

AMENDMENT NO. 1  
TO  
GCA 5865

Between  
The King County Department of Transportation, Metro Transit Division  
and  
The Washington State Department of Transportation

**THIS AMENDMENT No. 1 to GCA 5865** (the "First Amendment"), is made and entered into between King County, by and through its Department of Transportation, Metro Transit Division (the "County" or the "Metro Transit"), and the State of Washington, by and through its Department of Transportation ("WSDOT" or the "State"), either of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

**WHEREAS**, on December 30, 2008 the Parties entered into GCA 5865, an Agreement for Transportation Demand Management, Initial Transit Enhancements and Other Improvement Projects (the "Agreement"), and

**WHEREAS**, the Transit Demand Management ("TDM") work will be required for the Alaskan Way Viaduct South Holgate to South King Project, and

**WHEREAS**, Section 7 of the Agreement provides for changes to be made to the Agreement by written agreement of the Parties, and

**WHEREAS**, the Parties have determined that delays in the anticipated viaduct construction schedule will necessitate an extension of the term of the Agreement, and

**WHEREAS**, as a consequence of the construction delays, the Parties have mutually agreed to extend the term of the Agreement from June 30, 2013 to June 30, 2014 with no additional costs to the State and no additional performance obligations to the County, and

**WHEREAS**, the activities identified in Exhibit A (Scope of Work) must be adjusted to reflect the extension of the term of the Agreement; and

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

THE PARTIES HEREBY AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

1. Section 1 (Purpose) of the Agreement is hereby deleted in its entirety and replaced with the following:

1.1 The purpose of this Agreement is to implement the TDM outreach tasks specified in the detailed Scope of Work set forth at Exhibit A-1, which is attached to the Agreement and by this reference incorporated herein, hereinafter the "Work," which Work is intended to help improve system efficiency on SR 99 and adjacent facilities within the geographic boundaries of the Alaskan Way Viaduct South Holgate to South King Project during its construction and to establish a method for Metro Transit to invoice the State and to be reimbursed for the costs associated with the performance of this Work.

2. Section 2.1 (Provision of Transportation Demand Management) of the Agreement is hereby deleted in its entirety and replaced with the following:

Metro Transit shall perform the Work described in Exhibit A-1 which is attached to the Agreement and by this reference incorporated herein.

3. The last paragraph of Section 3.1 (Payment) of the Agreement is hereby deleted in its entirety and replaced with the following:

An estimate of the cost for Work to be performed by the County pursuant to this Agreement is shown in Exhibit A-1, which is attached hereto and incorporated herein by this reference.

4. Section 4 (Reports) of the Agreement is hereby amended with the following:

4.3 For each service period, a Performance Report shall be prepared by Metro Transit in a similar format and content as that transmitted to the State, "Enhanced Transit, Transit Travel Time and Demand Management Performance Report," Volume 1: September 2009-February 2010, Submitted April 5, 2010, for each service period. The Performance Report shall also include content reflecting the Water Taxi services provided and their performance. Travel time, ridership and passenger load information for bus, water taxi and water taxi shuttle applicable service will be reported to the State in the Performance Reports. Following the completion of a service period, the Performance Report shall be submitted to the State for review. This Performance report shall be submitted to the State at the same time as the next Enhanced Transit Service Proposal is submitted by the County to the State for review.

4.4 Additionally a final Performance Report on the TDM tasks will be required within six (6) months of the completion of work on the TDM tasks in this scope of work or the end date of this Agreement, whichever one comes first. This report will contain the final trip reduction performance data for all of the TDM tasks in this scope of work similar to what is presented in the TDM section of the service period performance reports. In addition this report will provide a narrative on the lessons learned for each of the TDM tasks discussing what worked, what didn't and why. This should include discussion on any characteristics of the construction, TDM

project, targeted area or global factors (economy, gas prices, etc) that affected trip reduction performance of the TDM projects positively or negatively.

5. Section 5 (Effective Date and Term of Agreement) is hereby deleted in its entirety and replaced with the following:

5.1 This Agreement is effective upon execution by both Parties and will remain in effect through June 30, 2014 unless otherwise amended or earlier terminated by either Party pursuant to the terms of this Agreement.

6. Exhibit A (Scope of Work) to the Agreement is hereby replaced in its entirety by Exhibit A-1 (Scope of Work,) which is attached to the Agreement and by this reference incorporated herein.

7. Except as specifically modified in this First Amendment, all other terms, conditions, and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this AMENDMENT No. 1 as of the latest date written below.

KING COUNTY, DEPARTMENT OF  
TRANSPORTATION

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
By  
Kevin Desmond  
General Manager  
King County Metro Transit Division

\_\_\_\_\_  
By  
Brian Lagerberg  
Director  
Public Transportation Division

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments:

Exhibit A-1 to the Amendment

**Exhibit A-1: Scope of Work**

The following details the scopes of work, including cost estimates, for the South End Transportation Demand Management Project and the Downtown Transportation Demand Management Project. The following scopes and cost estimates reflect completion of 5% design.

For the purpose of this scope of work a “trip” is defined as an annualized weekday round trip which is equivalent to 260 individual weekday round trips.

**I. Downtown Transportation Demand Management**

**A. Reduce Single Occupancy Vehicles (SOV) Commuter Parking - \$225,000**

<b>Concept</b>	The City of Seattle has developed parking strategies for converting existing long-term parking spaces to short-term use and moving commuters out of their cars to free up parking space. The Center City Parking Program will convert existing parking spaces in downtown lots and garages from long-term parking to short-term, off-street parking by working with building owners and private parking operators. The City will also build a parking guidance system to direct drivers to these available short-term parking spaces. On-street parking in downtown – up to 2,000 spaces – will be removed to increase road capacity. The City will provide additional funds to support the program, including funds for staff, program development and electronic guidance systems.
<b>Deliverables</b>	Surveying and marketing to support conversion of long-term parking to short-term parking in existing downtown lots and garages and a net reduction of 2,000 downtown long-term parking spaces. Metro Transit will estimate and report annually on the number of trips reduced, the net number of downtown long-term parking spaces (including baseline) and the net number of on-street parking spaces (including baseline).
<b>Timeline</b>	Begin surveys and marketing in late 2010 and continuing through 2014
<b>Expected Outcome</b>	Removal of on-street parking will improve mobility for transit and freight through the Center City during construction. The Center City Parking Program will convert commuter parking spaces to short-term use and reduce the overall number of long-term spaces leading commuters to seek alternative transportation modes. The program also leads to a decrease in searching for on-street parking consequently reducing emissions, fuel consumption and congestion.
<b>TDM Outcomes</b>	Shift 200 trips to alternative modes by reducing the net number of downtown long-term parking spaces by 2,000.

**B. Incentives for Transit and Ridesharing - \$350,000**

<b>Concept</b>	Employers in downtown Seattle will be offered an incentive to provide subsidized transit passes to their employees. Incentives will be offered to new employers not previously targeted. Data shows that companies who offer a FlexPass or subsidized retail passes have lower SOV rates than companies who do not. Incentives will also be offered for people who form and register carpools. Incentives can be targeted for certain areas through the Rideshare Online Web site and supported with stalls from the Star Carpool Program. Incentives will also be available for building managers that show a documented reduction in available SOV commuter parking supply. These incentives will support effort I.A. above, the Reduction in SOV Commuter Parking.
<b>Deliverables</b>	Provide 2,500+ transit pass incentives, 1,000+ carpool incentives, and a minimum 5 parking garage incentives. Metro Transit will conduct measurement and report results.
<b>Timeline</b>	Begin offering incentives as early as fall 2009, so employees have their transit passes by the time construction starts, and continue until all incentives are used.
<b>Expected Outcome</b>	Companies who offer FlexPass currently show an increase in transit use compared to companies without FlexPass. Our goal is to expand the number of individuals who have a pass and increase the number of overall transit riders. The goal is to create more carpools and gather data on the carpools to better address their needs. Incentives for the reduction of SOV parking will greatly reduce the attractiveness of commuting by SOV and will create capacity for HOV and short-term parking supply.
<b>TDM Outcomes</b>	Shift 620 trips to transit or ridesharing.

**C. Promotions for Transit and Ridesharing - \$150,000**

<b>Concept</b>	When new transit service is implemented under the Enhanced Transit Services Agreement, GCA 5820, targeted marketing will take place to promote the new service. In coordination with WSDOT, marketing will address the specific communities affected by the new service and provide information on other transit programs as well. Promotions specifically targeted to promote ridesharing will reach a population who may not be able to use transit.
<b>Deliverables</b>	Promote new transit services and all rideshare programs to a minimum 75,000 households. Metro Transit will conduct measurement and report results.
<b>Timeline</b>	Targeted promotional campaigns to coincide with major construction impacts and implementation of new transit service.

<b>Expected Outcome</b>	New transit service will attract a certain number of new riders on its own, but targeted promotions are needed to fully utilize the new service. The goal is to maximize the benefit of the new and existing service.
<b>TDM Outcomes</b>	Shift 520 trips to transit or ridesharing.

**D. Telecommuting/Flexible Schedules - \$140,000**

<b>Concept</b>	Work with employers to change perceptions and human resources policies related to telecommuting and flexible schedules. The goal is to make telecommuting and flexible schedules more accepted and normal in the downtown businesses.
<b>Deliverables</b>	Work with 15 to 20 companies to develop telecommuting/flexible schedule plans. Metro Transit will conduct measurement and report results.
<b>Timeline</b>	Begin working with companies in late 2009 to foster interest and gain management approval for telework implementation. The goal is to have programs up and running before any impacts of construction are felt.
<b>Expected Outcome</b>	Reduction in SOV trips through business culture changes.
<b>TDM Outcomes</b>	Save 710 peak hour trips from occurring.

**E. Plan Your Commute Programs - \$75,000**

<b>Concept</b>	Plan Your Commute programs provide one-on-one consultation about commute options. Events are held in building lobbies, coffee houses, and other popular locations and allow people to work with staff from Metro Transit to learn about alternative travel options. Incentives are offered to people willing to take the pledge to change 2+ trips to an alternative mode. Free bus tickets and information packets are given to all participants.
<b>Deliverables</b>	Hold 36 events; get 1,800 pledges, follow up measurement of sustained trip reduction and reporting of results.
<b>Timeline</b>	Hold events that coincide with construction milestones.
<b>Expected Outcome</b>	Inform commuters of construction impacts and provide information to help them choose a non-SOV mode.
<b>TDM Outcomes</b>	Shift 740 trips to alternative modes.

**F. Strategic Plan and Measurement - \$25,172**

<b>Concept</b>	Analyze and report on overall results of transportation demand management efforts.
<b>Deliverables</b>	Report.
<b>Timeline</b>	2010 - 2014
<b>Expected Outcome</b>	Information that enables the public to review, for each TDM mitigation program, results and contribution to overall SOV reduction during construction.

<b>TDM Outcomes</b>	Accountability for public dollars. Better information available for future construction mitigation programs and other trip reduction efforts.
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Metro Transit will provide a match of approximately \$350,000 of in kind staff services to support projects A through F outlined above. This is in addition to approximately \$150,000 of matching funds Metro Transit will provide to the project. King County Metro's total match is approximately \$500,000 for the Downtown Transportation Demand Management Project.

## II. South End Transportation Demand Management

### A. Residential Outreach - \$300,000

<b>Concept</b>	In-Motion is a residential version of employer transportation programs, providing one-on-one support to residents to help them make different choices about how they travel. Addressing residents' travel choices helps reach non-commute trips as well as commute trips. This program also is valuable in pushing the "Go Local" message, helping move viaduct corridor trips to bike/walk, or eliminating trips all together.
<b>Deliverables</b>	Conduct multiple In-Motion projects and In-Motion light follow-up programs. Neighborhoods to target could include: West Seattle, Tukwila, Burien, SeaTac, Federal Way, Queen Anne, South Lake Union, First Hill, and Ballard/Interbay. Measurement and reporting of results.
<b>Timeline</b>	Projects should be staggered throughout 2011 and 2012.
<b>Expected Outcome</b>	The program will be evaluated against a 10% household participation rate. Participation will be tracked through the submission of pledge cards to the program coordinator. Participants will be asked to complete a follow-up survey via mail or email to report their alternative mode usage in order to verify self-reported activities.
<b>TDM Outcomes</b>	Shift 390 SOV trips to alternative modes

### B. Carpool Programs - \$150,000

<b>Concept</b>	Vanpooling and transit usage cannot accommodate all of the needed shifts to mitigate impacts. Carpooling needs to be a continuing element of promotion and outreach if mitigation goals are to be met. This element will allow for expanded and targeted messaging on carpooling plus an incentive to new carpoolers.
<b>Deliverables</b>	Offer 1,000 incentives for new carpoolers. Metro Transit will conduct measurement and report results.
<b>Timeline</b>	Begin offering incentives as early as spring 2010 and continue until the incentives are gone.

<b>Expected Outcome</b>	The goal is to create more carpools and gather data on the carpools to better address their needs.
<b>TDM Outcomes</b>	Shift 270 trips to carpool.

**C. Employer Outreach - \$100,000**

<b>Concept</b>	Employer outreach occurs at larger companies that are required to participate in the Commute Trip Reduction (CTR) program, but smaller companies often miss out. By providing CTR-like outreach to the smaller employers a large proportion of the market can be reached. Working with the smaller employers to offer transit passes or subsidies allows more employees to be reached. Primary target employment areas include the SODO and Ballard/Interbay manufacturing centers and the South Lake Union, Queen Anne, and First Hill urban centers.
<b>Deliverables</b>	Conduct outreach in the secondary markets outlined above.
<b>Timeline</b>	Begin as early as spring 2010 to allow employers time to get programs in place before major construction impacts occur.
<b>Expected Outcome</b>	CTR firms have a much lower SOV rate than non-CTR firms and providing similar outreach and education to the non-CTR firms should reduce their SOV rates.
<b>TDM Outcomes</b>	Shift 100 trips to alternative modes.

**D. Promotions for Transit and Ridesharing - \$167,000**

<b>Concept</b>	When new transit service is implemented under the Enhanced Transit Services Agreement, GCA 5820, targeted marketing will take place to promote the new service. The marketing will address the specific communities affected by the new service and provide information on other transit programs as well. In neighborhoods where In-Motion programs will occur, coordination will occur between the In-Motion programs and the promotional effort.
<b>Deliverables</b>	Promote new transit services and all rideshare programs to a minimum 90,000 households. Metro Transit will conduct measurement and report results.
<b>Timeline</b>	Targeted promotional campaigns to coincide with major construction impacts and implementation of new transit service.
<b>Expected Outcome</b>	New transit service will attract a certain number of new riders on its own, but targeted promotions are needed to fully utilize the new service. The goal is to maximize the benefit of the new and existing service.
<b>TDM Outcomes</b>	Shift 580 trips to transit and ridesharing.

**E. Strategic Plan and Measurement - \$25,440**

<b>Concept</b>	Analyze and report on overall results of transportation demand management efforts.
<b>Deliverables</b>	Report
<b>Timeline</b>	2010 - 2014



<b>Expected Outcome</b>	Information that enables the public to review, for each TDM mitigation program, results and contribution to overall SOV reduction during construction.
<b>TDM Outcomes</b>	Accountability for public dollars. Better information available for future construction mitigation programs and other trip reduction efforts.

Metro Transit will provide a match of approximately \$350,000 of in kind staff services to support projects A through E outlined above. This is in addition to approximately \$200,000 of matching funds Metro Transit will provide to the project. Metro Transit's total match is approximately \$550,000 for the South End Transportation Demand Management Project.

AGREEMENT GCA 5865

**EXHIBIT B-1 – FEDERAL FUNDING REQUIREMENTS**

**1. GENERAL COMPLIANCE ASSURANCE**

King County (County) agrees to give reasonable guarantees that it and its sub-contractors and any third party Contractors under Agreement GCA 5865 (Agreement), will comply with all requirements imposed by, or pursuant to, the Federal Transit Act including any amendments thereto, and the Federal Regulations. The County agrees to comply with the provisions of 49 CFR Part 18 or 49 CFR Part 19, whichever is applicable, and the “Common Rule” as defined in OMB Circular A-87. The County agrees that the United States, any agency thereof, The State of Washington (The State) and any of the State’s representatives, have not only the right to monitor the compliance of the County with the provisions of this Assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the Federal Transit Act, the Federal Regulations, and this Assurance.

**2. PURCHASES**

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

A. **General Procurement Requirements.** The County shall comply with third party procurement requirements of 49 USC Chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with USDOT third party procurement regulations of 49 CFR §18.36 or 49 CFR §19.40 through 19.48 and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto to the extent those regulations are consistent with SAFETEA-LU provisions. The County shall also comply with the provisions of FTA Circular 4220.1E, “Third Party Contracting Requirements,” to the extent those regulations are consistent with SAFETEA-LU provisions and with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to “Grantee” shall mean the County.

B. **Geographic Restrictions.** The County agrees to not use any the State or local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

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

3. **CHARTER SERVICE OPERATIONS**

The County shall comply with 49 USC §5323(d) and 49 CFR Part 604, which state that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities without first providing notice to registered charter providers and then only as may be permitted by the regulations.

4. **SCHOOL BUS OPERATIONS**

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

5. **INCORPORATION OF FEDERAL TERMS**

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

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

6. **NO OBLIGATION BY THE FEDERAL GOVERNMENT**

A. The State and the County acknowledge and agree that regardless of any concurrence or approval by the Federal Government of the solicitation or award of this Agreement, the Federal Government is not a party to this Agreement unless so evidenced by express written consent. The Federal Government shall not be subject to any obligations or liabilities to the County or any other party (whether or not a Party to this Agreement) pertaining to any matter resulting from this Agreement.

B. No contract between the County and its sub-contractors shall create any obligation or liability of the State with regard to this Agreement without the State's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The County hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this Agreement.

7. **ETHICS**

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

1. **Personal Conflict of Interest.** The County's code or standards shall prohibit the County's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would

arise when any of the Parties set forth below has a financial or other interest in the firm or entity selected for award:

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

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

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

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

**D. Relationships with Employees and Officers of The State.** The County shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of the State, nor shall the County rent or purchase any Equipment and materials from any employee or officer of the State.

**E. Employment of Former State Employees.** The County hereby warrants that it shall not engage on a full, part-time, or other basis during the period of this Agreement, any professional or technical personnel who are, or have been, at any time during the period of this Agreement, in the employ of the State without written consent of the State.

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

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

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. Comply, and assure compliance by each sub-contractor at any tier and each sub-recipient at any tier, with applicable requirements of USDOT regulations, "New Restriction on Lobbying," 49 CFR Part 20, modified as necessary by 31 USC §1352; and
4. Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels; and
5. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

1. **Civil Fraud:** The Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by executing this Agreement, the County certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by this Agreement. In addition to other penalties that may apply, the County also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the County to the extent the Federal Government deems appropriate.
2. **Criminal Fraud:** If the County makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this Project authorized under 49 USC Chapter 53 or any other federal law, the Federal Government reserves the right to impose on the County the penalties of 49 USC §5323(1), 18 USC §1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

## 8. COMPLIANCE WITH LAWS AND REGULATIONS

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

## 9. CIVIL RIGHTS

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

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

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

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

1. The County agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The County agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The County shall also comply with any implementing requirements FTA may issue.
2. If the County is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this Agreement. Failure by the County to carry out the terms of that EEO program shall be treated as a violation of this Agreement. Upon notification to the County of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of federal financial assistance, or other measures that may affect the County’s eligibility to obtain future federal financial assistance for transportation projects.

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



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

1. The Age Discrimination Act of 1975, as amended, 42 USC §§6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance", 45 CFR Part 90, which prohibits discrimination on the basis of age.
2. The Age Discrimination in Employment Act (ADEA) 29 USC §§621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act" 29 CFR Part 1625.

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

**G. Disabilities-Access.** The County agrees to comply with the requirements of 49 USC §5301(d) which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The County also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§12101 et seq., which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 USC §§4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities; and with the Federal regulations, including any amendments thereto following: USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board USDOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19; U.S. Equal Employment Opportunity Commission,

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“Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630; U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled,” 47 CFR Part 64, Subpart F; U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, “Electronic and Information Technology Accessibility Standards” 36 CFR Part 1194; FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

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

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

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

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

#### **10. PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES**

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

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

B. The County agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with federal assistance derived from the USDOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The County agrees to take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with federal assistance derived from the USDOT. The County's DBE program, as required by 49 CFR Part 26 and approved by the USDOT, is incorporated by reference and made part of this Agreement. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this Agreement. Upon notification to the County of its failure to implement its approved DBE program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC §1001, and/or the Program Fraud Civil Remedies Act, 31 USC §§3801 et seq.

## 11. ENERGY CONSERVATION AND ENVIRONMENTAL REQUIREMENTS

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

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

applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

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

1. The County agrees to report each violation to the State and understands and agrees that the State, in turn, shall report each violation, as required, to the FTA and to the appropriate EPA Regional Office, and
2. The County agrees to include these requirements in each subcontract that exceeds \$100,000 and is financed in whole or in part with Federal assistance provided by FTA.

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

1. The County agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation to the FTA and to the appropriate EPA Regional Office, and
2. The County agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

## **12. ACCOUNTING RECORDS**

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

**B. Funds Received or Made Available for the Project.** The County agrees to deposit in a financial institution, all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of this Grant Agreement or Cooperative Agreement and all other

funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

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

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

### **13. AUDITS, INSPECTION, AND RETENTION OF RECORDS**

**A. Submission of Proceedings, Agreements, and Other Documents.** During the course of the Project and for six (6) years thereafter, the County agrees to retain intact and to provide copies of any data, documents, reports, records, contracts, and supporting materials relating to the Project upon request as the State or Federal Government may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 19. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the County's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

**B. General Audit Requirements.** The County as a sub-recipient of federal funds, agrees to perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 USC §§7501 et seq., as provided by 49 CFR §19.26, these audits must comply with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for the USDOT, and any further revision or supplement thereto. A sub-recipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State. The County agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing

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Standards”. The County agrees to obtain any other audits required by the State. Project closeout will not alter the County’s audit responsibilities.

C. The County, if services of a consultant are required, shall be responsible for audit of the consultant’s records to determine eligible federal aid costs on the project. The report of said audit shall be in the County’s files and made available to the State and the Federal Government. An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between the State and FHWA; and Office of Management and Budget Circular A-133. If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the County shall reimburse the State for the amount of such overpayment or excess participation.

D. **Inspection.** The County agrees to permit the State, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work materials, payrolls, and other data, and to audit the books, records, and accounts of the County and its Contractors pertaining to the Project. The County agrees to require each third party Contractor whose contract award is not based on competitive bidding procedures as defined by the United States Department of Transportation to permit the State, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Project as required by 49 USC §5325(g).

#### 14. LABOR PROVISIONS

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

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

**C. Overtime Requirements.** No COUNTY or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

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

**E. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the County and any sub-

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

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

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

## **15. SUBSTANCE ABUSE**

**A. Drug and Alcohol Abuse** – The County agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its



operating administrations and the State to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The County agrees further to submit annually the Management Information System (MIS) reports to the State by February 28th each year during the term identified in the caption space header above titled "the Term of Project".

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

## **16. TERMINATION**

**A. Termination for Convenience.** The State and the County may suspend or terminate this Agreement, in whole or in part, and all or any part of the federal and/or the State financial assistance provided herein, at any time by written notice to the other PARTY in accordance with 49 CFR Part 18 §18.44 or 49 CFR Part 19 §19.61, whichever is applicable. The State and the County shall agree upon the Agreement termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination, the portion to be terminated. However, if, in the case of partial termination, the State determines that the remaining portion of the award will not accomplish the purposes for which the award was made the State may terminate the award in its entirety. The PARTIES may terminate this Agreement for convenience for reasons including, but not limited to, the following:

1. The requisite federal and/or State funding becomes unavailable through failure of appropriation or otherwise;
2. The State determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of federal and/or State funds;
3. The County is prevented from proceeding with the Project as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;

4. The County is prevented from proceeding with the Project by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the County;

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

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

7. In the case of termination for convenience under subsections 1–5 above, the State shall reimburse the County for all costs payable under this Agreement which the County properly incurred prior to termination. The County shall promptly submit its claim for reimbursement to the State. If the County has any property in its possession belonging to the State, the County will account for the same, and dispose of it in the manner the State directs.

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

Takes any action pertaining to this Agreement without the approval of the State, which under the procedures of this Agreement would have required the approval of the State;

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

Fails to perform in the manner called for in this Agreement or fails to comply with, or is in violation of, any provision of this Agreement. The State shall serve a notice of termination on the County setting forth the manner in which the County is in default hereunder. If it is later determined by the State that the County had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the County, such as a strike, fire or flood, the State may: (a) allow the

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County to continue work after setting up a new delivery of performance schedule, or  
(b) treat the termination as a termination for convenience.

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

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