

SAFE ROUTES TO TRANSIT PROGRAM
PEDESTRIAN CAPITAL IMPROVEMENTS AGREEMENT
between
KING COUNTY, METRO TRANSIT DEPARTMENT
and
CITY OF AUBURN

THIS SAFE ROUTES TO TRANSIT PROGRAM CAPITAL IMPROVEMENTS AGREEMENT (the "Agreement") is entered into by and between the City of Auburn, a municipality of the State of Washington (the "City"), and King County, a political subdivision of the State of Washington, through its Metro Transit Department (the "County" or "Metro"), either of which entity may be referred to hereinafter as "Party" or collectively as the "Parties."

WHEREAS, Metro's adopted long-range transit plan, Metro Connects, envisions more people walking and bicycling to transit, and making significant investments toward that vision, including funding for sidewalks, bikeways and other treatments; and

WHEREAS, the County has appropriated funds in Metro's Safe Routes to Transit Program to support capital projects that improve safety, convenience and accessibility for people walking, bicycling and using assistive mobility devices (such as wheelchairs or walkers) to connect to transit services and facilities; and

WHEREAS, capital improvement projects made under the Safe Routes to Transit Program may include sidewalks, bikeways, safe crossings, ADA ramps, traffic calming devices and treatments, lighting, traffic counters, and other improvements that will enhance safety, comfort and access to transit services and facilities; and

WHEREAS, the County expects that such improvements developed under the Safe Routes to Transit Program will help reduce collision risks and injuries involving people walking and cycling, attract more transit riders, help more riders connect to transit without use of a personal car, thereby supporting County objectives for equity, managing demand for car parking at transit facilities, reducing local traffic congestion and emissions, and supporting health; and

WHEREAS, the County intends to work with local jurisdictions to fund the design and construction of such capital projects as sidewalks, bikeways, safe crossings, ADA ramps, traffic calming devices and treatments, lighting, traffic counters, and other improvements that will enhance safety, comfort and access to transit services and facilities; and

WHEREAS, Metro has worked with the cities of Renton, Kent and Auburn to design and prepare for construction of improvements for the RapidRide L Line, including access to transit improvements; and

WHEREAS, the RapidRide I Line will provide new RapidRide bus rapid transit (BRT) service connecting the cities of Renton, Kent and Auburn, upgrading the existing route 160, which was implemented in fall 2020; and

WHEREAS, the County and the City have mutual interest in reducing barriers to transit service in order to support access to transit services and facilities in the City; and

WHEREAS, the Parties have identified a capital improvement project that will support and improve transit access in the City;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions under which the County, as part of its Safe Routes to Transit Program, will reimburse the City for a portion of the costs of the design and/or construction of certain transit access capital improvements consisting, in summary, of pedestrian safety improvements at specific locations (the "Project"), as more particularly described in the Scope of Work ("SOW") set forth at Exhibit A, which is attached hereto and incorporated herein by this reference.

2. DUTIES AND RESPONSIBILITIES OF THE CITY

- 2.1 The City shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to design, construct and inspect the transit access capital improvements provided for in the Project description set forth in Exhibit A. The Project objectives and timelines are provided for with particularity in Exhibit A.
- 2.2 It shall be the City's responsibility to finalize the design and build the Project in compliance with applicable requirements of federal, state and local laws, rules and regulations, including, but not limited to, the Americans with Disabilities Act ("ADA"). The City shall also be responsible for obtaining any necessary permits; review and approval by federal, state or local regulatory agencies, if applicable; and for conducting any required environmental review. The City shall also be responsible for the administration and funding of any contracts it enters into for the performance of its responsibilities under this Agreement.
- 2.3 Upon completion, all Project improvements shall become the property of the City. The City shall be responsible for ongoing maintenance, repair and replacement of any Project improvements.
- 2.4 The City will provide the County with regular progress reports, at least quarterly, to identify work progress and other matters of significance in the performance of this Agreement.
- 2.5 The City shall submit design plans for the Project improvements to the County for its review and written approval prior to initiating construction. The County will have the opportunity to review and provide written comments on the plans to ensure consistency with any applicable requirements and the County's expectations for the Project. Should the City desire to change

the final Project design after the County's initial review and approval of the initial design plans, whether based on additional engineering or traffic analysis, input from stakeholders, or other factors, the County's Contract Manager, as provided for in Section 18 of this Agreement, shall be notified of such proposed changes. Any such changes that are deemed significant by the County shall require joint written approval consistent with Section 15 of this Agreement.

- 2.6 The City shall contribute funding for the design of the Project.

3. DUTIES AND RESPONSIBILITIES OF THE COUNTY

- 3.1 The County will reimburse the City for a portion of the actual, eligible costs incurred by the City for the transit access capital improvements as provided for in the SOW set forth at Exhibit A. Under no circumstances will the County's contribution to the City's eligible Project costs exceed a maximum amount of \$55,000.00 (the "Reimbursement Cap").
- 3.2 The County's obligation to make such reimbursements is contingent upon the City completing design of the project, as stated in Subsection 2.6.

4. INVOICE AND PAYMENT PROCEDURES

- 4.1 The County will reimburse the City for actual, eligible costs incurred for work performed pursuant to this Agreement as identified in the SOW. The City shall submit a completed invoice to the County detailing quarterly activities, outcomes, expenses and reimbursement amount due within thirty (30) days of each quarter's end. The County shall pay the City within thirty (30) calendar days after the County has received completed invoices. In no event shall the total reimbursement to City for work performed pursuant to this Agreement exceed the Reimbursement Cap provided for in Subsection 3.1 of this Agreement.
- 4.2 In the event that it is determined that an overpayment has been made to the City by the County, the County will bill the City for the amount of overpayment. The City shall pay the County within thirty (30) days of receipt of an invoice for overpayment.

5. EFFECTIVE DATE AND DURATION OF AGREEMENT

This Agreement shall take effect upon the latest date on which both Parties have signed the Agreement (the "Effective Date") and shall remain in effect until June 30, 2023, unless extended by written amendment of the Parties pursuant to Section 15 of this Agreement or earlier terminated pursuant to the provisions of Section 7 of this Agreement.

6. DISPUTE RESOLUTION PROCESS

- 6.1 Designated Dispute Resolution Representatives. The following individuals are the designated representatives for the purpose of resolving disputes that arise under this Agreement:

For the County:	Carol Cooper, Managing Director King County Metro Transit Market Innovation Section 201 South Jackson Street, MS KSC-TR-0411
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Seattle, WA 98104
(206) 477-5871
carol.cooper@kingcounty.gov

For the City: Jacob Sweeting, City Engineer
City of Auburn
25 West Main Street
Auburn, WA 98001
(253) 804-3118
jsweeting@auburnwa.gov

- 6.2 The County representative and the City representative shall confer to resolve disputes that arise under this Agreement as requested by either Party. The designated representatives shall use their best efforts and exercise good faith to resolve such disputes.
- 6.3 In the event the designated representatives are unable to resolve the dispute, the City's Mayor or her/his designee and the General Manager of the County's Metro Transit Department or her/his designee shall confer and exercise good faith to resolve the dispute.
- 6.4 In the event the Mayor and the General Manager of Metro Transit are unable to resolve the dispute, the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).
- 6.5 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either Party may institute a legal action in the King County Superior Court, situated in Seattle, Washington, unless another venue is mutually agreed to in writing.
- 6.6 The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

7. TERMINATION

- 7.1 Termination for Convenience. The County may terminate this Agreement for its convenience and without cause upon thirty (30) days written notice to the City. In the event of termination of this Agreement by the County pursuant to this Subsection 7.1, the County shall be liable only for costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- 7.2 Termination for Cause. Either Party may terminate this Agreement in the event that the other Party materially breaches this Agreement and such breach is not cured in the time provided in this Subsection 7.2. Written notice of intended termination and a description of the breach must be provided via certified mail by the Party terminating this Agreement to the other Party not less than thirty (30) calendar days prior to the intended effective date of termination. The breaching Party shall be given thirty (30) calendar days in which to cure its material breach to

the reasonable satisfaction of the other Party. If the breaching Party fails to cure within thirty (30) calendar days, the Agreement shall terminate on the date specified in the notice.

- 7.3 Termination for Non-Appropriation or Loss of Funding. In addition to termination for default, the County may terminate this Agreement for non-appropriation or loss of funding by giving not less than thirty (30) calendar days' written notice thereof to the City.

8. LEGAL RELATIONS

- 8.1 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.
- 8.2 No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement.
- 8.3 Independent Capacity. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- 8.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 8.5 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.
- 8.6 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.
- 8.7 Survival. Each of the provisions of this Section 8 (Legal Relations) shall survive the expiration or earlier termination of this Agreement.

9. RECORDS RETENTION AND AUDIT

- 9.1 Maintenance of Records. During the term of the Agreement and for a period not less than six (6) years from the date of its expiration or earlier termination, the records and accounts pertaining to this Agreement are to be kept available by both Parties for inspection and audit by the other Party and the State Auditor, and copies of all records, accounts, documents, or other data pertaining to the Agreement will be furnished upon reasonable notice. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period.
- 9.2 Disclosure of Public Records. Both Parties acknowledge and agree that all non-privileged, non-exempt records that may be maintained pursuant to Subsection 9.1 of this Agreement are subject to public disclosure under the Washington State Public Records Act, Chapter 42.56 RCW.

10. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of its 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: late delivery or nonperformance by vendors of materials or supplies; 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 or 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.

11. NONDISCRIMINATION

The City agrees to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of any and all subcontractors providing services or performing any work using funds provided under this Agreement. During the performance of this Agreement, neither the City nor any entity subcontracting under the authority of this Agreement, shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement. King County Code Chapter 12.16 and 12.17 are incorporated herein by reference, and such requirements shall apply to this Agreement.

12. INDEMNIFICATION

The City and its successors and assigns shall protect, save, defend, indemnify and hold harmless the County, its elected officials, officers, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, actions, judgments, and/or awards of damages or expenses of any nature whatsoever, arising out of or in any way resulting from the City's acts or omissions under this Agreement. The City agrees that it is fully responsible for the acts and omissions of its contractors, subcontractors, consultants, and their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County, its elected officials, officers, employees, and agents with a full and complete indemnity of claims made by the City's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. WAIVER

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

14. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

15. CHANGES AND MODIFICATIONS

This Agreement may be changed, modified, or amended only by written agreement executed by authorized representatives of both Parties.

16. REPRESENTATION ON AUTHORITY OF SIGNATORIES

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

17. ALL TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

18. CONTRACT MANAGEMENT

All contact information for the management of this Agreement shall be identified herein and may be updated by either Party for their agency only and shall be submitted in writing or electronic mail to the other Party. Any update to the Contract Managers shall state the effective date of said update.

Contract Manager for	City of Auburn	King County
Contact Name	Jacob Sweeting	Malva Slachowitz
Title	City Engineer	Senior Transportation Planner
Address	25 West Main Street Auburn, WA 98001	201 South Jackson Street, KSC-TR-0411, Seattle, WA 98104
Telephone	253-804-3118	206-477-5873
Email	jsweeting@auburnwa.gov	malva.slachowitz@kingcounty.gov

19. ASSIGNMENT

Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

20. 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 THEREOF the Parties hereto have executed this Agreement by duly authorized representatives on the dates shown below their respective signatures.

KING COUNTY

CITY OF AUBURN

By: _____
Terry White, General Manager
King County Metro Transit Department

By: _____
Nancy Backus, Mayor
City of Auburn

Date: _____

Date: _____

Attest:

Shawn Campbell, City Clerk

Approved as to form:

Kendra Comeau, City Attorney

EXHIBIT A SCOPE OF WORK

SAFE ROUTES TO TRANSIT PROGRAM CAPITAL IMPROVEMENT AGREEMENT

1. Purpose

- a. To design and construct pedestrian safety and access improvements as described in Section 3 for access to public transit services.

2. Scope of Services

- a. Project Management: The City will manage the project using professionals with capital project experience. Budget and schedule will be monitored regularly throughout design and construction. The City will provide the County with progress reports at least quarterly, per Subsection 2.4 of this Agreement.
- b. Design: The City will be responsible for completing design and developing the bid documents. The project will be permitted as a capital project with the City as the lead agency for SEPA. The City has determined that this project is categorically exempt from SEPA per Washington Administrative Code (WAC) 197-11-800(2)d vi, vii, and ix.
- c. The City shall submit design plans for the Project improvements to the County for its review and written approval prior to initiating construction, per Subsection 2.5 of this Agreement. The County will provide any review comments within 7 calendar days.
- d. Construction: The City will construct the project through a negotiated change order with a contractor currently constructing a City capital project, and utilize City forces, and issue a non-formally bid contract and monitor construction through completion.
- e. Inspection: Existing City staff or a consultant project manager will provide construction inspection services, with third party support for specific specialties if needed.
- f. Monitoring and Reporting: The City will submit quarterly progress reports during design and construction. The City and Metro will share relevant available data to monitor usage of the projects after completion and annually for four years following completion.

3. Projects to be completed

Location (intersection or corridor with extents)	Improvements	Phase(s) to be expensed under this agreement in 2022
Auburn Avenue and 2nd Street NE	Rapid Rectangular Flashing Beacon (RRFB) System including conduits, poles, foundations, beacons, signage, push buttons	Design and Construction

4. Schedule

Project milestones below represent work to be completed under this Agreement.

The project milestones are estimated as follows:

Milestone	Month/Year
Begin construction Phase 1 (install conduits, foundations, junction boxes)	4/2022
Begin construction Phase 2 (install and activate RRFB System)	7/2022
Complete construction	12/2022
Estimated opening for public use	1/2023

5. Budget

Phase	King County Funds	City-secured Funds	Project Total
Design	\$0	\$5000	\$5000
Construction (RRFB System Complete)	\$51,215	\$0	\$51,215
Est Total	\$51,215	\$5,000	\$56,125
Contingency	Up to \$3,785	n/a	Up to \$3,785
Total	\$55,000 (cap from King County)	\$5000	Up to \$60,000