

COMMUTE TRIP REDUCTION IMPLEMENTATION AGREEMENT
between
The City of Federal Way
and
The City of SeaTac

This Commute Trip Reduction Implementation Program Agreement (the "Agreement") is entered into by and between the City of Federal Way (the "City") and the City of SeaTac (the "Client"), 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, RCW 70.94.521 through RCW 70.94.555 (RCW) establish the state's leadership role, and the requirements and parameters to reduce traffic congestion, fuel use, and air pollution through commute trip reduction programs, including transportation demand management programs for growth and transportation efficiency centers ("GTEC") in Washington State; and

WHEREAS the City agrees to provide Transportation Demand Management ("TDM") services, primarily used to support local Commute Trip Reduction ("CTR") programs 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 driving alone; and

WHEREAS the RCW requires local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement CTR Plans to reduce vehicle miles traveled per employee and drive alone commute trips; and

WHEREAS, the RCW 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 Client has within its jurisdictional boundaries one or more "major employers" and is required by RCW 70.94.527 to develop and implement a CTR Plan; and

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

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

WHEREAS, the Client and the City desire through this Agreement to implement the RCW consistent with the statute and any applicable rules and regulations; and

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

WHEREAS, this Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW;

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 City on behalf of the Client to implement the Client's obligations under the RCW and provisions in the City of SeaTac's Municipal Code Chapter 11.30 relating to CTR requirements 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.

“Commute Trip Reduction (CTR) Plan” means a plan adopted by the Client designed to increase the proportion of non-drive-alone commute trips (“NDAT”) and reduce commute trip vehicle miles traveled by employees.

“Affected Employer” means an employer required by RCW 70.94.521 and the Client’s CTR Plan to implement a CTR program (see also “major employer”).

“Commute Trip Reduction Program (CTR Program)” means a program designed by an Affected Employer to reduce the proportion of drive alone commute trips and be consistent with the rules established by the TDM Executive Board and TDM Technical Committee.

“CTR Funds” means state funds authorized by RCW 70.94.544 and Section 301 of the Natural Resources biennial budget to help counties and cities implement 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.** City of Federal Way will perform the CTR services specified with particularity in the Scope of Work (the “Work”) set forth as Exhibits A, attached hereto and incorporated herein by this reference.
- 3.2 Reimbursement of Costs.** In accordance with the payment and billing provisions set forth in Section 4 of this Agreement, the Client will reimburse the City for undertaking the Work pursuant to this Agreement.
- 3.3 Implementation of Strategies.** The City agrees to implement the strategies and produce the deliverables outlined in the City of SeaTac’s WSDOT-approved Administrative Work Plan in order to coordinate the development, implementation and administration of a CTR Program or Plan.
- 3.4 Use of State Funds.** The City agrees to use State funds provided as part of this agreement in accordance with incentives guidance from WSDOT that the Client will provide to the City.

4. PAYMENT AND BILLING

- 4.1 Payment.** The Client will reimburse the City for the full costs associated with the City's performance of the work pursuant to this Agreement.
- 4.2 Cost Estimate and Budget.** A cost estimate and budget for work to be performed through June 30, 2023 is set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.
- 4.3 Invoices and Payment Process.** The Client shall make quarterly payments to the City for Work performed pursuant to this Agreement upon receipt of detailed billing invoices from the City. The Client shall make payment to the City within thirty (30) days of receipt of a billing invoice from the City. The City shall submit invoices and a quarterly progress report to the Client per the following schedule of fixed payments:

<u>Payment</u>	<u>CTR Fixed Payment</u>	<u>Invoice Submitted No Earlier Than</u>
1 st Payment	\$2,333.33	June 30, 2022
2 nd Payment	\$10,000.00	September 30, 2022
3 rd Payment	\$7,000.00	December 31, 2022

4 th Payment	\$7,000.00	March 31, 2023
5 th Payment	\$7,000.00	June 30, 2023**
Total	\$33,333.33	

* 3rd payment invoice to be submitted no later than January 31, 2023.

** 5th payment invoice to be submitted no later than July 7, 2023.

The total contract amount shall not exceed \$33,333.33.

4.5 Reimbursement of Pre-Termination Costs Incurred. In the event of termination pursuant to the provisions of Section 7 (Termination) of this Agreement, the Client shall reimburse the City for all costs payable under this Agreement that have been incurred up to and including the effective date of termination.

5. WORK SCHEDULE AND PROGRESS REVIEW

5.1 Progress Reviews. The City shall submit a quarterly report of progress and anticipated activities to jurisdiction representatives in a format prescribed by the Client and in accordance with State guidelines. 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 Client, the City will provide information to the State for monitoring or evaluation activities.

6. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement is effective from June 1, 2022. The expiration date for purposes of performing substantive work as described in Exhibit A (Scopes of Work) and for incurring costs is June 30, 2023, and for final accounting purposes is July 7, 2023, unless the Parties agree to an extension using the modification procedure provided in Section 8 (Changes and Modifications) 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 City Funding and Termination for Non-Appropriation. Performance of any Work undertaken by the City pursuant to this Agreement in advance of receiving reimbursement by the Client beyond the current appropriation year is conditioned upon the appropriation by the City 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 31 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 Client 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 City: Anthony Avery, Transportation Planner
City of Federal Way Public Works
33325 8th Ave S
Federal Way, WA 98003
(253) 835-2747

For the Client: Karen Spencer
City of SeaTac
4800 South 188th Street
SeaTac, WA 98188-8605
(206) 973-4720

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 and any of its representatives shall have full access to and the right to examine during normal business hours and as often as the State Auditor may deem necessary, all the records of the Client and the City with respect to all matters covered in this Agreement. Each Party to the Agreement shall have similar access and rights with respect to the records of the other Party. Such 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. The City shall require any subcontractors performing work on this Agreement to grant the State, the State Auditor, and any of their representatives, comparable audit rights as set forth in this Section. Such rights last for three (3) years from the date final payment is made hereunder.

12. INDEMNIFICATION AND HOLD HARMLESS

12.1 To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any negligent acts or omissions of the indemnifying Party, its contractors, and/or officials, employees, agents, or representatives in performing work under this Agreement; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the Client or its contractors, officials, employees, agents, or representatives, and the City or its contractors, officials, employees, agents, or representatives, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractors, officials, employees, agents, or representatives. Each Party specifically assumes potential liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as to the other Party only and only to the extent

necessary to fulfill its obligations under this Agreement, any immunity under the Worker's Compensation Act, RCW Title 51; and the Parties recognize that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provisions of RCW 4.24.115, if applicable.

- 12.2 The Client acknowledges it is solely responsible for its compliance with the CTR Act, and for the adoption, implementation, and enforcement of any Client ordinances, plans, and programs related to the CTR Act. The Client shall indemnify and hold the City harmless from, and shall process and defend, at its own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs arising out of, in connection with, or incidental to any act or omission of the Client or any of its officers, employees, subcontractors or agents in adopting or enforcing any Client ordinances, plans and programs related to the CTR Act.
- 12.3 The Parties hereto acknowledge that the State of Washington is not liable for damage or claims from damages arising from any act or omission of the City or the Client under this Agreement.
- 12.4 In the event any Party incurs attorney's fees, costs or other legal expenses to enforce provisions of this section against the other Party, all such fees, costs, and expenses shall be recoverable by the prevailing party.

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 Client to make payment to the City 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.

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

CITY OF SEATAC

CITY OF FEDERAL WAY

By: 
Carl Cole
City Manager


By: 
Jim Ferrell
Mayor

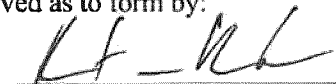
Date: 05/26/2022

Date: 6/7/22

Approved as to form by:

Approved as to form by:

By: 
City Attorney

By: 
for: City Attorney, Ryan Call

Date: 5-24-2022

Date: 6/7/2022

Exhibit A
City of SeaTac
Commute Trip Reduction (CTR) Services for Affected Employers
Scope of Work
Period: June 1, 2022 through June 30, 2023

Strategy 1: Program Administration

Brief description	Administer the program to meet state and city planning and implementation objectives and requirements.
Activities and outputs	<p><u>A. Administer the employer site registration and inventory record-keeping:</u> Identify, notify, and register new sites into the program in order to prepare them for their baseline surveys. Negotiate steps for compliance with non-compliant worksites with the onboarding component.</p> <p><u>B. Maintain database and master file records</u> on basic site information for all sites. Provide the Client and WSDOT with an electronic copy of City’s CTR-affected employers and ETCs, as requested by the Client or required by WSDOT.</p> <p><u>C. Administer, or assist the Client with administering, state and City planning and contracting processes:</u> Perform general update and implementation of the CTR Plan and ordinance, including development and execution of implementation contract between City of Federal Way CTR Services, the City of SeaTac and their Administrative Work Plan; and the CTR Final Report for the biennium. Provide quarterly report information for Client to complete state funds billing and reporting requirements. Meet regularly with Client staff to review activities, current issues, ongoing challenges and accomplishments. Provide the Client with draft responses to inquiries by state CTR committees and others, when warranted and as requested by the Client. Conduct other administrative activities as needed.</p>
Potential issues and risks	Outputs may be dependent on the actions of external organizations or other external factors; unresponsive sites

Strategy 2: Employer Program Development, Engagement and Marketing

Brief description	Engage worksite ETCs with assistance, training, communications, resources, and information to operate successful programs.
Activities and outputs	<p><u>A. Training:</u> Train all new employee transportation coordinators “(ETCs)” (at existing and new worksites) to ensure that they understand the requirements of the law, implementation strategies and their sites’ performance to date. Training classes can be taken online and include basic ETC training and survey training as needed.</p> <p><u>B. Marketing Assistance:</u> Assist ETCs with marketing of commute programs and ensure they meet their program information distribution requirements.</p> <p><u>C. Program Assistance:</u> Focusing primarily on sites that have not made progress toward goal, conduct survey analyses, review program summaries and make recommendations for program improvements.</p> <p><u>D. Targeted Promotions:</u> Identify highly congested employment areas, corridors, industries, and/or sites that have not made progress toward goals for targeted outreach. Actively work with ETCs to promote alternatives to drive-alone commuting at these locations or sites.</p> <p>(For C and D, the number and composition of worksites for such shall be determined in consultation with Client project manager, with larger worksites generally receiving more focus and time than smaller ones.)</p> <p><u>E. Information Provision:</u> Help ETCs become a major resource to their employees by providing them with up-to-date commute information, tools for communicating with employees, turnkey commuter promotions, and opportunities to attend networking events. Send transportation-related news and announcements via email to all ETCs; coordinate and distribute electronic materials and information for promotions such as Wheel Options and Bike Everywhere Month and Day; and schedule, promote, engage speakers and invite ETCs to employer network group meetings approximately 2-3 times per year.</p> <p><u>F. Strategic Planning:</u> Develop strategies to help ETCs communicate and promote their programs to employees and achieve success with their programs.</p> <p><u>G.</u> City to attend statewide and regional meetings related to the administration and effectiveness of the Client’s CTR program such as Technical Group, CTR Survey Tools, etc.</p>
Potential issues and risks	Sites are non-responsive or unable to make resource investments in program; ETCs are not given the time to use resources available to market program to employees; sites non-responsive to events and promotions.

Strategy 3: Program measurement and reporting (survey or alternate and employer program reports)

Brief description	Track and notify employers of surveying and reporting requirements, gather and manage survey and program report data, and provide technical assistance for and administration of measurement/reporting activities and program review/modification as warranted.
Activities and outputs	<p>Assist site representatives with:</p> <ul style="list-style-type: none"> (1) baseline survey and initial program development, for new sites; (2) ongoing survey and program reporting for existing sites; and (3) for worksites not making progress toward goal, review of the existing program and recommendations for program modifications to improve performance as warranted for existing sites. <p>This strategy includes sending survey and program notifications to all sites starting in Spring 2023 in coordination with WSDOT Survey deployment; reviewing and administering extensions and exemptions requests; and setting up and assisting sites with paper and online surveys and program reporting. Receive program report submittals and manage/organize program report data. Negotiate steps for compliance with non-compliant worksites. Maintain or edit report formats as needed; database; and keep master file records on all sites. Provide survey results and program reporting information to the city/state and worksite.</p>
Potential issues and risks	Timely processing of survey and report data by WSDOT and accuracy of tools and data; unresponsive sites; ETC turnover

Total CTR-Affected Budget Amount - Not to Exceed	\$33,333.33
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