

SPOKANE TRANSIT AUTHORITY INFRASTRUCTURE IMPROVEMENTS MASTER DESIGN & CONSTRUCTION AGREEMENT

This Master Design and Construction Agreement for Spokane Transit Authority Infrastructure Improvements ("Agreement" or Master Agreement") is made and entered into this 13th day of December, 2018, by and between the **City of Spokane** ("City") and the **Spokane Transit Authority** ("STA"); each a municipal corporation of the State of Washington. The City and STA may be referred to individually as a "Party" and collectively as "Parties".

WHEREAS, pursuant to Chapter 36.57A RCW, STA is authorized to do all things necessary to provide public transportation facilities and services to the public, including within the boundaries of the City of Spokane; and

WHEREAS, STA's Board of Directors annually adopts a Capital Improvement Plan to provide for the construction of capital projects and improvements to public transportation facilities within its area of operation, including the construction and installation of transit amenities and infrastructure to facilitate transit service improvements within the City limits; and

WHEREAS, the City annually establishes a list of infrastructure improvements within City limits, including improvements to neighborhoods and streets to which STA provides public transportation services; and

WHEREAS, RCW 39.34.080 authorizes STA and the City to enter into cooperative agreements to provide for and fund public infrastructure and facilities for the benefit of the citizens and residents within their jurisdictions; and

WHEREAS, STA and the City desire to achieve economic benefits and project efficiencies by cooperatively planning, designing and constructing infrastructure improvements that provide a benefit to each jurisdiction and establish a process for the reimbursement of costs related to the completion of such improvements by each Party; and

WHEREAS, in recognition of the Federal Transit Administration (FTA) funding that may be utilized by STA for capital projects constructed by it as part of this cooperative agreement, the Parties desire to provide for the requisite FTA grant assurances, certifications and continuing control agreements when such federal funding is utilized by the Parties on cooperative infrastructure projects.

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

1. DEFINITIONS

The following capitalized terms shall be interpreted as follows when used in this Agreement and any subsequent Project Orders:

Term	Definition
Cooperative Project	A capital project within the boundaries of the City of Spokane that enhances the efficiency and quality of public transportation service by providing tangible and accountable public transit benefits through the design, construction or installation of Transit Improvements.
FTA	Federal Transit Administration
Managing Party	The primary Party responsible for the performance of work under each Project Order.
Funding Party	The Party with limited or no responsibility for the performance of work under a Project Order, but who maintains a designated fiscal responsibility for a Project Order.
Project Order	A project-specific agreement identifying the Scope of Work to be performed on said project and the obligations of each Party for the completion of each Cooperative Project, or group of Cooperative Projects. Each Project Order shall incorporate the terms and conditions of this Master Agreement.
Scope of Work	A detailed description of all work to be performed under a Project Order, including, but not limited to, design, engineering, permitting, community relations, procurement, project management and construction. The Scope of Work shall be attached to each Project Order as an exhibit to the Project Order.
Transit Improvements	Capital improvements on a Cooperative Project that enhance the efficiency and quality of public transportation service, including, but not limited to, passenger boarding areas, curb and gutter, sidewalks and pathways, curb ramps, bus shelter footings, railings, supporting structures, transit shelters, lighting, electrical and communication services, signal improvements, intersection improvements, traffic re-channelization, and real-time information displays.

2. SCOPE OF WORK

A. IDENTIFICATION OF IMPROVEMENTS

- I. The City and STA shall identify Cooperative Projects in locations throughout the City to support or improve public transportation services. An initial list of potential Cooperative Projects, including a summary description of each project, is attached hereto as Exhibit A and each Cooperative Project shall be implemented upon the execution of a Project Order. Where the Parties deem appropriate and mutually agree, a Project Order may be issued retroactively to provide for reimbursement to a Managing Party for the cost of a project that

provides a benefit to the Funding Party. Additional Cooperative Projects may be agreed to pursuant to a written Project Order executed by each of the Parties.

- II. The Parties shall execute a Project Order, in the form attached hereto as Exhibit B, for each Cooperative Project or group of closely-related Cooperative Projects to be completed. The Project Order shall include, but not be limited to, identification of the Managing and Funding Parties, a detailed Scope of Work, the Transit Improvements to be constructed, a schedule for completion and each Party's financial obligations for the Cooperative Project. The terms of this Master Agreement shall be incorporated in each Project Order and any reference herein to "this Agreement" shall include any Project Order.
- III. As prioritized by the Project Orders, the Parties shall determine the order of completion and an annual schedule for the completion of Project Orders in conformance with the Parties respective capital improvement plans. The Parties agree to adhere to such schedule, and any modification to said schedule shall be communicated and coordinated between the Parties.

B. DESIGN AND ENGINEERING

On a Project Order basis, the Managing Party may perform some or all of the necessary administrative, design, engineering and estimating work related to the completion of the Cooperative Project(s). The Funding Party shall have the right to approve all designs, specifications, engineering work and estimates, but such approval shall not in any way relieve the Managing Party of its responsibilities for such work. The Managing Party shall designate a project manager for each Project Order.

C. EXECUTION OF WORK

For each Project Order, upon receipt of a written notice to proceed from the Funding Party, the Managing Party shall, to the extent permitted by law, or subcontract for the performance thereof, provide services, staff and otherwise do all things necessary for or incidental to the performance of work prescribed in the Scope of Work.

D. PROCUREMENT

Each Party shall be responsible for compliance with its procurement policy on any Cooperative Project. The Parties agree that the procurement policy of each Party satisfies, at a minimum, the state statutory requirements for public works projects and that STA's policies contain additional requirements in accordance with federal procurement requirements.

E. CONSTRUCTION PROGRESS

The Managing Party shall submit a written report upon timing specific to each Project Order to the Funding Party identifying work progress, detailed expenditures to-date, schedule adherence, change orders executed and any other matters of significance in the performance of this Agreement. In coordination with the Managing Party's project manager, the Funding Party shall have the right to inspect the work in progress but the work shall not be delayed or stopped for such inspection.

F. CHANGES

The Project Order will establish the process for communicating and coordinating any change in the Scope of Work, specifications or other terms of the work of a Project Order, or any contract entered into by the Managing Party for the performance of its responsibilities hereunder.

G. PERMITS, APPROVALS & COMMUNITY RELATIONS

The Managing Party shall be responsible for obtaining all permits, licenses, easements, right-of-way and approvals necessary to execute the Scope of Work and/or its obligations hereunder, shall pay all fees or costs associated therewith, shall keep records of all information and shall provide the Funding Party with a copy of same for each Project Order. On a Project Order basis, the Parties will outline all necessary community relations activities and will agree in writing what responsibilities will be assigned to the City, STA or a joint effort.

H. SCHEDULE

The Managing Party agrees the work under a Project Order shall be completed and final acceptance issued no later than the date specified in said Project Order, unless the Parties agree otherwise in writing.

I. FINAL ACCEPTANCE

Upon notification by the Managing Party of completion of the work of a Project Order, the Funding Party shall inspect the Cooperative Project(s). If the Funding Party finds any work which does not meet the terms of this Agreement or any specifications or terms established under a Project Order, it shall prepare a list of such items and submit it to the Managing Party. Work which does not comply with the agreed upon specifications and terms shall be corrected by the Managing Party at no cost to the Funding Party. Notice of acceptance shall not constitute acceptance of any unauthorized or defective work or material. The Funding Party retains all rights thereunder and at law to require the Managing Party to remove, replace, repair or dispose of any unauthorized or defective work, or from recovering damages for any such work or material.

3. OWNERSHIP AND MAINTENANCE

Except for public transportation facilities installed and maintained solely by STA and any other improvements or amenities as agreed to in writing by the Parties, all Transit Improvements constructed within City right of way shall become the property of the City upon their completion and final acceptance, and the City shall thereafter be responsible and liable for ongoing maintenance, repair and replacement of said Transit Improvements.

STA shall remove all Transit Improvements exclusively used by STA, including but not limited to platforms and associated transit facilities, upon closure or abandonment of a stop constructed under this Agreement and shall restore the property to its original condition.

4. CONTINUING CONTROL

In the event STA desires to complete a Cooperative Project that is funded in whole or in part by FTA grant assistance, such grant assistance shall be identified in the corresponding Project Order and the requisite FTA terms and conditions shall be incorporated into said Project Order.

A. GENERAL

The Parties acknowledge that some Cooperative Projects will be funded in part with federal funding from FTA, including but not limited to projects related to STA's Central City Line. The Parties commit to their adherence to federal and State funding and right of way acquisition requirements where required by FTA as a condition of funding ("FTA Funded Cooperative Projects"). An FTA Grant number shall be clearly noted on the Project Order executed by the Parties in order to designate a project as an FTA Funded Cooperative Project.

B. STA shall have the right to exercise satisfactory continuing control over the FTA Funded Cooperative Projects as applicable and in accordance with:

- I. 49 CFR Part 24 (and as may be amended), the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (Uniform Act);
- II. FTA Circular C 5010.1E Grant Management Requirements (dated February 13, 2017 and as may be amended);
- III. Applicable statutes regulating environmental aspects of federally funded acquisitions, including site inspections and surveys and including 42 USC Subsections 9601-9675 (and as amended);
- IV. 2 CFR part 1201, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; and
- V. Any other federal funding requirement(s) imposed on STA by FTA for an FTA Funded Cooperative Project.

C. PERIOD OF CONTROL

STA's right to exercise continuing control over a FTA Funded Cooperative Project shall continue as long as the property is needed, in the judgment of STA, for the appropriate project purposes, as described in an applicable FTA grant, for the duration of the useful life of that property, as required by the FTA, and shall include any time period necessary to dispose of the Federally Funded Cooperative Project under FTA requirements and procedures.

D. USE

The City acknowledges the FTA's interest in any FTA Funded Cooperative Project and agrees to use the FTA Funded Cooperative Project for appropriate purposes to support public transportation activities and will not exercise any right permitted under this Agreement in a manner which compromises or otherwise diminishes STA's continuing control over the FTA Funded Cooperative Project.

E. MAINTENANCE

The City agrees to maintain improvements such as, but not limited to, concrete sidewalks, curbs, gutters, storm sewer drains, asphalt paving, and landscaping in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing. STA agrees to maintain transit improvements such as platforms, bus bays, posts, transit shelters, real-time & persistent signage, and other transit amenities in good operating order, in compliance with any applicable Federal laws and regulations, and in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

F. RECORDS

The City agrees to keep all records pertaining to the use of the FTA Funded Cooperative Project and submit to STA upon request such information as may be required by the FTA to assure compliance with FTA's Master Agreement.

G. INCIDENTAL USE

Any incidental use of the FTA Funded Cooperative Project will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives. Any incidental use must be approved by STA prior to such use.

H. TRANSFER OR LEASE OF PROPERTY

The City shall not transfer any obligation pertaining to the FTA Funded Cooperative Project that would affect STA's, on behalf of the FTA, continuing interest in the FTA Funded Cooperative Project. Any transfer or lease must be approved by STA in writing and prior to such transfer or lease.

5. DISPOSITION OF COOPERATIVE PROJECT

A. GENERAL

Unless FTA Approval is required, the Parties may mutually negotiate the disposition of any Cooperative Project, subject to compliance with applicable state or local laws.

B. FTA APPROVAL WHEN REQUIRED

If the Parties are unable to agree upon a disposition proposal or plan of an FTA Funded Cooperative Project, STA may seek any necessary disposition instructions or approvals from the FTA. In such a case, STA will include in its submission to the FTA the independent views of the City regarding the appropriate disposition of the property involved. In addition, the City may assert whatever other rights it possesses by reason of its interest in such property.

C. AGREEMENT TO COMPLY

In the event that the FTA provides disposition instructions or approval with respect to the FTA Funded Cooperative Project, the City agrees to comply with the terms of such instructions or approval.

6. TERM

This Master Agreement shall commence upon execution by the Parties and shall continue in perpetuity unless mutually terminated by the Parties, or as terminated in accordance with Section 14.

7. COMPENSATION

The Funding Party shall reimburse the Managing Party for its financial obligations specified in each Project Order executed under this Agreement. The maximum aggregate expenditure by the Parties for all Project Orders entered into under this Master Agreement shall not exceed \$5,000,000.00 (Five Million dollars and no cents).

8. INVOICES

For each Project Order, upon the Managing Partner's issuance of completion and final acceptance to the contractor, the Managing Party shall submit an invoice to the Funding Party within sixty (60) days. Such invoice shall itemize all costs by type of expenditure for each improvement made and shall be accompanied by copies of official financial records evidencing the cost and/or payments for which the Managing Party seeks reimbursement from the Funding Party. Each Project Order will include a breakdown of the expenditures to be itemized such as overhead, design, right of way, construction management, construction, etc.

9. PAYMENT

The Funding Party shall issue payment to the Managing Party within thirty (30) days of receipt of invoice for work determined to be performed in accordance with the terms of this Agreement and any applicable Project Order(s).

10. NOTICES

All notices, requests, claims, demands and other communications shall be in writing and shall be signed by a person duly authorized to provide such notice. Notices permitted or requested to be given hereunder shall be deemed sufficient if given (1) in person; (2) by registered or certified mail, postage prepaid, return receipt requested; or (3) by email, addressed to the respective contact of the Parties as set forth below, or as may be revised by like notice from time to time.

All notices shall be deemed to have been duly given (1) when delivered in person; (2) upon receipt after dispatch by registered or certified mail, postage prepaid; (3) three (3) business days after the date of mailing by regular mail, postage prepaid; or (4) upon confirmation of a read receipt when transmitted by email.

City of Spokane	Spokane Transit Authority
James Richman Assistant City Attorney City of Spokane 808 W. Spokane Falls Blvd Spokane, WA 99201 E: jrichman@spokanecity.org P: (509) 625-6277	Robert West Contracts Compliance Specialist Spokane Transit Authority 1230 W Boone Ave Spokane, WA 99201 E: rwest@spokanetransit.com P: (509) 325-6000

11. COMMUNICATIONS

Any administrative or operational communications required by the Parties' obligations under this Agreement shall be directed to the Parties' representatives below:

City of Spokane	Spokane Transit Authority
Katherine Miller Director, Integrated Capital Management City of Spokane 808 W. Spokane Falls Blvd Spokane, WA 99201 E: kemiller@spokanecity.org P: (509) 625-6338	Daniel M. Wells Deputy Director of Capital Development Spokane Transit Authority 1230 W Boone Ave Spokane, WA 99201 E: dwells@spokanetransit.com P: (509) 343-1695

Communications to be given hereunder shall be deemed sufficient if given (1) in person; (2) by mail, postage prepaid; or (3) by email, addressed to the designated representative of the Parties as set forth above, or as may be revised by written notice in accordance with Section 1010 of this Agreement.

12. INDEMNIFICATION

- A. To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless STA 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 acts or omissions of the City, its contractors, and/or employees, agents and representatives in performing its work, services and obligations under this Agreement or any Project Order; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement or any Project Order and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City, its contractors or employees, agents or representatives and STA or its employees, agents or representatives, the indemnification applies only to the extent of the negligence of the City, its contractors or employees, agents or representatives. In the event of any such claims, demands, suits, actions and lawsuits, the City shall assume all costs of defense thereof, including legal fees incurred by STA, and of all resulting judgments that may be obtained against STA or any of its officers, principals, agents or employees. If resulting therefrom, any lien is placed upon property of STA or any of its officers, principals, agents or employees, the City shall at once cause the same to be dissolved and discharged by giving bond or otherwise. The City specifically assumes

potential liability for actions brought by the City's own employees against STA and for that purpose the City specifically waives, as respects to STA only, any immunity under the Workers' Compensation Act, RCW Title 51; and the City recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provisions of RCW 4.24.115, if applicable. In the event either Party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this section against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

- B. To the maximum extent permitted by law, STA shall defend, indemnify and hold harmless the City 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 acts or omissions of STA, its contractors, and/or employees, agents and representatives in performing its work, services and obligations under this Agreement or any Project Order; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement or any Project Order and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City, its contractors or employees, agents or representatives and STA or its employees, agents or representatives, the indemnification applies only to the extent of the negligence of the City, its contractors or employees, agents or representatives. In the event of any such claims, demands, suits, actions and lawsuits, the City shall assume all costs of defense thereof, including legal fees incurred by STA, and of all resulting judgments that may be obtained against STA or any of its officers, principals, agents or employees. If resulting therefrom, any lien is placed upon property of STA or any of its officers, principals, agents or employees, the City shall at once cause the same to be dissolved and discharged by giving bond or otherwise. The City specifically assumes potential liability for actions brought by the City's own employees against STA and for that purpose the City specifically waives, as respects to STA only, any immunity under the Workers' Compensation Act, RCW Title 51; and the City recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provisions of RCW 4.24.115, if applicable. In the event either Party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this section against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.
- C. The provisions of this section shall survive any termination of this Agreement or any Project Order.

13. INDEPENDENT CAPACITY

A. EMPLOYEES

The employees or agents of each Party will continue to be employees or agents of that Party and will not be considered for any purpose to be employees or agents of any other Party.

B. NO PARTNERSHIP & NO THIRD PARTY BENEFICIARIES

It is agreed by the Parties that this Agreement, and any Project Order(s), does not create a partnership or joint venture relationship between the Parties and does not benefit or create any rights in a third party.

14. TERMINATION

A. DEFAULT

Any Party may terminate this Agreement, or any Project Order, for default in the event a Party fails to perform a material obligation under this Agreement. Termination shall be effected by serving a Notice of Termination in accordance with Section 1010 of this Agreement, on the other Party setting forth the manner in which the Party is in default and the effective date of termination, which shall not be less than thirty (30) calendar days after the date of notice. The termination shall not take effect if the default has been cured within ten (10) calendar days after the date of the notice of termination.

B. EXPENSES

Expenses incurred by the City prior to the effective date of a Notice of Termination shall be reimbursed subject to the terms of this Agreement.

C. WAIVER OF DEFAULT OR BREACH

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such by written instrument signed by the Parties. Neither payment by STA nor performance by the City shall be construed as a waiver of the other Party's rights or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

15. FORCE MAJEURE

In the event that any Party's obligations under this Agreement are substantially delayed, prevented or rendered impractical by fire, flood, riot, earthquake, civil commotion, war, strike, lockout, labor disturbances, exposition, sabotage, accident or other casualty, weather event, act of God, any law ordinance, rule or regulation which becomes effective after the date of this Agreement, or any other cause beyond the reasonable control of any Party, then the Parties shall be released from performance under this Agreement. Parties hereby waive any claim for damages or compensation for such delay or failure to perform.

16. COMPLIANCE WITH LAWS

Each Party to this Agreement, and subsequent Project Order(s) shall comply with all applicable federal, state and local laws and regulations.

17. GOVERNING LAW & VENUE

This Agreement shall be governed by and construed according to the laws of the State of Washington. Nothing in this Agreement shall be construed as altering or diminishing the rights or responsibilities of the Parties as granted or imposed by state law. Any and all disputes concerning this Agreement must be resolved in the Superior Court of Spokane County, Washington. The Parties agree to exclusive personal jurisdiction, subject matter jurisdiction and the venue of this court.

18. SUCCESSORS & ASSIGNS

This Agreement shall be binding on the Parties and their successors and assigns. The Parties however agree that they will not assign or delegate the duties to be performed under this Agreement without prior written approval from the other Party.

19. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the Parties and supersede all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof.

20. MODIFICATION

This Agreement, or any Project Order, may be modified or amended only by written instrument signed by the Parties.

21. SEVERABILITY

Should any provision of this Agreement, or any Project Order, be deemed invalid or inconsistent with any federal, state or local law or regulation, the remaining provisions shall continue in full force and effect. The Parties agree to immediately attempt to renegotiate such provision that is invalidated or superseded by such laws or regulations.

22. CIVIL RIGHTS

A. NONDISCRIMINATION

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, no individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex (including sexual orientation and gender identity), race, color, religion, creed, marital status, familial status, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

B. EQUAL EMPLOYMENT OPPORTUNITY

The following equal employment opportunity requirements apply to this Agreement:

- I. Race, Color, Creed, National Origin, Sex, Sexual Orientation, Gender Identity. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Dept. of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R., Parts 60 *et seq.*, (which implement Executive Order No.11246, "Equal Employment Opportunity," as amended by Executive Order No. 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity." 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, sexual orientation, gender identity or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - II. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - III. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Parties agree to include these requirements in each of its subcontracts resulting from or pertaining to this Agreement.

23. ANTI-KICKBACK

No officer or employee of STA and/or the City, having the power or duty to perform an official act or action related to this Agreement or any Project Order(s), shall have or acquire any interest in the Agreement or Project Order(s), or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement or any Project Order(s).

24. CONFLICT OF INTEREST

No employee, officer or agent of STA or the City shall participate in the selection or award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- I. the employee, officer or agent;
- II. any member of his/her immediate family;
- III. his or her partner; or
- IV. an organization which employs, or is about to employ, and employee, officer or agent of STA

has a financial or other interest in the firm selected for award.

25. TRADEMARKS & LOGOS

The Parties are prohibited from using, and agree not to use, directly or indirectly, any name, trademark or logo of the other Party without first obtaining prior written consent from the other Party.

26. PUBLIC RECORDS ACT

Each Party to this Agreement understands and acknowledges that STA and the City are each a municipal corporation of the State of Washington subject to the Public Records Act, RCW 42.56 *et seq.*

27. AUDIT/RECORDS

The Parties shall maintain for a minimum of six (6) years following final payment all records related to its performance of this Agreement or any Project Order. The Parties shall provide access to authorized representatives of the State of Washington Auditor's office at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to this Agreement, the federal law shall prevail.

Records and other documents, in any medium, furnished by any Party to this Agreement or Project Order to another Party, will remain the property of the furnishing Party, unless otherwise agreed. Subject to Section 26, the receiving Party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing Party and giving it a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party or Parties are not erroneously disclosed to third parties.

28. COUNTERPARTS

This Agreement, and any subsequent Project Order(s), may be executed in one or more counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same instrument.

29. ELECTRONIC SIGNATURES

A signed copy of this Agreement, any Project Order or any other ancillary agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of any original executed copy of this Agreement, Project Order or such other ancillary agreement for all purposes.

30. SIGNATURES

The Parties affirm that the individuals signing this Agreement have been granted the authority to do so and by their signature affirm that the Parties will comply with the terms and conditions of this Agreement.

City of Spokane

Spokane Transit Authority



By: David A. Condon

Title: Mayor

Date: 2/14/19

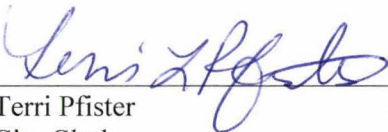


By: E. Susan Meyer

Title: Chief Executive Officer

Date: 12-21-18

Attest:



By: Terri Pfister

Title: City Clerk

Date: _____

Attest



By: Janet Watson

Title: Clerk of the Authority

Date: 12-21-18

Approved as to Form:



By: James Richmond

Title: Assistant City Attorney

Date: 2/07/2019

Approved as to Form:



By: Laura McAloon

Title: Attorney for the Authority

Date: 12-27-18



EXHIBIT A

COOPERATIVE PROJECTS

- Sprague Avenue Phase I Improvements – Four new in-lane high-performance-transit (HPT) bus stops.
- Sprague Avenue Phase II Improvements – ADA improvements on up to eight existing transit stops in conjunction with City of Spokane roadway improvements.
- North Division Street Phase I Improvements – Add sidewalk between Francis Ave. and Magnesium Rd.
- North Division Street Phase II Improvements – ADA and sidewalk improvements on North Division Street.
- Gateway Bridge Landing Improvements – Transit plaza @ the south terminus of the bridge.
- Sunset Boulevard Street Improvements – Rebuilding Sunset Boulevard between Royal & Lindeke; sidewalk & ADA access improvements; and transit stop improvements.
- West Francis Avenue & North Alberta Street Intersection Improvements – Geometric intersection improvements to alleviate tight turning radius for transit buses.
- Riverside Avenue Central City Line Stations – Incorporation of new Central City Line stations in coordination with City of Spokane rebuilding Riverside Avenue between Division Street and Wall Street.

EXHIBIT B

SAMPLE PROJECT ORDER

SPOKANE TRANSIT AUTHORITY INFRASTRUCTURE IMPROVEMENTS PROJECT ORDER

This Project Order Agreement ("Project Order") is made and entered into this XXX day of XXX, 20XX, by and between the **City of Spokane** ("City") and the **Spokane Transit Authority** ("STA"); each referred to individually as "Party" and collectively as "Parties".

WHEREAS, the Parties have executed the Spokane Transit Authority Infrastructure Improvements Master Design & Construction Agreement (the "Master Agreement") on XXX, under which the Parties have agreed to complete certain Cooperative Projects within the City that support or improve transit service; and

WHEREAS, the Master Agreement permits and the Parties desire to complete the Cooperative Project described herein, subject to the terms of this Project Order and the Master Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the Master Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

The following capitalized terms shall be interpreted as followed when used in this Project Order:

Term	Definition
Budget	Total estimated expenses to complete the Work, attached hereto as Exhibit PO-B.
Change Order	A written amendment to the Project Order authorizing a change in the Work, Budget or other information that modifies the original terms and conditions of the Project Order.
Managing Party	XXX
Project	The name of the Cooperative Project contemplated by this Project Order.
Funding Party	XXX
Work	All work necessary to complete the Cooperative Project identified in this Project Order ,as defined in Exhibit PO-A, attached hereto and incorporated herein.

All capitalized terms not specified in this section or elsewhere in this Project Order, shall have the same definition and meaning as specified in the Master Agreement.

2. SCOPE OF WORK

The Managing Party agrees to provide services and staff, and otherwise do all things necessary for or incidental to the performance of Work to complete the Project.

EXHIBIT B

SAMPLE PROJECT ORDER

3. BUDGET

The Budget for the Project is estimated at \$XXX,XXX.XX (XXX). The Managing Party shall be responsible for ensuring concurrence with the Budget in completing the Project. Any variations in actual expenses that exceed the Budget shall be approved in writing via a Change Order to this Project Order. In no case shall this Project Budget cause total expenditures by the Parties for all Cooperative Projects to exceed the amount specified in Section 8 of the Master Agreement.

4. COMPENSATION

The Funding Party shall reimburse the Managing Party in the amount not to exceed \$XXXXX.XX (XXX) in accordance with Sections 9 and 10 of the Master Agreement.

5. SCHEDULE

The Project is anticipated to begin on XXX and is scheduled to be completed by XXX. A schedule of key dates and milestones for the Project is attached hereto and incorporated herein as Exhibit PO-C.

6. PROJECT CONTACTS

City of Spokane	Spokane Transit Authority
Contact Title Company Address City, ST ZIP E: email P: (509)	Contact Title Spokane Transit Authority 1230 W Boone Ave Spokane, WA 99201 E: email@spokanetransit.com P: (509)

7. PROJECT CONSTRUCTION CONTACTS

City of Spokane	Spokane Transit Authority
Contact Title Company Address City, ST ZIP E: email P: (509)	Contact Title Spokane Transit Authority 1230 W Boone Ave Spokane, WA 99201 E: email@spokanetransit.com P: (509)

EXHIBIT B

SAMPLE PROJECT ORDER

8. INCORPORATION OF MASTER AGREEMENT

The Master Agreement between the Parties dated December 13, 2018 is incorporated herein by reference as if fully set forth and shall be binding on the Parties with respect to the work hereof.

9. INCORPORATION OF FTA TERMS & CONDITIONS

This Project Order is subject to FTA funding and is subject to the FTA Terms & Conditions attached hereto as Exhibit PO-D and incorporated herein.

OR

This Project Order is not subject to FTA funding or FTA Terms & Conditions.

10. CONFLICT OF TERMS

In the event a conflict occurs between the terms & conditions of this Project Order and the Master Agreement, the terms of this Project Order shall prevail. Notwithstanding the foregoing, if this Project Order is subject to FTA assistance, FTA terms & conditions required thereunder shall supersede the terms & conditions of this Project Order and the Master Agreement, in that order.

11. SIGNATURES

The Parties affirm that the individuals signing this Agreement have been granted the authority to do so and by their signature affirm that the Parties will comply with the terms and conditions of this Agreement.

City of Spokane

Spokane Transit Authority

By: _____
Title: _____

By: E. Susan Meyer
Title: Chief Executive Officer

Date: _____

Date: _____

Attest: _____

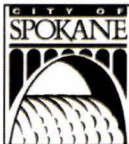
Attest: _____

By: _____
Title: _____

By: Dana Infalt
Title: Clerk of the Authority

Date: _____

Date: _____

**Agenda Sheet for City Council Meeting of:**

02/04/2019

Date Rec'd	1/22/2019
Clerk's File #	OPR 2019-0048
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	INTEGRATED CAPITAL
Contact Name/Phone	KATHERINE 625-6338
Contact E-Mail	KEMILLER@SPOKANECITY.ORG
Agenda Item Type	Contract Item
Agenda Item Name	4250 - MASTER AGREEMENT WITH SPOKANE TRANSIT AUTHORITY (STA)

Agenda Wording

Spokane Transit Authority Infrastructure Improvements Master Design and Construction Agreement

Summary (Background)

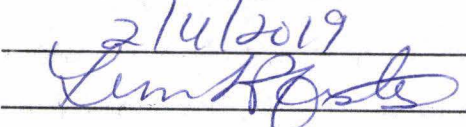
The City and STA have identified Cooperative Projects in locations throughout the City to support public transportation. This agreement establishes the process for implementing the projects. An initial list of potential Cooperative Projects is attached. Where the Parties, a Project Order may be issued retroactively to provide for reimbursement for the cost of a project that provides a benefit to the Funding Party. Additional projects may be agreed to pursuant to a written Project Order.

<u>Fiscal Impact</u>	Grant related? YES	<u>Budget Account</u>
	Public Works? YES	

Revenue	\$ 5,000,000.00	# VARIOUS
Select	\$	#
Select	\$	#
Select	\$	#

<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	MILLER, KATHERINE E	<u>Study Session</u>	
<u>Division Director</u>	SIMMONS, SCOTT M.	<u>Other</u>	1/28/19 PIES
<u>Finance</u>	ORLOB, KIMBERLY	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	kemiller@spokanecity.org	
<u>For the Mayor</u>	ORMSBY, MICHAEL	eraea@spokanecity.org	
<u>Additional Approvals</u>		icmaccounting@spokanecity.org	
<u>Purchasing</u>		mdoval@spokanecity.org	
<u>GRANTS &</u>	STOPHER, SALLY	tax&licenses@spokanecity.org	
		dwells@spokanetransit.com	

APPROVED BY
SPOKANE CITY COUNCIL:

2/4/2019

CITY CLERK

Briefing Paper

Public Infrastructure, Environment and Sustainability

Division & Department:	Public Works and Utilities; Integrated Capital Management
Subject:	Master Agreement with STA
Date:	January 28, 2019
Author (email & phone):	Katherine Miller, kemiller@spokanecity.org 625-6338
City Council Sponsor:	Councilmember Kinnear
Executive Sponsor:	Scott Simmons
Committee(s) Impacted:	PIES
Strategic Initiative:	Some Strategic Projects are involved, i.e. Sprague Phase 2
Deadline:	

Background/History:

The City and STA have identified Cooperative Projects in locations throughout the City to support or improve public transportation services. This master agreement establishes the process and procedures for implementing Cooperative Projects. An initial list of potential Cooperative Projects, including a summary description of each project, is attached and each Cooperative Project shall be implemented upon the execution of a Project Order. Where the Parties deem appropriate and mutually agree, a Project Order may be issued retroactively to provide for reimbursement to a Managing Party for the cost of a project that provides a benefit to the Funding Party. Additional Cooperative Projects may be agreed to pursuant to a written Project Order executed by each of the Parties.

The Project Order shall include the identification of the Managing and Funding Parties, a detailed Scope of Work, the Transit Improvements to be constructed, a schedule for completion and each Party's financial obligations for the Cooperative Project. The terms of this Master Agreement shall be incorporated in each Project Order and any reference herein to "this Agreement" shall include any Project Order.

The master agreement establishes a maximum amount of Five Million dollars that the total project orders shall not exceed.

Executive Summary:

- *The City and STA have identified Cooperative Projects throughout the City to support or improve public transit services.*
- *This master agreement establishes an initial list of projects, that once the master agreement is in place, the individual projects will be formally agreed to through individual project orders.*
- *Each project order will establish the financial responsibilities for each agency, identify a detailed scope of work and detail the schedule for delivery the project by the identified agency.*
- *This master agreement has a maximum amount of Five Million dollars that STA will make available to pay for transit related costs identified in the project orders.*
- *Project orders can be issued retroactively to reimburse the City for costs that benefitted transit during recent City projects such as Sprague Phase 1 and North Monroe.*
- *This master agreement will also be the mechanism for both agencies to efficiently determine the most effective way to construct improvements for the Central City Line during City run projects that overlap the CCL route and are planned to be constructed prior to STA's completion of the CCL which is currently planned for 2021.*

Budget Impact:

Approved in current year budget? ☐ Yes ☒ No
Annual/Reoccurring expenditure? ☐ Yes ☒ No
Specify funding source: reimbursement by STA for work they request

Operations Impact:

Consistent with current operations? ☒ Yes ☐ No

Requires change in current operations? ☒ Yes ☐ No

Specify operations change: A Project Order will be created for any requested work to be performed