

# COMMUTE TRIP REDUCTION PROGRAM IMPLEMENTATION AGREEMENT

**Between**  
**King County, Metro Transit Department**  
**And**  
**City of Kirkland**

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 the Metro Transit Department (the "County" or "Metro Transit") and the City of Kirkland (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 PTD 0129, 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's TDM Executive Board and Technical Committee; 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, as identified in the Scope of Work, to be undertaken by the County on behalf of the City to implement the City's obligations under the RCW; 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.

**"Employer Transportation Coordinator (ETC)"** means point of contact between the employer and its employees to implement, promote and administer the employer's CTR program.

**"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 and to WSDOT. On-going, periodic review of issues and materials will also be conducted with the jurisdiction representatives.
- 5.2 State Evaluation Requirements.** The County will provide information to the State for monitoring or evaluation activities, as directed by and on behalf of the City.

### **6. EFFECTIVE DATE AND TERM OF AGREEMENT**

This Agreement shall be effective July 1, 2019 and will remain in effect through June 30, 2021, 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 State 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 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 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: Christi Masi, Project Manager  
King County Metro Transit  
201 S. Jackson St., KSC-TR-0326  
Seattle, WA 98104-2615  
(206) 477-3843

For the City: Armaghan Baghoori, Transportation Program Coordinator  
City of Kirkland, Public Works  
123 5<sup>th</sup> Ave Kirkland, WA, 98033  
[ABaghoori@kirklandwa.gov](mailto:ABaghoori@kirklandwa.gov)  
(425) 587-3924

- 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**

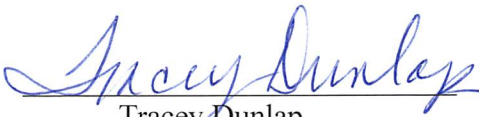
This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

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

KING COUNTY  
Metro Transit Department

CITY OF KIRKLAND

By: \_\_\_\_\_  
Christina O’Claire  
Division Director  
Metro Transit Department

By:   
Tracey Dunlap  
Deputy City Manager  
City of Kirkland

Date: \_\_\_\_\_

Date: 1/28/2020

Approved as to form:

By: \_\_\_\_\_  
Kevin Raymond  
City Attorney  
City of Kirkland

Date: \_\_\_\_\_

**Exhibit A**  
**City of Kirkland**  
**Commute Trip Reduction (CTR) Services for Affected Employers**  
**Scope of Work**  
**Period: July 1, 2019 through June 30, 2021**

**Strategy 1: Program Administration**

<b>Brief description</b>	Administer the program to meet state and city planning and implementation objectives and requirements.
<b>Activities and outputs</b>	<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 city and WSDOT with an electronic copy of city's CTR-affected employers and ETCs, as requested by the city or required by WSDOT. Keep website updated.</p> <p><u>C. Administer, or assist the city 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 King County CTR Services, the City and their Administrative Work Plan; and the CTR Final Report for the biennium. Provide quarterly report information for city to complete state funds billing and reporting requirements. Meet regularly with city staff to review activities, current issues, ongoing challenges and accomplishments. Provide the city with draft responses to inquiries by state CTR committees and others, when warranted and as requested by the city. Conduct other administrative activities as needed.</p>
<b>Potential issues and risks</b>	Outputs may be dependent on the actions of external organizations or other external factors; unresponsive sites



## **Strategy 2: Employer Program Development, Engagement and Marketing**

<b>Brief description</b>	Engage worksite ETCs with assistance, training, communications, resources, and information to operate successful programs.
<b>Activities and outputs</b>	<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. Update and maintain informational CTR website and other training resources.</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 city 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>
<b>Potential issues and risks</b>	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)**

<b>Brief description</b>	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.
<b>Activities and outputs</b>	Assist site representatives with: (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. This strategy includes sending survey and program notifications to all sites; 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.
<b>Potential issues and risks</b>	Timely processing of survey and report data by WSDOT and accuracy of tools and data; unresponsive sites; ETC turnover

<b>Approximate budget of WSDOT pass through funds for strategies 1-3</b>	<b>\$81,272 for 16 worksites as based on the WSDOT funding allocation received by King County on behalf of the City of Kirkland to complete all required activities as outlined in the scope of work.</b>
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