

**CONTRACT AGREEMENT  
FOR  
LEWIS COUNTY TRANSPORTATION PLANNING ASSISTANCE**

**THIS AGREEMENT** dated for reference purposes July 1, 2020 is entered into by and between the Cowlitz-Wahkiakum Council of Governments, a municipal corporation {hereinafter referred to as "CWCOG"}, and **LEWIS COUNTY**, a municipal corporation of Washington State (hereinafter "Agency"), collectively the "Parties" and individually the "Party."

**RECITALS**

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

**WHEREAS**, pursuant to RCW 47.80.020 the geographical contiguous Counties of Cowlitz, Grays Harbor, Pacific, and Wahkiakum Counties together with the CWCOG did form the Southwest Washington Regional Transportation Planning Organization (SWRTPO) through an Interlocal Agreement (December 1990) amending it to include Lewis County (March 1992); and

**WHEREAS**, the Interlocal Agreement designates the CWCOG, then known as the Cowlitz-Wahkiakum Governmental Conference, as the lead planning agency of the RTPO responsible for the coordination and development of the regional transportation plan; and

**WHEREAS**, the Washington State Department of Transportation's (WSDOT) annual appropriation for the SWRTPO is allotted to the CWCOG and in turn the CWCOG is choosing to contract with the Agency to conduct work in Lewis County for the purposes set forth by this agreement;

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. **PURPOSE**
- 1.1 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 Federal dollars funding this Agreement through Washington State Department of Transportation's GCB 2552 and its amendment shown as Exhibit C and attached hereto and by this reference made a part of this Agreement.
- 1.3 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. This contract incorporates in its entirety Agreement No. GCB 2552, between the Washington State Department of Transportation and the Cowlitz-Wahkiakum Council of Governments which is attached hereto as Exhibit C and made a part of this agreement. This agreement recognizes the SWRTPO and how it is to be administered. The Agency agrees to adhere to all terms and conditions of the above-referenced agreement, except as modified by this contract.

## 2. **CWCOG and AGENCY RESPONSIBILITIES**

### 2.1 **CWCOG RESPONSIBILITIES**

- 2.1.1 The CWCOG shall coordinate the five (5) county Regional Transportation Planning Organization (RTPO) 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 five (5) county RTPO from the State of Washington.

### 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 present detailed written monthly progress reports throughout the course of the work program's fiscal year in accordance with the WSDOT reporting requirements. A detailed report shall accompany each reimbursement request and reflect work accomplished within the same time period as the request.
- 2.2.3 At the conclusion of the fiscal year 2021, the Agency shall prepare and submit to the CWCOG a final progress report in a format determined by the CWCOG as prescribed in Exhibit A - Scope of Work.
- 2.2.4 As part of the annual Scope of Work for the region, the five (5) Counties in turn host a quarterly meeting of the Southwest Washington RTPO. In the quarter that the Agency is assigned to host, it is responsible to provide arrangements for the meeting room, refreshments, and other necessary elements in support of the meeting; however, any reasonable costs related to the meeting are not considered part of this contract and may be submitted to the CWCOG for reimbursement in full above and beyond the total amount of this agreement.

## 3. **PAYMENT**

- 3.1 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 CWCOG to any agreements, and the Agency shall not represent itself as the agent or legal representative of CWCOG.
- 3.2 Agency shall not be entitled to participate in any of CWCOG's benefits, including without limitation, any health or retirement plans. Agency shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Agreement.
- 3.3 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 Agency's responsibility.

## 4. **PAYMENT**

- 4.1 CWCOG, in consideration of the faithful performance of the services to be provided by Agency as described in Exhibit A - Scope of Work, agrees to reimburse Agency for actual direct and related indirect costs of the work to a not-to-exceed maximum amount of \$25,000.00, as established in this Agreement.
- 4.2 The compensation rate for services to be provided by 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 Agency and upon the Agency's submission to CWCOG of invoices and supporting

materials as deemed appropriate by CWCOG, payment shall be made by CWCOG to the Agency for expenses reasonably and necessarily incurred in performing the work. Agency shall request reimbursement from CWCOG not more than one time per calendar month.

4.4 Agency's request for reimbursement to 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 Agency's time and expenses.

4.5 To ensure payment, the Agency shall either email or mail via United States Postal Service invoices and appropriate supporting materials to:

CWCOG / Administration Annex  
207 4th Avenue North  
Kelso, WA 98626

OR email same to appropriate contact in Section 7 of this Agreement.

4.6 If, at the sole discretion of CWCOG, appropriate invoice and supporting material are received from the Agency by the 5th of the month, CWCOG shall make payment in full to the Agency on the last working day of the month. If CWCOG determines that an appropriate invoice and supporting material have not been delivered, 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 CWCOG. This may result in a delay of payment.

4.7 If there is a change in scope of work to be performed by Agency that results in an increase in costs in excess of the maximum amount allowed under section 3.1 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 Agency agrees to submit a final invoice to CWCOG by July 5, 2021. 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 Agency or under billings to CWCOG, Agency agrees to refund any overpayment made to the Agency within thirty (30) calendar days after receipt of notification from CWCOG and CWCOG agrees to reimburse the under billing amount to Agency after CWCOG's receipt of an invoice with appropriate documentation, provided the funding source as addressed in Scope of Work, Exhibit A, 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 AND TERMINATION**

6.1 The term of this Agreement shall begin July 1, 2020 and terminate June 30, 2021, 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, Agreement administration, will be between the representatives of each Party or their designee as follows:

CWCOG	AGENCY
William A. Fashing, Executive Director bfashing@cwco.org  Financial/Contract Amendments Designee Anisa Kisamore, Business Administrator akisamore@cwco.org	Michael Kroll, Transportation Planner michael.kroll@lewiscountwa.gov
Cowlitz-Wahkiakum Council of Governments 207 4 <sup>th</sup> Avenue North/Admin Annex Kelso, WA 98626	Lewis County Public Works 2025 NE Kresky Avenue Chehalis, WA 98532
Telephone: (360) 577-3041 Facsimile: (360)214-3245	Telephone: (360)740-2665 Facsimile: (360) 740-1475

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 6 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 CWCOG, whether or not so identified. All such confidential and proprietary information shall be used only for the purpose of the services provided hereunder. 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 CWCOG.

- 9.2 This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon 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 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 Agency shall not, without the prior written consent of CWCOG, use CWCOG's name in any advertising or promotional literature, or publish any articles relating to CWCOG, this Agreement, or the services provided hereunder, and shall not otherwise refer to the retention of 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 6 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 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 Agency and paid for with funds as a part of this Agreement shall be deemed the property of the CWCOG authored by 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**

**LEWIS COUNTY  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
William A. Fashing, Executive Director

By: \_\_\_\_\_  
Gary Stamper, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST**

**ATTEST**

By: \_\_\_\_\_  
Anisa Kisamore, Business Administrator

By: \_\_\_\_\_  
Rieva Lester, Clerk of the Board of  
County Commissioners

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Agency Attorney

Date: \_\_\_\_\_

**SCOPE OF WORK  
FOR  
LEWIS COUNTY TRANSPORTATION PLANNING ASSISTANCE**

This Scope of Work described herein are the transportation planning tasks to be performed in Lewis County by the Agency for the Southwest Washington Regional Transportation Planning Organization (SWRTPO), Fiscal Year 2020 (July 1, 2020 -June 30, 2021 program year).

**WORK TASKS**

**1. Transportation Program Administration**

Program administration is a core function with the purpose of providing 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 - Facilitate and support the SWRTPO tasks in coordination with Lewis County Transportation Strategy Council and Technical Advisory Committee; provide monthly activity report; participate in regularly scheduled coordination calls with CWCOG's transportation staff; participate in SWRTPO meetings.
- 1.2 Title VI Compliance - A"1 the Agency is a sub-recipient of a federally funded contract and as is required of the CWCOG for sub-recipient monitoring, the Agency will provide evidence of compliance with regulations relative to nondiscrimination whether by policy or assurances.
- 1.3 Coordination and consultation with Regional, Statewide, Federal and Indian Nation Partners - Participate in statewide and regional transportation planning coordination efforts, between CWCOG, cities and counties, and state and federal agencies. Attend public hearings and local council meetings; provide support as needed/requested. Reach out and engage with tribal partners in MPO and RTPO planning tasks. Assist as appropriate in tribal planning and implementation processes.
- 1.4 Unified Planning Work Program and Annual Performance and Expenditure Report - Prepare Agency's UPWP work tasks in conjunction with CWCOG staff; prepare Agency's accomplishments for inclusion in CWCOG's UPWP Annual Report.

**2. Multi-Modal Transportation Planning**

The purpose of the tasks within this element is to meet state and federal transportation planning requirements through a continuous, cooperative, and comprehensive planning process. This element also addresses federal, state, and regional priorities, and outlines tasks to develop multi-modal transportation long-range strategies for the region. All six of the state's transportation planning priorities of economic vitality, preservation, safety, mobility, environment, and stewardship are included throughout the development of this element and through outcomes associated with this activity.

- 2.1 Coordination of Planning Activities - Work closely with CWCOG staff to provide information required for timely delivery of all planning and reporting deliverables for the Agency; support SWRTPO in the development of the Regional Transportation Plan.
- 2.2 Planning Consultation, Services, and Technical Support - Continue to research grant funding

opportunities and provide staff support in the timely application for all applicable transportation funding opportunities; grant research and grant application assistance to rural cities and towns; continue to work on at-grade railroad crossing planning requirements, and position Washington, the region, and county for potential federal funding and enhanced state freight funding.

- 2.3 Review of Comprehensive Plans and Countywide Planning Policies (RCW 365.196.305) - Ensure that transportation facilities and services of statewide significance (RCW 47 .06.140) are included in member jurisdictions' GMA plans and the regional transportation plan, as applicable; perform consistency review of Lewis County jurisdictions' transportation elements of their GMA plans when such plans are due to be updated, including reviewing level of service (LOS) methodologies used by local jurisdictions.
- 2.4 Public and Stakeholder Participation, Outreach, and Education - Track and document public comment in local transportation efforts.
- 2.5 Perform public and stakeholder outreach and education activities relating to Title VI in Lewis County.
- 2.6 Regional Transportation Plan - Support CWCOG staff in the development and fulfillment of the RTP; work with local jurisdictions to review existing plans and policies, compile information as needed; provide Lewis County elements as directed; work with local agencies to ensure regional consistency in fulfillment of SWRTPO goals and policies.
- 2.7 Coordinated Public Transportation - Human Services Transportation Plan (HSTP) - Provide support to CWCOG in the implementation of the HSTP.

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

These tasks include the development and maintenance of a transportation database to support the transportation planning program. The database will be used to assess transportation system performance and evaluate level of service standards.

- 3.1 Data Collection, Analysis, and Reporting - Data collection, analysis and management, and technical support for coordination and collaboration with planning partners and member jurisdictions. As appropriate use GIS to track changes and trends within Lewis County
- 3.2 Develop and maintain, and share with CWCOG GIS data in support of performance measure reporting, analysis and other needs.
- 3.3 Work to expand and refine GIS capabilities, visualization, and related analysis tools. GIS will be used to track changes and trends in population, employment, land use, and other transportation related indicators and shared with CWCOG.

**ANTICIPATED DELIVERABLE(S)**

<b>Activity</b>	<b>Deadline</b>
Submit to CWCOG monthly invoice and activity reports:	Each month prior to the 5th
Submit to CWCOG Title VI policy or assurances and/or evidence of Title VI activities:	December 31, 2020
Create brochures, fact sheets, GIS maps and shapefiles, data related to transportation infrastructure and its needs in Lewis County:	Ongoing
Submit regionally significant and secured federally funded projects from Lewis County and municipalities within Lewis County to CWCOG for inclusion in the Regional Transportation Improvement Program (RTIP):	County - January 20, 2021 Cities July 20, 2020
Prepare Lewis County tasks and activities for inclusion in the FY 2020 UPWP Annual Report:	July 15, 2020
Coordinate with CWCOG staff to develop and complete tasks related to the Regional Transportation Plan implementation:	June 30, 2021
Assist in the development of the FY 2022 Unified Planning Work Program (UPWP):	March 1, 2021
Inform CWCOG of any Federal designation changes that may be approved within the county:	Ongoing

**Exhibit B**

**COMPENSATION RATES  
FOR  
LEWIS COUNTY TRANSPORTATION PLANNING ASSISTANCE**

The following rates are applicable to the 2020-2021 grant fiscal year.

<i>Rate</i>
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 \$25,000 unless otherwise mutually agreed to and amended to this contract as prescribed in section 5 of the contract.
Invoices will show accurate accounting of time spent on Regional Transportation Planning Organization Activities. Even monthly billing of the contract amount is not acceptable. Activities required of the agency under its general duties are not acceptable as RTPO expenses.

**Exhibit C**

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Contract Number: 2020-358

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