

RESOLUTION R-4868

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF KIRKLAND AND KING COUNTY FOR TRANSPORTATION MANAGEMENT PLANNING AND AUTHORIZING THE CITY MANAGER TO SIGN.

WHEREAS, the City of Kirkland desires to limit automobile-related air pollution and traffic congestion as well as develop and implement plans to reduce vehicle miles traveled per employee and single occupant vehicle commute trips; and

WHEREAS, the City has within its boundaries work sites that have agreed to implement Transportation Management Plans ("TMP"); and

WHEREAS, the King County Code 28.94.110 authorizes the execution and administration of agreements with state and local agencies for assistance in implementing the Commute Trip Reduction Act; and

WHEREAS, local jurisdiction commute trip reduction plans are required to be coordinated and consistent with plans of adjacent jurisdictions and applicable regional plans; and

WHEREAS, the City and King County desire to implement TMP in a manner which is consistent with King County and other cities within the county; and

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

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:


Section 1. The City Manager of the City of Kirkland is hereby authorized to execute on behalf of the City a Memorandum of Agreement substantially similar to that attached as Attachment 1.

Passed by majority vote of the Kirkland City Council in open meeting this 1st day of March, 2011.

Signed in authentication thereof this 1st day of March, 2011.


MAYOR

Attest:


City Clerk

ATTACHMENT 1
MEMORANDUM OF AGREEMENT
between
King County, Department of Transportation, Metro Transit Division
and
The City of Kirkland

This Memorandum of Agreement is entered into 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 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 specific tasks related to Transportation Management Plan (TMP) conditioned sites within the City.

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

1. SCOPE OF WORK

The scope of work to be completed by King County and the City in accordance with this Agreement is described in "Exhibit A: Scope of Work", which by reference is made a part of this Agreement. Funds provided by the City to King County under this Agreement shall be used solely for activities undertaken to fulfill the provisions of the scope of work as provided in Exhibit A. Specific task assignments among contract-funded staff will be approved by the City.

2. DEFINITIONS

The following definition 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.

3. DUTIES AND RESPONSIBILITIES

3.1 Provision of TMP Services. The County will perform the transportation outreach 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 Reimbursement of Costs. In accordance with the payment and billing provisions set forth in Section 4 of this Agreement, the City will reimburse the County for undertaking the Work pursuant to this Agreement.

4. PAYMENT AND BILLING

- 4.1 **Cost Estimate and Budget.** A cost estimate and budget for work to be performed through December 31, 2012 is set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.
- 4.2 **Invoices and Payment Process.** The City shall make payments to the County for Work performed pursuant to this Agreement upon receipt of detailed billing invoices from the County. The City shall make payment to the County within thirty (30) days of receipt of a billing invoice from the County. The County shall submit invoices and a quarterly progress report to the City per the following schedule:

<u>Payment</u>	<u>Fixed Payment</u>	<u>Invoice Submitted No Earlier Than</u>
1 st payment	\$2,267.75	March 31, 2011
2 nd payment	\$2,267.75	June 30, 2011
3 rd payment	\$2,267.75	September 30, 2011
4 th payment	\$2,267.75	December 31, 2011
5 th payment	\$2,500.00	March 31, 2012
6 th payment	\$2,500.00	June 30, 2012
7 th payment	\$2,500.00	September 30, 2012
8 th payment	\$2,500.00	December 31, 2012
Total	\$19,071.00	

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

5. PROGRESS REVIEW

The County shall submit a quarterly report of progress and anticipated activities to jurisdiction representatives in a format prescribed by the City. On-going, periodic review of issues and materials will also be conducted with the jurisdiction representatives.

6. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall be effective January 1, 2011 and will remain in effect through December 31, 2012, 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.

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: David Lantry, Supervisor of CTR Services or Designee
 Yesler Building
 400 Yesler Way, Rm. 650
 Seattle, WA 98104
 (206) 684-1139

For the City: Mr. David Godfrey, Transportation Engineer
 City of Kirkland Public Works
 123 - 5th Avenue
 Kirkland, WA 98033
 (425) 587-3865

- 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 City and King County 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. 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 City or its contractors, officials, employees, agents, or representatives, and the County 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 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 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 day first above mentioned.

KING COUNTY
DEPARTMENT OF TRANSPORTATION
METRO TRANSIT DIVISION

CITY OF KIRKLAND

By: _____
Kevin Desmond
General Manager
King County Metro Transit

By: _____
Kurt Triplett
City Manager
City of Kirkland

Date: _____

Date: _____

City of Kirkland – Exhibit A
Commute Trip Reduction Services Contract for TMP Sites
Scope of Work
Period: January 1, 2011, through December 31, 2012

<u>Scope of Work</u>	<u>Schedule</u>	<u>Cost</u>
1. Program Review for up to 21 TMP conditioned sites <ul style="list-style-type: none"> • Update TMP program report and provide electronic submission option • Develop and re-issue annual reporting timelines to all sites • Update TC contact matrix • Send letters of instruction /staff team member roster • Send TMP form templates to sites • Provide limited technical assistance or outreach visits to sites, as necessary • Monitor program report receipts • Review programs, contacting sites, as necessary • Initiate and mail approval letters • Notify City of approvals • Maintain master file records on all sites 	Spring 2011	\$8,736.00
2. Survey of up to 21 TMP conditioned sites <ul style="list-style-type: none"> • Notify site of survey • Coordinate survey timeline with building manager • Distribute surveys and reference guidelines to Kirkland TMP sites • Provide technical survey assistance to site • Collect and process survey data • Mail survey results to property managers • Compile results and send summary to City • Maintain master file records on all sites 	Spring 2012	\$9,156.00

3.	Training expenses	Spring 2012	\$250.00
	<ul style="list-style-type: none">• Provide one survey briefing for TMP managers & staff• Monitor attendance and report to City		
4.	Transportation Outreach to TMP sites in the GTEC Area	Jan. 1, 2012 to Dec. 31, 2012	\$929.00
	<ul style="list-style-type: none">• Communicate with BTCs about transportation issues, including Sound Transit, Metro Transit, Special events and items of interest (e.g.: construction and road closures, Air Quality alerts, WSRO bulletins)• Provide information on distribution requirement to TMPs		

Total Costs: **\$19,071.00**