GCA 6662

AGREEMENT
between the
Washington State Department of Transportation, the University of Washington, and
Sound Transit
to Implement the
Montlake Triangle Project

This Agreement (Agreement) is made and entered into by and between the University of Washington, ("UW") and the Washington State Department of Transportation ("WSDOT"), and Sound Transit ("ST"), collectively "PARTIES" and individually "PARTY".

WHEREAS, on April 13, 2007, ST and the WSDOT entered into a Mutual Undertaking on the Coordination of WSDOT's SR 520 Project and ST's University Link project to proactively and openly share project design and construction information so as to avoid adverse delay or physical conflicts between the projects while maximizing public benefit, specifically in the area of Montlake Boulevard and ST's University of Washington Station ("UWS"); and

WHEREAS, on July 2, 2007, ST and the UW entered into a Master Implementation Agreement ("MIA") governing ST's access to and use of University Property for the purpose of designing, constructing, operating, monitoring, and maintaining the Light Rail Transit System. In accordance with the MIA and preceding agreements, design approval from the UW Board of Regents is necessary prior to implementing construction; and

WHEREAS, ST's design for the light rail tunnels and UWS, including a pedestrian bridge over Montlake Boulevard, NE Pacific Place, and the Burke-Gilman Trail, was approved by UW Board of Regents on November 20, 2008; and

WHEREAS, on July 6, 2009, ST, UW, and the Seattle Department of Transportation ("SDOT") entered into a Memorandum of Understanding to look at alternatives to the UWS pedestrian bridge in light of opportunities presented by the City of Seattle's Complete Streets policy and UW's development of a new vision for the Rainier Vista corridor. Out of this three-agency effort was a recommendation to implement the Rainier Vista Land Bridge ("RVLB") with an at-grade crossing across Montlake as an alternative to the UWS pedestrian bridge; and

WHEREAS, in March of 2010, Engrossed Substitute Senate Bill 6392 directed WSDOT, UW, ST, SDOT, and King County Metro Transit (METRO) to convene a work group to study and make recommendations regarding design refinements to the SR 520, I-5 to Medina supplemental draft environmental impact statement in the area of the SR 520 / Montlake interchange; and

WHEREAS, on April 29, 2010, WSDOT selected the SR-520 Preferred Alternative. This Preferred Alternative included a suggested regional trail connection to the RVLB in conjunction with the UWS. Subsequently, WSDOT convened a design charrette for stakeholders to refine the concept for connecting the Burke-Gilman Trail to the Lake Washington trail system and integrate with ST's project. Several options for crossing Montlake Boulevard were developed, with two grade-separated alternatives, over-crossing and tunnel, presented to an inter-agency
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committee and the public in July 2010. The pedestrian bridge over Montlake with the RVLB and other at-grade bike/pedestrian access improvements was preferred; and

WHEREAS, in August 2010, WSDOT convened conceptual design work to define assumptions and prepared a preliminary project cost estimate for the UWS overcrossing and RVLB. The combined set of improvements is hereafter referred to as the Montlake Triangle Project (“MTP”); and

WHEREAS, the PARTIES recognize that proceeding to implement the MTP will require ST to redesign the UWS pedestrian bridge and change existing bid documents currently packaged with its U-250 general contractor. To avoid unnecessary costs and re-work during construction of the UWS entrance and other facilities, a funded agreement, 60% final design, and certain approvals associated with the new alternatives must be complete by May 20, 2011; and

WHEREAS, the PARTIES acknowledge that WSDOT’s contributions to the MTP will materially improve safety and efficiency for motor vehicles on SR 520 and SR 513 by providing a more viable option of a grade-separated crossing for bicyclists and pedestrians at the Montlake Boulevard and Pacific Place intersection; and

WHEREAS, to confirm the common belief that the MTP has both regional and individual agency benefits, and to understand the general terms and conditions the PARTIES believe are necessary to construct the MTP, the PARTIES, SDOT, and METRO developed a Term Sheet to provide a framework for this Agreement; and

WHEREAS, said Term Sheet was executed on November 18, 2010; and

WHEREAS, said Term Sheet identifies four Phases of the MTP; and

WHEREAS, Phase One was completed on September, 30, 2010; and

WHEREAS, the PARTIES are currently proceeding with Preliminary Design of the MTP identified as Phase Two in the Term Sheet; and

WHEREAS, the Light Rail Review Panel approved the MTP schematic design on December 16, 2010, the SDOT Director transmitted a resolution granting conceptual approval on February 28, 2011, and Council is scheduled to act on the resolution incorporating the MTP as part of ST’s Transitway on March 22, 2011; and

WHEREAS, the Federal Transit Administration (“FTA”) approved the NEPA process and the SEPA EIS Addendum for the University of Washington to Sound Transit U-Link Pedestrian Connection Project, on January 6, 2011 and January 14, 2011 respectively, allowing for Phase Three (Final Design) to begin; and

WHEREAS, in order to move forward with Phases Three (Final Design) and Four (Construction and Closeout) of the MTP, the PARTIES must execute this Agreement; and
NOW, THEREFORE, pursuant to RCW 47.28.140 and Chapter 39.34 RCW, and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof;

IT IS MUTUALLY AGREED AS FOLLOWS:

1.0 GENERAL

1.1 The purpose of this Agreement is to finalize the roles and responsibilities of the PARTIES during Phases Three and Four of the MTP (these Phases were defined in the Term Sheet), to develop and implement a method for tracking contributions of the PARTIES through all MTP Phases, and to define payment terms and methods.

1.2 The PARTIES acknowledge that WSDOT’s contributions will help ensure motor vehicle safety by improving non-motorized transportation connections between Montlake Boulevard (SR 513) and the Burke Gilman Trail. WSDOT’s contributions to the MTP will ensure the completion and connectivity of the SR 520 regional trail system, thereby assisting with the efficiency of vehicle movement on SR 520 and SR 513. WSDOT’s contributions will also serve as mitigation for effects resulting from the SR 520 I-5 to Medina project.

1.3 The PARTIES anticipate that the MTP will consist of 3 Sub-Projects that will be constructed sequentially and scheduled to avoid impacting light rail tunnel, UWS and Husky Stadium renovation projects. These Sub-Projects consist of:

- Montlake Pedestrian Bridge ("SP1")
- RVLB civil and structural ("SP2")
- RVLB landscaping, hardscaping and finishes ("SP3")

These Sub-Projects are further described in Exhibit A, MTP Scope and Description and Exhibit F, MTP Schedule, attached hereto and by this reference made a part of this Agreement.

1.4 UW and ST further agree that the MIA and the 2000 Memorandum of Agreement between UW and ST, concerning light rail transit construction on University Property do not apply to SP2, SP3 and the SP1 Bike Ramp, as shown in Exhibit A. The SP1 Bike Ramp exclusion is in effect so long as use is directly related to this scope only.

1.5 The PARTIES agree to rely upon the environmental documentation prepared during Phase Two for substantive and procedural compliance with SEPA and
NEPA for project approvals and permits during Phases Three and Four. The Performing Party will be responsible for ensuring relevant mitigation measures from the North Link Record of Decision (June 2006) and NEPA Environmental Re-evaluation Consultation (December 2010) are implemented for each Sub-Project as appropriate during Phases Three and Four.

1.6 The PARTIES agree they will design each Sub-Project so as not to exceed Authorized Budgets and exercise reasonable best efforts to complete construction on-budget and open the MTP for public use by March 2016.

1.7 Definitions

A. “Allocated Reserve” – means that dollar amount of the MTP Construction Reserve Fund allocated to each individual Sub-Project, based on the initial Sub-Project cost percentages of MTP Budget as noted in Table 2.

B. “Authorized Budget” – means that amount of funding, including soft costs and contingencies, authorized to be spent on each Sub-Project as noted Section 5.2 Table 2, but excluding the MTP Construction Reserve Fund.

C. “Bid Documents” – means the procurement documents, including contract drawings, specifications and other documents defining the scope of work for the Sub-Project being procured, whether such procurement is through invitations for sealed bids, requests for proposals, or other procurement means.

D. “Designated Representative” – means a person from one of the PARTIES to make decisions and provide information on their respective PARTY’s behalf as written in this Agreement. Designated Representatives have a higher authority than Primary Contacts. They are named in Exhibit C, attached hereto and by this reference made a part of this Agreement.

E. “Eligible Expenses” – means those costs incurred by the PARTIES in the development of preliminary and final design, cost estimates, and those costs incurred by the PARTIES in the construction of the Sub-Projects, as defined in Exhibit A.

F. “Executive Committee” – means a group of people consisting of a person from each PARTY to make decisions and provide information on their respective PARTY’s behalf as written in this Agreement. The Executive Committee members have a higher authority than Designated Representatives. Executive Committee members are named in Exhibit C.

G. “MTP Budget” – means the total $38 million MTP funding in year of expenditure dollars contributed by the PARTIES as outlined in Section 4.0.

H. “MTP Construction Reserve Fund” – means a fund comprised of the $5 million dollars contributed by WSDOT and any unused Sub-Project Authorized
Budget to create a designated reserve fund for use during Phase Four only, construction of the MTP. This reserve fund cannot be used for additional scope. The MTP Construction Reserve Fund may be used to cover the cost for unforeseen circumstances that may arise during construction and enable the MTP to continue progress toward completion, according to the procedures outlined in Section 5.3.

I. "Performing Party" – means the PARTY responsible for completing a certain work during Phase Three (final design) or Phase Four (construction) of the MTP.

J. "Primary Contact" – means a person selected to represent each PARTY to make day-to-day decisions and provide information on their respective PARTY's behalf as written in this Agreement. Primary Contacts are named in Exhibit C.

K. "Work" - means the construction work contemplated to be performed by the UW and ST under the terms of this Agreement.

2.0 PARTIES' ROLES AND RESPONSIBILITIES DURING PHASE THREE

2.1 WSDOT shall continue to participate in the MTP, including review and comment on the MTP design plans and cost estimates in accordance with Section 7.0, Conduct of Work.

2.2 ST shall be responsible for SP1 final design and permitting.

2.3 UW shall be responsible for SP2 and SP3 final design and permitting.

2.4 The PARTIES agree to work in collaboration and provide reciprocal review opportunities on design deliverables.

2.5 Prior to advancing to Phase Four, the PARTIES agree the Executive Committee shall meet to concur with decisions made in accordance with Section 9.0.

3.0 PARTIES' ROLES AND RESPONSIBILITIES DURING PHASE FOUR

3.1 WSDOT shall continue to participate in the MTP through review and comment on plan changes. WSDOT will contribute funding to the MTP via payments to both ST and UW during Phase Four, in accordance with Sections 5.0 and 6.0.

3.2 ST shall be responsible for construction of SP1. ST will be responsible for contractor payments for this Work.
3.3 UW shall be responsible for construction of the SP2 and SP3. UW will be responsible for contractor payments for this Work.

3.4 The PARTIES further agree that to the extent ST’s Link Light Rail construction and transportation easement changes, there will be no additional cost of this change. The UW anticipates providing temporary construction access and land use for the Sub-Project portions of the MTP via a Right of Entry permit or equivalent at no cost to the MTP.

3.5 Phase Four continues until closeout of all Sub-Projects, per Section 7.4 of this Agreement.

4.0 CONTRIBUTIONS OF THE PARTIES

4.1 The PARTIES agree to the following contributions in year of expenditure dollars:

4.1.1 UW agrees to contribute $4 million during Phases Three and Four of the MTP. UW’s maximum contribution to the MTP shall not exceed $4 million.

4.1.2 ST agrees to contribute up to $12 million to the MTP during Phases Three and Four of the MTP. This $12 million is comprised of both the estimated $8 million cost savings realized from deleting the original UWS pedestrian bridge and an additional $4 million paid to their consultants and contractors or otherwise spent on Eligible Expenses during Phases Three and Four of the MTP. ST’s maximum contribution to the MTP shall not exceed $12 million.

4.1.3 WSDOT agrees to contribute the balance of the cost of the MTP, which is currently estimated to be between $20.5 million and $22 million, through direct payment to its consultants and to the Performing Parties for work completed. WSDOT also agrees to contribute $5 million for establishment of the MTP Construction Reserve Fund. Rules and procedures for expenditure of the MTP Construction Reserve Fund are outlined in Section 5.0. WSDOT’s maximum contribution to the MTP shall not exceed $27 million.

4.1.4 UW and ST agree WSDOT’s funding of Phases One and Two of the MTP are Eligible Expenses by WSDOT to the MTP and, as such, will be counted toward WSDOT’s overall funding commitment outlined in Section 4.1.3. WSDOT contribution to Phases One and Two is estimated to be $1.34 million, as outlined in Exhibit B, Preliminary Cost Estimate, attached hereto and by this reference made a part of this Agreement. The remainder of WSDOT’s contribution will be made via reimbursement to ST and UW for Eligible Expenses as defined in Section 5.0.
5.0 PROPORTIONAL MTP FUNDING, USE AND ALLOCATIONS

5.1 Proportional MTP Funding

Once this Agreement is executed, all three PARTIES are irrevocably committed to funding commitments, subject to Section 9.0, Termination. At the start of next biennium, July 2011, PARTIES will present Eligible Expenses to date from August 1, 2010 to June 30, 2011. The PARTIES will pay/receive funds such that costs to date will be paid proportional to the agencies funding percentage as noted in Table 1.

### Proportional MTP Funding

**Table 1**

<table>
<thead>
<tr>
<th></th>
<th>WSDOT</th>
<th>ST</th>
<th>UW</th>
</tr>
</thead>
<tbody>
<tr>
<td>$38M MTP Budget funding</td>
<td>$22M</td>
<td>$12M</td>
<td>$4M</td>
</tr>
<tr>
<td>Funding Percentage</td>
<td>57.9%</td>
<td>31.6%</td>
<td>10.5%</td>
</tr>
<tr>
<td>MTP Construction Reserve Fund</td>
<td>$ 5M</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Starting in July 2011, all invoices from any PARTY will be paid for by all PARTIES proportional to the funding percentages, according to the process outlined in Section 6.0.

5.2 Funding Use and Allocations

The MTP Budget is broken down into three separate Sub-Projects as noted in Table 2. The dollar amounts shown in Table 2 are approximate; actual dollar amounts are reflected in Exhibit B of this Agreement.

### Montlake Triangle Project (MTP)

**Funding Use Matrix**

**Table 2**

<table>
<thead>
<tr>
<th>Sub-Project</th>
<th>SP1</th>
<th>SP2</th>
<th>SP3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Montlake Pedestrian Bridge (MPB)</td>
<td>Rainier Vista Land Bridge (RVLB)</td>
<td>RVLB landscaping, hardscaping, finishes.</td>
</tr>
<tr>
<td>Construction Year</td>
<td>Mid-2012</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; Quarter 2014</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; Quarter 2014</td>
</tr>
<tr>
<td>Start – approx.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery contract</td>
<td>ST General Contractor/Construction Manager</td>
<td>To Be Determined</td>
<td>Lump Sum bid</td>
</tr>
<tr>
<td>Sub-Project</td>
<td>SP1</td>
<td>SP2</td>
<td>SP3</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>Design Performing Party</td>
<td>ST</td>
<td>UW</td>
<td>UW</td>
</tr>
<tr>
<td>Construction Performing Party</td>
<td>ST</td>
<td>UW</td>
<td>UW</td>
</tr>
</tbody>
</table>

**Authorized Budget:**

- Preliminary Design (Phases One and Two) $1.34M
- Final Design* (Phase Three) $1.75M $1.80M
- Construction (Phase Four) $9.62M $19.02M $4.46M

**Allocated Reserve:**

- Initial Sub-Project Cost Percentages of MTP Construction Budget 29.2% 57.4% 13.4%
- Allocated Reserve per Sub-Project $1.45M $2.87M $0.67M

*includes reimbursement for King County design services on trolley bus components.

5.2.1 Authority to Manage Sub-Project Construction or Design Budgets

The Performing Party has the authority to modify the Sub-Project schedule, and reallocate Sub-Project contingency within the scope line item values, noted in Exhibit A, up to the original Authorized Budget amount including contingency.

5.2.2 Authority to Use Allocated Reserve by Sub-Projects

A Sub-Project’s Allocated Reserve shall be used as a last resort when no other Sub-Project funds are forecast to be available. The Performing Party may request funds from the Allocated Reserve. These requests must come from the Performing Party’s Designated Representative, and must be approved unanimously by the Executive Committee.

The PARTIES agree to respond to a request for Allocated Reserve use within twenty-one (21) calendar days of the request. Upon concurrence of the Executive Committee, ST shall modify the Monthly Reconciliation reports discussed in Section 6.3 to reflect the use of Allocated Reserve for the applicable Sub-Project.

If circumstances arise wherein the Performing Party has exhausted the Allocated Reserve for their Sub-Project and needs additional funding to complete the Work originally scoped, the Performing Party may request said additional funding from the MTP Construction Reserve Fund from other Sub-Projects. The process for the request is outlined in Section 5.3.
5.3 Request to Use MTP Construction Reserve Funds in Excess of Sub-Project’s Allocated Reserve

If a Sub-Project’s budget, including contingencies and Allocated Reserve, is exhausted, the Performing Party may request funds from the MTP Construction Reserve Funds. These requests must come from the Performing Party’s Designated Representative, and must be approved unanimously by the Executive Committee.

The PARTIES agree to respond to a request for MTP Construction Reserve Fund use within twenty-one (21) calendar days of the request.

If approved, ST shall modify the Monthly Reconciliation reports discussed in Section 6.3 to reflect the use of MTP Construction Reserve Funds for the applicable Sub-Project, and the reduction to the MTP Construction Reserve Fund.

5.4 Sub-Project Unused Authorized Budget

If a Sub-Project completes under its Authorized Budget, unused funds shall be placed in the MTP Construction Reserve Fund and managed per Section 5.3. ST shall track these contributions to the MTP Construction Reserve Fund separately from the initial $5 million contributed by WSDOT. In the event of a successful request to use the Allocated Reserve per Section 5.2 or MTP Construction Reserve Funds in excess of the Allocated Reserve per Section 5.3, the unused funds from prior projects shall be utilized before the $5 million WSDOT contribution. If there is a balance of unused funds at the completion of the MTP, the PARTIES agree to follow Section 6.3 for the final monthly reconciliation, and if necessary will meet to determine the distribution of funds.

5.5 MTP Cost Overruns During Phase Four

In the event the MTP Construction Reserve Funds are fully used per the provisions in Section 5.2.2 and 5.3 and a cost overrun occurs during construction exceeding funding for a Sub-Project or for the MTP, the intent is to continue the work to completion. The Performing Party shall prepare a request for additional funding and submit it to the Executive Committee for consideration. If approved by the Executive Committee, the PARTIES shall each contribute additional funding in the percentages shown on Section 5.1 in order to accomplish the work. In this case the Performing Party shall determine the responsibility for the cause of the overrun and propose a remedy to the Executive Committee for review and acceptance by consensus. In the event consensus is not achieved on the remedy or shared responsibility for funding the overrun, the PARTIES shall follow the dispute procedures outlined in Section 10.0.

6.0 ADMINISTRATION
6.1 Monitoring and Reporting of Progress

The PARTIES are committed to working cooperatively and efficiently and will closely monitor the work consistent with the MTP scope and budget. ST will provide MTP project control services to manage the proportional reimbursements and overall cost accounting for the MTP.

The PARTIES will develop and refine progress reporting, accounting and program management systems in order to ensure useful and descriptive information that complements each agency's project control system. The Performing Party shall provide active, ongoing oversight to ensure that funds are expended efficiently, in a manner that adds value to the MTP and is consistent with this Agreement.

6.2 Invoicing of work

The Performing Party will submit an invoice to the ST Primary Contact monthly based on work progress and actual expenditures. Invoices shall be submitted to the ST Primary Contact within thirty (30) calendar days after the Performing Party receives an invoice from their contractor. The Performing Party will be responsible for direct payment to their contractor and will then be reimbursed for those payments by the other PARTIES as outlined in Section 6.4, except that the Performing Party is responsible for their own net due payment terms with their contractor. Exhibit D, Invoice Template, identifies requirements of a complete and accurate invoice from the PARTIES including address and recipients. Invoices shall substantially conform to the invoice template shown in Exhibit D,
attached hereto and by this reference made a part of this Agreement.

Invoices shall reference the Sub-Project under which the invoiced services were authorized.

Invoices must be signed by an authorized representative of the Performing Party who shall verify that the invoice is accurate, the services have been purchased or the work has been performed, and that the costs shown have been reasonably incurred in accordance with this Agreement.

The invoiced cost of Work under this Agreement may include up to a ten percent (10%) mark-up for Construction Management (internal or external) and a 6.5% mark-up thereon for Performing Party Project Administration. Design work invoices may include up to a 6.5% mark-up for Performing Party Project Administration. An estimate of these costs is included in Exhibit B.

A progress report must accompany each invoice as noted in Section 6.3.

The PARTIES agree to submit a final invoice within forty five (45) calendar days after latest date noted in Section 8.0, Effectiveness and Duration, or termination of this Agreement as noted in Section 9.0, whichever comes first.
6.3 Monthly Reconciliation

ST's Primary Contact shall receive invoices and provide detailed monthly progress reports, copies of supplied invoices and reconciliation payments due to the other PARTIES by the 20th of each succeeding month. These reports shall monitor and reconcile the actual versus estimated effort and funding contributions and define payment responsibilities each month, as outlined in Exhibit E, MTP Agreement Reconciliation and Payments, attached hereto and by this reference made a part of this Agreement. This shall be done on a design or construction contract basis. The Primary Contacts representing each PARTY will meet each month to review invoices and reconcile payments.

The PARTIES will work cooperatively to resolve issues related to the accuracy of the reconciled invoices so as to avoid any delay in payment. Any invoiced expenditure unsupported by documentation shall be identified in writing to the Performing Party and not included in the reimbursement; provided, however, that the presence of unsupported items within an invoice shall not delay payment of those items which are supported by documentation.

In addition, a PARTY may require certain financial documents to verify that the amounts invoiced are included within the Sub-Project Authorized Budget and scope, as established in Section 5.0 and Exhibits A and B. Provided, that any such additional documentation requested by a Party shall not be used as the basis to refuse payment of an invoice, but rather shall be used to adjust by credit or debit, payment of future invoices.

Invoices shall only contain Eligible Expenses. Any dispute regarding the invoices shall be resolved as provided in Section 10.0 of this Agreement.

The Performing Party shall submit invoices to ST as outlined in Section 6.2, Invoicing.

At the end of Phase Four, if there is a net cost savings from the MTP Budget, the final monthly reconciliation shall determine the actual contributions and reconciliation payments due. In this situation, WSDOT's $5 million MTP Construction Reserve Fund will not be used and the actual contributions of the PARTIES shall be the following:

- UW's actual contribution shall be $4 million.

- ST's actual contribution shall be $4 million plus the savings realized from deletion of the original UWS pedestrian bridge, up to a maximum of $12 million.

- WSDOT's actual contribution shall be the balance of the actual MTP cost, up to a maximum of $22 million. MTP Budget under runs are credited to WSDOT and are not proportionally shared.
The PARTIES' Primary Contacts will meet to assess the final reconciliation payments due and unanimously agree on these amounts and actual MTP contributions. Reimbursement will not be made for activities outside the agreed MTP scope, as defined in Exhibit A, without concurrence by all PARTIES.

6.4 Payment

After monthly reconciliation, the Performing Party will send reconciled invoices to the PARTIES for payment with the proportionate share to be paid by each PARTY. A PARTY shall remit payment for reimbursable costs under this Agreement within thirty (30) calendar days after receipt of any complete and accurate reconciled invoice.

7.0 CONDUCT OF WORK

7.1 Responsibility for Quality of Work

All work and services provided by a Performing Party under this Agreement shall be performed, in a satisfactory and competent manner, and appropriate professional standards of performance shall apply to professional services rendered.

Each PARTY shall be responsible for the quality, technical accuracy and the coordination of all services furnished under this Agreement.

A PARTY shall make available, upon request, to the other PARTIES and their consultants, without cost, copies of reference documents related to the MTP that are readily available and on file. Except as specifically provided herein, these documents are available solely as additional information and do not relieve the PARTIES or their consultants of their respective duties and obligations under this Agreement.

7.2 Design Review

A Performing Party responsible for design shall notify and distribute plan sets, specifications, estimates and supporting technical memoranda at each deliverable milestone to the other PARTY Primary Contacts for their review and comment. The PARTIES agree to return comments to the Performing Party within twenty-one (21) calendar days of receipt. Design comments and responses shall be tracked by the Performing Party or their consultants.

7.3 Completion, Final Inspection and Acceptance

The Performing Party agrees to invite the other two PARTIES to participate in substantial completion inspections of the Work. The Performing Party shall notify the Primary Contacts in writing of its intent to declare the Work substantially
complete. The Primary Contacts shall respond in writing within seven (7) calendar days indicating agreement or providing a detailed objection. Failure to issue a response within seven (7) calendar days shall constitute the concurrence with a declaration of substantial completion by the Performing Party.

If another PARTY’s Primary Contact does express an objection to a declaration of substantial completion or acceptance of Work, the PARTIES may pursue the matter through the dispute resolution process of Section 10.0. All PARTIES agree to act as expeditiously as possible to assure a timely resolution.

7.4 Closeout of a Sub-Project

Work is considered complete when final payment is made and the Performing Party Primary Contact notifies the other PARTIES in writing.

7.5 As-builts

Delivery of as-builts to the UW is a prerequisite to closeout of a Sub-Project. As-built drawings shall utilize UW coordinates and vertical datums.

7.6 Ownership and Maintenance

At completion of MTP:

- Roadway elements, such as intersections, signals, crosswalks, refuge islands, etc. may be maintained by either WSDOT or SDOT, based on the "City Streets as Part of State Highways" guidance document between WSDOT and the Association of Washington Cities. If necessary these maintenance and operation items will be addressed in future agreements or as an amendment to this Agreement if agreed to by the PARTIES.

- UW will own and maintain SP2 and SP3 constructed infrastructure.

- ST will own and maintain the SP1 facilities.

8.0 EFFECTIVENESS AND DURATION

8.1 This AGREEMENT is effective upon execution by the PARTIES and shall remain in effect through December 31, 2016 or completion of MTP, whichever date is later.

9.0 TERMINATION

9.1 Termination:
Upon acceptance of the SPI construction cost proposal, termination of this agreement for convenience is not an option.

9.2 Termination prior to start of construction:

There will be three decision points prior to the start of any construction on the MTP. To facilitate decision making, final design shall proceed concurrently for each Sub-Project. At each of these decision points a PARTY may seek to terminate this Agreement in accordance with the following process:

9.2.1 Decision Point One, 60% Design: At completion of the 60% design effort for the MTP, the Designated Representatives will meet to assess and unanimously accept both the 60% design and cost estimate for the MTP, and unanimously agree to move forward with the MTP. In the event the Designated Representatives cannot unanimously agree, the Executive Committee will meet and make final decisions. If the Executive Committee cannot unanimously agree, this Agreement will be terminated.

9.2.2 Decision Point Two, Final Design/Pre-Bid: At the completion of the final design of the MTP the Designated Representatives will meet to assess and unanimously accept the final design and cost estimate for the MTP and unanimously agree to move forward with the MTP. In the event the Designated Representatives cannot unanimously agree, the Executive Committee will meet and make final decisions. If the Executive Committee cannot unanimously agree, this Agreement will be terminated.

9.2.3 Decision Point Three, Bid Opening: At the time of bid or proposal opening for each Sub-Project, the PARTIES will evaluate the successful contractor's bid or cost proposal. The Executive Committee will assess and unanimously accept the successful contractor's bid or cost proposal.

Acceptance of the SPI cost proposal initiates Phase Four, at which point, termination for convenience of the MTP is not an option, and damages are an inadequate remedy. Rather, all PARTIES agree that specific performance shall be required. The PARTIES must agree on options for responding to a cost proposal greater than the pre-bid estimate, such as unanimously agree to use Allocated Reserve to fully fund the contractor's cost proposal, re-bidding the Work, or reducing project requirements so that the Performing Party can proceed to execute the contract for Sub-Project Work in accordance with the Authorized Budget.

9.2.4 Each of these Decision Points will be documented by the ST Primary Contact and notification will be provided to all PARTIES per Section 17.0.

9.3 Termination after start of construction

Termination for Default
In the event of termination by default, the defaulting PARTY shall be obligated to compensate the other PARTIES for contract closeout costs and the portion of work that has been satisfactorily rendered to the effective date of the termination as well as additional costs and obligations as determined by the PARTIES pursuant to Sections 9.4 and 9.5 or available to the non-defaulting PARTIES as otherwise provided by law.

When the PARTIES agree to move forward with the MTP after Decision Point Three, termination is no longer a viable solution.

9.4 Duties of the PARTIES upon Termination

A termination by any PARTY shall not extinguish or release any PARTY from liability, claims or obligations to third parties existing as of the time of termination, including contractor claims and costs incurred by the PARTY in execution of Work. Any costs incurred prior to proper notification of termination will be borne by the PARTIES in accordance with the terms of this Agreement. The PARTIES agree to the following plan for coordination of termination, including the determination of a reasonable contract closeout and costs as provided in Section 9.5.

9.5 Procedures upon Termination

The PARTIES agree to apply the following procedures subsequent to any PARTY initiating termination:

9.5.1 The PARTIES shall jointly determine the expenditures of each PARTY through the date when the decision was made to terminate the Agreement.

9.5.2 The PARTIES shall seek consensus regarding each PARTY’s expenditures.

9.5.3 The PARTIES agree to proportionally share the costs through the date of the decision to terminate the Agreement, based on the Funding Percentages noted in Table 1 in Section 5.1. In the case of termination, WSDOT’s contributions for Phases One and Two will not be considered Eligible Expenses.

9.5.4 The PARTIES may agree to cooperate regarding any assignment or assumption of obligations of third-party contracts for the performance of Work under this Agreement.

9.5.5 The PARTIES shall agree upon a cost estimate for terminating any third party contracts that have been executed under this Agreement.

9.5.6 All Work in progress at the time of termination shall be completed to the extent necessary to restore the usefulness of the infrastructure affected by the MTP in accordance with the Standards and Specifications of the applicable Sub-Project.
9.6 Termination and Mitigation

In the event this Agreement is terminated, WSDOT’s funding contribution up to the date of termination will be considered compensation for mitigation of effects resulting from WSDOT’s SR 520, I-5 to Medina Project.

10.0 DISPUTES

10.1 The PARTIES will work collaboratively to resolve disagreements arising from activities performed under this Agreement, and the PARTIES will attempt to resolve disagreements promptly and at the lowest level of hierarchy as follows:

10.1.1 Dispute Resolution Process

If the PARTIES Designated Representatives are unable to agree on a given issue brought to them by their respective staffs, they will refer the issue to the Executive Committee. The Executive Committee will work together on a timely basis to resolve any issue brought before it. Decisions will be made by consensus. If the Executive Committee cannot unanimously resolve an issue before it, then the following arbitration procedure shall immediately apply.

10.1.2 Arbitration

Any dispute between the PARTIES, under this Agreement pursuant to Section 10.1.1, shall be determined by arbitration in Seattle under the American Arbitration Association (AAA) Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the PARTIES within three (3) calendar days of the arbitration demand or, if not, by the AAA from its Large, Complex Case Panel (or other entity having similar professional credentials), who shall be an attorney with at least six (6) years municipal or governmental law experience. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery and enter such prehearing orders as may be appropriate to ensure a fair private hearing, which shall be held within sixty (60) calendar days of the demand, and be concluded within three (3) calendar days. These time limits are not jurisdictional. The arbitrator shall apply substantive law, may award injunctive relief or any other remedy available from a judge, and may award attorneys’ fees and costs to the prevailing PARTY or PARTIES but shall not have the power to award punitive damages. PARTIES agree to seek all relief including emergency and injunctive relief from the Arbitrator. The PARTIES may appeal the Arbitrator’s decision to Superior Court of the State of Washington in King County.
11.0 NO AGENCY OR EMPLOYEE RELATIONSHIP

11.1 No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one PARTY shall be deemed, or represent themselves to be, employees of any other PARTY. In performing work and services pursuant to this Agreement, each PARTY, its employees, consultants, agents, and representatives shall be acting as agents of the PARTY and shall not be deemed or construed to be employees or agents of any other PARTY in any manner whatsoever. No PARTY shall hold itself out as, nor claim to be, an officer or employee of any other PARTY and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of any other PARTY.

12.0 INSURANCE

12.1 The Performing Party shall require its Contractors and subcontractors to obtain and maintain throughout the term of this Agreement, for each Sub-Project, an appropriate program of insurance, self-insurance, or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, the Performing Party shall require that all PARTIES be named as an Additional Insured in accord with insurer underwriting practices on the Contractor’s and subcontractors’ policies, and the Contractor’s and subcontractors’ insurance policies shall be primary and non-contributory to any coverage maintained by the Performing Party to cover any claims arising from the activities governed by the Sub-Projects. Contractors and subcontractors shall be required to waive all rights of subrogation against the Performing Party and all other PARTIES for claims by third-parties arising out of the MTP, other than for damages, claims or liabilities arising from negligent acts or omissions of the PARTIES and their officers, employees and agents. The Contractors and subcontractors shall provide the Performing Party with at least thirty (30) days prior written notice of any material change in the Contractor’s and subcontractors’ coverage program. The limits of the Contractor’s and subcontractors’ selected coverage program shall in no way diminish the Contractor’s and subcontractors’ obligations to the PARTIES as set forth in Section 13.0, Indemnification.

The PARTIES shall have the right to review the policies and to require that additional insurance be obtained if the PARTIES reasonably determine that the insurance provided is inadequate. The Performing Party shall require its Contractors and subcontractors to provide certificates of insurance and additional insured endorsements, on execution of each Sub-Project contract and upon renewal thereafter, and the Performing Party will provide a copy to the other PARTIES.

13.0 INDEMNIFICATION

13.1 General Indemnity
Each PARTY to this Agreement shall protect, defend, indemnify, and save harmless the other PARTIES, their officers, officials, employees, and agents, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from the first PARTY’s negligent or grossly negligent acts or omissions or that of its officers, officials, employees, or agents. No PARTY will be required to indemnify, defend, or save harmless another PARTY or PARTIES if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence or grossly negligent acts or omissions of the other PARTIES. Where such claims, suits, or actions for injuries, death, or damages results from concurrent negligence of the PARTIES, the indemnity obligation shall be valid and enforceable only to the extent of each PARTIES’ own negligence or grossly negligent acts or omissions or those of its officers, officials, employees, or agents while acting within the scope of their employment or capacity as such.

Each PARTY agrees that its defense, indemnification and save harmless obligations under this Section 13.1 extend to any claim, suit or action for injuries, death, or damages brought by or on behalf of any of its employees and for this purpose only each PARTY by mutual negotiation hereby waives with respect to the other PARTIES only any immunity that would otherwise be available to a PARTY under the Industrial Insurance Provision of Title 51 RCW.

In the event that a PARTY incurs any judgment, award, and/or cost arising therefrom, including attorneys’ fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible PARTY to the extent of that PARTY’s liability.

13.2 Indemnification by Contractor

Each PARTY to this Agreement shall include in all construction contracts that are entered into in regard to work covered by this Agreement, a provision that requires the contractor to:

Defend, indemnify, and hold University of Washington, Sound Transit, and Washington State Department of Transportation harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

1. The sole negligence of Contractor or any of its Subcontractors;

2. The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and

3. The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.
In any action against University of Washington, Sound Transit, or Washington State Department of Transportation, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this Section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to University of Washington, Sound Transit, and Washington State Department of Transportation only, in accordance with RCW Title 51.

13.3 Survival

The indemnification responsibilities provided in this Section will survive the termination of this Agreement.

13.4 Third-Party Claims

Each PARTY shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such PARTY is liable under this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

If a suit is commenced against any PARTY, or a claim is asserted for loss or damage for which any other PARTY may be solely or jointly liable under this Section, the PARTY sued, or against whom the claim is asserted, promptly shall notify the other PARTIES in writing of the pendency of the suit or claim, and thereupon such other PARTY shall assume or join in the defense of such suit or claim.

If two or more of the PARTIES may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the PARTIES, a release from liability shall be taken for and in the name of any other PARTIES. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars ($50,000), the settling PARTY shall obtain the written consent of the other PARTIES, which consent shall not be unreasonably withheld. It is not the intent of the PARTIES that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

It is not the intent of any of the PARTIES for any other PARTY to be conclusively bound by any judgment against one of the PARTIES.

14.0 ENTIRE AGREEMENT

14.1 This Agreement and the attached exhibits constitute the entire agreement and understanding between the PARTIES relating to the MTP. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.
15.0 AMENDMENTS

15.1 Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the members of the Executive Committee for each PARTY, subject to approval by the respective Board or other oversight entity, if required.

16.0 SEVERABILITY

16.1 In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The PARTIES agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

17.0 PRIMARY CONTACTS

17.1 The primary contacts for each PARTY in the day-to-day dealings of this Agreement are listed in Exhibit C. The PARTIES may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other PARTIES. The amendment becomes effective upon delivery.

17.2 The Designated Representatives of this Agreement may delegate authority and responsibilities as required by providing written notice of such delegation to the other PARTIES.

18.0 NOTICES

18.1 Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other PARTY’s Primary Contact as listed in Exhibit C. However, notice of termination must be delivered in person or by certified mail, return receipt requested.

19.0 VENUE
19.1 In the event that any PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the PARTIES agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

20.0 TRANSFER/ASSIGNMENT

20.1 NO PARTY may 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 PARTIES. This Agreement is binding upon, and inures to the benefit of, the PARTIES and their respective permitted successors and assigns.

21.0 BENEFITS

21.1 This Agreement is intended for the sole benefit of the PARTIES to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the PARTIES any legal or equitable right, remedy, or claim under this Agreement.

22.0 PREPARATION

22.1 The PARTIES and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the PARTIES intend that this Agreement is the collective work product of the PARTIES. The PARTIES do not intend for any provision of this Agreement to be construed against a PARTY on the basis of authorship.

23.0 COUNTERPARTS

23.1 This Agreement may be simultaneously executed in counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

24.0 AUTHORITY

24.1 The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their university, department, or regional transit authority, respectively.

25.0 RIGHTS AND REMEDIES
25.1 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by any PARTY of any default will not affect or impair any right arising from any subsequent default. The failure of any PARTY to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

26.0 NONDISCRIMINATION

26.1 The PARTIES agree to comply with all applicable Washington State and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all contractors, consultants, and subcontractors performing any work using funds provided under this Agreement.

27.0 RECORDS RETENTION AND AUDIT

27.1 During the term of this Agreement and for a period not less than six (6) years from the date of final payment by the PARTIES, the records and accounts pertaining to the Services provided by the PARTIES and accounting therefor. These records and accounts shall be kept available for inspection and audit by Washington State and/or the federal government, or the other PARTIES and copies of all records, accounts, documents, or other data pertaining to the Services provided by the PARTIES will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

28.0 GOVERNANCE

28.1 This Agreement is entered into pursuant to, and under the authority granted by, the laws of the State of Washington and applicable federal laws.

28.2 The provisions of this Agreement shall be construed to conform to those laws.

29.0 FEDERAL PROVISIONS

29.1 Each Sub-Project Contract or change order shall include the current version of FHWA 1273, “Required Contract Provisions for Federal-Aid Construction Contracts”.
29.2 To the extent applicable and required by the FTA, the PARTIES agree that the
FTA-compliant Design and Construction Provisions provided by Sound Transit
(set forth below) shall be included as part of the Performing Party’s Contractor
Contract(s) for the MTP projects. Copies of such contracts will be provided to ST.
ST will remain the lead reporting agency for required reports noted in the FTA
Design and Construction Provisions. As the lead reporting agency ST shall
provide all necessary support and assistance to other PARTIES to facilitate
compliance with the FTA provisions. Such support and assistance are Eligible
Expenses of the MTP and, as such, will be counted toward ST’s overall funding
commitment outlined in Section 4.1.2, including but not be limited to time spent:
helping with drafting contracts so the contracts clearly include the necessary
provisions; compiling quarterly status reports on required mitigation measures
identified in the Federal Record of Decision and NEPA Re-evaluation
consultation; assisting other PARTIES and selected contractors with
understanding of and compliance with FTA provisions, including but not limited
to, DBE and small business programs; monitoring contractor compliance with the
FTA provisions; administration of the FTA provisions including, but not limited
to, receipt of reports and auditing. ST’s Eligible Expenses for the support and
assistance work described here shall not exceed $350,000.00 total.

29.3 FTA-compliant Design Provisions. The following provisions will be included in
all design and construction management contracts:

29.3.1 Non-Discrimination in Employment and Contracting

29.3.1.1 In accordance with applicable Federal, State and Local laws:

29.3.1.1.1 Practices of employment discrimination against any
person on the basis of race, color, age, sex, marital status, sexual
orientation, religion, ancestry, national origin or the presence of
any sensory, mental or physical disability in an otherwise qualified
disabled person are prohibited. The Consultant shall adhere to
these non-discrimination provisions.

29.3.1.2 No one doing business or offering to do business
under this Agreement shall deny any person, on the basis of race,
color, age, sex, marital status, sexual orientation, religion, ancestry,
national origin or the presence of any sensory, mental or physical
disability in an otherwise qualified disabled person, the benefits of,
or exclude any person from participation in, the award and
performance of any work under contracts and agreements awarded
under this Agreement, and that one doing business or offering to
do business under this Agreement shall afford equal, non-
discriminatory opportunities to potential joint venture partners,
subcontractors, subconsultants and suppliers on contracts and
agreements awarded under this Agreement.

29.3.1.3 The Consultant shall comply with applicable
obligations and requirements under Chapter 49.60 RCW, the
Washington state “law against discrimination”, including rules and regulations promulgated pursuant to such law. In particular, the Consultant as an employer shall not commit any unfair practices prescribed in RCW 49.60.180.

29.3.1.4 The Consultant shall cooperate in any studies or surveys as may be conducted by Sound Transit or the UW, and as may be necessary to determine the extent of the Consultant’s compliance with those parties’ policies.

29.3.1.2 Disadvantaged Business Enterprise (DBE) Program. Because this Agreement is subject to financial assistance from the Federal Department of Transportation (DOT), Federal Transit Administration (FTA), the Consultant shall review and comply with the provisions in 49 CFR Part 26. Consultant will also ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 Code of Federal Regulations (CFR) Part 26, have an equal opportunity to receive and participate in federal Department of Transportation-assisted contracts. The objectives of the Sound Transit’s DBE Program include: (a) Ensuring non-discrimination in the award and administration of federal Department of Transportation-assisted contracts; (b) Creating a level playing field on which DBEs can compete fairly for such contracts; (c) Ensuring that the Sound Transit DBE Program is narrowly tailored in accordance with applicable laws; (d) Ensuring that only firms that fully meet eligibility standards as set forth in 49 CFR Part 26 are permitted to participate as DBEs; (e) Helping remove barriers to the participation of DBEs in such contracts; and (f) Assisting in the development of firms that can compete successfully in the marketplace outside of the DBE Program.

29.3.1.3 In the event the Consultant and/or its subconsultants fail(s) to comply with any substantive requirement of the Agreement related to non-discrimination, participation by Small Businesses and/or Disadvantaged Business Enterprises, or equal employment opportunity, Sound Transit or UW may require impositions of sanctions which then may be imposed by the Performing Party as it may determine to be appropriate, including but not limited to: (a) Requiring the Consultant to take remedial action to bring the Consultant or its subconsultant into compliance; (b) Withholding payments to the Consultant until the Consultant or its subconsultant is in compliance; (c) Suspend or terminate this Agreement; (d) Debar the Consultant or its subconsultant from future contracts with Sound Transit; and/or (e) File civil and/or criminal action(s) against the Consultant and, if applicable, its subconsultants, suppliers, employees, agents, and representatives.
29.3.2 Equal Employment Opportunity

29.3.2.1 The Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, sex, sexual orientation, age, nationality, or the presence of any sensory, mental, or physical disability, unless based upon a bona fide occupational qualification. The Consultant shall make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, sex, sexual orientation, age, nationality, or the presence of such disability. Such action shall include, but not be limited to, the following: 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 Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29.3.2.2 The Contractor shall require that substantially the same provisions as in this Section are contained in all subcontractor agreements entered into by the Contractor under this Agreement.

29.3.2.3 In addition, the Contractor shall comply with, and ensure its subcontractors comply with, applicable Federal Civil Rights Requirements set forth in this Agreement.

29.3.3 Disadvantaged Business Enterprise (DBE) Program

29.3.3.1 As a recipient of financial assistance from the federal Department of Transportation (DOT), through the Federal Transit Administration (FTA), one or more of the Parties have developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall comply with applicable provisions in 49 CFR Part 26.

29.3.3.2 Pursuant to 49 CFR Part 26, in preparing SOQs or Proposals to perform Design Services under this Agreement, prospective Consultants shall afford DBEs an equal, non-discriminatory opportunity to compete for business as joint venture partners or subconsultants, and shall ensure their proposed subconsultants also afford DBEs such opportunities.

29.3.3.2.1 For non-construction contracts, race-neutral (including gender neutral) means will be used to obtain DBE participation.
29.3.3.2.2 As described in 49 CFR § 26.51(b), race-neutral means include, but are not limited to, actions such as: (1) arranging solicitations, times for the presentation of bids or proposals, quantities, specifications, and delivery schedules in ways that facilitate DBE participation; (2) providing assistance in overcoming obstacles such as inability to obtain bonding or financing; (3) providing technical assistance and other services; (4) carrying out information and communications programs on contracting procedures and specific contract opportunities; (5) implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs; (6) providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency; (7) establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low; (8) ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime consultants; and (9) assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media. Such race-neutral means should benefit Small Businesses as well as DBEs.

29.3.3.2.3 Prospective Consultants, and the Consultant awarded a contract under this Agreement, shall pursue race-neutral measures in soliciting for and securing participation by DBEs on this project. As described in 49 CFR Section 26.5, a race (and gender) neutral measure is one that is, or can be, used to assist all Small Businesses.

29.3.3.2.4 Participation by DBEs is not required for consideration of an SOQ or Proposal to perform design services under this Agreement, and no minimum DBE participation goal has been established for this Agreement. However, to ensure that an equal opportunity has been given to DBEs to compete for portions of the work included under this Agreement, Prospective Consultants shall conduct outreach to solicit and secure DBE participation and fully and fairly consider utilizing DBEs to perform portions of the work. Outreach efforts shall include, but are not limited to, the following activities:

29.3.3.2.4.1 Identifying portions of the Work to be performed by DBEs, including breaking out work items into economically feasible units to facilitate participation by DBEs.
29.3.3.2.4.2 If changes in the Project work and/or Additional Work is requested or directed, the Consultant shall make affirmative efforts to include participation by DBEs when negotiating and performing said changes and/or Additional Work.

29.3.3.2.4.3 Soliciting through reasonable and available means the interest of DBEs who have or may have the capability to perform portions of the Work under this Agreement. Such means of solicitation should include community, consultant and public agency organizations and offices that are involved in recruiting and placing DBEs. Solicitations shall occur with sufficient time that interested DBEs would be able to respond to the solicitation.

29.3.3.2.4.4 Providing information about work items to interested DBEs.

29.3.3.2.4.5 Negotiating in good faith with interested DBEs.

29.3.3.2.4.6 Identifying and making efforts to assist DBEs to obtain necessary personnel, equipment, materials and supplies to perform the work items.

29.3.3 For purposes of this Agreement, Prospective Consultants are advised that DBEs are those businesses certified as DBEs by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE). To facilitate outreach efforts to DBEs, Submitters may obtain a listing of DBEs certified by OMWBE on the Internet at http://www.omwbe.wa.gov/directory/directory.htm or by calling 360-753-9693.

29.3.3.4 The Consultant shall include the following assurance in any contract, including subconsultant agreements, it enters into under this Agreement (revised to accurately identify parties):

"The Consultant, sub-recipieent or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant 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 Sound Transit or UW deem appropriate."
29.3.3.5 During performance of design services under this Agreement, the Consultant shall maintain sufficient records necessary for Sound Transit and UW to monitor the Consultant’s and its Subconsultants’ compliance with the provisions of the DBE Program.

29.3.4 Small Business Program

29.3.4.1 Sound Transit and UW promote and encourage the use of Small Businesses on contracts to perform design services under this Agreement.

29.3.4.2 For the purposes of this Agreement, a Small Business is a business that: (a) Is organized for profit; (b) Has a place of business in the United States; and (c) For its industry, does not exceed the numerical size standard established by the federal Small Business Administration pursuant to 13 Code of Federal Regulations Part 121.

29.3.4.3 A business shall be presumed to meet the Small Business size standard and be a Small Business if the business comes within one of the following categories:

29.3.4.3.1 Is certified by the Washington State Office of Minority and Women Business Enterprise (OMWBE). To obtain a listing of firms certified by OMWBE, contact OMWBE at 360-753-9693 or access a listing on the Internet at http://www.omwbe.wa.gov/directory/directory.htm;

29.3.4.3.2 Is a participant in federal Small Business Administration programs, such as, but not limited to, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. To obtain a listing of Small Businesses participating in the U.S. Small Business Administration programs or activities as eligible Small Businesses, contact the SBA’s Seattle District Office at 206-553-7310; or

29.3.4.3.3 Is certified by a public agency other than OMWBE and a size standard that is no greater than the Small Business Administration Size Standard, which is a criterion for certification or participation in that public agency program.

29.3.4.4 Participation by Small Businesses is not required for consideration of an SOQ or Proposal to perform design services under this Agreement, and no minimum Small Business participation goal has been established for this Agreement. However, to ensure that an equal opportunity has been given to Small Businesses to compete for portions of the work included under this Agreement, Consultant shall conduct affirmative outreach efforts to solicit and secure participation.
by Small Businesses and fully and fairly consider utilizing Small Businesses to perform portion of the work. The affirmative outreach efforts listed previously for DBEs are also applicable for affirmative outreach efforts to Small Businesses.

29.3.4.5 During performance of design services under this Agreement, the Consultant shall maintain sufficient records necessary for Sound Transit and UW to monitor the Consultant’s and its Subconsultants’ compliance with the provisions of the Small Business Program.

29.3.5 Federal Civil Rights Requirements. In addition to the nondiscrimination requirements set forth in other Sections in this Agreement, the following Federal requirements apply to the Consultant’s performance under this Agreement:

29.3.5.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any person on the basis of race, color, creed, national origin, sex, age, or disability under any program or activity receiving Federal financial assistance. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. Specific requirements to implement Title VI and the Americans with Disabilities Act of 1990 are included in FTA Sections 21 and 22, respectively, of this Agreement.

29.3.5.2 Equal Employment Opportunity - In addition to the provisions set forth in FTA Section 15 of this Agreement, the following equal employment opportunity requirements apply to this Agreement:

take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

29.3.5.2.2 **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

29.3.5.2.3 **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

29.3.5.3 **Disadvantaged Business Enterprises** - This Agreement is subject to the requirements of Title 49, Code of Federal Regulations (CFR), Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Consultant and its subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Sound Transit or UW deems appropriate. Each subcontract the Consultant signs with a subconsultant must include the assurance in this paragraph (see 49 CFR 26.13(b)). Specific requirements to implement 49 CFR Part 26 are included in FTA Section 16 of this Agreement.

29.3.5.4 The Consultant also agrees to include these requirements in each subconsultant agreement entered into under this
Agreement, modified only if necessary to identify the affected parties.

29.3.6 Title VI Compliance

29.3.6.1 During the performance of this Agreement, the Consultant, for itself, its assignees, and its successors in interest (hereinafter referred to as "Consultant"), agrees as follows:

29.3.6.2 Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations (CFR), Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

29.3.6.3 Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

29.3.6.4 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

29.3.6.5 Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Sound Transit or UW or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Sound Transit or UW, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Sound Transit or UW shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

29.3.6.6.1 Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,

29.3.6.6.2 Cancellation, termination or suspension of the Agreement, in whole or in part.

Incorporation of Provisions: Consultant shall include the provisions of subparagraphs 26.3.6.1 through 26.3.6.5 of this Paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Sound Transit or UW or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request Sound Transit or UW to enter into such litigation to protect the interests of Sound Transit or UW, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ADA, Section 504 and Other Federal Requirements

29.3.7.1 The Consultant is also 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:

29.3.7.1.1 U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;

29.3.7.1.2 U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

29.3.7.1.3 U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35;
29.3.7.1.4 DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;

29.3.7.1.5 U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;


29.3.7.1.7 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

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

29.3.7.1.9 Any implementing requirements that the FTA may issue.

29.3.8 Recycled Products

29.3.8.1 To the extent practicable and economically feasible, the Consultant agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 CFR Parts 247-253, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

29.3.9 Reporting, Record Retention and Access

29.3.9.1 Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government.

29.3.9.2 Consultant agrees to maintain intact and readily accessible all work, materials, payrolls, books, documents, papers, data, records and accounts pertaining to the Agreement. Consultant agrees to permit the Secretary of Transportation, the Comptroller General of the United States and Sound Transit, or their authorized representatives, access to any work, materials, payrolls, books, documents, papers, data, records and accounts
involving the Agreement for the purpose of making audit, examination, excerpts, and transcriptions pertaining to the Agreement as it affects the Project. Consultant shall retain all required records for six (6) years after final payments have been made. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized representatives, shall continue until such litigation, claims, or exceptions have been disposed of. Consultant shall require its subconsultants to also comply with the provisions of this Paragraph B, and shall include the provisions of this Paragraph B in each of its subcontracts.

29.3.10 Privacy

29.3.10.1 Should the Consultant, or any of its subconsultants, 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.

29.3.10.2 For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, Sound Transit and any Consultants, 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 Agreement will make this Agreement subject to termination.

29.3.10.3 The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

29.3.11 Changes in Governmental Regulations

29.3.11.1 In the event local, state or federal laws or regulations that were not announced or enacted at the time of Bid and/or submittal of Proposal, and such laws or regulations make standards more stringent or compliance more costly under this Agreement, the Consultant shall notify Sound Transit in writing of such laws or regulations and their effects on the pricing or delivery schedule.
promptly after the Consultant first became aware of the laws and regulations and prior to incurring any such expenses.

29.3.11.2 Sound Transit or UW will make a determination as to whether the Consultant should be reimbursed for any such expenses or any time extensions should be granted.

29.3.11.3 The Consultant shall be deemed to have had notice of any Federal law or regulation announced or enacted at the time of contract award, even though such law or regulation did not take effect or become operative until some date after the contract award.

29.3.11.4 The Consultant shall, immediately upon becoming aware of any such imposition or change of requirement, provide Sound Transit with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the date of contract award so as to make the Consultant's performance less expensive, or less difficult, then Sound Transit shall have the option either to require the Consultant to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. Sound Transit shall give the Consultant notice of Sound Transit's determination, and anticipated savings.

29.3.12 Compliance with All Laws and Regulations

29.3.12.1 The Consultant agrees to comply with all federal, state and local laws and regulations applicable to such services, including all regulations, requirements and registrations related to lobbying activities and including the conditions of the federal Occupational Safety and Health Act of 1970 (OSHA) and the Washington Industrial Safety and Health Act of 1973 (WISHA) whenever such laws are applicable to work and services provided under this Agreement.

29.3.12.2 The Consultant shall comply with all federal, state, and local licensing, registration, filing and/or certifications standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the Consultant's operation.

29.3.12.3 The Consultant shall comply and, to the best of its ability, shall require its subconsultants to comply with all resolutions and
policies (for example policy on equal employment opportunity and harassment) and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement. Copies of resolutions and policies are available upon request.

29.3.12.4 Sound Transit and the Consultant agree to exercise reasonable efforts to stay apprised of any changes to federal, state or local laws, regulations and ordinances referred to in this Section, to bring any such changes to the attention of the other party and to negotiate in good faith the effects of any such changes.

29.3.13 False or Fraudulent Changes and Claims

29.3.13.1 The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes 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, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

29.3.13.2 The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

29.3.13.3 The Consultant agrees to include the above two clauses in each subcontract 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 subconsultant who will be subject to the provisions.

29.3.14 Applicability of Federal Grant Contract

29.3.14.1 This procurement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation, which incorporate the current
FTA Master Agreement and Circular 4220.1, as amended. U.S. Department of Transportation’s level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

29.3.14.2 Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

29.3.15 Incorporation of Federal Transit Administration (FTA) Terms

29.3.15.1 All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, (http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html), as amended and the Master Grant Agreement (http://www.fta.dot.gov/documents/13-Master.doc), 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.

29.3.15.2 The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

29.3.15.3 Copies of the FTA Master Agreement are available from Sound Transit.

29.3.16 Federal Funding Limitation

29.3.16.1 Consultant understands that funds to pay for Consultant’s performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA.

29.3.17 No Federal Government Obligation to Third Parties
29.3.17.1 Consultant agrees that absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement between Sound Transit and the FTA. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

29.3.18 Federal Lobbying Restrictions

29.3.18.1 This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an officer or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will 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 any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts which exceed $100,000, and that all such subconsultants shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the
certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

29.3.18.2 If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". Sound Transit must also receive all disclosure forms.

29.3.18.3 The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

29.3.18.3.1 A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

29.3.18.3.2 A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

29.3.18.3.3 A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

29.3.19 Lobbying Certification and Disclosure

29.3.19.1 Pursuant to 40 CFR Part 34 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form with the execution of this Agreement.

29.3.20 Certification Regarding Debarment, Suspension and Other Responsibility Matters

29.3.20.1 Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 CFR 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds $25,000 each Consultant shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Consultant to provide a certification will not necessarily result in denial of
consideration for contract award. A Consultant that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Consultant from participation under this Contract. Sound Transit, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

29.3.20.2 The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to Sound Transit or UW. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify Sound Transit or UW immediately of circumstances which made the original certification no longer valid, Sound Transit or UW may disqualify the Consultant, terminate the contract, or invoke other remedies available including FTA suspension and/or debarment.

29.3.20.3 Further, the Consultant shall not knowingly enter into any subcontract exceeding $25,000 with an entity or person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall require all subconsultants seeking subcontracts greater than $25,000 to complete and submit the same certification form contained in these documents before entering into any agreement with said subconsultant.

29.3.21 Exclusionary or Discriminatory Specifications

29.3.21.1 Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

29.3.22 Conservation

29.3.22.1 The Consultant shall recognize 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 Section 6321 et seq.).
29.3.23 Clean Water

29.3.23.1 The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

29.3.24 Clean Air

29.3.24.1 The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

29.3.25 Fly America

29.3.25.1 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 US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40018, in accordance with US GAO regulations, "Uniform Standards and Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

29.3.26 Seismic Safety

29.3.26.1 The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including
work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

29.3.27 National Intelligent Transportation Systems Architecture and Standards


29.3.28 Electronic and Information Technology

29.3.28.1 When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others, on behalf of Sound Transit, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

29.4 FTA-compliant Construction Provisions. The following provisions will be included in all construction contracts:

29.4.1 Non-Discrimination in Employment and Contracting

29.4.1.1 In accordance with applicable Federal, State and Local laws:

29.4.1.1.1 Practices of employment discrimination against any person on the basis of race, color, age, sex, marital status, sexual orientation, religion, ancestry, national origin or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person are prohibited. The Contractor shall adhere to these non-discrimination provisions.

29.4.1.1.2 No one doing business or offering to do business under this Agreement shall deny any person, on the basis of race, color, age, sex, marital status, sexual orientation, religion, ancestry, national origin or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person, the benefits of, or exclude any person from participation in, the award and performance of any work under contracts and agreements awarded under this Agreement, and that one doing business or offering to do business under this Agreement shall afford equal, non-
discriminatory opportunities to potential joint venture partners, subcontractors, subconsultants and suppliers on contracts and agreements awarded under this Agreement.

29.4.1.1.3 The Contractor shall comply with applicable obligations and requirements under Chapter 49.60 RCW, the Washington state "law against discrimination", including rules and regulations promulgated pursuant to such law. In particular, the Contractor as an employer shall not commit any unfair practices prescribed in RCW 49.60.180.

29.4.1.1.4 The Contractor shall cooperate in any studies or surveys as may be conducted by one or more of the Parties to this Agreement, and as may be necessary to determine the extent of the Contractor's compliance with one or more of the Parties' employment and contracting programs and policies

29.4.1.2 Disadvantaged Business Enterprise (DBE) Program. As a recipient of financial assistance from the Federal Department of Transportation (DOT), Federal Transit Administration (FTA), Sound Transit developed and administers a Disadvantaged Business Enterprise (DBE) program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall review and take into account the provisions in 49 CFR Part 26. It is the policy of Sound Transit to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 Code of Federal Regulations (CFR) Part 26, have an equal opportunity to receive and participate in federal Department of Transportation-assisted contracts. The objectives of the DBE Program include: (a) ensuring non-discrimination in the award and administration of federal Department of Transportation-assisted contracts; (b) Creating a level playing field on which DBEs can compete fairly for such contracts; (c) Ensuring that the DOT DBE Program is narrowly tailored in accordance with applicable laws; (d) Ensuring that only firms that fully meet eligibility standards as set forth in 49 CFR Part 26 are permitted to participate as DBEs; (e) Helping remove barriers to the participation of DBEs in such contracts; and (f) Assisting in the development of firms that can compete successfully in the marketplace outside of the DBE Program.

29.4.1.3 In the event the Contractor and/or its subcontractors fail(s) to comply with any substantive requirement of the Agreement related to non-discrimination, participation by Small Businesses and/or Disadvantaged Business Enterprises, or equal employment opportunity, Sound Transit or UW may require imposition of sanctions which then may be imposed by the Performing Party as it may determine to be appropriate,
including but not limited to: (a) Requiring the Contractor to take remedial action to bring the Contractor or its subcontractor into compliance; (b) Withholding payments to the Contractor until the Contractor or its subcontractor is in compliance; (c) Suspend or terminate this Agreement; (d) Debar the Contractor or its subcontractor from future contracts with Sound Transit; and/or (e) File civil and/or criminal action(s) against the Contractor and, if applicable, its subcontractors, suppliers, employees, agents, and representatives. Sound Transit may consider any such failure by the Contractor in determining whether to award any future contracts to the Contractor.

29.4.2 Equal Employment Opportunity

29.4.2.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, sex, sexual orientation, age, nationality, or the presence of any sensory, mental, or physical disability, unless based upon a bona fide occupational qualification. The Contractor shall make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, sex, sexual orientation, age, nationality, or the presence of such disability. Such action shall include, but not be limited to, the following: 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 post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29.4.2.2 The Contractor shall, during the term of this Agreement, furnish, upon request and on forms approved by Sound Transit or UW, a report of the affirmative efforts made by the Contractor in implementing the nondiscrimination and equal employment opportunity provisions in this Agreement. The Contractor shall permit access by Sound Transit and UW to the Contractor’s records of employment, employment advertisements, application forms, and other pertinent data and records for the purpose of determining compliance with this provision.

29.4.2.3 The Contractor shall implement and carry out the obligations regarding equal employment opportunity submitted as part of its Proposal to perform this Agreement and the equal employment opportunity provisions set forth in this Agreement. Failure to implement and carry out such obligations and provisions in good faith may be considered by
the Parties a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement and dismissal of the Contractor.

29.4.2.4 The Contractor shall require that substantially the same provisions as in this Section are contained in all subcontractor agreements entered into by the Contractor under this Agreement.

29.4.2.5 In addition, the Contractor shall comply with, and ensure its subcontractors comply with, applicable Federal Civil Rights Requirements set forth in this Agreement.

29.4.2.6 The Contractor shall comply with the following assurance: The Contractor 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 DOT-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 Sound Transit or UW deems appropriate.

29.4.2.7 The Contractor shall include in each Subcontract it awards pursuant to this Contract the following assurance: “The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this subcontract. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the subcontractor to carry out these requirements is a material breach of this subcontract, which may result in the termination of this subcontract or such other remedy as the Contractor, Sound Transit or UW deems appropriate.”

29.4.3 Disadvantaged Business Enterprise (DBE) Program

29.4.3.1 As a recipient of financial assistance from the federal Department of Transportation (DOT), through the Federal Transit Administration (FTA), Sound Transit has developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall comply with applicable provisions in 49 CFR Part 26.

29.4.3.2 Sound Transit and UW promote and encourage small business participation, which by definition also includes Disadvantaged Business Enterprises and U.S. Small Business Administration (SBA) program participants and may include firms owned by persons with disabilities. For this Agreement, Sound Transit
and UW are interested in DBE and small business participation as prime contractors, joint venture partners, or subcontractors.

29.4.3.3 Contractors are advised that, in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (DBE Regulations), Sound Transit has established a 7.4% DBE Project Goal for contracts to be let under the University Link Light Rail Project (U-Link DBE Project Goal). Sound Transit established the 7.4% DBE Goal for the University Link Project that now includes the scope of work addressed in this Agreement.

29.4.3.4 Contractors are also advised that Sound Transit has committed to meeting their overall DBE participation goal(s) by race-neutral (including race and gender neutral) means. The Contractor shall also pursue race-neutral means in soliciting for and securing participation by DBEs on this Agreement.

29.4.3.4.1 As described in 49 CFR § 26.51(b), race-neutral means include, but are not limited to, actions such as: (1) arranging solicitations, times for the presentation of bids or proposals, quantities, specifications, and delivery schedules in ways that facilitate DBE participation; (2) providing assistance in overcoming obstacles such as inability to obtain bonding or financing; (3) providing technical assistance and other services; (4) carrying out information and communications programs on contracting procedures and specific contract opportunities; (5) implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs; (6) providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency; (7) establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low; (8) ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors and consultants; and (9) assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media. Such race-neutral means should benefit small businesses as well as DBEs.

29.4.3.5 The Contractor shall afford DBEs an equal, non-discriminatory opportunity to compete for business as joint venture partners, subcontractors or suppliers and shall ensure its subcontractors also afford DBEs such opportunities. A listing of DBEs certified by OMWBE is available on the Internet at http://www.omwbe.wa.gov/directory/directory.htm, or by contacting OMWBE at 360-753-9693.
29.4.3.6 In accordance with these policies and federal requirements, the Contractor is encouraged to make affirmative efforts to reach out to DBEs to solicit and achieve a 7.4% goal for participation by DBEs on its work under this Agreement, and to maintain documentation of its efforts. However, the Contractor is not required to achieve a minimum level of participation by DBEs. If achieving the 7.4% goal for DBEs is not reasonably achievable, the Contractor should make its best efforts to supplement DBE participation with the participation of other small businesses. Affirmative outreach efforts shall include, but are not limited to, the following activities:

29.4.3.6.1 Identifying portions of the Work to be performed by DBEs, including breaking out work items into economically feasible units to facilitate participation by DBEs.

29.4.3.6.2 If changes in the Project work and/or Additional Work is requested or directed, the Contractor shall make affirmative efforts to include participation by DBEs when negotiating and performing said changes and/or Additional Work.

29.4.3.6.3 Soliciting through reasonable and available means the interest of DBEs who have or may have the capability to perform portions of the Work under this Agreement. Such means of solicitation should include community, consultant and public agency organizations and offices that are involved in recruiting and placing DBEs. Solicitations shall occur with sufficient time that interested DBEs would be able to respond to the solicitation.

29.4.3.6.4 Providing information about work items to interested DBEs.

29.4.3.6.5 Negotiating in good faith with interested DBEs.

29.4.3.6.6 Identifying and making efforts to assist DBEs to obtain necessary personnel, equipment, materials and supplies to perform the work items.

29.4.3.7 Prospective Contractors are advised that any contract, including subcontracts, awarded pursuant to this Agreement shall include the following assurance:

"The Contractor, sub-recipient 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 DOT-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 recipient deems appropriate."

29.4.3.8 The Contractor shall maintain sufficient records necessary for the Parties to monitor the Contractor’s and its subcontractors’ compliance with the provisions of the DBE Program.

29.4.4 Small Business Program

29.4.4.1 Sound Transit and UW promote and encourage the use of Small Businesses on construction contracts under this Agreement.

29.4.4.2 Contractors are advised that, in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (DBE Regulations), Sound Transit has established a 7.4% DBE Project Goal for contracts to be let under the University Link Light Rail Project (U-Link DBE Project Goal). Sound Transit established a 7.4% DBE Goal for the University Link Project that now includes the scope of work addressed in this Agreement. However, the Contractor is not required to achieve a minimum level of participation by DBEs. If achieving the 7.4% goal for DBEs is not reasonably achievable, the Contractor shall make its best efforts to supplement DBE participation with the participation of other small businesses. The Contractor shall make affirmative outreach efforts to include the participation by Small Businesses under this Agreement. The affirmative outreach efforts listed previously for DBEs are also applicable for affirmative outreach efforts to Small Businesses.

29.4.4.3 For the purposes of this Agreement, a Small Business is a business that: (a) Is organized for profit; (b) Has a place of business in the United States; and (c) For its industry, does not exceed the numerical size standard established by the federal Small Business Administration pursuant to 13 Code of Federal Regulations Part 121.

29.4.4.4 A business shall be presumed to meet the Small Business size standard and be a Small Business if the business comes within one of the following categories:

29.4.4.4.1 Is certified by the Washington State Office of Minority and Women Business Enterprise (OMWBE). To obtain a listing of firms certified by OMWBE, contact OMWBE at 360-753-9693 or access a listing on the Internet at http://www.omwbe.wa.gov/directory/directory.htm;

29.4.4.4.2 Is a participant in federal Small Business Administration programs, such as, but not limited to, Section 8(a)
Business Development, Small Disadvantaged, and HUBZone. To obtain a listing of Small Businesses participating in the U.S. Small Business Administration programs or activities as eligible Small Businesses, contact the SBA’s Seattle District Office at 206-553-7310; or

29.4.4.4.3 Is certified by a public agency other than OMWBE and a size standard that is no greater than the Small Business Administration Size Standard, which is a criterion for certification or participation in that public agency program.

29.4.4.5 The Contractor shall maintain sufficient records necessary for Sound Transit or UW to monitor the Contractor’s and its subcontractors’ compliance with the provisions of the Small Business Program.

29.4.5 Applicability of Federal Grant Contract

29.4.5.1 This procurement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation (DOT), which incorporate the current FTA Master Agreement and Circular 4220.1 as amended.

29.4.5.2 All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, and the Master Grant Agreement, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.

29.4.5.3 The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Contract and any lower tier subcontracts at any level and to take appropriate measures to ensure that Contractor and its lower tier Subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The following provisions of the FTA Master Agreement are hereby incorporated by reference into this Contract, and the Contractor shall comply with all such requirements.

29.4.5.4 Copies of the FTA Circular 4220.1, as amended, and the Master Grant Agreement are available from Sound Transit.

29.4.6 Federal Funding Limitation

29.4.6.1 The Contractor understands that a portion of the funds to pay for the Contractor's performance under this Contract are
anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All such funds must be approved and administered by FTA.

29.4.7 Recovered Materials

29.4.7.1 The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247.

29.4.7.2 These requirements flow down to all Contractor and Subcontractor tiers.

29.4.8 Energy Conservation

29.4.8.1 The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

29.4.8.2 These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

29.4.9 Federal Lobbying Restrictions

29.4.9.1 This Contract is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Contractors and Subcontractors at any time who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will 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 any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier
shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Contractor shall submit the "Certification Regarding Lobbying," included in the Bid documents. The Contractor's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed $100,000, and that all such Subcontractors shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Contractor, who is in turn responsible for keeping the certification forms of Subcontractors. Further, by executing the Contract, the Contractor agrees to comply with these laws and regulations.

29.4.9.2 If the Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Contract, the Contractor must disclose these activities. In such a case, the Contractor shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." Sound Transit must also receive all disclosure forms.

29.4.9.3 The Contractor and any Subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

29.4.9.3.1 A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or

29.4.9.3.2 A change in the person(s) influencing or attempting to influence this federally funded Contract; or

29.4.9.3.3 A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

29.4.10 Program Fraud and False Or Fraudulent Statements Or Related Acts

p pertaining to this Contract. Upon execution of the underlying contract, the Contractor 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 the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor 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 the Contractor to the extent the Federal Government deems appropriate.

29.4.10.2 The Contractor 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 the Contractor, to the extent the Federal Government deems appropriate.

29.4.10.3 The Contractor agrees to include the above two clauses in each Subcontract 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 Subcontractor who will be subject to the provisions.

29.4.11 Anti-Kickback

29.4.11.1 Sound Transit and contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. Under state and federal law, it is a violation for Sound Transit employees, proposers, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

29.4.11.2 "Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

29.4.12 Civil Rights
29.4.12.1 Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national original, sex, marital status, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

29.4.12.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

29.4.12.2.1 Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. As required by 41 CFR 60-1.4, during the performance of this Contract, the Contractor agrees as follows:

29.4.12.2.1.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, marital status, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places, available to employees and applicants for
employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

29.4.12.2.1.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, marital status or national origin.

29.4.12.2.1.3 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

29.4.12.2.1.4 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

29.4.12.2.1.5 The Contractor will furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

29.4.12.2.1.6 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

29.4.12.2.1.7 The Contractor will include the portion of the sentence immediately preceding paragraph 29.4.12.2.1.1 and the provisions of paragraphs
29.4.12.2.1.1 through 29.4.12.2.1.6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

29.4.12.2.1.8 The Contractor and its Subcontractors shall include the equal employment opportunity clause set forth in paragraph 29.4.12.2.1.1 above in each of their non-exempt Subcontracts.

29.4.12.2.2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

29.4.12.2.3 Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

29.4.12.2.4 Federal Equal Employment Opportunity Requirements. As required by 41 CFR 60-4.2, the Contractor shall take into account the following provisions in performing the Work:

29.4.12.2.4.1 The Contractor shall comply with the Federal Equal Employment Opportunity (EEO) Requirements.

29.4.12.2.4.2 The goals for minority and female participation, expressed in percentage terms for the
Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows (unless modified by the federal government):

- Minority participation in each trade (King County) - 7.2%
- Minority participation in each trade (Snohomish County) - 7.2%
- Minority participation in each trade (Pierce County) - 6.2%
- Female participation in each trade (Nationwide) - 6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

29.4.12.2.4.3 The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) Business Days of award of any construction Subcontract in excess of $10,000 at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the Subcontractor; employer
identification number of the Subcontractor; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.

29.4.12.2.4.4 As used in this Notice, and in this Contract, the "covered area" is Snohomish, King and Pierce Counties of the State of Washington.

29.4.12.2.5 EEO Construction Contract Specifications. As required by 41 CFR 60-4.3, the Contractor shall comply with the following: Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

29.4.12.2.5.1 As used in these specifications:

29.4.12.2.5.1.1 "Covered area" is Snohomish, King and Pierce Counties of the State of Washington.

29.4.12.2.5.1.2 "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

29.4.12.2.5.1.3 "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

29.4.12.2.5.1.4 "Minorities" includes:

29.4.12.2.5.1.4.1 Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

29.4.12.2.5.1.4.2 Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

29.4.12.2.5.1.4.3 Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
29.4.12.2.5.1.4.4 American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

29.4.12.2.5.2 Whenever the Contractor, or any Subcontractor at any tier subcontracts a portion of the Work involving any construction trade, it shall physically include in each Subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which are set forth in this Contract.

29.4.12.2.5.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.

29.4.12.2.5.4 The Contractor shall implement the specific affirmative action standards provided in paragraphs g(1) through g(16) below. The goals set forth in this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.
Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

29.4.12.2.5.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor’s obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

29.4.12.2.5.6 In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

29.4.12.2.5.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor’s compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

29.4.12.2.5.7.1 Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor’s employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor’s obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
29.4.12.2.5.7.2 Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

29.4.12.2.5.7.3 Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

29.4.12.2.5.7.4 Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor minority persons or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

29.4.12.2.5.7.5 Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 29.4.12.2.5.7.2 above.

29.4.12.2.5.7.6 Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual
report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

29.4.12.2.5.7.7 Review, at least annually, the company’s EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

29.4.12.2.5.7.8 Disseminate the Contractor’s EEO policy externally by including it in any advertising in the new media, specifically including minority and female news media, and providing written notification to and discussing the Contractor’s EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.

29.4.12.2.5.7.9 Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor’s recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

29.4.12.2.5.7.10 Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to
minority and female youth both on the site and in other areas of a Contractor’s work force.

29.4.12.2.5.7.11 Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

29.4.12.2.5.7.12 Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

29.4.12.2.5.7.13 Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor’s obligations under these specifications are being carried out.

29.4.12.2.5.7.14 Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

29.4.12.2.5.7.15 Document and maintain a record of all solicitations of offers for subcontract from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

29.4.12.2.5.7.16 Conduct a review, at least annually, of all supervisors’ adherence to and performance under the Contractor’s EEO policies and affirmative action obligations.

29.4.12.2.5.8 The Contractor is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (paragraphs g(1) through g(16) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or
more of its obligations under g(1) through g(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

29.4.12.2.5.9 A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

29.4.12.2.5.10 The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

29.4.12.2.5.11 The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

29.4.12.2.5.12 The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
29.4.12.2.5.13 The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

29.4.12.2.5.14 The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

29.4.12.2.5.15 Nothing herein provided shall be construed as limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

29.4.12.2.6 The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

29.4.12.2.7 Flow Down. The Civil Rights requirements flow down to the Contractor and its subcontractors at every tier.

29.4.13 Certification Regarding Debarment, Suspension And Other Responsibility Matters

29.4.13.1 This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that 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.

29.4.13.2 The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

29.4.13.3 By signing and submitting its Bid, the Bidder certifies as follows: The certification in this clause is a material representation of fact relied upon by Sound Transit. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to Sound Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

29.4.14 Buy America Requirements

29.4.14.1 The Contractor agrees to comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661, which provide 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 the FTA or the product is subject to a general waiver. General Waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out in section 165(b)(3), of the Surface Transportation Assistance Act of 1982 and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

29.4.14.2 A bidder or offeror must submit to Sound Transit the appropriate Buy America certification, with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

29.4.14.3 Whether or not a Bidder certifies that it will comply with the applicable requirement, Bidder will be bound by its original certification and is not permitted to change its certification after the time that the Bid is submitted, except for clerical error. A Bidder that certifies that it will comply with the applicable Buy America requirements may not change its
certification at any point, and is not eligible for waiver of those requirements. (Buy America Regulations, 49 CFR Part 661.13(c)).

29.4.14.4 If the Bidder is unable to certify compliance, but believes that it may qualify for an exception to the requirement consistent with section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, Sound Transit, on behalf of the Bidder, will tender the request for exception(s) to FTA for review and approval. Sound Transit does not warrant that any such request will be acted upon in accordance with the Bidder's time frame. Failure to achieve an exception will not relieve the Bidder of its responsibilities under this Section.

29.4.15 Cargo Preference

29.4.15.1 Pursuant to 46 CFR Part 381, the Contractor agrees:

29.4.15.1.1 To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, 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.

29.4.15.1.2 To furnish within twenty (20) Days following the date of loading for shipments originating within the United States, or within thirty (30) Business Days following the date of loading for shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo described in paragraph A above to Sound Transit (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, 400 Seventh Street, SW, Washington, D.C., 20590, marked with appropriate identification of the Project.

29.4.15.1.3 To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

29.4.15.1.4 The Contractor must properly execute and submit with its Bid the "Cargo Preference Certificate" which is included in the Contract Documents, if applicable.

29.4.16 Fly America Requirements

29.4.16.1 The Contractor agrees to comply with 49 U.S.C. § 40018 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which
provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by 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 by a U.S. flag carrier was not available or why it was necessary to use a foreign air 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.

29.4.17 No Obligation by The Federal Government

29.4.17.1 In connection with this Contract, the Federal Government shall have no obligations or liabilities to the Contractor or any Subcontractor or Supplier at any tier that is not a party to the Grant Agreement between Sound Transit and FTA. Notwithstanding that the Federal Government may have concurred in or approved the solicitation for this Contract, the Federal Government is not a party to this Contract and has no obligations or liabilities to any party, including the Contractor and its Subcontractors and Suppliers at any tier.

29.4.17.2 The Contractor agrees to include the above clause in each Subcontract. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provision.

29.4.18 Clean Water

29.4.18.1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

29.4.18.2 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.

29.4.19 Clean Air

29.4.19.1 The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to
report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

29.4.19.2 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.

29.4.20 Seismic Safety

29.4.20.1 The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

29.4.21 Changes in Governmental Regulations

29.4.21.1 In the event local, state or federal laws or regulations were not announced or enacted at the time of bid, and such laws or regulations make standards more stringent or compliance more costly under this Contract, the Contractor shall notify Sound Transit in writing of such laws or regulations and their effects on the scope, schedule and budget of the Work promptly after the Contractor first became aware of the laws and regulations and prior to incurring any such expenses.

29.4.21.2 Sound Transit will make a determination as to whether the Contractor should be reimbursed for any such expenses or any time extensions should be granted in accordance with the General Conditions.

29.4.21.3 In the event any governmental requirements are removed, relaxed or changed in any way after the date of contract award so as to make the Contractor's Work less expensive, or less difficult, then Sound Transit shall have the option either to require the Contractor to perform pursuant to the more rigorous requirements or issue a Change Order to incorporate the revised governmental requirements and deduct an appropriate value for the Work not performed. Sound Transit shall give the Contractor notice of Sound Transit's determination.

29.4.22 Electronic and Information Technology

29.4.22.1 When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others,
on behalf of Sound Transit, the Contractor agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.
IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the latest date written below.

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

Paula J. Hammond, P.E
Secretary of Transportation

Date 3/9/11

APPROVED AS TO FORM:

Elizabeth Lagerberg
Assistant Attorney General

Date 3-3-2011

UNIVERSITY OF WASHINGTON

Dr. Phyllis M. Wise
Interim President

Date 3/4/11

APPROVED AS TO FORM:

Karin Nyrop
Assistant Attorney General

Date March 4, 2011

SOUND TRANSIT

Joan M. Earl
Chief Executive Officer

Date March 6, 2011

APPROVED AS TO FORM:

Loren Armstrong
Legal Counsel

Date 3 Mar 2011
Exhibit A - MTP Scope and Description

This exhibit outlines the general scope and description for the MTP. The MTP detailed scope and description will be agreed upon by the PARTIES during Phase Three and at the decision points outlined in Section 9.2. The agreed upon design at these decision points will supersede the following general description and plan sheets for each Sub-Project:

Sub-Project One
Montlake Pedestrian Bridge

- Bridge with stairs and elevator at triangle
- Bicycle access ramp
- Bicycle and pedestrian paths along east side of Montlake Blvd

Sub-Project Two
Rainier Vista Land Bridge (Civil/Structural)

- Civil and structural work at triangle and Lower Vista
- Pedestrian ramp connection to SP1 bridge (above Triangle Parking Garage)
- Lowering of Pacific Place and Burke-Gilman Trail
- Retaining walls
- Land bridge spanning Pacific Place
- Garage structural and ventilation
- Sidewalk improvements around triangle and along north side of Pacific Place with bus stops
- Impacted utilities and electrical, water, and drain connections
- Street lighting
- Street trees

Sub-Project Three
Rainier Vista Land Bridge (Landscaping, Hardscaping and Finishes)

- Landscaping
- Hardscaping, finishes
- Lighting
- Irrigation system
- Signage
RAINIER VISTA LANDSCAPING

SCALE: 1" = 100'-0"

MONTLACE PACKAGES

Sub-Project One: Montlake Bridge

Sub-Project Two: Rainier Vista Land Bridge

Sub-Project Three: Rainier Vista Landscaping
### Exhibit B - Preliminary Cost Estimate

**March 1, 2011**

#### SP1: Montlake Pedestrian Bridge (MPB)

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost (in $)</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Direct Construction Cost</td>
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<tr>
<td>Contractor GCs/Fee &amp; Contingency</td>
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<tr>
<td>Escalation</td>
<td>415,144</td>
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**Construction Subtotal**

$7,111,021

**Construction Soft Costs**

$2,504,683

- **Sales Tax on Construction** $620,263 9.5%
- **Construction Contingency** $711,102 10.0%
- **Construction Management/Admin** $1,173,319 16.5%

**Total Construction Cost**

$9,615,705

**Total Design Cost**

$1,745,899

- **Design and Permits (30% to Bid)** $1,534,000
- **King County Design** $105,341
- **Design Administration** $106,557 6.5%

**Total Cost**

$11,361,603

#### SP2: Rainier Vista Landbridge (RVLB) civil/structural

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<tr>
<th>Item</th>
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<td>Escalation</td>
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**Construction Subtotal**

$13,966,690

**Construction Soft Costs**

$5,035,162

- **Sales Tax on Construction** $1,328,723 9.5%
- **Construction Contingency** $1,396,656 10.0%
- **Admin/CM** $2,307,782 16.5%

**Total Construction Cost**

$19,021,722

**Total Design Cost**

$1,809,920

- **Design and Permits (30% to Bid)** $1,500,000
- **King County Design** $198,455
- **Design Administration** $110,465 6.5%

**Total Project Cost**

$20,631,641

#### SP3: RVLB landscaping, hardscaping, finishes

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<td>Escalation</td>
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**Construction Subtotal**

$3,281,497

**Construction Soft Costs**

$1,181,339

- **Sales Tax on Construction** $911,742 9.5%
- **Construction Contingency** $328,150 10.0%
- **Admin/CM** $541,447 16.5%

**Total Construction Cost**

$4,462,836

**Total Design Cost**

$-

**Total Project Cost**

$4,462,836

#### Preliminary Cost Estimate

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost (in $)</th>
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<td>SP1: MPB</td>
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<td>SP2: RVLB civil/structural</td>
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<td>SP3: RVLB landscaping, hardscaping, finishes</td>
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**Design and Permits (June 2010 to 30%)**

$1,343,920

**Total**

$38,000,000

#### Funding

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<tr>
<td>UW Contribution</td>
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<tr>
<td>WSDOT Contribution to balance</td>
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**Total**

$38,000,000

#### Construction Reserve by Sub-Project

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<td>SP2</td>
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<tr>
<td>SP3</td>
<td>670,000</td>
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**Total Reserve**

$5,000,000

---

**NOTES**

1. Direct construction costs are in April 2011 dollars.
2. Right-of-way and easement costs are assumed to have no cost to the MTP.
Exhibit C – Primary Contacts, Designated Representatives and Executive Committee

Primary Contacts are as follows:

WSDOT:  
Kerry Ruth  
Engineering Manager  
Washington State Department of Transportation  
SR 520 Program  
Plaza 600 Building  
600 Stewart Street, Suite 520  
Seattle, WA 98101-1217  
Phone: 206-770-3546  
Email: ruthk@wsdot.wa.gov

UW:  
Andy Casillas  
Project Manager, Capital Projects Office  
University of Washington  
BOX 352205  
Seattle, WA 98195-2205  
Phone: 206-685-9055  
Email: casillas@u.washington.edu

ST:  
Tracy Reed  
Deputy Project Director, Business Services  
Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104  
Phone: (206) 398-5205  
Email: tracy.reed@soundtransit.org

Designated Representatives are as follows:

WSDOT:  
Kerry Ruth, Engineering Manager
UW:  
John Palewicz, Interim Director of Program Management, CPO
ST:  
Joe Gildner, University Link Project Director

Executive Committee members are as follows:

WSDOT:  
Julie Meredith, SR 520 Project Director
UW:  
Richard Chapman, Associate Vice President for Capital Projects, CPO
ST:  
Ahmad Fazel, Executive Director Design Engineering & Construction Mgmt

GCA 6662
Exhibit C
Page 1 of 1
Montlake Triangle Project
Exhibit D
Invoice Template

XX/XX/2011

TO: XXX
XXX
XXX
XXX
XXX

Invoice number: XXX
For the period: XXX/11 thru XXX/11

Project: Montlake Triangle Project Agreement Number: GCA 6662

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TOTAL AMOUNT DUE THIS INVOICE $0.00

Task Element: Sub-Project 1. Construction Line Items

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Task Element: Sub-Project 2. Design

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Task Element: Sub-Project 3. Design

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<th>Staff Member/Consultant</th>
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<th>Rate</th>
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<td>Total Direct Labor (DL)</td>
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**Mark-ups**

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<th>Percentage of</th>
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<td>Construction Management (if applicable)</td>
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<td>Project Administration (if applicable)</td>
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<td>Total Mark-ups</td>
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**Work Performed for this Invoice Period**

This invoice includes....

**Back up documentation for Task Elements noted above**

(Back up documentation includes invoices and other documentation from staff, contractors and consultants containing detailed information such as specific hours and rates for all tasks)

---

**Progress Report**

---

**Percent Complete**

---

**Issues**

---

**Signature of Authorized Representative:** ___________________________  
**Date:** ____________

**Printed Name of Authorized Representative:** ___________________________
Montlake Triangle Project
Exhibit E – MTP Agreement Reconciliation and Payments

Cumulative Contributions through June '11

- ST = $X
- UW = $Y
- WSDOT = $Z

WSDOT Reconciliation Payments after Phase Three

To ST = X - 31.6% (X+Y+Z)
To UW = Y - 10.5% (X+Y+Z)

Monthly Invoicing to WSDOT after July '11

- ST = $A
- UW = $B

WSDOT Monthly Payments

To ST = A - 31.6% (A+B)
To UW = B - 10.5% (A+B)
# Exhibit F - Montlake Triangle Project Schedule

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*Date to be determined*

Montlake Triangle Project (MTP) schedule is subject to change at MTP decision points outlined in Section 9.2 of this agreement.