EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
State Capital Construction Grant Agreement No. GCB2316 for North Broadway Bus Stop Safety Improvements with the Washington State Department of Transportation

_____ Briefing
_____ Proposed Action
_____ Consent
_____ Action
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Public Hearing
_____ Budget Advisory

COUNCIL BILL #	
Originating Department	Transportation Services
Contact Person	George Baxter
Phone Number	425-257-8935
FOR AGENDA OF	March 30, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
		Agreement	Legal , Transportation Services

Amount Budgeted	-0-	Revenue: Multimodal Tier Funds: $1,000,000 from 11/15/2015 – 6/30/2017 Future projected Multimodal Tier Funds: $2,000,000 for 7/1/2017 – 6/30/2019
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

This grant agreement provides Everett Transit with 2015-2017 Multimodal Tier Funds for Phase 1 of the bus stop curb bulbs project along the North Broadway corridor beginning at 41st Street and ending at 7th Street. Phase 1 includes the following: planning, design, purchase of stop amenities such as shelters, benches, trash cans and bike racks, and beginning construction, as funds allow, through June 30, 2017.

The grant does not require a local match.

Future projected Multimodal Tier Funds in the amount of $2,000,000 will be used to finish construction in Phase 2 and will be added by amendment when appropriated by the State Legislature for the July 1, 2017 – June 30, 2019 biennium.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the State Capital Construction Grant Agreement No.GCB2316 for North Broadway Bus Stop Safety Improvements with the Washington State Department of Transportation.

State Capital Construction Grant Agreement	
WSDOT Tier Projects Program	
Washington State Department of Transportation Public Transportation Division 310 Maple Park Avenue SE PO Box 47387 Olympia, WA 98504-7387 WSDOT Contact: Tom Hanson 360-705-7919 Cell #: 360-387-174	*Contractor:* **Everett Transit** 3225 Cedar Street Everett, WA 98201-4515 Contact Person: George Baxter 425-257-8935
Term of Project: From July 15, 2015 to June 30, 2019	**Federal ID #:** 91-6001248 5
Scope of Project: As set forth in Exhibit I, Project Scope, Schedule and Budget	**Project Title:** North Broadway Bus Stop Safety Improvements **PIN: T1PT311**
Location: As set forth in Exhibit I	**Project Costs:**
Agreement Number: GCB2316	2015-2017 Multimodal-Tier Funds **$1,000,000** Future Projected Multimodal-Tier Funds **$2,000,000** Local Match **$ 0** **Total Project Cost** **$3,000,000**

THIS AGREEMENT, entered into by the Washington State Department of Transportation, hereinafter "WSDOT," and the contractor identified above, hereinafter the "CONTRACTOR," individually the "PARTY" and collectively the "PARTIES," WITNESSETH THAT:

WHEREAS, pursuant to chapter 44.48 RCW the Legislative Evaluation and Accountability Program (LEAP) Committee provides analysis and monitoring of state expenditures, budgets and related fiscal matters and consults with Legislative committees;

WHEREAS, the State of Washington in its Sessions Laws of 2015, Chapter 43, Section 207, subsection (1) (a) added new revenue funds for public transportation projects through the multimodal transportation account, as identified in the budget through its 2015-2017 biennial appropriations to WSDOT;

WHEREAS, WSDOT Public Transportation Division administers multimodal transportation account funds to provide assistance solely for transportation projects as identified in **LEAP Transportation Document 2015 NL3** as developed on June 28, 2015, Transit Projects, Public Transportation V;

NOW, THEREFORE, in consideration of the terms, conditions, performances, and mutual covenants herein set forth and the attached Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE," IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1
Purpose of Agreement

The purpose of this AGREEMENT is for WSDOT to provide capital funding to the CONTRACTOR for the design, acquisition, construction and/or improvements of capital facilities and infrastructure to be used in the provision of transportation services to persons in the State of Washington, hereinafter referred to as the "Project." Reference to the "Project" shall include all such capital facilities, infrastructure and/or associated equipment designed, acquired, constructed, improved or installed under this AGREEMENT.

Section 2
Scope of Project

The CONTRACTOR agrees to perform the work and complete the Project described and detailed in Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE", and in accordance with the terms and conditions of this AGREEMENT. By the preceding reference, Exhibit I is fully incorporated herein as if fully set out in this AGREEMENT.

Section 3
Term of Project

The Project period of this AGREEMENT shall commence and terminate on the dates shown in the caption space header titled "Term of Project" regardless of the date of execution of this AGREEMENT, unless terminated as provided herein. The caption space header titled "Term of Project" and all caption space headers above are by this reference incorporated herein into the AGREEMENT as if fully set forth in the AGREEMENT.

Section 4
State Review of Project

WSDOT shall review the project identified in this AGREEMENT as Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE", at least semiannually to determine whether the Project is making satisfactory progress. If WSDOT has awarded funds, but the CONTRACTOR does not report satisfactory activity within one (1) year of the initial grant award, WSDOT shall review the Project to determine whether the grant should be terminated as provided in Section 33, Termination.

Section 5
Project Costs and Local Match

The reimbursable costs of the Project shall not exceed the amount indicated for State Multimodal-Tier Funds located within the caption space header titled "Project Costs." The CONTRACTOR agrees to expend eligible funds, together with other local funds allocated for the Project, in an amount sufficient to complete the Project as detailed in Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE". at any time the CONTRACTOR becomes aware that the cost which it expects to incur in the performance of this AGREEMENT will exceed or be less than the amount identified as "Total Project Cost" in the caption space header titled "Project Costs," the CONTRACTOR shall notify WSDOT in writing within thirty (30) calendar days of making that determination.

Section 6
Inspection of the Project

The CONTRACTOR shall inspect the Project pursuant to this AGREEMENT as required during construction and upon Project completion. Upon receipt and acceptance of the Project, the CONTRACTOR agrees that it has fully inspected the Project and accepts it as being in good condition and repair, and that the CONTRACTOR is satisfied with the Project and that the Project complies with all regulations, rules, and laws.

Section 7
Miscellaneous Charges and Conditions

The CONTRACTOR shall pay and be solely responsible for all storage charges, parking charges, late fees, and fines, as well as any fees and taxes, except applicable state sales or use tax, which may be imposed with respect to the Project by a duly constituted governmental authority as the result of the CONTRACTOR's use or intended use of the Project. All replacements, repairs, or substitutions of parts or Project Equipment shall be at the cost and expense of the CONTRACTOR.

Section 8
Payment

A. State funds shall be used to reimburse the CONTRACTOR for allowable expenses incurred in completing the Project described in Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE". Allowable Project expenses shall be determined by WSDOT as described in WSDOT's *Regional Mobility Grants Program Guidebook*, which can be found at http://www.wsdot.wa.gov/Transit/Grants/regional-mobility-grants-program-guidebook.htm and any subsequent amendments thereto . In no event shall the total amount reimbursed by WSDOT hereunder exceed the "Multimodal-Tier Funds" identified in the caption space header titled "Project Costs."

B. Payment will be made by WSDOT on a reimbursable basis for actual net Project costs incurred within the timeframe in the caption space titled "Term of Project" less any pre-payment discounts, rebates, late penalties and/or refunds. Such costs to be reimbursed shall be calculated as described in WSDOT's *Regional Mobility Grants Program Guidebook*, and

any subsequent amendments thereto. The CONTRACTOR may submit to WSDOT requests for partial payment for eligible costs incurred no more than once per month and the CONTRACTOR shall submit to WSDOT an invoice or financial summary of the activity of the Project at least quarterly. Payment is subject to the submission to and approval by WSDOT of appropriate invoices, reports, and financial summaries.

C. **State Fiscal/ Biennial Year End Closure Requirements per RCW 43.88.** The CONTRACTOR shall submit an invoice by the 15th of July of every state fiscal year (July 1 through June 30) of the Term of Project. If the CONTRACTOR is unable to provide an invoice by this date, the CONTRACTOR shall provide an estimate of the charges to be billed so WSDOT may accrue the expenditures in the proper fiscal period. Any subsequent reimbursement request submitted will be limited to the amount accrued as set forth in this section. The CONTRACTOR's final payment request must be received by WSDOT by July 15 immediately following the final fiscal year of the Term of Project , within thirty (30) days of the completion of the Project, or within thirty (30) days of the termination of this AGREEMENT, whichever is sooner. Any payment request received after the 15th day after the end of the grant period will not be eligible for reimbursement.

Section 9
Assignments, Subcontracts, and Leases

A. Unless otherwise authorized in advance in writing by WSDOT, the CONTRACTOR shall not assign any completed Project facilities and/or infrastructure under this AGREEMENT, or execute any contract, amendment, or change order thereto pertaining to the Project or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT or lease or lend the Project or any part thereof to be used by anyone not under the CONTRACTOR's direct supervision.

B. The CONTRACTOR agrees to include Sections 11 through 25 of this AGREEMENT in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT. The PARTIES further agree that those clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in an advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

Statement of Financial Assistance:
"This AGREEMENT is subject to the appropriations of the State of Washington."

Section 10
Reports and Project Use

A. The CONTRACTOR agrees that the Project shall be used for the provision of transportation services within the area indicated in Exhibit I, for the term of the Project. The CONTRACTOR further agrees that it will not use or permit the use of the Project in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project to become subject to any lien, charge, or encumbrance. Should the CONTRACTOR unreasonably delay or fail to use the Project during the project term and reporting period, the CONTRACTOR agrees that it may be required to refund up to the entire amount of the "Multimodal-Tier Funds" expended on the Project. The CONTRACTOR shall immediately notify WSDOT when any Project facilities and/or infrastructure is withdrawn from Project use or when the Project or any part thereof is used in a manner substantially different from that identified in Exhibit I, "PROJECT SCOPE, BUDGET AND SCHEDULE". If the Project is permanently removed from transportation services, the CONTRACTOR agrees to immediately notify WSDOT of its intentions regarding the disposal of the Project or any part of the Project thereof.

B. **Reports.** The CONTRACTOR shall submit quarterly reports to WSDOT for the Term of Project, regarding the progress of the Project, or as WSDOT may require, including, but not limited to, interim and annual reports. The CONTRACTOR shall keep satisfactory written records with regard to the use of Project and shall submit the following reports to, and in a form: and at such times prescribed by WSDOT.

1. A Project status narrative.
2. An updated schedule of Project completion.
3. A financial summary.

C. In the event any portion of the Project sustains disabling damage, the CONTRACTOR shall notify WSDOT immediately after the occasion of the damage, including the circumstances thereof.

D. The CONTRACTOR shall collect and submit to WSDOT, at such time as WSDOT may require, such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by WSDOT.

E. **Remedies for Misuse or Noncompliance.** The CONTRACTOR shall not use the Project or any part thereof in a manner different from that described in Exhibit I, PROJECT SCOPE, BUDGET AND SCHEDULE, as set forth in Section 2 of the AGREEMENT. If WSDOT determines that the Project has been used in a manner different from Exhibit I, PROJECT SCOPE, BUDGET AND SCHEDULE, WSDOT may direct the CONTRACTOR to repay WSDOT the State funded share of the "Project Costs." WSDOT may also withhold payments should it determine that the CONTRACTOR has failed to comply with any provision of this AGREEMENT.

Section 11
Maintenance of the Project

The CONTRACTOR shall make all necessary repairs and reasonably maintain the Project to assure it remains in good and operational condition until the end of its useful life. The useful life of the constructed project is determined by the Architectural/Engineering (A&E) estimates, materials used and industry standards for the type of structure built. All service, materials, and repairs in connection with the use and operation of the Project during its useful life shall be at the CONTRACTOR's expense. CONTRACTORS who are transit agencies must also have a Transit Asset Management Plan certified by WSDOT that details the transit agency's plan to maintain the Project. All other CONTRACTORS must submit a written Maintenance Plan to WSDOT for approval prior to the occupation and/or operations of the Project. The CONTRACTOR agrees, at a minimum, to maintain the Project and service or replace parts at intervals recommended in the manuals and/or instructions provided by the subcontractors and/or component manufacturers, or sooner if needed. The CONTRACTOR shall have the Project routinely inspected and make arrangements for any appropriate service and repair under the manufacturer's warranty. WSDOT shall not be liable for repairs. The CONTRACTOR shall retain records of all maintenance and parts replacement performed on the Project in accordance with Section 22, Audits, Inspection, and Retention of Records. The CONTRACTOR shall provide copies of such records to WSDOT, upon request.

Section 12
General Compliance Assurance

The CONTRACTOR agrees to comply with all the terms and conditions as prescribed in this AGREEMENT and any amendments thereto. The CONTRACTOR agrees that, WSDOT and/or any authorized WSDOT representative, shall have not only the right to monitor the compliance of the CONTRACTOR with respect to the provisions of this AGREEMENT, but also have the right to seek judicial enforcement with regard to any matter arising under this AGREEMENT. It is understood by the CONTRACTOR that this assurance obligates the CONTRACTOR and any transferee of the CONTRACTOR, or said transferee's successor(s), for the term of this AGREEMENT."

Section 13
Compliance with State Design Standards

The CONTRACTOR agrees the Project design must comply with all Washington State Standard Specifications for Road, Bridge, and Municipal Construction (www.wsdot.wa.gov/Publications/Manuals/M41-10.htm), and any revisions thereto. Projects that wish to use design standards that differ from state standards must submit a request to WSDOT's Public Transportation Division and obtain documented approval before design work commences.

Section 14
No Obligation by the State Government

No contract between the CONTRACTOR and its subcontractors shall create any obligation or liability of WSDOT with regard to this AGREEMENT without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof and the CONTRACTOR hereby agrees to include this provision in all contracts it enters into for the design, acquisition, and construction of facilities and/or infrastructure related to the Project, or the performance of any work to be accomplished under this AGREEMENT.

Section 15
Ethics

A. **Relationships with Employees and Officers of WSDOT.** The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the CONTRACTOR rent or purchase any Project equipment and materials from any employee or officer of WSDOT.

B. . **Employment of Former WSDOT Employees.** The CONTRACTOR hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are,

or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.

Section 16
Compliance with Laws and Regulations

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, project record keeping necessary to evidence compliance with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in Chapter 49.60 RCW.

Section 17
State and Local Law

Except when a federal statute or regulation pre-empts state or, local law, no provision of this AGREEMENT shall require the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of state or local law. Thus if any provision or compliance with any provision of this AGREEMENT violates state, or local law, or would require the CONTRACTOR to violate state or local law, the CONTRACTOR agrees to notify WSDOT immediately in writing. Should this occur, WSDOT and the CONTRACTOR agree to make appropriate arrangements to proceed with or, if necessary, expeditiously, terminate the Project.

Section 18
Labor Provisions

Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the Project work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. CONTRACTOR will comply with Title 49 RCW, Labor Regulations.

Section 19
Environmental Protections and Archeological Preservation

The CONTRACTOR agrees to comply with all applicable requirements of chapter 43.21C RCW "State Environmental Policy Act" (SEPA). The CONTRACTOR also agrees to comply with all applicable requirements of Executive Order 05-05, Archeological and Cultural Resources, for all capital construction projects or land acquisitions for the purpose of a capital construction project, not undergoing Section 106 review under the National Historic Preservation Act of 1966 (Section 106).

Section 20
Accounting Records

A. **Project Accounts.** The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible and available to WSDOT upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

B. **Documentation of Project Costs and Program Income.** The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The CONTRACTOR also agrees to maintain accurate records of all program income derived from implementing the Project.

Section 21
Audits, Inspection, and Retention of Records

A. **Submission of Proceedings, Contracts, Agreements, and Other Documents.** During the term of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six (6) year period then the CONTRACTOR's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

B. **General Audit Requirements.** The CONTRACTOR agrees to obtain any other audits required by WSDOT at CONTRACTOR's expense. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. **Inspection.** The CONTRACTOR agrees to permit WSDOT, and the State Auditor, or their authorized representatives, to inspect all Project work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the CONTRACTOR and its contractors pertaining to the Project. The CONTRACTOR agrees to require each third party contractor to permit WSDOT, the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project.

Section 22
Permitting

The CONTRACTOR agrees to be solely responsible for all required Federal, State and/or local permitting as related to the Project.

Section 23
Loss or Damage to the Project

A. The CONTRACTOR, at its own expense, shall cover any loss, theft, damage, or destruction of the Project's facilities, associated equipment and/or infrastructure using either of the following methods:

1. The CONTRACTOR shall maintain property insurance for facilities, associated equipment and/or infrastructure adequate to cover the value of the Project; the CONTRACTOR shall supply a copy of the Certificate of Insurance specifying such coverage to WSDOT with the first request for reimbursement, and supply proof of renewal annually thereafter; or
2. The CONTRACTOR shall certify that it has self-insurance and provide a written certificate of self-insurance to WSDOT with the first request for reimbursement, and annually thereafter. The CONTRACTOR will cover from its own resources the costs of repairing or replacing any Project facilities, associated equipment and/or infrastructure, if it is stolen, damaged, or destroyed in any manner.

B. If the damage to the Project does not result in a total loss, payments for damage shall be paid directly to the CONTRACTOR. The CONTRACTOR shall, within thirty (30) days, either: 1. Devote all of the insurance proceeds received to repair the Project and place it back in service, and the CONTRACTOR shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or

2. In the event the CONTRACTOR certified to self- insurance, devote all funds necessary to repair the Project and place it back into service.

C. If the Project is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to the CONTRACTOR and within fifteen (15) days the CONTRACTOR shall pay WSDOT its proportionate funded share of such proceeds received. The CONTRACTOR shall within sixty (60) days of loss, theft, or damage, notify WSDOT that it either:

1. Intends to replace the lost Project facilities, associated equipment and/or infrastructure; or
2. Does not intend to replace the lost Project facilities, associated equipment and/or infrastructure.

D If the CONTRACTOR intends to replace the Project facilities, associated equipment and/or infrastructure then WSDOT will reimburse the CONTRACTOR upon receipt of an approved invoice, funds up to the amount WSDOT received in insurance proceeds.

E. Coverage, if obtained or provided by the CONTRACTOR in compliance with this section, shall not be deemed as having relieved the CONTRACTOR of any liability in excess of such coverage as required by the limitation of liability section of this AGREEMENT, or otherwise.

Section 24
Limitation of Liability

A. The CONTRACTOR shall indemnify and hold WSDOT, its agents, employees, and officers harmless from and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against WSDOT arising out of, in connection with or incident to this AGREEMENT and/or the CONTRACTOR's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against WSDOT,

its agents, employees and officers arising out of, in connection with or incident to the negligent acts omissions of the CONTRACTOR, its agents, employees and officers. Provided, however, that nothing herein shall require the CONTRACTOR to indemnify and hold harmless or defend the WSDOT, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the WSDOT, its agents, employees or officers. The indemnification and hold harmless provision shall survive termination of this AGREEMENT.

B. The CONTRACTOR shall be deemed an independent contractor for all purposes, and the employees of the CONTRACTOR or its subcontractors and the employees thereof, shall not in any manner be deemed to be employees of WSDOT.

C. The CONTRACTOR specifically assumes potential liability for actions brought by CONTRACTOR's employees and/or subcontractors and solely for the purposes of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

D. In the event either the CONTRACTOR or WSDOT incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

Section 25
Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters he or she is acting solely as an agent of WSDOT.

Section 26
WSDOT Advice

The CONTRACTOR bears complete responsibility for the administration and success of the Project as it is defined by this AGREEMENT and any amendments thereto. If the CONTRACTOR solicits advice from WSDOT on problems that may arise, the offering of WSDOT advice shall not shift the responsibility of the CONTRACTOR for the correct administration and success of the Project, and WSDOT shall not be held liable for offering advice to the CONTRACTOR.

Section 27
Forbearance by WSDOT Not a Waiver

Any forbearance by WSDOT in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

Section 28
Lack of Waiver

In no event shall any WSDOT payment of funds to the CONTRACTOR constitute or be construed as a waiver by WSDOT of any CONTRACTOR breach, or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default

Section 29
Changed Conditions Affecting Performance

The CONTRACTOR hereby agrees to immediately notify WSDOT of any change in conditions or law, or of any other event, which may affect its ability to perform the Project in accordance with the provisions of this AGREEMENT.

Section 30
Agreement Modifications

Either PARTY may request changes to this AGREEMENT. Any changes to the terms of this AGREEMENT must be mutually agreed upon and incorporated by written amendment to this AGREEMENT. Such amendments shall not be binding or valid unless signed by the persons authorized to bind each of the PARTIES.

Section 31
Disputes

A. **Disputes**. Disputes, arising in the performance of this AGREEMENT, which are not resolved by agreement of the PARTIES, shall be decided in writing by the WSDOT Public Transportation Division's Assistant Director or designee. This decision shall be final and conclusive unless within ten (10) days from the date of CONTRACTOR'S receipt of WSDOT's written decision, the CONTRACTOR mails or otherwise furnishes a written appeal to the Director of the Public Transportation Division or the Director's designee. The CONTRACTOR's appeal shall be decided in writing by

the Director of the Public Transportation Division within thirty (30) days of receipt of the appeal by the Director of the Public Transportation Division or the Director's designee. The decision shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

B. **Performance During Dispute**. Unless otherwise directed by WSDOT, CONTRACTOR shall continue performance under this AGREEMENT while matters in dispute are being resolved.

C. **Claims for Damages.** Should either PARTY to this AGREEMENT suffer injury or damage to person, property, or right because of any act or omission of the other PARTY or any of that PARTY's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other PARTY within thirty (30) days after the first observance of such injury or damage.

D. **Rights and Remedies**. All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the PARTIES hereto. No action or failure to act by the WSDOT or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Section 32
Termination

A. **Termination for Convenience.** WSDOT and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the other PARTY. WSDOT and the CONTRACTOR shall agree upon the AGREEMENT termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination the portion to be terminated. However if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made, WSDOT may terminate the award in its entirety. PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite funding becomes unavailable through failure of appropriation or otherwise;
2. WSDOT determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds;
3. The CONTRACTOR is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;
4. The CONTRACTOR is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the CONTRACTOR; or
5. The State Government or WSDOT determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of financial assistance for the Project.
6. In the case of termination for convenience under subsections A.1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT that the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to WSDOT. If the CONTRACTOR has any property in its possession belonging to WSDOT, the CONTRACTOR will account for the same, and dispose of it in the manner WSDOT directs.

B. **Termination for Default.** WSDOT may suspend or terminate this AGREEMENT for default, in whole or in part, and all or any part of the financial assistance provided herein, at any time by written notice to the CONTRACTOR, if the CONTRACTOR materially breaches or fails to perform any of the requirements of this AGREEMENT, including:

1. Takes any action pertaining to this AGREEMENT without the approval of WSDOT, which under the procedures of this AGREEMENT would have required the approval of WSDOT;
2. Jeopardizes its ability to perform pursuant to this AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates;
3. Failure to perform the Project or any part thereof including, but not limited to:

a) Failure to build the Project according to the design specifications and all building code required standards;

b) Failure to remedy all defects in the performance of the Project and correct all faulty workmanship by the CONTRACTOR or its subcontractors in a timely manner;

c) Failure to take any action which could affect the ability of the Project to perform its designated function or takes any action which could shorten its useful life for Project use or otherwise; or

d) Failure to make reasonable and appropriate use of the Project real property, facilities, equipment and/or infrastructure.

4. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or

5. Fails to perform in the manner called for in this AGREEMENT, or fails, to comply with or, is in violation of, any provision of this AGREEMENT. WSDOT shall serve a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default hereunder. If it is later determined by WSDOT that the CONTRACTOR had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the CONTRACTOR, such as a strike, fire or flood, WSDOT may: a) allow the CONTRACTOR to continue work after setting up a new delivery of performance schedule, or b) treat the termination as a termination for convenience.

C. WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the CONTRACTOR fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

D. In the event that WSDOT elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

Section 33
Venue and Process

In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The PARTIES agree that the laws of the State of Washington shall apply.

Section 34
Subrogation

A. **Prior to Subrogation.** WSDOT may require the CONTRACTOR to take such action as may be necessary or appropriate to preserve the CONTRACTOR's right to recover damages from any person or organization alleged to be legally responsible for injury to the Project or other property in which WSDOT has a financial interest.

B. **Subrogation.** WSDOT may require the CONTRACTOR to assign to WSDOT all right of recovery against any person or organization for loss, to the extent of WSDOT's loss. Upon assignment, the CONTRACTOR shall execute, deliver, and do whatever else necessary to secure WSDOT's rights. The CONTRACTOR shall do nothing after any loss to prejudice the rights of WSDOT.

C. **Duties of the Contractor.** If WSDOT has exercised its right of subrogation, the CONTRACTOR shall cooperate with WSDOT and, upon WSDOT's request, assist in the prosecution of suits and enforce any right against any person or organization who may be liable to WSDOT due to damage to the Project. The CONTRACTOR shall attend hearings and trials as requested by WSDOT, assist in securing and giving evidence as requested by WSDOT, and obtain the attendance of witnesses as requested by WSDOT.

Section 35
Severability

If any covenant or provision of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

Section 36
Counterparts

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONTRACTOR does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements and their supporting materials contained and/or mentioned herein, and does hereby accept WSDOT's grant and agrees to all of the terms and conditions thereof.

Section 37
Complete Agreement

This document contains all covenants, stipulations, and provisions agreed upon by WSDOT. No agent or representative of WSDOT has authority to make, and WSDOT shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein or made by written amendment hereto.

Section 38
Execution

This AGREEMENT is executed by the Director, Public Transportation Division, State of Washington, Department of Transportation or the Director's designee, not as an individual incurring personal obligation and liability, but solely by, for and on behalf of the State of Washington, Department of Transportation, in the capacity as Director, Public Transportation Division, or as a designee.

Section 39
Binding Agreement

The undersigned acknowledge that they are authorized to execute this AGREEMENT and bind their respective agency(ies) and/or entity(ies) to the obligations set forth herein.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year last written below.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
Brian Lagerberg, Director
Public Transportation Division

Date: _____

APPROVED AS TO FORM

By: Susan Cruise
Assistant Attorney General

Date: January 28, 2016

CITY OF EVERETT

_____
Ray Stephanson
Mayor

Date: _____

Attest:

_____
Sharon Fuller
City Clerk

Date: _____

Approved as to form only:

_____
James D. Iles
City Attorney

Date: _____

EXHIBIT I
PROJECT SCOPE, BUDGET AND SCHEDULE

Funding by Project

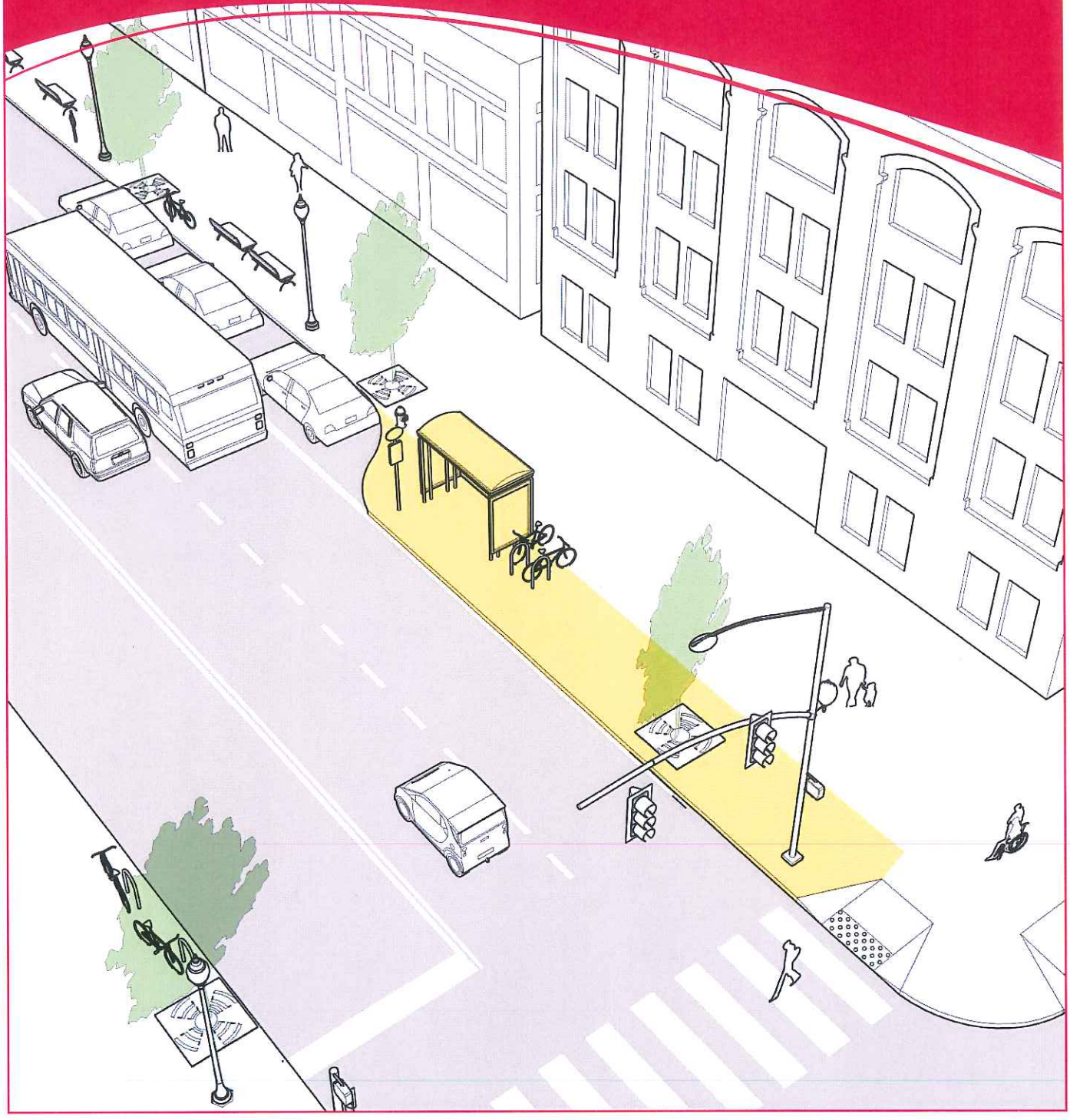
Project A

Scope of Work: To provide multimodal tier funding assistance to install bus stop bulb outs, passenger shelters and benches along the North Broadway corridor between 41st Street and 7th Street in Everett.

Funds	2015-2017 Current Funds	Future Projected Funds	Total Funds Awarded
2015-2017 Multimodal Tier Funds	$1,000,000	$ 0	$1,000,000
Future Projected Multimodal Tier Funds	$ 0	$2,000,000	$2,000,000
Local Match	$ 0	$ 0	$ 0
Total Project Funds	$1,000,000	$2,000,000	$3,000,000

Budget: *Current funding available for the project is identified in the 2015-2017 biennium. Future projected funds are subject to appropriation and will be added by amendment when approved by the legislature.*

Project Schedule/Milestone

Design Start	01/2016
NEPA/SEPA Kick Off	N/A
Environmental Documents Approved	N/A
Right-of-Way Start	N/A
Right-of-Way Complete	N/A
Geometric/30% Design Complete	06/2016
Advertisement	07/2016
Contract Awarded	09/2016
Open to Public	03/2018

Bus Bulb Example