

AGREEMENT GCA 5487  
between the  
Washington State Department of Transportation  
and  
King County Department of Transportation, Metro Transit Division  
for  
I-405 Construction Mitigation Assistance  
Kirkland – Phase 1

This Agreement is made and entered into by and between KING COUNTY, through its Department of Transportation, METRO TRANSIT DIVISION (hereinafter “Metro Transit”) and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, (hereinafter the “State”), also referred to individually as "Party" or collectively as the “Parties.”

**WHEREAS**, the 2003 Washington State Legislature enacted Substitute House Bill 1163 and the 2005 Washington State Legislature enacted Substitute Senate Bill 6091, which provide for funding specific transportation projects contained within the I-405 Corridor Master Plan, and

**WHEREAS**, the I-405 Corridor Program Final Environmental Impact Statement specifically calls for the implementation of Transportation Demand Management (TDM) strategies, and

**WHEREAS**, the State’s Office of Transit Mobility is responsible for developing, coordinating, and implementing integrated TDM strategies related to the I-405 Corridor Program, and

**WHEREAS**, the State has entered into a separate contract for the design and construction of the first transportation project associated with the I-405 Corridor Master Plan, known as the Kirkland – Phase 1 project (hereinafter the "Project"), and

**WHEREAS**, the Parties have developed a program of TDM strategies and actions designed to reduce the number of single occupancy vehicle (SOV) trips on I-405 during construction of the Project, and

**WHEREAS**, the State desires to have Metro Transit implement said strategies and actions due to its experience and familiarity with delivering public transportation and TDM services and outreach within the areas of impact, and

**WHEREAS**, in order to preserve the Project’s schedule, this Agreement also ratifies the advance authorization given by the State on February 27, 2006 for Metro Transit to begin the implementation of the TDM services and outreach work specified in Exhibit A, and

**WHEREAS**, Federal funding is authorized under 49 USC chapter 53, Title 23 USC (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted as Public Law 109-59, August 10, 2005; the Transportation Equity Act for the 21st Century (TEA-21) enacted as Public law 105-178, June 9, 1998, as amended; the National Capital Transportation Act of 1969, D.C. Official Code, §§9-1111.01 et seq.; or other Federal legislation FTA administers to the extent FTA so determines, and

**WHEREAS**, funding is authorized under 49 USC §5316 for Job Access and Reverse Commute; and any subsequent amendments and resolutions thereto,

**NOW THEREFORE**, by virtue of chapter 39.34 RCW and in consideration of the terms, conditions, and mutual covenants set forth herein and in the attached Exhibits A and B which are incorporated herein and made a part hereof, the sufficiency of which consideration is acknowledged, the Parties **MUTUALLY AGREE AS FOLLOWS:**

### **1. GENERAL**

The purpose of this Agreement is to implement the TDM services and outreach specified in Exhibit A, hereinafter the "Work," in an effort to reduce single occupancy vehicle trips on I-405 during construction of the Project and to establish a method for invoicing and payment of the costs associated with this Work.

### **2. DUTIES**

Metro Transit will perform the Work and provide the services as described in Exhibit A.

### **3. PAYMENT**

The State will reimburse Metro Transit for the actual direct and related indirect costs of the Work performed pursuant to this Agreement, not to exceed a maximum amount of One Million Nine Hundred Forty-Seven Thousand Forty Dollars and Fifty-Three Cents (\$1,947,040.53).

A cost estimate for Work to be performed by Metro Transit pursuant to this Agreement is shown in Exhibit B.

Partial payments to Metro Transit shall be made by the State throughout the term of this Agreement, upon receipt of detailed billing invoices from Metro Transit. Billings will not be more frequent than one (1) per month.

The State agrees to make payment for the Work performed by Metro Transit within thirty (30) days from receipt of a billing invoice from Metro Transit.

Metro Transit agrees to submit a final billing to the State within forty-five (45) days after the effective date of termination of this Agreement.

### **4. AMENDMENT**

Either Party may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

### **5. DISPUTES**

The Parties, through their designated representatives identified in Section 11 herein this Agreement, shall use their best efforts to resolve any disputes pertaining to this Agreement that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible Project

directors of both Parties shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter shall be reviewed by the department directors of both Parties or a Party's designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

#### **6. EFFECTIVENESS AND DURATION**

Metro Transit was given verbal approval to begin work for this Agreement on February 27, 2006. This Agreement will remain in effect through December 31, 2008, unless terminated earlier pursuant to Sections 12 and 14 of this Agreement.

#### **7. LEGAL RELATIONS**

It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.

#### **8. ENTIRE AGREEMENT**

This Agreement, including its Exhibits, contains all terms, conditions and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment as provided for in Section 4 of this Agreement.

#### **9. FORCE MAJEURE**

Either Party to this Agreement shall be excused from performance of any responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event should this provision eliminate the need to make payment for work performed pursuant to this Agreement.

#### **10. SEVERABILITY**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

#### **11. NOTIFICATION**

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated in writing by the Parties:

To the State: System Integration Manager  
WSDOT Public Transportation Division  
Office of Transit Mobility  
401 Second Avenue South, Suite 400  
Seattle, WA 98104

To Metro Transit: Senior Transportation Planner  
MS YES-TR-0600  
King County Metro Transit Division  
400 Yesler Way  
Seattle, WA 98104

## **12. INDEMNIFICATION AND HOLD HARMLESS**

The Parties shall 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, arising out of, or in any way resulting from, each of the Party's own negligent acts or omissions. 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 is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph 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 of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In any action to enforce the provisions of this Section, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs incurred from the other Party. The obligations of this section shall survive any termination of this Agreement.

## **13. VENUE**

This Agreement shall be deemed to be made in the County of Thurston, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. Any legal action arising out of this Agreement shall be brought in the superior court situated in the County of Thurston, State of Washington.

## **14. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS**

Metro Transit agrees to comply with all applicable federal rules and regulations contained herein, and agrees to require the same of all subcontractors providing services or performing any Work using funds provided under this Agreement. For the purposes of meeting FTA requirements as defined in this Section 14, Metro Transit shall also be referred to as "CONTRACTOR."

#### 14.1 Project Costs

The CONTRACTOR agrees that the Project costs eligible for federal participation, including State Funds and/or CONTRACTOR's Funds used as match to Federal Transit Administration (FTA) funds, must comply with the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments."

#### 14.2 Assignments and Subcontracts

Unless otherwise authorized in advance and in writing by WSDOT, the CONTRACTOR will not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any assignee with respect to its rights and responsibilities under this AGREEMENT. The CONTRACTOR agrees to include Sections 14.3 through 14.19 of this AGREEMENT in each subcontract financed in whole or in part with federal assistance provided by FTA; 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, subject to the limitations set forth in Sections 14.13, C.2 and D.2 of this AGREEMENT. It is further agreed 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 any advertisement or invitation to bid for any procurement by the CONTRACTOR under this AGREEMENT:

#### Statement of Financial Assistance:

This AGREEMENT is subject to a financial assistance contract between the Washington State Department of Transportation and the Federal Transit Administration and the appropriations of the State of Washington.

#### 14.3 General Compliance Assurance

The CONTRACTOR agrees to give reasonable guarantees that it and its subcontractors and any third party contractors under this AGREEMENT, will comply with all requirements imposed by, or pursuant to, the Federal Transit Act including any amendments thereto, and the Federal Regulations. The CONTRACTOR agrees to comply with the provisions of 49 CFR Part 18 or 49 CFR Part 19, whichever is applicable, and the "Common Rule" as defined in OMB Circular A-87. The CONTRACTOR agrees that the United States, any agency thereof, Washington State Department of Transportation (WSDOT) and any of WSDOT's representatives, have not only the right to monitor the compliance of the CONTRACTOR with the provisions of this Assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the Federal Transit Act, the Federal Regulations, and this Assurance.

#### 14.4 Purchases

The CONTRACTOR shall make purchases of any incidental goods or supplies essential to this AGREEMENT through procurement procedures approved in advance by WSDOT and consistent with the following provisions:

A. **General Procurement Requirements.** The CONTRACTOR shall comply with third party procurement requirements of 49 USC chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with United States Department of Transportation (USDOT) third party procurement regulations of 49 CFR §18.36 or 49 CFR §19.40 through 19.48 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto to the extent those regulations are consistent with SAFETEA-LU provisions. The CONTRACTOR shall also comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those

regulations are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to "Grantee" shall mean CONTRACTOR.

**B. Preference for United States Products and Services.** To the extent applicable, the CONTRACTOR agrees to comply with the following United States (U.S.) preference requirements:

1. **Buy America.** The CONTRACTOR agrees to comply with 49 USC §5323(j), with FTA regulations, "Buy America Requirements," 49 CFR Part 661, to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The CONTRACTOR also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions and except to the extent that FTA determines otherwise in writing.

2. **Cargo Preference—Use of United States-Flag Vessels.** The CONTRACTOR agrees to comply with 46 App. USC §1241(b)(1) and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the Project.

3. **Fly America.** The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC §40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§301-10.131 through 301-10.143.

**C. Pre-Award and Post-Delivery Requirements.** The CONTRACTOR agrees to comply with the requirements of 49 USC §5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision(s) thereto.

**D. Geographic Restrictions.** The CONTRACTOR agrees to not use any state or local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

**E. Government Orders.** In case any lawful government authority shall make any order with respect to the Project or Project Equipment, or any part thereof, or the PARTIES hereto or either PARTY, the CONTRACTOR shall cooperate with WSDOT in carrying out such order and will arrange its operation and business so as to enable WSDOT to comply with the terms of the order.

#### 14.5 Charter Service Operations

The CONTRACTOR shall comply with 49 USC §5323(d) and 49 CFR Part 604, which state that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded Equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the transportation services provided under this contract.

#### 14.6 School Bus Operations

The CONTRACTOR agrees to comply with 69 USC §5323(f) and 49 CFR Part 605, which state that recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

#### 14.7 Incorporation of Federal Terms

A. **Purchasing.** This AGREEMENT's provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth in this AGREEMENT's provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any WSDOT request, which would cause WSDOT to be in violation of any FTA term or condition.

B. **Federal Changes.** The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, whether or not they are referenced in this AGREEMENT and to include any amendments promulgated by the FTA, during the term of this AGREEMENT. The CONTRACTOR's failure to so comply shall constitute a material breach of this AGREEMENT.

#### 14.8 No Obligation by the Federal Government

A. WSDOT and the CONTRACTOR acknowledge and agree that regardless of any concurrence or approval by the Federal Government of the solicitation or award of this AGREEMENT, the Federal Government is not a party to this AGREEMENT unless the the Federal Government provides its express written consent. The Federal Government shall not be subject to any obligations or liabilities to the CONTRACTOR or any other party pertaining to any matter resulting from this AGREEMENT.

B. 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. The CONTRACTOR hereby agrees to include this provision 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.

#### 14.9 Ethics

A. **Code of Ethics.** The CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by federal assistance. The code or standards shall provide that the CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential contractor or sub-recipient. The CONTRACTOR may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These codes or standards shall prohibit the CONTRACTOR's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the CONTRACTOR's officers, employees, board members, or agents, or by subcontractors or sub-recipients or their agents. The CONTRACTOR must fully comply with all the requirements and obligations of chapter 42.52 RCW that govern ethics in state and local governments.

1. **Personal Conflict of Interest.** The CONTRACTOR's code or standards shall prohibit the CONTRACTOR's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the PARTIES set forth below has a financial or other interest in the firm or entity selected for award:

- a. The employee, officer, board member, or agent;
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ, any of the above.

2. **Organizational Conflict of Interest.** The CONTRACTOR's code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or impair its objectivity in performing the work under this AGREEMENT.

B. **Debarment and Suspension.** The CONTRACTOR agrees to comply with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 USC §6101 note, and USDOT regulations "Government-wide Debarment and Suspension (Non-procurement)" at 49 CFR Part 29. The CONTRACTOR agrees to review the Excluded Parties Listing System at <http://epls.arnet.gov/> before entering into any contracts.

C. **Bonus or Commission.** The CONTRACTOR affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for federal financial assistance for this Project.

D. **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 Equipment and materials from any employee or officer of WSDOT.

E. **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.

F. **Restrictions on Lobbying.** The CONTRACTOR agrees to:

1. Comply with 31 USC §1352(a) and will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant AGREEMENT or Cooperative Agreement; and

2. Comply, and assure compliance by each subcontractor at any tier and each sub-recipient at any tier, with applicable requirements of USDOT regulations, "New Restriction on Lobbying," 49 CFR Part 20, modified as necessary by 31 USC §1352; and

3. Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a state legislature on legislation or appropriations, except through proper, official channels.

G. **Employee Political Activity.** To the extent applicable, the CONTRACTOR agrees to comply with the provisions of the "Hatch Act," 5 USC §§1501 through 1508, and §§7324 – 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR Part 151. The "Hatch Act" limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal Funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 49 USC §5307 (k)(2)(B) and 23 USC §142(g), the "Hatch Act" does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving assistance pursuant to the SAFETEA-LU provisions and/or receiving FTA assistance to whom the "Hatch Act" does not otherwise apply.

H. **False or Fraudulent Statements or Claims.** The CONTRACTOR acknowledges and agrees that:

1. **Civil Fraud:** The Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by executing this AGREEMENT, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by this AGREEMENT. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR to the extent the Federal Government deems appropriate.

2. **Criminal Fraud:** If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this Project authorized under 49 USC Chapter 53 or any other federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 USC §5323(1), 18 USC §1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

#### 14.10 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 provision in chapter 49.60 RCW.

#### 14.11 Civil Rights

The CONTRACTOR shall comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. **Nondiscrimination in Federal Transit Programs.** The CONTRACTOR agrees to comply, and assures compliance by each third party contractor at any tier, with the provisions of 49 USC §5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity;

B. **Nondiscrimination--Title VI of the Civil Rights Act.** The CONTRACTOR agrees to comply, and assure compliance by each third party contractor at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC §§2000(d) et seq.; and USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21, Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to comply with any applicable implementing federal directives that may be issued;

C. **Equal Employment Opportunity.** The CONTRACTOR agrees to comply, and assures compliance by each third party contractor at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000(e), and 49 USC §5332 and any implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

2. If the CONTRACTOR is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this AGREEMENT. Failure by the CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of federal financial assistance, or other measures that may affect the CONTRACTOR's eligibility to obtain future federal financial assistance for transportation projects.

**D. Nondiscrimination on the Basis of Sex.** The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§1681 et seq.; with USDOT regulations "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance", 49 CFR Part 25; and with any implementing directives that USDOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

**E. Nondiscrimination on the basis of Age.** The CONTRACTOR agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 USC §§6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance", 45 CFR Part 90, which prohibits discrimination on the basis of age.

2. The Age Discrimination in Employment Act (ADEA) 29 USC §§621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act" 29 CFR Part 1625.

**F. Disabilities-Employment.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

**G. Disabilities-Access.** The CONTRACTOR agrees to comply with the requirements of 49 USC §5301(d) which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§12101 et seq., which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 USC §§4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities; and with the Federal regulations, including any

amendments thereto following: USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board USDOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630; U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, "Electronic and Information Technology Accessibility Standards" 36 CFR Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

**H. Drug or Alcohol Abuse.** Confidentiality and Other Civil Rights Protections. The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 USC §§1101 et seq.; with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 USC §§4541 et seq.; and comply with the Public Health Service Act of 1912, as amended, 42 USC §§201 et seq. and any amendments to these laws.

**I. Access to Services for Persons with Limited English Proficiency.** The CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC §2000d-1 note, and with provisions of USDOT Notice "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.

**J. Environmental Justice.** The CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations", 42 USC §4321 note, except to the extent that the Federal Government determines otherwise in writing.

**K. Other Nondiscrimination Statutes.** The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination and other nondiscrimination statute(s) that may apply to the Project including chapter 49.60 RCW.

#### 14.12 Participation of Disadvantaged Business Enterprises

The CONTRACTOR shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

A. The CONTRACTOR agrees to comply with section 1101(b) of SAFETEA-LU, 23 USC §101 note, and USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and

B. The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with federal assistance derived from the USDOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps under 49 CFR Part

26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with federal assistance derived from the USDOT. The CONTRACTOR's DBE program, as required by 49 CFR Part 26 and approved by the USDOT, is incorporated by reference and made part of this AGREEMENT. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to implement its approved DBE program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC §1001, and/or the Program Fraud Civil Remedies Act, 31 USC §§3801 et seq.

#### 14.13 Energy Conservation and Environmental Requirements

**A. Energy Conservation.** The CONTRACTOR shall comply with the mandatory standards and policies relating to energy efficiency standards and policies within the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§6321 et seq., and any amendments thereto.

**B. Environmental Protection.** The Recipient agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§4321-4335; Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC §4321 note; FTA statutory requirements at 49 USC §5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 - 1508; joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622, and subsequent Federal environmental protection regulations that may be promulgated. As a result of enactment of 23 USC §§139 and 326 as well as amendments to 23 USC §138, environmental decision making requirements imposed on FTA projects are to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

**C. Clean Water.** In the event that the Federal share, identified in "Project Cost" of this AGREEMENT, exceeds \$100,000, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 et seq.

1. The CONTRACTOR agrees to report each violation to WSDOT and understands and agrees that WSDOT, in turn, shall report each violation, as required, to the FTA and to the appropriate EPA Regional Office.

2. The CONTRACTOR also agrees to include these requirements in each subcontract that exceeds \$100,000 and is financed in whole or in part with Federal assistance provided by FTA.

**D. Clean Air.** In the event that the federal share, identified in "Project Cost" of this AGREEMENT exceeds \$100,000, the CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401-7671(q) et seq.

1. The CONTRACTOR agrees to report each violation to WSDOT and understands and agrees that WSDOT will, in turn, report each violation to the FTA and to the appropriate EPA Regional Office.

2. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

#### 14.14 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, in accordance with applicable federal regulations and other requirements that FTA may impose. 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 and FTA upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

B. **Funds Received or Made Available for the Project.** The CONTRACTOR agrees to deposit in a financial institution, all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of this Grant AGREEMENT or Cooperative AGREEMENT and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

C. **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.

D. **Checks, Orders, and Vouchers.** The CONTRACTOR agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

#### 14.15 Audits, Inspection, and Retention of Records

A. **Submission of Proceedings, Agreements, and Other Documents.** During the course 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. Reporting and record-keeping requirements are set forth in 49 CFR Part 19. 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-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 perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 USC §§7501 et seq., as provided by 49 CFR §19.26, these audits must comply with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for the USDOT, and any further revision or supplement thereto. The CONTRACTOR agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing Standards". The CONTRACTOR agrees to obtain any other audits required by WSDOT. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. **Inspection.** The CONTRACTOR agrees to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work materials, payrolls, 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 whose contract award is not based on

competitive bidding procedures as defined by the United States Department of Transportation to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, 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 as required by 49 USC §5325(g).

#### 14.16 Labor Provisions

**A Contract Work Hours and Safety Standards Act.** The CONTRACTOR shall comply with, and shall require the compliance by each subcontractor at any tier, any applicable employee protection requirements for non-construction employees as defined by the Contract Work Hours and Safety Standards Act, as amended, 40 USC §3701 et seq., and specifically, the wage and hour requirements of section 102 of that Act at 40 USC §3702 and USDOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)" at 29 CFR. Part 5; and the safety requirements of section 107 of that Act at 40 USC §3704, and implementing USDOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

**B. Fair Labor Standards Act.** The CONTRACTOR agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 USC §§201 et seq., apply to employees performing work involving commerce, and apply to any local government employees that are public transit authority employees. The CONTRACTOR shall comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

**C. Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract 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 40 hours in such workweek.

**D. Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of six (6) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, 40 USC §§3141 et seq., and pursuant to 49 USC §5333(a) et seq., daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, 40 USC §3141 et seq. and pursuant to 49 USC §5333(a), the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee

programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**E. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (B) of this section.

**F. Withholding for unpaid wages and liquidated damages.** The CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (E) of this section.

**G. Transit Employee Protective Agreement.** As a recipient of funds under TEA-21, SAFETEA-LU, 23 USC §10, 49 USC §§5309, 5311, 5311(f), 5316, and 5317 or a public agency recipient of funds under 49 USC §§5310, the CONTRACTOR shall carry out the Project in compliance with the applicable terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and that comply with the requirements of 49 USC §5333(b), and with the USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215 and any amendments thereto. These terms and conditions are identified in USDOL's certification of transit employee protective arrangements to FTA. The CONTRACTOR agrees to implement the Project in accordance with the conditions stated in that USDOL certification, which certification and any documents cited therein are incorporated by reference and made part of this AGREEMENT. The CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by USDOL or any revision thereto.

#### 14.17 Planning and Private Enterprise

**FTA Requirements.** The CONTRACTOR agrees to implement the Project in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 USC §§5303, 5304, 5306, and 5323(a)(l); joint Federal Highway Administration (FHWA)/ FTA document, "Interim Guidance for Implementing SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, as amended by joint FHWA/FTA guidance, "SAFETEA-LU Deadline for New Planning Requirements (July 1, 2007)", dated May 2, 2006; joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 CFR Part 450 and 49 CFR Part 613; and with FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, to the extent that these regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations. To the extent feasible, the CONTRACTOR agrees to comply with the provisions of 49 USC §5323(k), which afford governmental agencies and non-profit organizations that receive Federal

assistance for non-emergency transportation from Federal Government sources (other than USDOT) an opportunity to be included in the design, coordination, and planning of transportation services.

#### 14.18 Substance Abuse

**A. Drug and Alcohol Abuse** - The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations and WSDOT to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The CONTRACTOR agrees further to submit annually the Management Information System (MIS) reports to WSDOT by February 28th each year during the term identified in the caption space header above titled "the Term of Project".

**B. Privacy Act** - The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Services Act of 1912, 42 USC §§290dd-3 and 290ee-3 including amendments to these acts. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying AGREEMENT.

#### 14.19 Termination

**A. Termination for Convenience.** WSDOT and the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the federal and/or state financial assistance provided herein, at any time by written notice to the other PARTY in accordance with 49 CFR Part 18 §18.44 or 49 CFR Part 19 §19.61, whichever is applicable. 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. The PARTIES may terminate this AGREEMENT for convenience for reasons including, but not limited to, the following:

1. The requisite federal and/or state 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 federal and/or state 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;

5. The Federal Government and/or State Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of federal and/or state financial assistance for the Project; or

6. The Federal Government terminates this AGREEMENT due to a determination that the CONTRACTOR has: (a) willfully misused Federal assistance Funds by failing to make adequate progress on the Project, (b) failed to make reasonable and appropriate use of the Project real property, facilities, or equipment, or (c) failed to comply with the terms of this AGREEMENT. In the event of a termination under this subsection, and the Federal Government exercises its right to require WSDOT to refund any or all of the Federal Funds provided for the Project, the CONTRACTOR shall return all monies reimbursed to it by WSDOT, in the amount required by the Federal Government, within sixty (60) days of its receipt of a certified letter from WSDOT.

7. In the case of termination for convenience under subsections 1-5 above, WSDOT shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT which 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 federal 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:

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;

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

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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date written below.

KING COUNTY, DEPARTMENT OF  
TRANSPORTATION, METRO TRANSIT  
DIVISION

STATE OF WASHINGTON  
DEPARTMENT OF  
TRANSPORTATION

Kevin Desmond  
By

Kathryn M. Saylor  
By

Kevin Desmond  
General Manager  
King County Metro Transit Division

Director  
Public Transportation

10/3/07  
Date

10/10/07  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

N/A  
By (print)

Elizabeth Layerberg  
By (print)

\_\_\_\_\_  
Signature

Elizabeth  
Signature

\_\_\_\_\_  
Title

Assistant Attorney General

\_\_\_\_\_  
Date

September 18, 2007  
Date

**GCA 5487**  
**Exhibit A**  
**Scope of Work**

**I-405 Construction Mitigation Project - Kirkland, Phase 1**

**I. Description of King County Metro (Metro Transit) Proposed Actions**

**1. Transit Service Additions**

- A. Kenmore/Kingsgate/Overlake Transit Service, June 2006-May 2007. Deliver new transit service oriented to Overlake from Kenmore and serving the Kenmore and Kingsgate park-and-ride lots. Using four buses, eighteen trips will be delivered providing 387 seats.
- B. Kenmore/Kingsgate/Overlake Transit Service, June 2007-May 2008. Deliver new transit service oriented to Overlake from Kenmore and serving the Kenmore and Kingsgate park-and-ride lots. Using 5 buses, fifteen trips will be delivered providing 322 seats.
- C. Juanita/Seattle Arterial transit service, June 2006-May 2007. Extend Route 255 trips that now begin or end at the Kirkland Transit Center to the Brickyard park-and-ride lot via the regular arterial path of Route 255. Without adding buses, eight Route 255 trips will be extended north.
- D. Juanita/Seattle Arterial transit service, June 2007-May 2008. Extend Route 255 trips that now begin or end at the Kirkland Transit Center to the Brickyard park-and-ride lot via the regular arterial path of Route 255. Without adding buses, eight Route 255 trips will be extended north.

Notes:

All of the proposed new service was added in conjunction with Metro Transit's June, 2006 service change.

**2. I-405 Survey Research & Methodology**

- A. Utilizing two questions in the 2005 Rider/Non-Rider Survey, provide an I-405 Corridor data subset in an agreed format to State.

**3. Park & Ride Efficiency**

- A. Relocate five Metro Transit Vanpool groups at three park-and-ride lots serving the I-405 corridor: Brickyard, Kenmore, and Kingsgate using financial incentives valued up to \$300 for a maximum of 70 vanpool passengers.

*Note:* Supplemental park and ride lot capacity will be identified jointly with Metro Transit and State on an as needed basis.

- B. Recruit up to twelve new Metro Transit VanShare groups. Vanshare fares (\$125) will be funded for up to twelve months and a one time \$100 fuel incentive will be provided for each of the twelve new Vanshare groups.
- C. Outreach at targeted employer sites will be conducted to reach additional commuters using and/or potentially using the affected Park and Ride lots in an effort to reach SOV commuters that can be recruited to join Metro Transit VanShare groups.
- D. Obtain and Install one bike rack and four two-bicycle capacity lockers at key park and ride locations, to be identified jointly by Metro Transit and State.
- E. Produce specialized outreach materials including, but not limited to flyers, schedules maps, brochures and other unique print materials in support of park and ride efficiencies and multimodal commuting in construction affected corridors.
- F. Obtain (and install) equipment necessary to enhance the messaging and efficient use of park and ride facilities including, but not limited to, banners, parking signs, and a variable reader display.

*Note:* Whenever possible, outreach efforts will be coordinated with and build upon local, regional and statewide incentive programs.

#### 4. HOV Promotion

- A. Produce and deliver a multi- modal, construction mitigation awareness direct mail piece including Metro Transit free-ride tickets and a postage paid return questionnaire. Household mailing list of 45,000 households is based on a 2.5 mile buffer analysis of Kenmore, Kingsgate, and Brickyard P&R lots.
- B. Produce 150 bus-side advertisement pieces for strategic on bus advertisement.
- C. Produce and place up to eight print advertisements in targeted newspapers to increase the effectiveness of construction mitigation services.

*Note:* An evaluation of results will be provided based upon returned questionnaires, a count of redeemed free ride tickets, and ridership counts on affected routes.

#### 5. Geodatabase

- A. Develop and Refine Market Analysis Geodatabase

Develop and refine a geodatabase, based on GIS data, to identify key travel markets to focus trip reduction programs. Specifically, this model would collect, relate, and display data of the following types:

- Origin/destination
- Travel mode
- Highway system performance
- Transit system capacity
- Ridesharing utilization, and
- Other demographic information

Timeline:

- Development of Initial Geodatabase - June 30, 2007
- Refined Geodatabase - December 31, 2007
- Manual for application of database to other projects - April 1, 2008

B. Apply and Test Geodatabase

Arrange and overlay travel and transportation system data to support specific State and Metro Transit trip reduction projects. Metro Transit will solicit and incorporate feedback from the State in organizing, analyzing and representing data.

Model application will be made during the agreement period to support trip reduction projects. Such applications will include, but not be limited to: corridor and destination definition, trip reduction goals, refinement and coordination of data sources.

Timeline:

- Database Application – Ongoing

**GCA 5487**  
**I-405 Construction Mitigation Assistance**  
**Kirkland - Phase 1**

**Exhibit B - Cost Estimate**

Service Category		Deliverable	Number of Units	Unit	Cost per Unit	Cost
1 Transit Service Additions	A	Kenmore/Kingsgate/Overlake (new route) - 18 Daily Monday-Friday Trips June 2006 - May 2007	9525	service hour	79.93	\$ 761,333.00
1 Transit Service Additions	B	Kenmore/Kingsgate/Overlake (new route) - 15 Daily Monday-Friday Trips June 2007 - May 2008	7227.36	service hour	89.8	\$ 649,005.00
1 Transit Service Additions	C	Juanita/Seattle Arterial - 8 Daily Monday-Friday Trips June 2006 - May 2007	1447.8	service hour	84.21	\$ 121,920.00
1 Transit Service Additions	D	Juanita/Seattle Arterial - 8 Daily Monday-Friday Trips June 2007 - May 2008	1428.84	service hour	103.31	\$ 147,610.00
<i>Transit Service Additions Total</i>						<b>\$ 1,679,868.00</b>
2 I-405 Survey Research and Methodology	A	I-405 data subset in agreed format	1	ea	1000	\$ 1,000.00
<i>I-405 Survey Research and Methodology Total</i>						<b>\$ 1,000.00</b>
3 Park and Ride Efficiency	A	Vanpool Relocation Incentives	70	ea vanpooler	300	\$ 21,000.00
3 Park and Ride Efficiency	B.1	Vanshare Costs	12	ea vanshare	1500	\$ 18,000.00
3 Park and Ride Efficiency	B.2	Vanshare Incentive	12	ea vanshare	100	\$ 1,200.00
3 Park and Ride Efficiency	C	Staff Outreach	420	hour	40.495	\$ 17,000.00
3 Park and Ride Efficiency	D.1	Bicycle Rack	1	ea	500	\$ 500.00
3 Park and Ride Efficiency	D.2	Bicycle Locker (capacity=2 bicycles)	4	ea	3000	\$ 12,000.00
3 Park and Ride Efficiency	E	Produce Outreach Materials	1	not to exceed	7500	\$ 7,500.00
3 Park and Ride Efficiency	F	Obtain Support Tools including banners, signage and variable reader display	1	not to exceed	8000	\$ 8,000.00
<i>Park and Ride Efficiency Total</i>						<b>\$ 85,200.00</b>
4 HOV Promotion	A	Produce and Deliver Mailer	45000	ea	1.6	\$ 72,000.00
4 HOV Promotion	B	Produce Exterior Bus Advertisements	150	ea	60	\$ 9,000.00
4 HOV Promotion	C	Produce and Place Newspaper Advertisements	8	ea	5000	\$ 40,000.00
<i>HOV Promotion Total</i>						<b>\$ 121,000.00</b>
5 Geodatabase	A	Production of geodatabase	752	hours	39.91	\$ 30,000.12
5 Geodatabase	B	Testing and application of geodatabase	751	hours	39.91	\$ 29,972.41
<i>Geodatabase Total</i>						<b>\$ 59,972.53</b>
<b>Grand Total</b>						<b>\$ 1,947,040.53</b>