

**REIMBURSEMENT AGREEMENT NO. GCB 1934
RE: CERTAIN PRE-CONSTRUCTION WORK FOR
NEW PASSENGER-ONLY FERRY TERMINAL AT
SEATTLE MULTIMODAL TERMINAL**

This Reimbursement Agreement (“Agreement”) is made and entered into this 23rd day of December, 2014 (the “effective date”) between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION, operating as Washington State Ferries (“WSF”) and the KING COUNTY FERRY DISTRICT, a municipal corporation of the state of Washington (“District”), (each a “Party” and collectively the “Parties”).

Recitals

1. WSF owns the ferry terminals at Piers 50 and 52 in Seattle, Washington.
2. The District is currently operating water taxi and passenger-only ferry service from Pier 50 to Vashon Island and West Seattle pursuant to Terminal License Agreement No. GCA 6750, dated August 18, 2011, between the Parties.
3. Providing water taxi and passenger-only ferry service provides a significant public benefit.
4. WSF plans to remodel Pier 52, to include space for relocation of passenger-only ferry operations from Pier 50 to the south side of Pier 52.
5. Pre-construction work, including design and permitting work, is underway as part of WSF’s plan to remodel Pier 52.
6. Pursuant to Laws of Washington 2012, Chapter 86, Section 308(13), WSF must not preclude passenger-only ferry service providers as part of the remodel of Pier 52.

7. Since September 2012, WSF has expended funds and spent resources to include facilities for passenger-only ferry service in the remodel of Pier 52, which expenditures benefit the District by ensuring that POF facilities are integrated into WSF's remodel of Pier 52.
8. King County, as service provider to the District, was awarded Federal Transit Administration ("FTA") grant WA-90-X526 (CFDA number 20.507) to fund in part the pre-construction work that is the subject of this Agreement. King County intends to be reimbursed from this FTA grant to pay the amount under this Agreement for and on behalf of the District.
9. The purpose of this Agreement is to set forth the terms and conditions under which the District will reimburse WSF for certain direct and indirect costs expended through July 7, 2014 for the benefit of the District as part of the remodel of Pier 52, and to release the District from any further liability or obligation for POF-related pre-construction costs (e.g., design and permitting costs) incurred by WSF up to and including July 7, 2014 in connection with the project to remodel Pier 52.
10. This Agreement is authorized by Chapter 39.34 RCW, the Interlocal Cooperation Act.

(go to next page)

Agreement

1. In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:
2. The District shall reimburse WSF for POF-related pre-construction work conducted by WSF through July 7, 2014 for the remodel of Pier 52 in the amount of \$198,977.00.
3. The District shall pay WSF the full amount due within sixty (60) days after the effective date of this Agreement. This amount includes work, all of which provide a benefit to the District, as follows:

Coordination and assistance by WSF staff	\$ 31,902.00
CH2MHill/NBBJ subtask 11	\$ 79,519.00
FSI	\$ 1,500.00
Discipline studies	\$ 12,268.00
Hydraulics report	\$ 3,584.00
Geotechnical	\$ 21,456.00
NEPA review	\$ 39,031.00
ESA compliance	\$ 3,791.00
Section 106 compliance	<u>\$ 5,926.00</u>
Total:	\$198,977.00

4. WSF shall not seek any additional reimbursement from the District for POF-related costs and indirect (overhead) costs incurred by WSF before July 7, 2014 and in connection with the Pier 52 remodel.
5. Unless otherwise agreed to in writing, from and after the date of this Agreement the District and its successors and assigns shall have no additional responsibility or liability for any costs, amounts or resources WSF may have incurred or expended on the Pier 52 remodel through July 7, 2014. WSF waives and releases the District and its successors and assigns from any and all liability, claims, or causes of action arising out of or relating to such costs, amounts, and resources.
6. No assumptions as to either Party's liability or obligation for POF-related costs arising out of or pertaining to the Pier 52 remodel shall be made by reason of the reimbursement terms agreed to by the Parties in this Agreement.
7. Following reimbursement by the District pursuant to this Agreement, WSF will continue to provide the District, its contractors, successors, and assigns with reasonable access to all documents and deliverables pertaining to WSF's POF-related pre-construction work conducted through July 7, 2014 and related to the remodel of Pier 52.
8. Persons executing this Agreement on behalf of their Party have full and approved authority to fully and completely bind their respective Party and their Party's officers, directors, successors, assigns, and employees to this Agreement for all purposes.
9. Neither Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party; provided, the Parties contemplate that King County may assume the District's rights and duties under this Agreement pursuant to RCW Chapter 36.150, and WSF consents to any such assumption of the District's rights and obligations under this Agreement by King County, including but not limited to the right to enforce WSF's waiver of claims in Section 3 of this Agreement.

10. Subject to the Parties' reserved assignment rights under Section 7, this Agreement creates no right, privilege, duty, obligation or cause of action in any person or entity not a party to it.
11. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the state of Washington without reference to its choice of law rules or conflicts of law provisions. Any legal action to enforce or resulting from this Agreement shall be brought in the Superior Court of King County, Washington.
12. This Agreement may be executed in multiple counterparts, all of which together shall be regarded for all purposes as one original.
13. **Exhibit A** attached hereto and incorporated herein (together with its Attachments) is another section of this Agreement. WSF shall comply with the terms and conditions of **Exhibit A** in performing the POF-related pre-construction work that is reimbursed by the District pursuant to this Agreement.

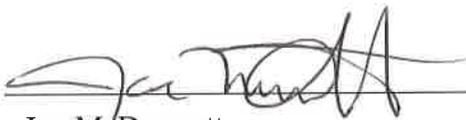
IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
FERRIES DIVISION**

By: 
Lynne Griffith
WSDOT Assistant Secretary
For Washington State Ferries

Date: 12/23/2014

KING COUNTY FERRY DISTRICT

BY: 
Joe McDermott
King County Ferry District Board Chairperson

Date: 12/19/2014

Approved for WSDOT Ferries Division:

By: 
Timothy P. McGuigan
Director of Contracts & Legal Services

Date: 11/10/2014

EXHIBIT A

SECTION 13 OF AGREEMENT – FEDERAL REQUIREMENTS LANGUAGE

- A. This Agreement is subject to a financial assistance agreement between King County, as service provider to the District, and the FTA. WSF shall comply with all applicable federal laws, regulations, policies, procedures and directives, including but not limited to the following, item nos. 3 through 6 of which are attached hereto and incorporated herein by this reference:
1. 49 CFR 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The text is available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=08e9c1f803e98a578e0f3d2714277ff4&rgn=div5&view=text&node=49:1.0.1.1.12&idno=49>
 2. 2 CFR Part 225, Cost Principles for State, Local and Indian Tribal Governments. The text is available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=08e9c1f803e98a578e0f3d2714277ff4&rgn=div5&view=text&node=2:1.1.2.10.6&idno=2>
 3. The requirements and obligations imposed on a “Recipient” under the applicable provisions of the FTA Master Agreement. The Master Agreement is incorporated by reference as Attachment A. The Master Agreement text is available at: <http://www.fta.dot.gov/documents/20-Master.pdf>
 4. The requirements of FTA Circular 5010.1D Project Administration and Management. Circular 5010.1D is incorporated by reference as Attachment B. The Circular text is available at: http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf
 5. If WSF contracts with a third party to provide all or a portion of the services described in this Agreement, then WSF shall comply with FTA Circular 4220.1F. Circular 4220.1F is incorporated by reference as Attachment C. The Circular text is available at: http://www.fta.dot.gov/documents/C_4220_1F.pdf
 6. Applicable FTA Third Party Contract Provisions – Standard Terms and Conditions. The text is attached as Attachment D.
- B. New federal laws, regulations, policies, procedures and directives may be adopted after the date this Agreement is established and may apply to this Agreement. WSF agrees to accept and comply with all applicable laws, regulations, policies, procedures and directives as may be amended or promulgated from time to time during the term of this Agreement.

- C. WSF shall not perform any act, fail to perform any act, or refuse to comply with any requests by the District which would cause King County or the District to be in violation of any federal law or FTA requirement. WSF's failure to so comply with this Section shall constitute a material breach of this Agreement.
- D. The District and WSF acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to King County, the District, WSF, or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant thereto) pertaining to any matter resulting from this Agreement.
- E. WSF agrees to extend application of the federal requirements to its subrecipients or contractors, and their respective subcontractors, by including this Section and the related exhibits in each contract and subcontract WSF awards under this Agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that this Section shall not be modified, except to change the names of the parties to reflect the subrecipient or contractor which will be subject to its provisions.
- F. WSF acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801, et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the work under this Agreement. Upon execution of this Agreement, WSF certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, WSF further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on WSF to the extent the Federal Government deems appropriate.
1. WSF also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on WSF, to the extent the Federal Government deems appropriate.
 2. WSF agrees to include the above two clauses in each contract and subcontract it awards under this Agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the contractor or subcontractor who will be subject to the provisions.

G. Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Agreement is a covered transaction for purposes of 2 CFR part 1200. As such, WSF is required to verify that none of WSF, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. WSF is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into. By signing and submitting this Agreement, WSF certifies as follows:

The certification in this clause is a material representation of fact relied upon by the District. If it is later determined that WSF knowingly rendered an erroneous certification, in addition to remedies available to King County or the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. WSF agrees to comply with the requirements of 2 CFR 1200, Subpart C while this offer is valid and throughout the period of any work or services that may arise from this Agreement. WSF further agrees to include a provision requiring such compliance in its lower tier covered transactions.

H. As a sub-recipient receiving \$25,000 or more of pass-through Federal Transit Administration funds, WSF must comply with the reporting requirements of The Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282., as amended by section 6202(a) of P.L. 110-252). The FFATA prescribes specific data to be reported and the District hereby agrees to report sub-award data into the website www.USASpending.gov via www.frs.gov. WSF agrees to provide the District with the information required in this Section within 30 calendar days from the execution date of this Agreement:

I. WSF agrees to provide the District with its Federal Central Contractor Registration number within 30 calendar days of the execution of this Agreement. If it has not already registered, WSF agrees to register with the Federal Central Contractor Registration at <https://www.sam.gov/portal/public/SAM/> (formerly www.CCR.gov) and provide the District with the registration number within 30 calendar days from the execution date of this Agreement. *Exceptions may be made on a case-by-case basis upon approval by the District.*

J. WSF agrees to provide the District with a copy of its Title VI implementation plan in accordance with FTA Circular 4702.1B, Chapter III, Section 11. If WSF does not have a Title VI plan, the District and WSF agree to work together to sufficiently document WSF's adoption of the District's Title VI plan, or in the alternative, WSF's implementation of its own Title VI plan.

ATTACHMENT A TO EXHIBIT A

FTA Master Agreement

(incorporated by reference)

ATTACHMENT B TO EXHIBIT A

FTA Circular 5010.1D
Project Administration and Management

(incorporated by reference)

ATTACHMENT C TO EXHIBIT A

FTA Circular 4220.1F

(incorporated by reference)

ATTACHMENT D TO EXHIBIT A

FTA THIRD PARTY CONTRACT PROVISIONS STANDARD TERMS AND CONDITIONS

This Contract shall be partially funded by the Federal Transit Administration (FTA). The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as are the requirements of the Master Agreement between King County and the U.S. Department of Transportation, including all “flow down” provisions to third party Contractors, Subcontractors and or suppliers are hereby incorporated by reference. Unless stated otherwise, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

1. Changes in Federal laws, Regulations, Policies and Administrative Practices

New federal laws, regulations, and directives may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

Ref: FTA Master Agreement MA (16), 10-1-2009, Section 2(c).

2. Federal Changes

The Contractor agrees to comply with all applicable FTA laws, regulations and directives, including without limitation, those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to comply shall constitute a material breach of this Contract.

Ref: 49 CFR Part 18 and FTA Master Agreement MA (16), 10-1-2009, Section 2(c).

3. No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any

other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

Ref: FTA Master Agreement MA (16), 10-1-2009, Section 2(f).

4. Equal Employment Opportunity

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Ref: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 621-634; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Parts 1625 and 1630; 41 CFR § 60-1.4, Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, " 49 CFR Part 25.

5. Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time. The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations.

Ref: 49 CFR Part 21.19.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

- A. Nondiscrimination—49 CFR Part 26. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation ("USDOT") — assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. Prompt Payment. The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Contract no later than thirty (30) Days from the receipt of each payment the Contractor receives from the County. The Contractor agrees further to return retainage payments to each Subcontractor within thirty (30) Days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE Subcontractors.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- D. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, King County shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- E. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs A through D in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- F. Contractor's List. Contractor is requested to submit the name, address, DBE/Non-DBE status, annual gross receipts, and age of all Subcontractors and suppliers

bidding or quoting on DOT-assisted projects. **Compliance with the requirement to report the Contractor's List information is a matter of responsibility.** Contractor is requested to submit the Contractor's List prior to Contract Work.

6. Disadvantaged Business Enterprise Requirements.

- A. DBE Participation. The County has not established a DBE goal for this Contract. In accordance with this section, the County has an overall annual DBE goal of thirteen percent (13%) for FTA assisted projects. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor accurately DBE program compliance.
- B. Reporting Requirement. The USDOT requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor DBE participation accurately and for reporting purposes.
- C. DBE Eligibility. A DBE means a business certified as a DBE by the Washington State Office of Minority and Women's Business Enterprise (OMWBE).
- D. DBE Listing. A Directory of DBE firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available online at the following website address:
<http://www.omwbe.wa.gov/directory/directory.htm> Telephone the OMWBE at 360-753-9693. **All DBE firms must be certified by OMWBE.**
- E. Counting DBE Participation. The County will count DBE participation toward its annual overall DBE goal as provided for in 49 CFR 26.55.
1. DBE Contractor. The County will only count the Work a DBE Contractor performs with its own forces as well as the Work performed by DBE Subcontractors with their own work forces.
 2. Joint Venture. When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces.
 3. Commercially Useful Function. The County will count expenditures to a DBE contractor only for DBEs who perform a commercially useful function on that contract.
 - a. DBE performs a commercially useful function when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself.

- b. DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DBE participation.
 - (1) A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved.
4. Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
- a. **Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - b. **Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (1) To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - c. A Person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (4)(b), if the Person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. The cost of the materials and supplies themselves shall be counted.
5. Purchases from a DBE. With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

7. Disadvantaged Business Enterprise and Other Small Business Participation

The County encourages Contractors to carry out the following steps to facilitate DBE and other small business participation, which may be either on a direct basis in response to this solicitation or as a Subcontractor to a bidder.

- A. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small businesses that have the capability to perform the Work of the Contract.
- B. Select portions of the Work to be performed by Subcontractors to increase the likelihood that DBE and other small businesses' goals will be achieved.
- C. Provide interested Subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. Negotiate in good faith with interested DBEs and other small businesses.
- E. Avoid rejecting DBEs and other small businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to obtain DBE and other small business participation.
- F. Make efforts to assist interested DBEs and other small businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Make efforts to assist interested DBEs and other small businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively use the services of available minority/women community organizations, Contractors' groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small businesses.

*Note – Use if shipping goods outside the USA

8. Cargo Preference - Use of U.S. Flag Vessels

In the event that ocean shipment or international air transportation is required for any equipment, material or commodities pursuant to this Contract, the Contractor shall:

- A. Utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- B. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Contractor in the case of Subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.
- C. Insert the substance of the provisions of this section in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Ref: 46 USC § 1241; 46 CFR Part 381.

*Note – Use if flying goods or people outside the USA

9. Fly America

The Contractor agrees to utilize United States flag air carriers to the extent such carriers Provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers, to the extent such service is available, unless travel by a foreign air carrier is a matter of necessity, as defined by the Fly America Act. . The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service with a U.S. flag air carrier was not available or why it was necessary to use a foreign carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Ref: 49 USC § 40118; 41 CFR Part 10.131-10.143.

10. Audit and Inspection of Records

In the case of all negotiated Contracts and Contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposal procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the

purpose of audit and examination be permitted to inspect and reproduce as needed all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

Ref: 49 USC § 5325(g); 18 CFR Part 18.36 (i); 49 CFR Part 633.17; and FTA Master Agreement MA (16), 10-1-2009, Section 8 (c) and (d).

**Note – Use for goods contracts expected to be \$100,000 or more*

11. Buy America

The Contractor agrees to comply with 49 USC § 5323(j), 49 CFR Part 661, which provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7 and include but are not limited to microcomputer equipment and Software for purposes of storing and processing data, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C), 5325(e)(f) and 49 CFR 661.11. Subcomponents, such as bus parts, may be foreign sourced. Such products are considered Buy America compliant.

Contracts in excess of \$100,000 require a Buy America Certificate, to be completed and submitted to the County with the bid, except those subject to a general waiver. A Contract that is not accompanied by a completed Buy America certification shall be rejected and subject to termination. This requirement does not apply to lower tier Subcontractors.

**Note – Applies to contracts expected to be \$100,000 or more*

12. Buy America General Waiver

The procurement is exempt from FTA "Buy America" requirements in 49 USC § 5323(j), 49 CFR Part 661 because of a General Waiver.

In accordance with Appendix A to 49 CFR § 661.7 General Waivers (d), "Under the provisions of § 661.7(b) and (c) of this part, microcomputer equipment, including Software, of foreign origin can be procured by grantees."

**Note – Does not apply to goods only contracts*

13. Privacy

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract shall make this Contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract that involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

14. Access Requirements for Individuals with Disabilities

The County and the Contractor are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities receiving from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and

l. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

15. Interest of Members of or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.

16. Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of 2 CFR part 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR 1200, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. Disclosure of Lobbying Activities

Contracts in excess of \$100,000 require a Certificate of Lobbying Activities, to be completed and submitted to the County with the proposal, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

Ref: 49 CFR Part 20, modified as necessary by 31 USC § 1352.

18. False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., and/or 49 USC § 5307(k)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

19. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq., and 49 CFR Part 18.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

20. Air Pollution

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria shall be met. This evidence and related documents shall be retained by the manager for on-site examination by FTA.

21. Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Contractor agrees to comply with the applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500, *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

*Note – Applies to contracts of \$100,000 or more

B. Air Quality

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to 42 USC § 7606. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Ref: 42 USC § 7606; 40 CFR Part 51, Subpart T; 40 CFR Part 85; 40 CFR Part 86; and 40 CFR Part 600.

**Note – Applies to contracts of \$100,000 or more*

C. Clean Water

The Contractor agrees to comply with all applicable laws, regulations, and directives issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251-1377. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300f through 300j-6.

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

Ref: 33 USC § 1251.

**Note – Applies to projects within a 100 year floodplain*

D. Floodplains

The Contractor agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, “Floodplain Management,” 42 USC § 4321 note.

**Note – Applies to projects jeopardizing endangered species*

E. Endangered Species and Fisheries Conservation

The Contractor agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 USC §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 USC §§ 1801 *et seq.*

**Note – Applies to contracts of \$100,000 or more*

F. Use of Public Lands

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used unless the FTA makes the specific findings required by 49 USC § 303.

**Note – Applies to contracts including land or buildings*

G. Historic Preservation

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, “Protection and Enhancement of the Cultural Environment,” 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 *et seq.* involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Contract, in accordance with Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

H. Mitigation of Adverse Environmental Effects

The Contractor agrees that if the Work should cause adverse environmental effects, the Contractor shall take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622, 23 CFR 774.

I. Wild and Scenic Rivers

The Contractor agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 USC §§ 1271 -1287, relating to protecting components of the national wild and scenic river system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 CFR Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 CFR 8350.

22. Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the United States EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

*Note – Applies to contracts developing a product or information

23. Patent Rights

If any invention, improvement, or discovery of the Contractor or any of its Subcontractors is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States or any foreign country, the Contractor agrees to notify the County immediately and Provide a detailed report in a format satisfactory to the FTA. The rights and responsibilities of the Contractor and the County with respect to such invention, improvement or discovery shall be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, academic institution, individual), the County and the Contractor agree to take the necessary actions to Provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor also agrees to include the requirements of this section in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance Provided by FTA.

FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Contract to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 CFR Parts 18 and

19, Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 USC §§ 200 *et seq.*, which applies to patent rights developed under a research project.

Ref: 49 CFR Parts 18 and 19, 37 CFR Part 401, USC §§ 200 *et seq*

*Note - Applies to contracts developing a product or information

24. Rights in Data and Copyrights

Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

A. Federal Rights in Data and Copyrights

The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this subsection.

B. License Fees and Royalties.

FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Work to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 CFR Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 USC §§ 200 *et seq.*, which applies to patent rights developed under a research project.

C. Restrictions on Access to Patent Rights

Nothing in this subsection pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

D. Data Developed Without Federal Funding or Support

In connection with the Contract, the Contractor may find it necessary to provide data to the County developed without any Federal funding or support by the Federal Government. The requirements of Federal Rights in Data and Copyrights do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with this Contract. Nevertheless, Contractor understands and agrees that the Federal

Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

25. Termination Provisions Required

All Contracts and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it shall be effected and the basis for settlement.

Ref: FTA Circular 4220.1F § IV.2.b.

26. Breach Provisions Required

All Contracts in excess of \$100,000 shall contain contractual provisions or conditions that shall allow for administrative, contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all subcontracts in excess of \$100,000 awarded under this Contract.

Ref: FTA Circular 4220.1F, § IV.2.B

*Note – Applies to contractors that perform safety sensitive functions

27. Substance Abuse

Contractor and its subcontractors agrees to comply with U.S. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32, that implement the Drug-Free Workplace Act of 1988, 41 USC §§ 701 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated, and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, that implement 49 USC § 5331.