

**CONTRACT AGREEMENT
FOR
GRAYS HARBOR TRANSPORTATION PLANNING ASSISTANCE**

THIS AGREEMENT dated for reference purposes July 1, 2021, is entered into by and between the Cowlitz-Wahkiakum Council of Governments, a municipal corporation (hereinafter referred to as the “CWCOG”), and Grays Harbor Council of Governments (hereinafter referred to as the “Agency”), collectively the “Parties” and individually the “Party.”

RECITALS

WHEREAS, the CWCOG, being organized under RCW 36.64.080 to serve general and special purpose governments within the Cowlitz and Wahkiakum Counties, was subsequently designated under Title 23, Section 134 and Title 49, Section 1607 to be the Metropolitan Planning Organization (MPO) for the Urbanized Area of the Cities of Longview, Kelso, and Rainier, Oregon; and

WHEREAS, pursuant to RCW 47.80.020, the geographical contiguous Counties of Cowlitz, Grays Harbor, Lewis, Pacific, and Wahkiakum Counties did form the Southwest Washington Regional Transportation Planning Organization (SWRTPO) through an Interlocal Agreement amended June 2021; and

WHEREAS, the Interlocal Agreement designates the CWCOG as the lead planning agency of the RTPO responsible for the coordination and development of the five-county area Washington State Department of Transportation (WSDOT) required transportation plans; and

WHEREAS, the WSDOT annual appropriation for the SWRTPO is allotted to the CWCOG, and in turn, the CWCOG does choose to contract with the Agency to conduct work in Grays Harbor County for the purposes of such plan development as set forth by this agreement; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

- 1.1 The Agency agrees to perform and complete the work as described in Exhibit A – Scope of Work (hereinafter referred to as “Work”), attached hereto and by this reference made a part of this Agreement.
- 1.2 The Agency agrees to comply with all Federal, State of Washington, and local laws and ordinances applicable to the Work to be performed under this Agreement including but not limited to those laws specific to the State and Federal dollars funding this Agreement through WSDOT’s GCB 3503 shown as Exhibit C attached hereto and by this reference made a part of this Agreement.
- 1.3 The Agency agrees to recognize and adhere to all terms and conditions of the SWRTPO Interlocal Agreement except as modified by the Agreement, and comply with the administration and directives of its governing board in setting regional priorities and project(s) direction.
- 1.4 The CWCOG agrees to reimburse the Agency for the Work as provided in Section 4 of this Agreement and as defined in Exhibit B – Compensation Rate, attached hereto and by this reference made a part of this Agreement.

2. CWCOG & AGENCY RESPONSIBILITIES

2.1 CWCOG RESPONSIBILITIES

- 2.1.1 The CWCOG shall coordinate the SWRTPO and those projects identified in the Unified Planning Work Program (UPWP) for this fiscal period.

2.1.2 The CWCOG will be responsible for administering all federal, state, and local funds allocated to the SWRTPO.

2.2 AGENCY RESPONSIBILITIES

2.2.1 The Agency shall confer and coordinate with the CWCOG on a regular basis.

2.2.2 The Agency shall prepare and submit to the CWCOG in writing detailed monthly progress reports throughout the course of the work program's fiscal year in accordance with the reporting requirements of WSDOT's GCB 3503.

2.2.3 The Agency shall prepare and submit to the CWCOG an annual progress report in a format determined by the CWCOG at the end of the grant period at noted in Exhibit A - Scope of Work, Section 4 – Anticipated Deliverables.

2.2.5 Within COVID-19 safety guidelines deemed applicable at the time for such an activity, the Agency will host a quarterly meeting of the RTPO. Arrangements for such a meeting shall include but not be limited to a sufficient sized meeting room for attendees, refreshments appropriate for the time of day of the meeting, technology that will support in-person and on-line attendance, and any other necessary elements in support of the meeting. Any incurred and reasonable costs related to the meeting are not considered part of this contract. However, the Agency may seek reimbursement from the CWCOG by submitting a separate and appropriately documented invoice above and beyond the total compensation of this Agreement.

3. CWCOG & AGENCY RELATIONSHIP

3.1 The Agency agrees to perform the services hereunder solely as an Independent Contractor. The Parties to this Agreement recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties. The Agency is not authorized to enter into or commit the CWCOG to any agreements, and the Agency shall not represent itself as the agent or legal representative of the CWCOG.

3.2 The Agency shall not be entitled to participate in any of the CWCOG's benefits, including without limitation, any health or retirement plans. The Agency shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Agreement.

3.3 The CWCOG shall not be liable for taxes, Worker's Compensation, unemployment insurance, employers' liability, employers' FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the Agency or any other person consulted or employed by the Agency in performing services under this Agreement. All such costs shall be the Agency's responsibility.

4. PAYMENT

4.1 The CWCOG, in consideration of the faithful performance of the services to be provided by the Agency as described in Exhibit A – Scope of Work, agrees to reimburse the Agency for actual direct and related indirect costs of the Work to a maximum, not-to-exceed amount of Seventy Thousand Dollars (\$70,000.00) limited to Thirty-five Thousand Dollars (\$35,000.00) per twelve (12) month period as established in this Agreement.

4.2 The compensation rate for services to be provided by the Agency is marked Exhibit B – Compensation Rates, and is attached hereto and by this reference made a part of this Agreement.

4.3 Upon request of the Agency and upon the Agency's submission to the CWCOG of invoices and supporting materials as deemed appropriate by the CWCOG, payment shall be made by the CWCOG to the Agency for expenses reasonably and necessarily incurred in performing the

Work. The Agency shall request reimbursement from the CWCOG not more than one time per calendar month.

- 4.4 The Agency's request for reimbursement to the CWCOG shall detail the Work accomplished during the current billing period, as well as a summary of the total costs billed to date. The invoice shall summarize all of the Agency's time and expenses.
- 4.5 To ensure payment, the Agency shall email invoices and supporting materials to the appropriate contact and in Section 7 of this Agreement.
- 4.6 If, at the sole discretion of the CWCOG, appropriate invoice and approved supporting materials are received from the Agency by the 5th of the month, the CWCOG shall make payment in full to the Agency on the last working Friday of the month. If the CWCOG determines that an appropriate invoice and supporting materials have not been delivered, the CWCOG shall notify the Agency in writing within ten (10) days of the date of receipt of the invoice and supporting material that such is insufficient. The Agency shall thereafter re-submit an appropriate invoice and supporting material as directed by the CWCOG. This may result in a delay of payment.
- 4.7 If there is a change in Scope of Work to be performed by the Agency that results in an increase in costs in excess of the maximum amount allowed under Section 4.1 herein, the Parties shall enter into an amendment to this Agreement to document the change in scope and to increase the maximum amount reimbursable under this Agreement.
- 4.8 The Agency agrees to submit a final invoice to the CWCOG by July 6, 2022. At the time of final billing, all necessary adjustments will be made and reflected in the final payment. In the event that such final review or audit reveals overpayment to the Agency or under billings to the CWCOG, the Agency agrees to refund any overpayment made to the Agency within thirty (30) calendar days after receipt of notification from the CWCOG and the CWCOG agrees to reimburse the under billed amount to the Agency after the CWCOG's receipt of an invoice with appropriate documentation, provided the funding source as addressed in Exhibit A – Scope of Work, is still available.

5. AMENDMENT

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and understandings, agreements, representations not contained in this Agreement shall not be binding on either Party. Either Party may request changes to the provisions of this Agreement. Such changes that are mutually agreed upon shall be incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

6. TERM / TERMINATION

- 6.1 The term of this Agreement shall begin July 1, 2021, and terminate June 30, 2023, or earlier if agreed to in writing by the Parties, except as set forth below in this section. The term of this Agreement may be modified and continued by amendment for work beyond this date at the discretion of the Parties.
- 6.2 Either Party may terminate this Agreement at any time in the event the other Party fails to perform a material obligation of this Agreement or fails to perform any of the requirements of this Agreement, including, but not limited to, if either Party fails to make reasonable progress on the Work or other violation of this Agreement that endangers substantial performance of the Work. The Parties shall serve written notice of a Party's intent to terminate this Agreement setting forth in detail the reasons for such termination. The Party receiving such notice of intent to terminate shall be given the opportunity to remedy the default within fifteen (15) calendar

days of receipt of such notice. If the default is not cured within the designated time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.

6.3 Either Party may terminate this Agreement for convenience and without cause upon thirty (30) days written notice to the other Party. The CWCOG shall pay in full for all services provided up to the date of termination of this Agreement.

7. PARTY CONTACTS

All contact between the Parties, including, but not limited to, the Agreement administration, will be between the representatives of each Party or their designee as follows:

CWCOG	AGENCY
William A. (Bill) Fashing, Executive Director Email: bfashing@cwco.org Financial/Contract Amendments Designee: Anisa Kisamore, CAO Email: akisamore@cwco.org Planning/Scope of Work Designee: Robert Stevens Email: rstevens@cwco.org	Vicki Cummings, Executive Director Email: vcummings@ghcog.org Electronic Invoice Designee: Zana Dennis, Office/Grant Coordinator/Plnr I Email: zdennis@ghcog.org
Cowlitz-Wahkiakum Council of Govts Administration Annex / 207 4 th Avenue N Kelso, WA 98626	Grays Harbor Council of Governments 115 S Wooding St Aberdeen, WA 98520
Telephone: (360) 577-3041	Telephone: (360) 537-4386

8. NOTIFICATION

Any notice required pursuant to this Agreement shall be in writing and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the individual(s) identified in Section 7 herein unless otherwise indicated in writing by the Parties to the Agreement.

9. CONFIDENTIALITY

9.1 In connection with the performance of services hereunder, the Agency may be exposed to confidential and proprietary information of the CWCOG, whether or not so identified. All such confidential and proprietary information shall be used only for the purpose of the services provided hereunder. The Agency shall limit disclosure of confidential and proprietary information within its own agency to its directors, officers, partners, members, and/or employees having a need to know and shall not disclose said information to any third party (whether an individual, corporation, or other entity) without the prior written consent of the CWCOG.

In that the Agency is a public entity and as such is subject to any and all public disclosure laws, in the case of a public disclosure request the Consultant shall inform the CWCOG in writing of the request and what information is being requested, and shall not be held to the stipulations of this section.

- 9.2 This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon the Agency any rights, license or authority in or to the information exchanged by the Parties, except the limited right to use confidential and proprietary information of the CWCOG for services provided hereunder. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Agreement.
- 9.3 The Agency shall not, without the prior written consent of the CWCOG, use the CWCOG's name in any advertising or promotional literature, or publish any articles relating to the CWCOG, this Agreement, or the services provided hereunder, and shall not otherwise refer to the retention of the Agency to render services hereunder.

10. INDEMNIFICATION

- 10.1 Each Party to this Agreement shall protect, defend, indemnify, and hold harmless the other Party, its officers, employees, and agents, while acting within the scope of their employment as such, from any and all costs (including reasonable attorneys' fees and costs), claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions with respect to the provisions of this Agreement. No party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligent acts or omission. Each Party waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other Party and its agencies, officials, agents or employees.
- 10.2 The indemnification obligation described in this section shall survive the termination of this Agreement.

11. DISPUTES

The designated representatives herein under Section 7 of this Agreement shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Parties shall agree upon a third-party to provide non-binding mediation of the issue prior to institution of litigation. Each Party shall bear its own costs and one-half of the cost of the third-party mediator.

12. VENUE

This Agreement shall be deemed to be made in the County of Cowlitz, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the superior court situated in the County of Cowlitz, State of Washington.

13. ATTORNEY FEES & COSTS

In the event a suit, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, and shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

14. SEVERABILITY

If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder shall not be affected.

15. ASSIGNMENT

Neither this Agreement nor any interest therein may be assigned by either Party without first obtaining the written consent of the other Party.

16. NONDISCRIMINATION

No person shall, on the grounds of race, creed, color, national origin, sex, sexual orientation or handicapped condition, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under activities performed pursuant to this Agreement.

17. RECORD RETENTION & AUDIT

During the progress of the Work and for a period of not less than six (6) years from the date of final payment to the Agency, the records and accounts pertaining to the services under this Agreement and accounting thereof shall be kept available for inspection and audit by the Parties, City, County, State and/or Federal Government, and copies of all records, accounts, documents, or other data pertaining to this Agreement will be furnished upon request. The Parties shall have full access to and right to examine and copy said records during normal business hours and as often as it deems necessary. The Parties agree that the services performed herein are subject to audit by either or both Parties.

18. COPYRIGHTS

Copyright of all material created by the Agency and paid for with funds as a part of this Agreement shall be deemed the property of the CWCOG authored by the Agency. Either Party may use the material and permit others to use such for any purpose consistent with the Party's respective mission. This material includes, but is not limited to, documents, reports, books, videos, pamphlets, sound reproductions, photographs, studies, surveys, tapes, and training material. Materials used to perform the services and create the deliverables of this Agreement that are not created for or paid for through this Agreement shall be owned by such party as determined by law. The legal owner thereof hereby grants a perpetual, unrestricted, royalty free, non-exclusive license to the other party to use and to permit others to use for any purpose consistent with the respective mission of said material.

19. AUTHORIZED SIGNATURES

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

20. COUNTERPARTS

This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts shall constitute one agreement.

IN WITNESS HEREOF, the Parties have subscribed their names hereto effective as of the year and date first written above.

**COWLITZ-WAHKIAKUM
COUNCIL OF GOVERNMENTS**

By: William A. Fashing
Its: Executive Director

Date: _____

ATTEST

By: Anisa Kisamore
Its: Chief Administrative Officer

Date: _____

**GRAYS HARBOR
COUNCIL OF GOVERNMENTS**

By: Vicki Cummings
Its: Executive Director

Date: _____

ATTEST

By: Zana Dennis
Its: Office/Grant Coordinator, Planner I

Date: _____

APPROVED AS TO FORM

By: _____
Its: Agency Attorney

Date: _____

**SCOPE OF WORK
FOR
GRAYS HARBOR TRANSPORTATION PLANNING ASSISTANCE**

This Scope of Work described herein sets forth the transportation planning tasks to be performed in Grays Harbor County by the Agency for the fulfillment of responsibilities by the SWRTPO for the fiscal biennium/program period July 1, 2021 to June 30, 2023. Work that is inherently assigned to Agency is not eligible for funding under this agreement unless noted specifically under the following Scope of Work activities.

WORK TASKS

1. Transportation Program Administration

Program administration is a core function of the responsibilities of the SWRTPO. Its purpose is to provide the administrative support required to manage and coordinate the overall transportation planning program which includes state and federal planning requirements.

1.1 Program Management and Support

Management of the overall SWRTO program and delivery of the program within Grays Harbor County.

Provide monthly activity reports on the UPWP related activities conducted by the agency.

Participate in regularly scheduled coordination calls with CWCOG's transportation staff, and SWRTPO Board meetings.

1.2 Coordination and Consultation with Regional, Statewide, Federal and Tribal Partners

Participate in statewide and regional transportation planning coordination efforts between CWCOG, cities, counties, state, and federal agencies.

Attend transportation related meetings, public hearings and local council meetings within Grays Harbor County as necessary.

Provide support as needed or requested.

Assist as appropriate in tribal planning activities, seek participation and input from tribes in special planning projects, work with tribal partners on projects and studies as requested, assist with rural and special needs transportation efforts for elders and youth, attend tribal transportation meetings, share grant opportunities, learn about individual tribal planning and transportation processes, and seek feedback on how we can better serve our tribal transportation partners.

1.3 UPWP Annual Performance & Expenditure Report

In coordination with CWCOG staff, prepare and submit the Agency's work tasks for inclusion in the 2023 and 2024 UPWP.

Prepare and submit the Agency's accomplishments towards its yearly UPWP work tasks for inclusion in the CWCOG's Annual Performance and Expenditure Report.

2. Multi-Modal Transportation Planning

Multi-Modal Transportation Planning is a required element of the federal and state transportation planning efforts. Through a continuous, cooperative, and comprehensive planning process this element addresses federal, state, and regional priorities and outlines tasks to develop multi-modal transportation, long-range strategies for the region. This element is key in that through its development and subsequent outcomes it addresses all six of the state's transportation planning priorities: economic vitality, preservation, safety, mobility, environment and stewardship.

2.1 Coordination of Planning Activities

Facilitate and support the SWRTPO tasks in coordination with policy boards and Grays Harbor Technical Advisory Committee (TAC).

Assist in coordination of active transportation, public transportation, freight, aviation, port, and roadway stakeholders.

Assist CWCOG staff in participating in WSDOT statewide planning activities, as appropriate, including but not limited to MAP-21/FAST Act Performance Measure Target Setting, Transportation Systems Management and Operations Program Plan, Multimodal Investment Strategy, Highway System Plan, and Active Transportation Plan, Part 2.

Work closely with the CWCOG staff to provide the Agency's information required for inclusion and timely delivery of all required WSDOT planning and reporting requirements.

Coordinate and contribute as needed or requested by the CWCOG to support the development of the RTP and Coordinated Public Transit/Human Services Transportation Plan (HSTP).

2.2 Planning Consultation, Services, & Technical Support

Act as regional lead in Grays Harbor County when participating in local, regional, and state planning efforts.

In coordination with CWCOG and WSDOT, help coordinate state and local projects when identified.

Research grant opportunities and support CWCOG staff in the timely application of identified funding opportunities.

Provide staff assistance to rural cities and town in grant research and application process.

2.3 Review of Comprehensive Plans & Countywide Planning Policies

Ensure that transportation facilities and services of statewide significance are included in member jurisdictions and regional transportation plans as applicable.

Assist in reviews of Grays Harbor County jurisdictions' draft comprehensive plan transportation elements to ensure local plans are consistent with the RTP. The Agency is responsible for early engagement in each comprehensive plan update or review in the county in coordination with the CWCOG staff.

2.4 Public & Stakeholder Participation, Outreach, & Education

Assist CWCOG in attending community and public meetings/events to make community connections and explain SWRTPO transportation program activities.

Track and document public comment in local transportation efforts.

Perform public and stakeholder outreach and education activities relating to Title VI in Grays Harbor County.

Work with local jurisdictions to ensure regional consistency in fulfillment of SWRTPO goals and policies.

2.5 Transportation Plans

Regional Transportation Plan (RTP): Support CWCOG staff in the development and fulfillment of the RTP by working with local jurisdictions to review existing plans and policies, compiling information as needed including Grays Harbor County elements (including cities and towns) as directed by CWCOG staff.

Coordinated Human Services Transportation Plan (CHSTP): Coordinate with and provide support to CWCOG staff in the formation and implementation of the plan.

Rural Intelligent Transportation System (ITS) Architecture Best Practices Report: Lend assistance to CWCOG staff in engaging and educating local agencies in the purpose and development of the ITS report.

Rural Safety Guide: Provide feedback from TAC in development of the Guide.

3. **Data Collection, Analysis, & Forecasting**

Data collection, analysis, and forecasting includes the development and maintenance of a transportation database to support program planning. The database is used to assess transportation system performance and evaluate level of service standards.

3.1 Data Collection & Analysis

Perform data collection and analysis, regional management, and technical support for the coordination and collaboration of planning partners and member jurisdictions.

As appropriate use geographical information systems (GIS) to track changes and trends within Grays Harbor County by working to expand and refine GIS capabilities and visualization and related analysis tools used to track changes and trends in population, employment, land use, and other transportation related indicators.

Develop, maintain, and share the GIS data, feature layers, and analysis results with CWCOG staff to be included in data support of performance measures, analysis, and other required transportation reporting.

Maintain data, GIS maps and feature layers that support Grays Harbor County transportation infrastructure and needs, and share that data with the CWCOG as requested.

4. Anticipated Deliverables & Deadlines

The following deliverables will be submitted to CWCOG staff on or before the identified deadline.

Activity	Deadlines	
	Fiscal Period 2021-2022	Fiscal Period 2022-2023
Monthly activity report & invoice	5 th of each month	5 th of each month
Annual progress report	Jun 30, 2022	Jun 30, 2023
List of regionally significant, secured, federally funded projects within the boundaries of Grays Harbor County for inclusion in the Regional Transportation Improvement Program (RTIP)	County – Jan 20, 2022 Cities – Jul 20, 2021	County – Jan 20, 2023 Cities – Jul 20, 2022
List of tasks and activities performed by the Agency for inclusion in the UPWP Annual Report	Jul 15, 2021	Jul 15, 2022
Coordinate with the CWCOG to develop and complete tasks related to the RTP implementation	Jun 30, 2022	Jun 30, 2023
Assist the CWCOG in the development of the UPWP	Mar 01, 2022	Mar 01, 2023
Provide CWCOG updates on any Federal designation changes that may be approved within the county	On-going	On-going

**COMPENSATION RATES
FOR
GRAYS HARBOR COUNTY TRANSPORTATION PLANNING ASSISTANCE**

The following rates are applicable to the July 1, 2021 to June 30, 2023 grant periods.

<i>Rate</i>
<p>For the purpose of this agreement, all allowable costs associated with the work program tasks as prescribed in Exhibit A may be submitted for reimbursement up to but not to exceed \$35,000 per 12-month period unless otherwise mutually agreed to and amended to this contract as prescribed in Section 5 of this Agreement.</p> <p>Invoices will show accurate accounting of time spent on SWRTPO activities. Even monthly billing of the contract amount is not acceptable. Activities required of the Agency under its general duties are not acceptable SWRTPO expenses.</p>

[Left blank for the inclusion of WSDOT GCB 3503.]



2021-391 WSDOT
GCB 3503 MPO-RTPC