



**Washington State
Department of Transportation**

Local Programs E-bike Lending Library & Ownership State Funding Agreement	Work by:	Contractor name and address:
Agreement Number:	Project Number:	Maximum amount authorized:
Project Title:		Location and Description of Work (See also Exhibit A-Project Summary):

This AGREEMENT is between the STATE OF WASHINGTON, Department of Transportation (WSDOT) and the above named organization, hereinafter called the “CONTRACTOR” also referenced as “Party” and the “Parties”.

Funding for this project comes from the Climate Commitment Act (CCA), codified in chapter 70a.65 RCW Greenhouse Gas Emissions—Cap and Invest Program.

The e-bike lending library and ownership program is intended to encourage adoption of electric bicycles as a replacement for motor vehicle trips. Projects must provide safe opportunities for eligible bike borrowers to try integrating e-bikes as a form of transportation into their daily life, providing structured assistance, education and training that can ultimately support e-bike ownership.

Now therefore, pursuant to chapter 39.34 RCW (as applicable), and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibit A – Project Summary which is incorporated and made a part hereof, it is mutually agreed as follows:

1. PURPOSE

The purpose of this Agreement is to provide funding to the Contractor to create and or administer a public or work-based e-bike lending library or ownership program, including the acquisition and operation of all necessary equipment. Projects administered by government entities or Tribes will serve employees as part of their Commute Trip Reduction work. Projects administered by nonprofits or Tribes will serve communities identified as low income and or living in an overburdened community.

2. PROJECT SUMMARY

- a. The Contractor shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of work set forth in **Exhibit "A" Project Summary** attached and incorporated herein.

3. PERIOD OF PERFORMANCE

- a. Subject to its other provisions, the period of performance of this Agreement shall commence on _____, 20____ and be completed on _____ unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.

4. COSTS, PAYMENT AND BILLING

- a. The STATE, in consideration of the faithful performance of the work to be performed by the Contractor, agrees to reimburse the Contractor for the percentage of the actual direct and related indirect cost of the work shown above, up to the "MAXIMUM AMOUNT AUTHORIZED". The Contractor will comply with Governmental Accounting Auditing and Financial Reporting Standards and applicable state law and local regulations, policies and procedures. No payment will be made for work done prior to execution of this Agreement.
- b. The Contractor agrees that all costs in excess of the amount authorized and the Contractor's matching funds shall be the responsibility of the Contractor.
- c. For e-bike purchases, during the useful life of the e-bike, the Contractor shall not sell, dispose or implement any modifications to the e-bike without prior approval by WSDOT.
- d. Contractor shall submit regular, accurate invoices and project summary reports and billing form. Invoices shall be submitted no more than once per month and shall include proper documentation of all charges. Payment for approved goods and/or services will be made by check, warrant or account transfer within 30 days of receipt of the full, accurate and complete invoice. Upon expiration of the Agreement, invoices shall be paid, if received within 30 days after the expiration date. A payment will not constitute agreement as to the appropriateness of any item and, at the time of final invoice, the Parties will resolve any discrepancies.
- e. Any and all travel and per diem rates shall be paid in accordance with RCW 43.03.50 and the Office of Financial Management per diem rates.
- f. WSDOT Fiscal Year End Closure Requirements (chapter 43.88 RCW): Any invoices for Work performed between July 1 and June 30 of any given year must be submitted to WSDOT no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the Contractor is unable to provide an invoice for such Work by this date, an estimate of all remaining payable costs owed by WSDOT for Work performed prior to July 1 must be submitted to WSDOT no later than July 12th of the same year in order for WSDOT to accrue the amount necessary for payment. The Contractor will thereafter submit any remaining invoices to WSDOT as soon as possible. Failure to comply with these

requirements may result in delayed payment. WSDOT shall not be required to pay late payment fees, interest, or incidental costs incurred by the Contractor or any other costs related to a delayed payment if the Contractor fails to comply with the invoice requirements of this Section.

5. DUPLICATION OF BILLED COSTS

- a. Neither Party shall bill for services performed under this contract if it is entitled to payment or has been or will be paid by any other source, including grants, for that service.

6. PURCHASES

- a. The Contractor shall make purchases of any project equipment pursuant to this agreement through ethical procurement procedures approved in advance in writing by WSDOT. Contractor is expected to utilize state DES master contracts where possible, and include comprehensive, itemized, signed and dated invoices with requests for reimbursement.

7. INSPECTION UPON DELIVERY

- a. The Contractor shall inspect any Project Equipment purchased pursuant to this Agreement at the time of delivery to the Contractor. The Contractor has 15 calendar days from delivery to either accept or reject the Project Equipment. If rejected, the Contractor shall provide a written notice specifying the Project Equipment deficiencies to its vendor and WSDOT, allowing the vendor a reasonable amount of time to cure the deficiencies or defects. Upon receipt and acceptance of Project Equipment, the Contractor agrees that it has fully inspected the Project Equipment and accepts it as suitable for the purpose under this Agreement, as being in good condition and state of good repair, and that the Contractor is satisfied with the Project Equipment and that the Project Equipment complies with all applicable regulations, rules, and laws. Payment to the vendor must occur within thirty (30) calendar days of the Project Equipment acceptance.

8. USE OF PROJECT EQUIPMENT

- a. The Contractor agrees that the lending library e-bike or equipment shall be used for the provision of transportation service within the area described in Exhibit A for the term of agreement. The Contractor further agrees that it will not use or permit the use of the Project Equipment in a negligent manner or in violation of any law or so as to avoid any insurance covering the same or permit the Project Equipment to become subject to any lien, charge or encumbrance. Should the Contractor unreasonably delay or fail to use the Project Equipment during the useful life of the Project Equipment the Contractor agrees that it may be required to refund up to the entire amount of the state share expended on the Project. The Contractor shall immediately notify WSDOT when any Project Equipment is withdrawn from Project use or when Project Equipment is used in a manner substantially different from that identified in Exhibit A. If the project equipment is permanently removed from transportation services prior to the end of its useful life, the Contractor agrees to immediately contact WSDOT for instructions regarding the disposal of project equipment.
- b. Remedies for misuse or noncompliance. The Contractor shall not use any Project Equipment in a manner materially different from that described in Exhibit A and the service area identified in Exhibit A. If WSDOT determines that the Project Equipment has been used

in a manner materially different from that described in Exhibit A. WSDOT may direct the Contractor to dispose of the Project Equipment acquired by the Contractor. WSDOT may also withhold payments should it determine that the Contractor has failed to materially comply with any provision of this Agreement.

9. AMENDMENT

- a. This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

10. ASSIGNMENT

- a. The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either Party in whole or in part, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld.

11. ASSURANCES

- a. The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state, and local laws, rules, and regulations as they currently exist or as amended.

12. DISPUTES

- a. The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:
 - (1) The representatives designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
 - (2) A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
 - (3) In the event the representatives cannot resolve the dispute or issue, the Contractor and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.

- (4) In the event the Contractor WSDOT, or their respective designees, cannot resolve the dispute or issue, the Contractor and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

13. GOVERNING LAW AND VENUE

- a. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the exclusive venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

14. INDEPENDENT CAPACITY

- a. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

15. MAINTENANCE OF RECORDS

- a. The Parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either Party in the performance of the service(s) described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either Party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the Parties shall have full access and the right to examine any of these materials during this period.
- b. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c. Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The receiving Party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing Party and giving it a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to ensure that records and documents provided by the other Party are not erroneously disclosed to third parties. However, the Parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

16. ORDER OF PRECEDENCE

- a. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:
 - (1) Applicable state and federal statutes, and local laws, rules and regulations;
 - (2) This Agreement
 - (3) Exhibits and Appendices, to include Project Summaries and Special Terms and Conditions
 - (4) Any other provisions of the agreement, including materials incorporated by reference.

17. RESPONSIBILITIES OF THE PARTIES

- a. Each Party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither Party assumes any responsibility to the other Party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a party to this Agreement.

18. SEVERABILITY

- a. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

19. SUBCONTRACTING

- a. "Subcontractor" means one not in the employment of a Party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a Party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- b. Except as otherwise provided in the Agreement, the Contractor shall not subcontract any of the contracted services without the prior approval of the Agency. The Contractor is responsible to ensure that all terms, conditions, assurances, and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of the Contractor or its Subcontractors to perform the obligations of this Agreement shall not discharge the Contractor from its obligations under this Agreement.

20. TERMINATION

- a. This Agreement may be terminated as follows:

- (1) Termination for Convenience

This Agreement may be terminated for convenience by either Party at any time. The notice

of intent to terminate for convenience shall be issued by a Party in writing no less than thirty (30) working days in advance of termination. The Party terminating for convenience shall not be liable to the other Party for any direct, indirect, or consequential damages arising solely from termination of this Agreement.

(2) Termination for Cause

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

(3) Termination for Withdrawal of Authority

This Agreement may be terminated by WSDOT in the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than **[seven (7) calendar days]** in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised.

(4) Termination for Non-Allocation of Funds

This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than **[seven (7) calendar days]** in advance of termination.

- b. If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Contractor agrees to reimburse WSDOT for the actual direct and current applicable related indirect expenses and costs it has incurred up to the date of termination, as well as the costs of non-cancelable obligations.
- c. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination, provided that neither Party shall incur new obligations after receiving a notice of termination other than obligations necessary to comply with the termination.
- d. Within thirty (30) working days of the termination of this Agreement, the Contractor shall, if directed by WSDOT, return all items

21. OWNERSHIP

- a. Contractor shall retain ownership and responsibility of the program equipment, with the exception of e-bikes which have planned ownership transfer built into their programs as part

of the incentive. Program equipment will be used for the purposes identified in this agreement to serve only the communities identified in Exhibit A. Program equipment must be fully insured as per section 24 of this agreement.

- b. Penultimate progress report must detail project closure and transfer of ownership procedures for all e-bikes purchased through this funding.

22. INDEMNIFICATION

- a. To the fullest extent permitted by law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither 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 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, their agents, officials, or employees, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.

- b. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification and waiver will survive the termination of this Agreement.

23. INSURANCE

- a. The Contractor shall secure insurance coverage in conformance with the requirements of this section and promptly provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, evidencing the procurement of the required insurance coverages. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification on any such general liability policies. Contractor's insurance policy must provide liability coverage for its operations under this Agreement through a Commercial General Liability (CGL) policy, with minimum coverages of \$1 million per occurrence and \$2 million in aggregate.

- b. If Contractor is self-insured, it may satisfy the insurance requirements above by providing adequate evidence of its self-insured status with coverages equivalent to those set forth above, and sufficient assets in the self-insurance pool to pay claims within the coverage limits.

24. WAIVER

- a. A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

25. ALL WRITINGS CONTAINED HEREIN

- a. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

26. COUNTERPARTS AND ELECTRONIC SIGNATURE

- a. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other parties are relying on its electronic or "PDF" signature.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year last written below.

AGENCY / CONTRACTOR	STATE
Name:	By:
Title:	Title:
Signature:	Signature:
Date:	Date: