

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
BELLEVUE COLLEGE, KING COUNTY, AND THE CITY OF BELLEVUE,
WASHINGTON**

THIS MEMORANDUM OF AGREEMENT (the “MOA”) is made by and between Bellevue College, a community college and agency of the State of Washington established under chapter 28B.50 RCW; AND King County, a political subdivision of the State of Washington and a home rule charter county and legal successor in interest to the Metropolitan Municipality of Seattle, which provides a regional system of public transportation pursuant to Chapter 35.58 RCW, Chapter 36.56 RCW, and other authorities (the “County” or “Metro Transit”); AND the City of Bellevue, a Washington municipal corporation and code city with a council-manager form of government organized under Title 35A RCW (the “City”), all of which entities may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Bellevue College and its student population have invested in transportation management strategies that reduce visits of single-occupancy vehicles and increase transportation alternatives; and

WHEREAS, Bellevue College’s *Campus Master Plan* (February 2017) reflects the goal of creating a culture on campus based on environmental sustainability that supports pedestrian, bicycle, and transit mobility and the campus’ evolution, including planned student housing; and

WHEREAS, Strategy 3.1.1 in the Metro Transit *Strategic Plan for Public Transportation 2011-2021* directs Metro to work on developing investments and partnerships with regional organizations, local jurisdictions and the private sector, to provide alternatives to driving alone that connect people to job centers, educational institutions and other destinations essential to King County’s economic vitality; and

WHEREAS, Strategy 5.1.3 in the Metro Transit *Strategic Plan for Public Transportation 2011-2021* directs Metro to continue to improve transit speed and reliability; and

WHEREAS, the *Metro Connects Long-Range Plan* (adopted January 2017) proposes dedicating 45 percent of the capital budget for METRO CONNECTS to investments that improve transit speed and reliability; and

WHEREAS, the service network in the *Metro Connects Long-Range Plan* (adopted January 2017) includes a vision for Metro Transit to operate RapidRide 1027 (Totem Lake – Eastgate – Kirkland) and RapidRide 1030 (Overlake – Renton – Eastgate) along Snoqualmie River Road; and

WHEREAS, the City’s Comprehensive Plan identifies the Eastgate/I-90 area as one of the City’s five major employment centers; and

WHEREAS, the *Eastgate/I-90 Land Use and Transportation Project*, approved by the Bellevue City Council (April 2012), identifies Bellevue College as a major asset not only for the I-90 corridor but for the region as a whole and reflects the goal of facilitating the evolution of the area around the campus into a walkable, bikeable, transit-oriented, multiuse center where people work, live, shop, learn, and recreate; and

WHEREAS, the *Bellevue Transit Master Plan*, adopted by the Bellevue City Council (July 2014) offers transit capital investment recommendations that have the potential to enhance transit speed and reliability between the Eastgate Park-and-Ride and Bellevue College – each a major transit hub – and points beyond resulting in improved provision of cost-efficient and effective bus transit service and potential for increased ridership; and

WHEREAS, the *Capital Investment Program Plan 2019-2025*, approved by the Bellevue City Council (December 2018), sets aside \$400,000 in project PW-R-201 to partner with Metro Transit and Bellevue College to advance design and reconstruct the campus roadway to support frequent transit bus service, construct sidewalks and accessible bus stops and modify the 142nd Place SE/SE 32nd Street intersection; and

WHEREAS, Bellevue College, King County and the City of Bellevue desire to enter into this MOA, pursuant to the authority set forth in Chapter 39.34 RCW, to jointly fund a transit circulation study to achieve their respective goals and objectives through a coordinated effort,

NOW, THEREFORE, in consideration of the mutual promises and other undertakings by and between the Parties and set forth in this MOA, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Purpose

The purpose of this MOA is to define the roles, responsibilities, and obligations of all three Parties including joint funding the Phase One scope-of-work (hereinafter the “Work”) for the Bellevue College Multimodal Connection project.

The roadway design work is expected to be conducted in Two phases, however this MOA only governs the Phase One Pre-Design work.

Phase One “Work” is outlined in Exhibit A and is described below:

Phase One shall consist of an initial corridor circulation study to analyze alternative transit route improvements through Bellevue College campus along Snoqualmie River Road to accommodate Metro Bus and Rapid Ride service, pedestrian and bicycle access, transit stops, parking and freight access, and roadway circulation.

An outline of Phase One “Work” is provided in **Exhibit A** of this MOA. All three parties engaged in Phase One are committed to arriving at a Preferred Alignment that will be used in the Phase Two roadway design scope-of-work.

Phase Two scope-of -work will be finalized as part of a future agreement after a Preferred Alignment is agreed to by all three parties in writing.

2. **Term**

This MOA shall take effect once executed by all three Parties and shall remain in effect until the Work is complete and an agreement is in place for Phase Two work, or until December 31, 2024, whichever occurs first, unless terminated early or extended prior to expiration as described in Section 10.

3. **Responsibilities**

3.1. The City, Bellevue College and the County shall be responsible for the following:

3.1.1. Contract Administration and Invoicing. The Parties jointly agree on the initial Phase One “Work” and have agreed to share the costs equally among the Parties to complete the Phase One “Work” as defined in Exhibit A, which shall not exceed in the aggregate cost of \$300,000.

The City shall be responsible for executing and administering the agreement with a design consultant (the “Consultant”) to complete the Work. The City shall require that the selected engineering Consultant indemnify and hold harmless Bellevue College, the City and King County. The City shall require the Consultant to obtain and maintain insurance meeting, at a minimum, the requirements set forth in **Exhibit B** to this MOA. Bellevue College and the County shall be named as additional insureds by the Consultant and shall have the right to require insurance certificates and copies of policies upon written notice to the Consultant. The City will also instruct the Consultant that Bellevue College and King County shall have the opportunity to review and revise drafts of written products prior to finalization. The consultant agreement shall establish reasonable review schedules considering the relative importance and complexity of the documents that are being reviewed. The Parties shall use their best efforts to adhere to the agreed review schedule. Each Party shall notify the other at the earliest possible opportunity if it appears that a deviation from the agreed review schedule may be necessary.

3.1.2. Invoicing. The City shall be responsible for payment to the selected design consultant. All costs shall be shared equally between the Parties. The City shall invoice Bellevue College and King County quarterly for reimbursement of each Party’s proportional share of costs incurred for the Work. The invoice shall include the actual accounting of costs and supporting documentation and any other reasonable documentation requested by Bellevue College or King County to substantiate reimbursement for the work done to date. Bellevue College and King County shall

pay such invoices within sixty (60) calendars days from the date of invoice. Bellevue College and King County have the right to request backup documentation prior to payment of such invoices. The City shall use the funds it receives from Bellevue College and King County under this MOA solely for the purposes set forth in this MOA.

3.1.3. Amendments to Consultant Agreement: At its sole discretion, The City may amend the Consultant agreement without approval from the other Parties so long as any amendment does not significantly change the scope of the Work, does not result in less benefit to transit riders, is minor in nature and otherwise complies with the terms of this MOA.

3.2 Joint Project Management Team

3.2.1. Designated Representative. Each Party shall designate at least one representative to serve on a Joint Project Management Team to work directly with the Consultant, provide input into the process, and monitor the delivery of the transit circulation study referenced in this MOA. The Joint Project Management Team shall also set up a regular meeting schedule should regular meetings be necessary.

3.2.2. Final Report. Upon completion of the Work, the Joint Project Management Team shall meet to discuss the final report and determine if there is consensus on a Preferred Alignment. In the event the Joint Project Management Team cannot reach a consensus, the Parties will follow the procedures in Section 4 to resolve the issue(s). Nothing set forth in this MOA shall obligate the Parties to reach consensus, advance a route to the next phase of design, or enter into any subsequent actions or agreement.

3.3 Conveyance of Snoqualmie River Roadway

Prior to the start of Phase Two work Bellevue College shall arrange to have the State Board of Community and Technical Colleges (SBCTC), on the College's behalf, transfer title of the Snoqualmie River Roadway for the Bellevue College Multimodal Connection project along the Preferred Alignment to the City of Bellevue in a form acceptable to the City. The details of such conveyance shall be set forth in a future agreement and shall include a right of reversion to the SBCTC in the event the Bellevue College Multimodal Connection project is not constructed.

4. Dispute Resolution.

4.1 The Parties agree to negotiate in good faith to resolve any disputes arising under this MOA. The Parties shall designate representatives for purposes of managing this MOA and the dispute resolution process under this Section 4. The Parties' MOA administrators shall be the persons identified in Section 8 to receive notice for King County, Bellevue College, and the City, or such other persons as they may designate in writing from time to time. Except as

otherwise provided in this MOA, the Parties shall use the following dispute resolution process:

- Step One:** The Parties' MOA administrators shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either Party.
- Step Two:** If the MOA administrators are unable to resolve the dispute within ten (10) business days, any Party may refer the dispute to the City Transportation Department Assistant Director, the Bellevue College Vice President of Administrative Services and the King County Metro RapidRide Program Director. The City Transportation Department Assistant Director, the Bellevue College Vice President of Administrative Services and the King County Metro RapidRide Program Director shall confer and attempt to resolve the dispute within ten (10) business days of receiving the referral. The conference may be in person or by other means, such as telephone conference, videoconference, etc.
- 4.2 No Party may seek relief in a court of law until and unless the two-step process in Paragraph 4.1 is completed in good faith.
- 4.3 If the Parties cannot resolve the dispute utilizing the process in Section 4.1, the Parties may, by agreement, submit the matter to non-binding mediation. The Parties shall share equally in the cost of the mediation. If additional parties participate in the mediation then each participant shall pay a share of the cost of the mediation, such share to be calculated by dividing the total cost of the mediation by the number of parties participating. Mediation shall not be a prerequisite to litigation.
- 4.4 The Parties agree that during any conflict or dispute resolution process they shall continue to diligently perform their respective responsibilities under this MOA.

5. No Preclusion of Separate but Related Activities or Projects

Nothing in this MOA shall preclude any Party from choosing or agreeing to fund or implement any work activities or projects associated with any of the purposes hereunder by separate agreement or action, provided that any such decision or agreement shall not impose any funding, participation or other obligation of any kind on the other Parties under the terms of this MOA unless agreed to in writing by all Parties.

6. Permitting Authority

Nothing in this MOA modifies or alters the City's role as the jurisdiction with permitting and regulatory authority for any potential future projects contemplated under this MOA. Nothing in this MOA may be deemed an approval or guarantee regarding transit routes or consistency with City codes and regulations. Nothing in this MOA shall affect the police powers of the City or King County.

7. Hold Harmless and Indemnification

To the extent permitted by state law, and for the limited purposes set forth in this MOA, each Party shall protect, defend, hold harmless and indemnify the other Parties, their officers, elected officials, agents and employees, while acting within the scope of their duties as such, from and against any and all claims (including demands, suits, penalties liabilities, damages, costs, expenses, or losses of any kind or nature whatsoever) ("Damages") resulting from such Party's own negligent acts or omissions related to such Party's participation and obligations under this MOA. Each Party agrees that its obligations under this subsection extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the industrial insurance act provision of Title 51 RCW. The Parties acknowledge that this Section 7 was expressly negotiated and agreed to by them. The provisions of this Section 7 shall survive and continue to be applicable to any party exercising the right of termination pursuant to Section 11.

8. Notice; Designation of Agreement Administrators; Signature Authority

8.1 Any notice permitted or required to be given by any Party shall be given in writing and may be affected by: certified United States mail, with return receipt requested, properly addressed, postage prepaid; or by reputable overnight delivery service; or by personal service. Notice shall be deemed given two (2) business days after deposit in the U.S. mail as specified in the preceding sentence; or upon delivery (or refusal of delivery) by an overnight delivery service or by personal service.

8.2 All notices, including Dispute Resolution Notices, shall be given to the MOA administrators. A Party may change their MOA administrators by providing notice to the other Party. The initial MOA administrators are as follows:

Victor Stover, RapidRide Line Lead
King County Metro KSC-TR-0415
401 S Jackson Street
Seattle, WA 98104

William Tribble
Bellevue College, Administrative Services
Bellevue College

3000 Landerholm Circle SE
Bellevue, WA 98007

Paul Krawczyk, Project Manager
City of Bellevue, Transportation Department
450 110th Avenue NE
Bellevue, WA 98004

9. Records and Audit

- 9.1 For a period not less than six (6) years from the date of completion of the Work or for such retention period as may be required by law, whichever is longer, records and accounts pertaining to the Work of this MOA and accounting therefor shall be kept available for inspection and audit by representatives of the Parties. Copies of the records shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

10. Extension and Amendments.

- 10.1 The Parties may agree in writing to extend or renew the term of this MOA at any time prior to its expiration date as specified in Section 2. Such a change must be added as an amendment to the MOA at which time an extension or renewal of the MOA is enacted.
- 10.2 This MOA may only be amended or extended by the mutual written consent of all Parties.

11. Termination

- 11.1 Any Party may terminate this MOA for its convenience by giving written notice as required under Section 8. After notice of termination under this Section 11.1 has been given, the Parties will meet to determine the disposition of any outstanding Work. The Parties can either negotiate a close out to all outstanding Work or the Parties can negotiate to complete all outstanding Work. In any case the MOA will terminate at the latest completion date agreed upon for all outstanding approved Work in place at the time the termination notice is deemed given under Section 8.1.
- 11.2 Subject to and after exhausting the dispute resolution process set forth in Section 4 of this MOA, a Party may terminate this MOA in the event that one or more of the other Parties has materially breached this MOA. Written notice of such termination and a description of the breach must be given by the Party terminating this MOA to the other Party or Parties not less than thirty (30) calendar days prior to the effective date of termination. The breaching Party or Parties shall be given this 30-day period in which to cure its material breach

(or, if such breach reasonably requires more than 30 days to cure, the breaching Party shall commence such cure within the 30-day period). If the breaching Party fails to cure within 30 days (or fails to commence to cure a breach reasonably requiring more than 30 days), the MOA shall be immediately terminated effective at 11:59 PM on the thirtieth day. Upon termination, the Parties shall determine final costs and payments to be made by each Party in order to close out this MOA and any Work not yet completed under it.

- 11.3 The Parties' obligations under this Agreement beyond the current appropriation year are conditioned upon their respective legislative appropriations of sufficient funds to support the obligations described in this MOA. If such appropriations are not approved, then this MOA shall terminate automatically at the close of the then-current appropriation year. As between the Parties, the designated representative of each Party shall have sole and absolute discretion to determine the sufficiency of that Party's legislative appropriation.
- 11.4 Nothing in this Section 11 shall relieve a Party of its obligation to pay its requisite share of the cost of any Work performed by the Consultant under this MOA prior to the effective date of termination.

12. General Terms and Conditions

- 12.1 Entire Agreement. This document contains all of the terms, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment. There are no other agreements between the Parties with respect to the matters described herein, whether in writing or otherwise, and all prior agreements and understandings are superseded with respect to the subject matter of this MOA.
- 12.2 Legal Relations. This MOA is solely for the benefit of the Parties hereto and creates no right, duty, privilege, or cause of action in any other person or entity not a party to it. No joint venture or partnership is formed as result of this MOA. No employees or agents of one Party or its contractors shall be deemed, or represent themselves to be, employees of the other Party.
- 12.3 Compliance with Laws. The Parties shall comply and shall ensure that their respective contractors and subcontractors comply, with all Federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this MOA.
- 12.4 Remedies Cumulative. The Parties' rights and remedies in this MOA are in addition to any other rights and remedies provided by law or equity.

- 12.5 Nonwaiver. A Party's failure to require full and timely performance of any provision of this MOA at any time shall not waive or reduce that Party's right to insist upon complete and timely performance of any other provision thereafter.
- 12.6 Choice of Law; Venue. This MOA shall be interpreted in accordance with the laws of the State of Washington, without reference to its conflicts of law rules or choice of law provisions. Subject to the dispute resolution provisions contained herein, the Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this MOA.
- 12.7 Survival. The Consultant insurance and indemnity requirements of Section 3.1.1, and all provisions of Section 7 (Indemnity) and this Section 12 shall survive the expiration or earlier termination of this MOA.
- 12.8 Severability. If any term of this MOA is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
- 12.9 No Expenditure In Excess of Appropriation. Nothing in this MOA shall be construed as obligating any Party to expend money in excess of appropriations authorized by law and administratively allocated for the work contemplated in this MOA.
- 12.10 No Assignment. Neither this MOA nor any of the rights or obligations of any of the Parties arising under this MOA may be assigned, without the other parties' prior written consent. Subject to the foregoing, the MOA will be binding upon, enforceable by, and inure to the benefit of the Parties and their successors and assigns.
- 12.11 No Third Party Beneficiaries. There are no third party beneficiaries to this MOA, and this MOA shall not impart any rights enforceable by any person or entity that is not a party hereto.
- 12.12 Counterparts. This MOA may be executed by facsimile or any other electronically reproduced signature that is consistent with Chapter 19.360 RCW in any number of current parts and signature pages hereof with the same effect as if all Parties had all signed the same document. All executed current parts shall be construed together, and shall, together with the text of this agreement, constitute one and the same instrument.

12.13 During the performance of this MOA, the County, Bellevue College, the City or any entity contracting or subcontracting with the City under the authority of this MOA, shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this MOA.

[Signatures-Proceed to Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOA on the date affixed to their signatures.

CITY OF BELLEVUE

City of Bellevue, Assistant Director of Transportation

Date

Approved as to Form By:

City of Bellevue, Assistant City Attorney

Date

KING COUNTY

King County Metro, Capital Division Director

Approved as to Form By:

King County, Senior Deputy Prosecuting Attorney

Date

BELLEVUE COLLEGE

President Bellevue College

Date

Approved as to Form By:

Bellevue College Assistant Attorney General

Date

EXHIBIT A

SCOPE OF SERVICES: The anticipated scope of services for the Bellevue College Multimodal Connection project will include an alternatives analysis to determine a Preferred Alignment to accommodate two-way frequent bus service for Metro Transit RapidRide operations along the existing Snoqualmie River Road corridor with associated pedestrian and bicycle facilities, transit stops, and roadway improvements.

All design work, deliverables and/or plans submitted to the City shall adhere to all guidelines and requirements outlined in the City of Bellevue Transportation Department DESIGN STANDARDS, PLAN PREPARATION GUIDELINES, AND PLAN SUBMITTAL REQUIREMENTS. The City will perform Quality Audits on the consultant work in progress. The purpose of the Quality Audits is to ensure that the Consultant has met the guidelines and requirements set forth in the City's DESIGN STANDARDS, PLAN PREPARATION GUIDELINES, AND PLAN SUBMITTAL REQUIREMENTS. The City will withhold payment for consultant work items found to be not in compliance with the guidelines and requirements.

The anticipated **Phase One Alternatives Analysis** scope-of-work is to provide a pre-design analysis within the \$300,000 budget, which includes but is not limited to:

- Consultant agreement to provide pre-design analysis with evaluation criteria and screening framework
- Conceptual Site Design that includes alignment survey, urban design opportunities and as-built information
- Determination of the preferred roadway alignment to determine the location and limits of the project within the Bellevue College Campus.
- Parking impact summary
- Property acquisition support
- Preliminary Engineering Design 10% Conceptual Plans
- Cost estimates for each of the alternative corridor alignments inclusive of storm water management and restructure of Bellevue College infrastructure

Project Deliverables for Phase One work includes, but are not limited to:

- Cost estimates for each of the alternative corridor alignments
- Alternatives analysis for at least three alignment options with recommended Preferred Alignment Memorandum
- Preliminary Roadway Design Conceptual Plans (10%) based on preferred alignment
- Project details that include proposed roadway cross-sections
- A memorandum identifying and evaluating project impacts
- Intersection design layout at College entrance at Snoqualmie River Road and SE 32nd Street.
- Project Schedule
- Roadway corridor survey with as-built information including underground and above ground utilities

Exhibit B
INSURANCE REQUIREMENTS
RFP #19085

Bellevue College Multimodal Connection

The Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Consultant. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Insurance

1. Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate.
2. Commercial Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto.
3. Stop Gap/Employer's Liability coverage with limits not less than \$1,000,000 per accident/disease.
4. Workers' Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.

B. Additional Insurance:

Consultant's Errors & Omissions or Professional Liability with limits not less than \$1,000,000 per claim and as an annual aggregate.

C. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City.

D. Other Provisions

1. Commercial General Liability policies shall be endorsed to:
 - a. Include the City, its officials, employees and volunteers as additional insureds,
 - b. Provide that such insurance shall be primary as respects any insurance or self-insurance maintained by the City, and
 - c. Include King County Metro Transit and Bellevue College as additional insureds.
2. Consultant or its Insurance Agent/Broker shall notify the City of any cancellation, or reduction in coverage or limits, of any insurance within seven (7) days of receipt of insurers' notification to that effect.

E. Acceptability of Insurers

Insurance shall be placed with insurers with an AM Best rating of A:VII or better.

F. Verification of Coverage

Consultant shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. Subcontractors

Consultant shall require subconsultants to provide coverage which complies with the requirements stated herein.

