

Amendment No.5

TO THE CONSTRUCTION SERVICES AGREEMENT  
BETWEEN SOUND TRANSIT AND THE CITY OF SEATTLE  
RELATING TO THE UNIVERSITY LINK, NORTH LINK, AND EAST LINK PROJECTS

THIS FIFTH AMENDMENT to the Construction Services Agreement is made between the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY ("Sound Transit") and the THE CITY OF SEATTLE ("the City").

WHEREAS, the Parties entered into the above-captioned Agreement ("Agreement") on or about August 12, 2009.

WHEREAS, the initial Agreement only specified funding for the University Link segment.

WHEREAS, amendments 1 through 4 were executed to provide funding for services related to the North Link segment, as identified in Exhibit 3.1.

WHEREAS, this amendment is being executed to provide funding for services related to the East Link segment, as identified in Exhibit 3.2.

NOW, THEREFORE, in consideration of the terms contained herein, IT IS AGREED AS FOLLOWS:

1. Section 1.1.I of the Agreement is amended as follows:

“East Link” – means the 14 mile Link Light Rail segment from the International District Station, across Lake Washington in the I-90 Corridor, through Bellevue and terminating at the Redmond Technology Center Station.

2. Section 2.5.A is amended as follows:

SDCI inspection services for electrical, elevators, escalators, plumbing/sanitary sewer within building footprint, and special inspections will be covered and paid for under separate permits issued to Sound Transit’s contractors.

3. Section 2.5.B is amended as follows:

Any work permitted separately, such as SDCI value-based construction permits or SDOT street-use permits.

4. Section 2.8 of the Agreement is amended as follows:

Designated Representatives for the University Link segment for each Party are as follows:

For Sound Transit

Joseph Gildner  
Executive Project Director  
Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104  
Phone: 206-689-3350

For the City of Seattle  
Michael James  
Rail Transit Manager  
Seattle Department of Transportation  
P.O. Box 34996  
Seattle, WA 98124-4996  
Phone: 206-386-4012

Designated Representatives for the North Link segment for each Party are as follows:

For Sound Transit  
Rick Capka  
Construction Manager  
Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104  
Phone: 206-903-7474

For the City of Seattle  
Michael James  
Rail Transit Manager  
Seattle Department of Transportation  
P.O. Box 34996  
Seattle, WA 98124-4996  
Phone: 206-386-4012

Designated Representatives for the East Link segment for each Party are as follows:

For Sound Transit  
Ron Lewis  
Project Director  
Sound Transit  
401 S. Jackson Street  
Seattle, WA 98104  
Phone: 206-398-4905

For the City of Seattle

Michael James  
Rail Transit Manager  
Seattle Department of Transportation  
P.O. Box 34996  
Seattle, WA 98124-4996  
Phone: 206-386-4012

5. Section 4.2, Paragraph 1 of the Agreement is amended as follows:

Exhibit 3 contains a summary of the budget for the services to be provided by the City under this Agreement for the University Link segment. Exhibit 3.1 contains a summary of the budget for services to be provided by the City under this Agreement for the North Link segment. Exhibit 3.2 contains a summary of the budget for services to be provided by the City under this Agreement for the East Link segment. The budget for City field crew work will be accounted for separately from all other City construction support services. The total authorized amount for each Task Order will be negotiated. No expenditures will be authorized in excess of the total authorized cost established in an executed Task Order, except by approved Change Order and Task Order Amendment. Reimbursement will not be made for activities that are not covered in a Task Order.

6. Section 4.2, Paragraph 3 of the Agreement is amended as follows:

Sound Transit shall reimburse the City for services delivered and work performed under this Agreement. The amount set forth in Exhibits 3, 3.1 and 3.2 reflect the Parties' best estimates of the amounts that may be required to accomplish the reimbursable tasks under this Agreement. The City shall endeavor to manage the expenditures of departments and offices engaged in work authorized by Task Order under this Agreement such that the maximum obligation of Sound Transit is not exceeded.

7. The List of Exhibits to the Agreement is amended as follows:

1. Task Order Form Template
2. U-Link Summary Construction Schedule
- 2.1 North Link Summary Construction Schedule
- 2.2 East Link Summary Construction Schedule
3. U-Link Budget
- 3.1 North Link Budget
- 3.2 East Link Budget
4. Acronyms and Abbreviations
5. Federal Clauses

8. The attached new Exhibit 2.2 East Link Summary Construction Schedule is incorporated to the Agreement.

9. The attached new Exhibit 3.2 East Link Budget is incorporated to the Agreement.
10. The attached revised Exhibit 4 Acronyms and Abbreviations replacing the old Exhibit 4 is incorporated into the Agreement.
11. The attached revised Exhibit 5 Federal Clauses replacing the old Exhibit 5 is incorporated into the Agreement.
12. The remaining terms and conditions of the Agreement shall remain in full force and effect except as expressly modified by this **Fifth Amendment**.
13. This **Fifth Amendment** is effective as of \_\_\_\_\_.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment:

**CENTRAL PUGET SOUND  
REGIONAL TRANSIT AUTHORITY  
(SOUND TRANSIT)**

**THE CITY OF SEATTLE**

\_\_\_\_\_  
Ron Lewis, East Link Project Director  
Sound Transit

\_\_\_\_\_  
Michael James, Rail Transit Manager  
Seattle Department of Transportation

Date:

Date:

Approved as to form:

Authorized by Ordinance \_\_\_\_\_

By:

Sound Transit Legal Counsel

Authorized by Motion:

Print: 08-Jan-16 : 13:31

Contact: Kristi Curry

Data Date: 19-Oct-15

### E130 Baseline Construction Schedule

### Exhibit 2.2 East Link Summary Construction Schedule Amendment 5 to the CSA

Activity Name	Start	Finish	Duration	2019				2020				2021	
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
<b>E130 (Seattle to S. Bellevue) - Baseline Construction Schedule - SC 12/12/20</b>													
<b>I-90 Center Roadway</b>													
<b>King County Handover of D2</b>													
ST/King County-Remove Bus Service from D2		02-Jan-19*	0	◆ ST/King County-Remove Bus Service from D2									
<b>Rainier Station</b>													
<b>Site Prep</b>													
Concrete Pavement Removal	02-Jan-19	08-Jan-19	5	█ Concrete Pavement Removal									
Storm Drainage and Utilities	09-Jan-19	15-Jan-19	5	█ Storm Drainage and Utilities									
<b>West Entry</b>													
Bridge Demolition No.221	02-Jan-19*	29-Jan-19	20	█ Bridge Demolition No.221									
Pedestrian Bridge Modifications-No.221-BP	02-Jan-19	29-Jan-19	20	█ Pedestrian Bridge Modifications-No.221-BP									
West Entry- Soil Improvement, Tangent Piles, Soldier Pile Walls	30-Jan-19	23-Apr-19	60	█ West Entry- Soil Improvement, Tangent Piles, Soldier Pile Walls									
West Entry Excavation, Retaining Walls, PLaza Construction	24-Apr-19	16-Oct-19	126	█ West Entry Excavation, Retaining Walls, PLaza Construction									
<b>Station Structures</b>													
Acoustical Walls	16-Jan-19	19-Mar-19	45	█ Acoustical Walls									
Station Platform	06-Mar-19	28-May-19	60	█ Station Platform									
West Foundations	29-May-19	25-Jun-19	20	█ West Foundations									
East Foundations	29-May-19	25-Jun-19	20	█ East Foundations									
Elevator Core and Structures-East	26-Jun-19	02-Jul-19	5	█ Elevator Core and Structures-East									
Rough-In Utilities	26-Jun-19	30-Jul-19	25	█ Rough-In Utilities									
Elevator Core and Structures-West	26-Jun-19	20-Aug-19	40	█ Elevator Core and Structures-West									
Structural Steel-East Entry	31-Jul-19	24-Sep-19	40	█ Structural Steel-East Entry									
Structural Steel-West Entry	07-Aug-19	01-Oct-19	40	█ Structural Steel-West Entry									
Structural Steel-Station Platform	18-Sep-19	29-Oct-19	30	█ Structural Steel-Station Platform									
Track Slab Through Stations	30-Oct-19	10-Dec-19	30	█ Track Slab Through Stations									
<b>Escalators,Elevators,Curtain Wall, Roof</b>													
Install Elevators #1 and #2	21-Aug-19	17-Sep-19	20	█ Install Elevators:#1 and #2									
Install Escalators#1 and #2	02-Oct-19	29-Oct-19	20	█ Install Escalators#1 and #2									
Stairs	02-Oct-19	29-Oct-19	20	█ Stairs									
Install Curtain Wall	30-Oct-19	31-Dec-19	45	█ Install Curtain Wall									
Install Roof and Gutters	01-Jan-20	11-Feb-20	30	█ Install Roof and Gutters									
<b>Station Interior</b>													
Station Interior Walls	12-Feb-20	05-May-20	60	█ Station Interior Walls									
Utility Finishes	06-May-20	11-Aug-20	70	█ Utility Finishes									
Station Finishes	12-Aug-20	13-Oct-20	45	█ Station Finishes									
Punchlist	14-Oct-20	04-Nov-20	16	█ Punchlist									

█ Actual Work     █ Critical Remaining Work  
█ Remaining Work     ◆ Milestone

**Exhibit 3.2 East Link CSA Budget**

Department/Activity	Estimated Cost
<b>SCL - Construction Assistance</b>	
<b>ELink-001-SCL-MGMT</b> SCL project management.	\$ 75,000
<b>SCL - Construction Services</b>	
<b>ELink-002-SCL-ENG</b> Engineering for SCL construction work associated with TPSS 1 and TPSS 2.	\$ 125,000
<b>ELink-003-SCL-CON</b> Construction of system work associated with TPSS 1 and TPSS 2.	\$ 928,872
<b>SCL Total</b>	<b>\$ 1,128,872</b>
<b>SDOT - Construction Assistance</b>	
<b>ELink-004-SDOT-MGMT</b> Interdepartmental coordination, intergovernmental liaison, construction liaison, and agreement administration, project-wide	\$ 428,373
<b>SDOT Total</b>	<b>\$ 428,373</b>
<b>SPU - Construction Assistance</b>	
<b>ELink-005-SPU-PMCA</b> Project management; review and approve plans / submittals.	\$ 186,620
<b>SPU - Construction Services</b>	
<b>ELink-006-SPU-CS</b> Protection of Utilidor (2 years 16 hours per week); Protection of Eastside transmission line (1 year 16 hours per week); Water Main Connections and Fire Hydrants RE Inspection; Water Main Connections and Fire Hydrants SPU Crew.	\$ 412,778
<b>SPU Total</b>	<b>\$ 599,398</b>
<b>SFD - Construction Assistance</b>	
<b>ELink-006-SFD-MGMT</b> Project Management	\$ 430,000
<b>SFD Total</b>	<b>\$ 430,000</b>
<b>Subtotal Task Orders Issued (Task Orders 1 through 7)</b>	
	<b>\$ 2,586,643</b>
<b>*Provisional funding for future task orders</b>	
	<b>\$ 424,751</b>
<b>GRAND TOTAL - East Link Supplement</b>	
	<b>\$ 3,011,394</b>
ST Control Contingency	10%
	\$ 301,139
<b>TOTAL w/ Contingency</b>	
	<b>\$ 3,312,533</b>

**NOTES and ASSUMPTIONS:**

\* Provisional funding for future task orders may include, but is not limited to, additional SDOT construction assistance, SDCI inspection services, and additional SFD services such as inspections, commissioning and drills.

Exhibit 4 -Acronyms and Abbreviations  
(revised per 5<sup>th</sup> Amendment to CSA)

BRKS	Brooklyn Station
CCB	Change Control Board (Sound Transit)
CEO	ST Chief Executive Officer
CHS	Capitol Hill Station
CM	Construction Manager
CMC	Construction Management Consultant
COS	City of Seattle
CUD	Contract Unit Description (for Sound Transit contract packages)
DECM	Department of Engineering and Construction Management (Sound Transit)
DPD	Department of Planning and Development
E-Link	East Link
E130	E-Link Contract E130: Judkins Park Station (Seattle/I-90 to South Bellevue Way)
E120	E-Link Contract Seismic and Gravity Retrofit
E110	E-Link Contract modification to IDS Station
FD	Final Design
FFGA	Full Funding Grant Agreement
FTA	Federal Transit Administration of the USDOT
GCs	General Conditions (of Sound Transit's contracts)
GSP	General Special Provision (of the City Standard Specs)
IFB	Invitation for Bid
LRT	Light Rail Transit
MLP	Maple Leaf Portal (formerly North Portal)
NI10	N-Link Contract NI 10: Advanced Utility Relocation at Roosevelt Station
NI11	N-Link Contract NI 11: Advanced Utility Relocation at Northgate
NI12	N-Link Contract NI 12: U District and Roosevelt Station Areas Site Preparation
NI25	N-Link Contract NI 25: TBM Tunnels, UWS to MLP
NI40	N-Link Contract NI 40: U District Station Finishes
N150	N-Link Contract N150: Roosevelt Station Finishes
N160	N-Link Contract N160: Northgate Station and Elevated Guideway
NGS	Northgate Station
N-Link	Northgate Link Extension (formerly NorthLink)
PMM	Project Management Manual
PSST	Pine Street Stub Tunnel
QA	Quality Assurance
QC	Quality Control
RFI	Request for Information
ROD	Record of Decision
SCL	Seattle City Light
SDCI	Seattle Department of Construction and Inspection
SDOT	Seattle Department of Transportation
SFD	Seattle Fire Department
SPU	Seattle Public Utilities
ST	Sound Transit (Central Puget Sound Regional Transit Authority)
TBM	Tunnel Boring Machine
U215	U-Link Contract U215: I-5 Crossing Construction Pits
U220	U-Link Contract U220: TBM Tunnels UWS to CHS
U230	U-Link Contract U230: TBM Tunnels CHS to PSST
U240	U-Link Contract U240: Capitol Hill Station Civil and Finishes
U250	U-Link Contract U250: University of Washington Civil & Finishes
UDS	U District Station (formerly Brooklyn Station)
UL	University Link extension of the Central Link Light Rail System (also called U-Link)
USDOT	United States Department of Transportation
UW	University of Washington
UWS	University of Washington Station
WBS	Work Breakdown Structure
WSDOT	Washington State Department of Transportation



## REVISED EXHIBIT 5 (5th Amendment to CSA)

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### FEDERAL PROVISIONS

#### INCORPORATION OF FTA PROVISIONS

##### 1.1 APPLICABILITY OF FEDERAL GRANT CONTRACT

- A. 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.
- B. 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.
- C. 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.
- D. Copies of the FTA Circular 4220.1, as amended, and the Master Grant Agreement are available from Sound Transit.

##### 1.2 FEDERAL FUNDING LIMITATION

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. Sound Transit's obligation hereunder is, in part, payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If such funds are not allocated, or ultimately are disapproved by FTA, Sound Transit may be required to terminate or suspend the Contractor's services. In such event, the Contract may at Sound Transit's option be terminated for convenience in accordance with these General Conditions.

##### 1.3 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. 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 entity other than Sound Transit, including the Contractor and its Subcontractors and Suppliers at any tier.



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

**1.4 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

- A. 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.
- B. 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.
- C. 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.

**1.5 FEDERAL LOBBYING RESTRICTIONS**

- A. 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.
- B. 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.
- C. 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.

- D. 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.
- E. 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:
  - 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
  - 2. A change in the person(s) influencing or attempting to influence this federally funded Contract; or
  - 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

#### **1.6 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions 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.
- B. 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.
- C. 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.

#### **1.7 ANTI-KICKBACK**

- A. 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.

- B. "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 contractor in connection with a subcontract relating to a prime contract.

## **1.8 CIVIL RIGHTS**

In addition to the provisions in Section 00 73 39 00, Diversity Program Provisions, the following requirements pertaining to nondiscrimination and civil rights apply to the underlying contract:

### **A. 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, Executive Order 11246 as amended, 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 origin, sex, gender identity, status as a parent, marital status, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

### **B. Equal Employment Opportunity**

The following equal employment opportunity requirements apply to the underlying contract:

#### **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:

- a. 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, gender identity, status as a parent, 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. The Contractor will include the portion of the sentence immediately preceding paragraph 1.a and the provisions of paragraphs 1.a through 1.f 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.

- h. The Contractor and its Subcontractors shall include the equal employment opportunity clause set forth in paragraph 1.a above in each of their non-exempt Subcontracts.

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.

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.

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:

- a. The Contractor shall comply with the Federal Equal Employment Opportunity (EEO) Requirements.
- b. 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.

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

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)**

- a. As used in these specifications:
  - (1) "Covered area" is Snohomish, King and Pierce Counties of the State of Washington.
  - (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - (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.
  - (4) "Minorities" includes:
    - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (c) 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

- (d) 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.

- g. 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:
- (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.
  - (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.
  - (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.
  - (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.
  - (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 g(2) above.
  - (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.

- (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.
- (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.
- (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.
- (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.
- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (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.
- (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.
- (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.
  - (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.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- h. 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.
  - i. 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).
  - j. 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.
  - k. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  - l. 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.

- m. 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.
- n. 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.
- o. 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).

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.

C. Flow Down

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

**1.9 BUY AMERICA REQUIREMENTS**

- A. 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.

- B. A bidder or offeror must submit to Sound Transit the appropriate Buy America certification, attached herein, 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
- C. 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))
- D. 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.

#### **1.10 CARGO PREFERENCE**

Pursuant to 46 CFR Part 381, the Contractor agrees:

- A. 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.
- B. 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.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.
- D. The Contractor must properly execute and submit with its Bid the "Cargo Preference Certificate" which is included in the Contract Documents, if applicable.

#### **1.11 FLY AMERICA REQUIREMENTS**

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.

**1.12 RECOVERED MATERIALS**

- A. 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.
- B. These requirements flow down to all Contractor and Subcontractor tiers.

**1.13 ENERGY CONSERVATION**

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

**1.14 CLEAN WATER**

- A. 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.
- B. 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.

**1.15 CLEAN AIR**

- A. 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.
- B. 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.

**1.16 MIGRATORY BIRD TREATY ACT**

The Contractor shall comply with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. Sections 703-712, 50 C.F.R. Section 10.13 and all amendments, which makes it illegal for anyone to take, possess, import, export, transport, sell, or offer for sale, purchase, or barter, any migratory bird, or other parts, nests, or eggs of such a bird except unless and except as permitted by regulations or under the terms of a valid permit issued by the Secretary of the Interior.

**1.17 SEISMIC SAFETY**

The Contractor agrees that any new building or addition to an existing building will be 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.

#### **1.18 ELECTRONIC AND INFORMATION TECHNOLOGY**

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.

#### **1.19 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

In addition to the Disadvantaged Business Enterprise Program provisions set forth in Section 00 733 39, the Contractor shall comply with the following requirements:

A. As a recipient of financial assistance from the federal Department of Transportation (DOT), through the 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 comply with applicable provisions in 49 CFR Part 26 and Section 00 73 39 of this Contract.

B. 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 deems appropriate.

C. 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 or Sound Transit deems appropriate."

#### **1.20 NO TEXTING WHILE DRIVING**

A. Contractor shall comply with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009. Contractor shall:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;
2. Contractor-owned or Contractor-rented vehicles or Government-owned, leased or rented vehicles;

3. Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
  4. Any vehicle, on or off duty, and using an employer supplied electronic device.
  5. Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. "Driving" is defined as operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.
- C. "Text Messaging" is defined as reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.
- D. Contractor shall include this provision in all subcontracts at all tiers.