

<b>Commute Trip Reduction Implementation Agreement</b>	
<b>Washington State Department of Transportation</b> 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387  Contact Person: Kathy Johnston	<b>Contractor</b> <b>City of Redmond</b> P.O. Box 97010 Redmond, WA 98073  Federal ID #: 91-6001492 Contact Person: Gloria Newby
<b>Project Costs:</b> State Funds                 \$ 202,781 Contractor Funds             \$ 0 Total Project Cost           \$ 202,781	<b>Scope of Project:</b> Carry out the Project as described in Exhibit I, Project Scope of Work
<b>Agreement Number:</b> <b>GCA6246</b>	
Term of Project: <b>July 1, 2009 through June 30, 2011</b>	<b>Service Area:</b>

Public Transportation Office

This AGREEMENT is entered into by the Washington State Department of Transportation, hereinafter referred to as "WSDOT" and the Contractor identified above, hereinafter referred to as "CONTRACTOR", and/or individually referred to as the "PARTY" and collectively referred to as the "PARTIES."

WHEREAS, RCW 70.94.521 through RCW 70.94.555 establishes the requirements and parameters for Commute Trip Reduction programs, including the Growth and Transportation Efficiency Centers in Washington State;

WHEREAS, the State of Washington in its Sessions Laws of 2009, chapter 470, Section 222(7) and (9), authorizes funding for Public Transportation and Commute Trip Reduction programs and other special proviso funding through the multi-modal transportation account as identified in the budget through its 2009-2011 biennial appropriations to WSDOT; and

WHEREAS the WSDOT Public Transportation Division is responsible for administering funds on behalf of the state legislature;

**NOW, THEREFORE**, in consideration of terms, conditions, performances and mutual covenants herein set forth and the attached Exhibit I, "Project Scope of Work" and Exhibit II, "Project Progress Reports", which are both incorporated and made a part of this AGREEMENT, IT IS MUTUALLY AGREED AS FOLLOWS:

**Section 1  
Purpose of Agreement**

The purpose of this AGREEMENT is for WSDOT to provide funding to the CONTRACTOR to be used solely for activities undertaken to fulfill the requirements of RCW 70.94.521 through RCW 70.94.555, hereinafter known as the "Project".

**Section 2**  
**Scope of Work**

The CONTRACTOR agrees to perform all designated tasks of the Project under this AGREEMENT as described in Exhibit I, "Project Scope of Work", which by this reference is incorporated into this AGREEMENT as if fully set forth herein.

**Section 3**  
**Term of Project**

The CONTRACTOR shall commence, perform and complete the Project within the time defined in the caption space header above titled "Term of Project" on this AGREEMENT regardless of the date of execution of this AGREEMENT, unless terminated as provided herein. The caption space header above entitled "Term of Project" and all caption space headers above are by this reference incorporated into this AGREEMENT as if fully set forth herein.

**Section 4**  
**Project Costs**

The total reimbursable cost to accomplish the Project Scope of Work shall not exceed the "State Funds" detailed in the caption space header above titled "Project Costs". The CONTRACTOR agrees to expend eligible "State Funds" together with any "Contractors Funds" identified above in the caption space header "Project Costs", in an amount sufficient to complete the Project as detailed in Exhibit I, "Project Scope of Work". If at any time the CONTRACTOR becomes aware that the cost which it expects to incur in the performance of this AGREEMENT will differ from the amount indicated in the caption space titled "Project Costs" above, the CONTRACTOR shall notify WSDOT in writing within three (3) business days of making that determination.

**Section 5**  
**Reimbursement and Payment**

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 Project period. Payment is subject to the submission to and approval by WSDOT of properly prepared invoices accompanied by progress reports and financial summaries as required in Section 7 – Progress Reports. The CONTRACTOR must submit an invoice using either state form A-19 or a format approved by WSDOT. The CONTRACTOR may submit invoices, not more than once per month, during the course of this AGREEMENT. The CONTRACTOR shall submit a final invoice to WSDOT no later than July 15, 2011. Any invoice received after July 15, 2011 will not be eligible for reimbursement. Within thirty (30) days after receiving and approving the invoice, WSDOT shall remit payment to the CONTRACTOR.

**Section 6**  
**Project Records**

The CONTRACTOR agrees to establish and maintain for the Project, either a separate set of accounts or, accounts within the framework of an established accounting system in order to sufficiently and properly reflect all eligible direct and related indirect Project costs incurred in the performance of this AGREEMENT. Such accounts are referred to herein collectively as the "Project Account". All costs claimed against the Project Account must be supported by properly executed payrolls, time records, invoices,

contracts, and payment vouchers evidencing in sufficient detail the nature and propriety of the costs claimed.

### **Section 7 Progress Reports**

The CONTRACTOR shall submit either monthly or quarterly progress reports to WSDOT so that WSDOT may adequately and accurately assess the progress made under the terms of this AGREEMENT. The progress reports shall be prepared as prescribed by WSDOT on the forms provided in Exhibit II, "Project Progress Reports" and/or as provided and modified by WSDOT staff. Progress reports shall be submitted to WSDOT no later than forty-five (45) days from the end of each calendar quarter.

### **Section 8 Audits, Inspections, and Records Retention**

WSDOT, the State Auditor, and any of their representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the CONTRACTOR's records with respect to all matters covered by this AGREEMENT. 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 other matters covered by this AGREEMENT. In order to facilitate any audits and inspections, the CONTRACTOR shall retain all documents, papers, accounting records, and other materials pertaining to this AGREEMENT for six (6) years from the date of completion of the Project or the Project final payment date. However, in case of audit or litigation extending past that six (6) years period, then the CONTRACTOR must retain all records until the audit or litigation is completed. The CONTRACTOR shall be responsible to assure that it, WSDOT, the State Auditor, and any of their representatives, retain comparable audit rights with respect to subcontractors to the CONTRACTOR within the scope of this AGREEMENT.

### **Section 9 Agreement Modifications**

A. Either PARTY may request changes to this AGREEMENT, including changes in the Scope of Project. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

B. If an increase in funding by the funding source augments the CONTRACTOR's allocation of funding under this AGREEMENT, the CONTRACTOR and WSDOT agree to enter into an amendment to this AGREEMENT, providing for an appropriate change in the Scope of Project and/or the Project Cost in order to reflect any such increase in funding.

C. If a reduction of funding by the funding source reduces the CONTRACTOR's allocation of funding under this AGREEMENT, the CONTRACTOR and WSDOT agree to enter into an amendment to this AGREEMENT providing for an appropriate change in the Scope of Project and/or the Project Cost in order to reflect any such reduction of funding.

**Section 10**  
**Recapture Provision**

In the event that the CONTRACTOR fails to expend State Funds in accordance with state law and/or the provisions of this AGREEMENT, WSDOT reserves the right to recapture State Funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for a period not to exceed three (3) years following termination or expiration of this AGREEMENT. The CONTRACTOR agrees to repay such State Funds under this recapture provision within thirty (30) days of demand.

**Section 11**  
**Disputes**

A. If the PARTIES cannot resolve a dispute arising from the performance of this AGREEMENT by mutual agreement, the CONTRACTOR may submit a written detailed description of the dispute to the Public Transportation Division's Program Manager or the Program Manager's designee who will issue a written decision within ten calendar (10) days of receipt of the written description of the dispute. This decision shall be final and conclusive unless within ten (10) days from the date of 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. In connection with any such appeal the CONTRACTOR shall be afforded an opportunity to offer material in support of its position. The CONTRACTOR's appeal shall be decided in writing 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, the CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.

**Section 12**  
**Termination**

WSDOT, at its sole discretion, may suspend or terminate this AGREEMENT in whole, or in part, for the reasons following:

A. The CONTRACTOR materially breaches, or fails to perform any of the requirements of this AGREEMENT and after fourteen (14) days written notice, has failed to cure the condition(s) causing that breach. Conditions of breach may include, but are not limited to:

1. Any action taken by the CONTRACTOR without WSDOT approval, which under the provisions of this AGREEMENT, required WSDOT approval;
2. Failure to perform in the manner called for under this AGREEMENT; or
3. Failure to comply with any provision of this AGREEMENT;

B. The CONTRACTOR is prevented from proceeding with this AGREEMENT 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;

C. The requisite state funding is reduced or becomes unavailable through failure of appropriation or otherwise;

- D. WSDOT determines that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
- E. WSDOT, at its sole discretion, determines to accept a request made in writing by the CONTRACTOR to terminate this AGREEMENT in whole or in part; or
- F. WSDOT determines that suspension or termination is in the best interests of the state.

If this AGREEMENT is terminated under subsections B, C, D, E, and/or F of this Section, the CONTRACTOR may be reimbursed only for actual, eligible direct and related indirect expenses incurred prior to the date of termination, and then only to the extent of awarded funds. If this AGREEMENT is terminated under subsection A of this Section, the WSDOT shall not be obligated to provide any additional reimbursement, and WSDOT shall retain all rights to seek recapture or damages from the CONTRACTOR.

**Section 13**  
**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 14**  
**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, and shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default. In no event shall acceptance of any WSDOT payment of grant funds by the CONTRACTOR constitute or be construed as a waiver by CONTRACTOR of any WSDOT breach, or default which shall in no way impair or prejudice any right or remedy available to CONTRACTOR with respect to any breach or default.

**Section 15**  
**WSDOT Advice**

The CONTRACTOR bears complete responsibility for the administration and success of the work as it is defined in this AGREEMENT and any amendments thereto. Although the CONTRACTOR may seek the advice of WSDOT, the offering of WSDOT advice shall not modify the CONTRACTOR's rights and obligations under this AGREEMENT and WSDOT shall not be held liable for any advice offered to the CONTRACTOR.

**Section 16**  
**Limitation of Liability and Indemnification**

A. The CONTRACTOR shall indemnify 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 this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity 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 and officers. Provided, however, that nothing

herein shall require the CONTRACTOR to indemnify and hold harmless or defend the WSDOT, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the WSDOT, its agents, employees or officers. 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 specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

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 17**

#### **Governing Law, Venue, and Process**

This AGREEMENT shall be construed and enforced in accordance with, and the validity and performance thereof shall be governed by the laws of the State of Washington. 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 CONTRACTOR hereby accepts service of process by registered mail consistent with RCW 4.28.080(1) or (2) as applicable. Each PARTY shall bear its own legal costs and expenses, including attorney fees, in any such litigation.

#### **Section 18**

#### **Compliance with Laws and Regulations**

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 AGREEMENT compliance, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW. The CONTRACTOR will also comply with the Americans with Disabilities Act (ADA), Public Law 101-336, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment public accommodations, state and local government services and telecommunication.

#### **Section 19**

#### **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 part thereof, that 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 20  
Counterparts**

This AGREEMENT may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONTRACTOR does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements and their supporting materials contained and/or mentioned in such executed counterpart, and does hereby accept State Funds and agrees to all of the terms and conditions thereof.

**Section 21  
Execution**

This AGREEMENT is executed by the Director of the 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 his/her capacity as Director of the Public Transportation Division.

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

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION**

By: Kathryn W. Taylor  
Kathryn W. Taylor,  
Director, Public Transportation

**CONTRACTOR**

By: Jane Christensen  
Print Name: JANE CHRISTENSEN

Title: ASST TO THE Mayor  
Who certifies proper authority  
to execute this AGREEMENT  
on behalf of the  
CONTRACTOR

Date: 10/6/07

Date: 9/22/07

Approved as to form only:

By: \_\_\_\_\_  
Susan Cruise  
Assistant Attorney General

Date: July 17, 2009

**EXHIBIT I**  
**Project Scope of Work**

**Commute Trip Reduction (CTR)**

**1. Scope of Work**

**A. Work Plan**

The CONTRACTOR agrees to submit to WSDOT a detailed administrative work plan no later than ninety (90) days after the affected date of this AGREEMENT. The work plan shall identify deliverables, schedule and the budget specific to tasks associated with this AGREEMENT and to include, at a minimum, the following required activities:

1. Notification of Requirements for Newly Affected Worksites
2. Review of Employer Program Reports
3. Administration of Surveys,
4. Review of Program Exemption Requests.

The work plan shall also include other tasks as defined in approved and locally adopted CTR or GTEC plans for the implementation of the local CTR program. These may include, but are not limited to, employer training, incentives, promotion and marketing, and emergency ride home. In addition, the work plan shall identify specific or overall performance measures for each task and deliverable. This work plan must be approved in writing by the WSDOT Project Manager and signed by the CONTRACTOR, and shall be incorporated as a written amendment to the AGREEMENT. The work plan may be amended based on mutual written agreement between the WSDOT Project Manager and the CONTRACTOR.

**B. Work to be Performed**

The county or city, whichever applies, has enacted or will enact a Commute Trip Reduction (CTR) ordinance in compliance with RCW 70.94.521-.555. The CONTRACTOR agrees to implement a CTR program based on the approved administrative work plan and the draft or adopted local CTR plan and to comply with all provisions of the applicable county or city ordinance.

**C. Progress Reports and Invoices**

The CONTRACTOR agrees to submit to WSDOT quarterly progress reports, as specified by WSDOT in Section 7 – Progress Reports of the AGREEMENT, in Exhibit II, “Project Progress Report”, and as integrated with the deliverables indentified in the administrative work plan, along with all invoices in accordance with Section 5 – Reimbursement and Payment of the AGREEMENT. The CONTRACTOR shall accurately and completely report local investments in its CTR/GTEC plans and programs, as part of its progress reports. All invoices shall be complete and accurately reflect actual state funded expenditures. The CONTRACTOR shall include a complete progress report quarterly.

#### **D. Funding Distribution and Reporting**

The CONTRACTOR may distribute funds to local jurisdictions to include counties, cities, transit agencies, Transportation Management Associations, and Metropolitan Planning Organizations or other eligible organizations authorized to enter into agreements for the purposes of implementing CTR/GTEC plans and ordinances as authorized by RCW 70.94.527(5) and RCW 70.94.544 . The CONTRACTOR shall submit to WSDOT within 30 days of the execution of any agreement between the CONTRACTOR and the CONTRACTOR's eligible contracting partner(s) as listed above: (a) a list of dollar amounts to be disbursed by the CONTRACTOR to its eligible contracting partner(s), or (b) a fund dispersion methodology.

#### **E. Implementation Plans**

The CONTRACTOR shall incorporate appropriate sections of the Project Scope of Work, as well as the approved Work Plan, in all agreements with eligible contracting partner(s), as necessary, to coordinate the development, implementation, and administration of the CTR/GTEC plans, and compliance with applicable ordinances.

#### **F. Appeals and Modifications**

The CONTRACTOR shall maintain an appeals process consistent with this AGREEMENT and applicable ordinances, and procedures contained in the Commute Trip Reduction Guidelines which may be obtained from WSDOT or found at <http://www.wsdot.wa.gov/tdm/>.

#### **G. Coordination with Regional Transportation Planning Organizations (RTPO)**

The CONTRACTOR shall coordinate the development and implementation of its CTR/GTEC plan and programs with the applicable regional transportation planning organization (RTPO). The CONTRACTOR agrees to notify the RTPO of any substantial changes to its plans and programs that could impact the success of the regional CTR plan. The CONTRACTOR agrees to provide information about the progress of its CTR/GTEC plan and programs to the RTPO upon request.

#### **H. Survey Coordination**

The CONTRACTOR agrees to coordinate with WSDOT and its contracting partners for baseline and subsequent program assessment surveys.

#### **I. Planning Data**

The CONTRACTOR agrees to provide WSDOT with the program goals established for newly affected worksites when they are established by the local jurisdiction. The CONTRACTOR agrees to provide WSDOT with updated program goals for affected worksites and jurisdictions as requested. These updates shall be submitted electronically in a format specified by WSDOT.

**J. Database Updates**

The CONTRACTOR agrees to provide WSDOT and the CONTRACTOR's contracting partners with updated lists of affected or participating worksites, employee transportation coordinators, and jurisdiction contacts, as requested. These updates will be submitted in a format specified by WSDOT.

Exhibit II  
Progress Report  
Commute Trip Reduction (CTR)

Organization Submitting Report:

Reporting Jurisdiction:

Agreement (GCA) Number:

Billing Period:

**Contact Information**

Name:

Phone:

Fax:

Email:

**Executive Summary**

Prepare a brief narrative summary of activities during the period for which reimbursement is requested:

*Required Activities to Administer the CTR Program*

Notification of requirements for newly affected worksites:

Review of employer program reports:

Administration of surveys:

Review of program exemption requests:

Other activities:

*Employer Service Activities to implement CTR or GTEC plan*

Employer training/networking/support:

Incentives:

Promotion and Marketing:

Emergency Ride Home:

Other work plan deliverables:

### Expenditures This Period

Categories	State CTR Funds Spent Since Last Report	Fiscal Year To Date State CTR Funds Spent	Fiscal Year (June 30) Estimate To Date Local Funds Spent on CTR Activities	Fiscal Year (June 30) Estimate to Date Other Funds Spent on CTR Activities
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#### Required Activities:

a. Notification of requirements for newly affected worksites				
b. Review of employer program reports				
c. Administration of surveys				
d. Review of program exemption requests				
e. Other activities				
<b>Subtotal:</b>	\$0.00	\$0.00	\$0.00	\$0.00

#### Employer Service Activities:

a. Employer training/networking/support				
b. Incentives				
c. Promotion and Marketing				
d. Emergency Ride Home				
e. Other work plan deliverables				
<b>Subtotal:</b>	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total:</b>	\$0.00	\$0.00	\$0.00	\$0.00

Source of Local Funds	Local Funds Spent (Estimate) Fiscal Year to Date	Total Reported (Estimate) Fiscal Year to Date
<b>Total Local Funds:</b>	\$0.00	\$0.00

### State CTR Funds Disbursed

If your jurisdiction disbursed any state CTR funds reported above to other organizations or jurisdictions to implement the CTR program list those disbursements below.

Jurisdiction/Organization	Disbursed Since Last Report	Total Disbursed Fiscal Year to Date
<b>Total Disbursement:</b>	\$0.00	\$0.00