

To be filed with the Clark County Auditor

Return Address:
C-Tran
PO Box 2529
Vancouver, WA 98668-2529

**AMENDMENT TO INTERLOCAL AGREEMENT
BETWEEN C-TRAN AND THE CITY OF VANCOUVER
FOR
PROPERTY ACQUISITION, OWNERSHIP, PERMITTING AND
OPERATION OF BUS RAPID TRANSIT STATIONS AND RELATED
FACILITIES FOR THE FOURTH PLAIN BUS RAPID TRANSIT CORRIDOR**

This is an amendment to the Interlocal Agreement For Property Acquisition, Ownership, Permitting and Operation of Bus Rapid Transit Stations and Related Facilities for The Fourth Plain Bus Rapid Transit Corridor between the City of Vancouver (“City”) and Clark County Public Transportation Benefit Area (“C-TRAN”), which is dated August 3, 2015 (“**the Agreement**”).

WHEREAS, per the terms of the Agreement, C-TRAN acquired portions of permanent right of way (“ROW”) for the purpose of constructing, operating and maintaining Bus Rapid Transit Stations (“Stations”) along Fourth Plain Blvd.; and

WHEREAS, Article IV, Section B.1., of the Agreement provides that C-TRAN will acquire the necessary portions of ROW at C-TRAN expense using funding from federal and state grants; and

WHEREAS, the City and C-TRAN now wish to amend the Agreement to indicate the exact funding source that C-TRAN used to acquire the ROW.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Article IV, Section B.1. is hereby amended to add the following language to the end of the Section B.1:

C-TRAN will use funds from the following federal grant to acquire the permanent ROW referenced above:

- **FAIN: WA-04-0105**
- **Award Date: 9/10/15**
- **City of Vancouver Unique Identifier: VANCOU80**
- **Total Amount of Federal Award (this project): \$59,660**
- **Total Amount of Federal Award (all contracts): \$59,660**
- **CFDA Name and Number: 20.500 (Federal Transit Capital Investment Grants)**

2. All other terms of the Agreement shall remain in full force and effect.

Dated: _____

Dated: _____

FOR THE CITY OF VANCOUVER:
A municipal corporation

FOR C-TRAN:

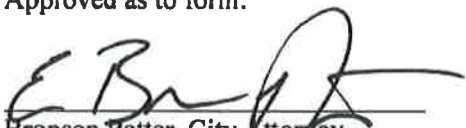

Eric Holmes, City Manager


Executive Director and CEO

Attest:


Natasha Ramras, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:


Bronson Potter, City Attorney

Approved as to form:


C-TRAN Legal Counsel

INTERLOCAL AGREEMENT

**BETWEEN C-TRAN AND THE CITY OF VANCOUVER
FOR PROPERTY ACQUISITION, OWNERSHIP, PERMITTING AND OPERATION OF
BUS RAPID TRANSIT STATIONS AND RELATED FACILITIES
FOR THE FOURTH PLAIN BUS RAPID TRANSIT CORRIDOR ("AGREEMENT")**

THIS Agreement, made and entered into this 3rd day of August 2015, by and between Clark County Public Transportation Benefit Area (hereinafter referred to as "C-TRAN"), a municipal corporation, formed under authority of Chapter 36.57A RCW , and the City of Vancouver, (referred to as the "City") a municipal corporation and a City of the first class, hereinafter sets forth a common agreement concerning the Fourth Plain Bus Rapid Transit ("BRT") Project's ("Project") BRT STATIONS ("STATIONS") component, a cooperative effort as authorized by Chapter 39.34 RCW.

RECITALS

WHEREAS, C-TRAN plans to install STATIONS as part of the Project, as required by the Federal Transit Administration ("FTA") under the federal definition of a Small Starts BRT project; and

WHEREAS, C-TRAN and the City have collaborated on STATIONS requirements, permitting and expectations for STATION operations as part of BRT on the Fourth Plain BRT Corridor ("Corridor"); and

WHEREAS, in 2015, C-TRAN is executing an FTA Small Starts Grant for full funding and implementation of the Fourth Plain BRT Project; and

WHEREAS, the Parties mutually agree to carry out STATIONS along the Fourth Plain BRT Corridor, subject to specific tasks, responsibilities, designs, and long term objectives for the STATIONS Project contained in this Agreement; and

NOW, THEREFORE, pursuant to RCW 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which are incorporated and made a part hereof, the parties agree as follows:

ARTICLE I

RECITALS ADOPTED. The recitals set forth above are hereby adopted as the factual basis for this Agreement.

ARTICLE II

PURPOSE. The Parties mutually agree to interpret and implement this Agreement for the purpose of and consistent with the following long term objectives of STATIONS to:

1. Help reduce transit travel time and increase on-time trip performance along the Fourth Plain BRT corridor between downtown Vancouver and Westfield Vancouver Mall.
2. Attract, together with other transit enhancements, more riders to transit, thus reducing the number of vehicles using the corridor, in turn reducing traffic congestion and pavement wear-and-tear due to vehicular traffic.
3. Produce a system of STATIONS at selected and defined locations (see Exhibit 1) along Fort Vancouver Way between McLoughlin Boulevard and Fourth Plain; along Fourth Plain Boulevard between Fort Vancouver Way and Thurston Way; and along Thurston Way between Fourth Plain and the terminus of the BRT line at Westfield Vancouver Mall, as noted in Exhibit 1, Project Map. For the purposes of this Agreement, STATIONS excludes the 7th Street at Turtle Place station as well as the Vancouver Mall Transit Center station.
4. Purchase property rights of way ("ROW") for such STATIONS.
5. Obtain City permits for such STATIONS in order to operate such STATIONS in perpetuity.

ARTICLE III

DEFINITIONS

Agreement means this document and all Exhibits attached and subsequent amendments hereto.

Continuing Control means the conditions of the FTA Small Starts Grant that require that the STATIONS be used specifically for STATION purposes on the Fourth Plain BRT Corridor and maintained in a state of good repair.

Fourth Plain BRT Corridor (aka "Corridor") means the surface street route along Fort Vancouver Way between McLoughlin Boulevard and Fourth Plain; along Fourth Plain Boulevard between Fort Vancouver Way and Thurston Way; and along Thurston Way between Fourth Plain and the terminus of the BRT line at Westfield Vancouver Mall.

Project means the Fourth Plain Bus Rapid Transit (BRT) Project, a street construction, traffic signal modification, STATION construction, and accessory structure construction project beginning in 2015 with completion expected by late summer 2016.

STATION Component of the Project means the effort by which the Parties will cooperate to acquire rights of way, transfer of rights of way and maintenance responsibilities, permitting and operation of BRT STATIONS to serve the Project.

ARTICLE IV

TERMS

A. RESPONSIBILITY OF BOTH C-TRAN AND THE CITY

1. **Grant to Use City Right-of-Way:** As a result of the C-TRAN transfer of ROW, the City grants C-TRAN a permanent, non-exclusive grant to use those transferred portions of City's rights-of-way as noted in the Type D Long Term Street Use Permits issued for the project. The Agreement is intended to satisfy FTA requirements for continuing control and has been reviewed and approved by the FTA for continuing control compliance..
2. **Maintenance-** C-TRAN shall be responsible for maintenance at each STATION location, including the sidewalk if it is part of the transit fare zone (that is, part of the STATION platform). The City shall be responsible for maintenance outside of the station areas. The City shall also be responsible for maintenance of sidewalks adjacent to STATIONS if they are behind the STATION (that is, not part if the STATION platform).

B. RESPONSIBILITY OF C-TRAN TO THE CITY

1. **Rights of Way Provided**
C-TRAN, as part of the Fourth Plain BRT Project, will acquire permanent ROW, along the Corridor through State of Washington and Federal Transit Administration ("FTA") federal acquisition regulations, rules and procedures with the use of federal and state grants for the purpose of constructing, operating, and maintaining STATIONS. C-TRAN shall record and transfer said ROW to the City of Vancouver using the City's deed template. C-TRAN shall also acquire and retain ownership of temporary construction easements for the duration of the construction, which will expire upon construction completion, which easements may be recorded at the landowner's request.
2. **Ownership Transferred**
C-TRAN shall require the property owner subject to the permanent ROW to deed the ROW to the City using the City's template for such transactions.
3. **STATION Maintenance and Operation Payment Obligation of C-TRAN**
C-TRAN will be responsible for the maintenance and operation of the STATIONS as set forth in A.2. above.

C. RESPONSIBILITY OF THE CITY TO C-TRAN

1. City Action Upon Transfer of ROW Ownership

The transfer of the ROW deeds by C-TRAN, and completion by C-TRAN of City requirements for such are expressly conditioned upon the City granting C-TRAN a Type D Long Term Right of Way Use and Occupation Permit pursuant to Vancouver Municipal Code (VMC) 11.60.060.B.4. Pursuant to the terms of this Agreement and by issuance of the permit, it is understood the Type D Right of Way permit will remain in perpetuity for the STATIONS unless mutually terminated by both parties. Such grant of permit is expressly understood to be required to satisfy FTA continuing control requirements so the permit shall contain such provisions as the FTA shall mandate to satisfy this requirement. The City shall be responsible thereafter for the maintenance of the ROW outside of the physical boundaries of the STATIONS as specified in A.2. above.

D. FINANCIAL PROVISIONS

As set forth in Article IV, Subsection B.1 above, C-TRAN agrees to acquire the ROW necessary for the STATIONS at C-TRAN expense using funding as specified above. The City has no financial obligation for ROW under this Provision.

E. PROJECT ADMINISTRATION

1. C-TRAN has designated Project Manager Chuck Green for the Fourth Plain BRT Project. The City has appointed Senior Civil Engineer Ryan Lopossa of the Department of Public Works as the liaison for the City for these rights-of-way transactions. These individuals shall communicate regularly to discuss the status of tasks and services related to the successful performance of this Agreement.
2. Changes to Project Manager/liason designation(s) shall be communicated between both parties no later than two (2) weeks prior to the change occurring.

F. MANAGEMENT, INVENTORY and ANNUAL CERTIFICATION

C-TRAN shall be responsible for maintaining the Record of Negotiations as well as the recording of deeds for the Fourth Plain BRT Project's STATIONS Component prior to transfer of ownership to the City. The fiscal record keeping shall consist of procuring the necessary ROW, and as necessary, transferring ownership of the ROW identified in the Fourth Plain BRT Project plans and special provisions. The City acknowledges that ROW is being purchased with federal grant funds. Transfer of ownership of any ROW shall be in accordance with any FTA requirements.

G. INDEMNIFICATION

1. C-TRAN agrees to indemnify, defend, save and hold harmless the City, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees, and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by C-TRAN pursuant to this Agreement.
 - a. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against C-TRAN, the City retains the right to participate in said suit if any principle of public law is involved.
 - b. This indemnity and hold harmless shall include any claim made against the City by an employee of C-TRAN or subcontractor or agent of C-TRAN, even if C-TRAN is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the City. C-TRAN specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that C-TRAN provide the broadest scope of indemnity permitted by RCW 4.24.115.
2. The City agrees to indemnify, defend, save, and hold harmless C-TRAN, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees, and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by City pursuant to this Agreement.
 - a. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, C-TRAN retains the right to participate in said suit if any principle of public law is involved.

- b. This indemnity and hold harmless shall include any claim made against C-TRAN by an employee of the City or subcontractor or agent of the City, even if the City is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of C-TRAN. The City specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the City provide the broadest scope of indemnity permitted by RCW 4.24.115.

H. NON-DISCRIMINATION

The Parties hereto agree that they shall not participate in any discriminatory action against any employee who is paid by funds indicated in this Agreement or against any applicant for such employment because of race, religion, color, sex, marital status, creed, national origin, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap or as otherwise provided by applicable law. This provision shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training.

I. AGREEMENT MODIFICATIONS

It is mutually agreed and understood that no alteration or variation to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, shall not be binding.

J. NOTICES

Notices to C-TRAN: until such time as C-TRAN notifies the City in writing otherwise, all notices to C-TRAN required to be given under the terms of this Agreement, unless otherwise specified herein, or as maybe amended, shall be given in writing, addressed as follows:

Executive Director/CEO
C-TRAN
PO Box 2529
Vancouver, WA 98668-2529

Notices to the City: until such time as the City notifies C-TRAN in writing otherwise, all notices to the City required to be given under the terms of this Agreement, unless otherwise specified herein, or as may be amended, shall be given in writing, addressed as follows:

City Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

K. DURATION AND TERMINATION

1. This Agreement shall be in perpetuity unless mutually terminated by the Parties or in the event that one of the Parties materially breaches this Agreement.
2. Funding for this Project is provided, in part, from federal and state sources. The terms and conditions of this Agreement are subject to the adherence to Federal and Washington State funding and right-of-way acquisition requirements and continued availability of funding identified for this Project.

L. DISPUTE RESOLUTION PROCESS

1. In the event of any dispute concerning this Agreement, the Project Managers shall confer to resolve the dispute. These individuals shall use their best efforts and exercise good faith to resolve disputes and issues arising out of, or related to this Agreement. In the event the Project Managers are unable to resolve the dispute, the City's Public Works Director and C-TRAN's Director of Planning and Development shall confer and exercise good faith to resolve the dispute.
2. In the event the Public Works Director, and C-TRAN's Director of Planning and Development are unable to resolve the dispute, C-TRAN's Executive Director/CEO and the City Manager shall engage in good faith negotiations to resolve the dispute.
3. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the Executive Director/CEO of C-TRAN and the City Manager may be submitted to mediation. If still not resolved, the parties may seek any judicial remedies available in law and equity.

4. The parties agree that they shall have no right to seek relief in a court of law until each of these procedural steps is exhausted and if a statute of limitations or statute of repose may lapse during these procedural steps such statute(s) are deemed tolled until the completion of the above referenced administrative dispute resolution process. In the event relief is sought in a court of law, the parties agree to Clark County Superior Court as the venue for any legal action, subject to federal jurisdictional and venue requirements.

M. INDEPENDENT CONTRACTOR

C-TRAN and the City are and shall at all times be deemed to be independent contractors in the provision of the services set forth in this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between either party or between any of their employees. Each party shall retain all authority for provision of services, standards of performance, discipline and control of its personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of C-TRAN an employee of the City or any employee of the City an employee of C-TRAN for any purpose, including but not limited to, for withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

N. NO THIRD PARTY BENEFICIARY

C-TRAN does not intend by this Agreement to assume any contractual obligations to anyone other than the City. The City does not intend by this Agreement to assume any contractual obligations to anyone other than C-TRAN. C-TRAN and City do not intend there be any third-party beneficiary to this Agreement.

O. WAIVER

No waiver by either party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

P. INTERLOCAL COOPERATION ACT COMPLIANCE

This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Article II. Its duration and termination are as specified in Article IV, Section L (Duration). Financial provisions are as described in Article IV, Section D. Transfer of property acquired pursuant to this Agreement is as described in Article IV B. and C.

Q. INTEREST OF THE FEDERAL TRANSIT ADMINISTRATION

C-TRAN shall acquire properties for the BRT Project compliant with the following federal requirements:

- 49 CFR Part 24 as amended January 4, 2005: Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs: Final Rule and Notice (Uniform Act) (attached as Appendix B).
- FTA Circular C 5010.1D, Grant Management Requirements Chapter IV, pertaining to Real Estate Project Management (attached as Appendix C).
- Applicable statutes regulating environmental aspects of acquisition, such as site inspection, survey of prior owners and uses, etc., include 42 USC Subsections 9601-9675.

R. ENTIRE AGREEMENT

This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

S. DOCUMENT EXECUTION AND FILING

The City and C-TRAN agree that there shall be three (3) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Agreement shall be retained by the Vancouver City Clerk and one shall be retained by each of the other parties. The Vancouver City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040). Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon all parties.

T. RATIFICATION

Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

U. SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their signatures.

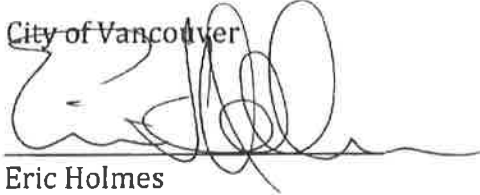
DATED this 3rd day of August, 2015.

C-TRAN



Jeff Hamm
Executive Director/CEO

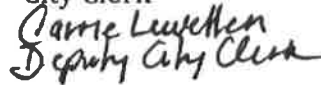
City of Vancouver



Eric Holmes
City Manager



R. Lloyd Tyler
City Clerk



Carrie Luytken
Deputy City Clerk

Approved as to form:



Thomas H. Wolfendale
C-TRAN Legal Counsel



E. Bronson Potter
City Attorney

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Exhibit 1 – STATION Locations (Project Map)

