pursuant to this Agreement.

15. COMPLIANCE WITH APPLICABLE LAWS

The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to nondiscrimination and agree to require the same of any subcontractors providing services or performing any of the Work using funds provided under this Agreement.

16. EXECUTION OF AGREEMENT – COUNTERPARTS

This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

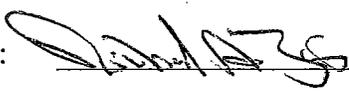
Dated this 22nd day of October, 2015.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date written below.

KING COUNTY
DEPARTMENT OF TRANSPORTATION
METRO TRANSIT DIVISION

CITY OF WOODINVILLE

By: 
Matt Hansen
Manager, Customer
Communications and Services
King County Metro Transit

By: 
Title: Erikim Gjyngjaj

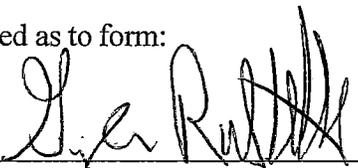
Date: 9-11-15

Date: 10/27/15

Approved as to form:

K.C.P.A.O.

Approved as to form:

By: 
City Attorney

Date: 10/20/15

Exhibit A
City of Woodinville
Commute Trip Reduction Implementation Agreement Scope of Work
Period: July 1, 2015 through June 30, 2017

King County will implement all elements of the City of Woodinville CTR workplan through the following strategies and deliverables:

Strategy 1: Train all new ETCs and new sites to ensure that they have an understanding of the requirements of the law, implementation strategies and their site's performance to date.

Description:

Consult with ETCs at new sites and with new ETCs at existing sites, conduct basic ETC training quarterly, survey training as needed, update and maintain CTR website and printed information.

Deliverables:

- Offer regular ETC basic training sessions
- Consult with new ETCs at new sites and at existing sites
- Offer survey briefings aligned with survey cycles
- Maintain CTR website as a source of information, materials and tools

Strategy 2: Track and notify employers of legally required activities and provide technical assistance to all employers for legal compliance.

Description:

Notify new sites; assist them with baseline survey and initial program development. Send survey and program notifications to all sites, review extensions and exemptions requests, set up and assist sites with paper and online surveys and program reporting. Negotiate steps for compliance with non-compliant worksites. Maintain database and master file records on all sites. Provide WSDOT with an electronic copy of city's CTR-affected employers and ETCs quarterly or as required by WSDOT.

Deliverables:

- Notify new and existing sites of survey and program reporting requirements within timeframes specified in Law and/or Ordinance
- Maintain electronic and paper records in accordance with WSDOT requirements
- Document sites' compliance with required activities

Strategy 3: Focus program review and survey analysis time on sites that have not made progress towards goal and spend less time reviewing program reports for sites that have made progress or goal.

Description:

- For sites that have met or made progress towards goal, focus program review for completeness of report and approve using electronic submittal.

- For no progress sites, conduct survey analysis and make recommendations for program improvements to ETC. Review programs for inclusion of recommendations, as well as completeness and program summary.

Deliverables:

- Review all programs for completeness
- Approve programs for sites that have made progress or goal
- Consult with sites that have not made progress or goal and recommend improvements to program
- Document on quarterly CTR progress reports: 1) the number of CTR programs reviewed; 2) the number of consultations with no-progress sites

Strategy 4: Assist ETCs with marketing of commute programs and ensure they meet their program information distribution requirements. Help ETCs become a major resource to their employees by providing them with up-to-date commute information, tools for communicating with employees, turn-key commuter promotions, and opportunities to attend employer network group meetings.

Description:

- Review program summary and make marketing recommendations at sites that did not make progress towards goals.
- Send transportation related news and announcements via email to all ETCs; coordinate and distribute materials and information for promotions such as Wheel Options and Bike to Work Day; schedule, promote, engage speakers and invite ETCs to employer network group meetings, as needed.

Deliverables:

- Send regular emails to ETCs on transportation related issues that they can share with their employees
- Inform ETCs of program summary template on website
- Print and mail new set of commute options posters to sites
- Distribute promotional materials to sites for county and state-wide promotions
- Notify ETCs of network group meetings

Strategy 5: Actively promote alternatives to drive-alone commuting at worksites targeted by location, corridor, industry or lack of progress toward goal.

Description:

- Identify highly congested employment areas and/or sites that have not made progress toward goals for targeted outreach.
- Develop strategies to help ETCs communicate and promote program to employees, implement targeted promotions.

Deliverables:

- Organize promotions or events at select targeted areas, corridors or industries.