

Exhibit D
Federal Transit Administration Provisions

This AGREEMENT is partially funded by grant funds provided by the Federal Transit Administration (FTA) to SOUND TRANSIT (the grant Recipient). FTA requires federal provisions to be inserted into agreements between Sound Transit and third parties. The following terms and conditions are incorporated into this AGREEMENT.

I. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The CITY agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to the CITY or any sub-recipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this AGREEMENT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the CITY, a sub-recipient or third party contractor.

II. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

1. The CITY recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Accordingly, by signing the AGREEMENT, the CITY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, or this AGREEMENT. In addition to other penalties that may be applicable, the CITY acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CITY, to the extent the Federal Government deems appropriate.
2. The CITY also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the CITY the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.
3. The CITY 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.

III. CHANGES IN GOVERNMENTAL REGULATIONS

1. In the event local, state or federal laws or regulations that were not announced or enacted at the time of execution of this AGREEMENT, and such laws or regulations make standards more stringent or compliance more costly under this AGREEMENT, SOUND TRANSIT shall notify the CITY in writing of such laws or regulations and their effects on the pricing or delivery schedule promptly after SOUND TRANSIT first became aware of the laws and regulations and prior to incurring any such expenses.
2. SOUND TRANSIT will make a determination as to whether the CITY should be reimbursed for any such expenses or any time extensions should be granted in accordance with the provisions of Changes as defined in this AGREEMENT.
3. The CITY shall be deemed to have had notice of any Federal law or regulation announced or enacted at the time of contract award, even though such law or regulation did not take effect or become operative until some date after contract award.
4. The CITY shall, immediately upon becoming aware of any such imposition or change of requirement, provide SOUND TRANSIT with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the date of contract award so as to make the CITY's performance less expensive, or less difficult, then SOUND TRANSIT shall have the option either to require the CITY to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the goods and services affected for all savings in direct costs which may be realized by the CITY by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the CITY. SOUND TRANSIT shall give the CITY notice of SOUND TRANSIT's determination and anticipated savings.

IV. FEDERAL CIVIL RIGHTS REQUIREMENTS

In addition to SOUND TRANSIT nondiscrimination requirements set forth in other Sections in this AGREEMENT, the following Federal requirements apply to the CITY's performance under this AGREEMENT:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any person on the basis of race, color, creed, national origin, sex, age, or disability under any program or activity receiving Federal financial assistance. In addition, the CITY agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this AGREEMENT:

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 CITY agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement 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. The CITY 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, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

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 CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY 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 CITY agrees to comply with any implementing requirements FTA may issue.

3. Disadvantaged Business Enterprises -- This AGREEMENT is subject to the requirements of Title 49, Code of Federal Regulations (CFR), Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The CITY and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CITY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted AGREEMENT. Failure by the CITY to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as SOUND TRANSIT deems appropriate. Each subcontract the CITY signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The CITY 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. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

V. TEXT MESSAGING WHILE DRIVING

The CITY, including its subcontractors and sub-consultants, is encouraged to avoid unsafe practices while driving a vehicle in the course of work under this Contract and while on City or SOUND TRANSIT property or jobsites including text messaging while driving.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

1. As a recipient of financial assistance from the federal Department of Transportation (DOT), through the FTA, SOUND TRANSIT developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The CITY shall comply with applicable provisions in 49 CFR Part 26.
2. SOUND TRANSIT promotes and encourages participation by DBEs on its contracts. The CITY shall afford DBEs an equal, non-discriminatory opportunity to compete for business as joint venture partners, subcontractors or suppliers and shall ensure its subcontractors also afford DBEs such opportunities. DBEs are firms that have been certified as eligible to participate as DBEs by the Washington State Office of Minority and Women's Business Enterprises. A listing of DBEs certified by OMWBE is available on the Internet at <http://www.omwbe.wa.gov/directory/directory.htm> or by contacting OMWBE at 360-753-9693.
3. Although SOUND TRANSIT did not establish a DBE Goal for this AGREEMENT, the CITY shall make affirmative efforts to include the participation by DBEs under this AGREEMENT.
4. The CITY shall include the following assurance in any contract, including subcontractor agreements, it enters into under this AGREEMENT:

"The CITY, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CITY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CITY 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."
5. During performance of this AGREEMENT, the CITY shall maintain sufficient records necessary for SOUND TRANSIT to monitor the CITY's and its subcontractors' compliance with the provisions of the DBE Program.

VII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CITY is required to verify that none of the CITY, 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.

Upon the execution of this AGREEMENT the CITY will also sign and submit Certification 1.2 in XIII.

The certification in this clause is a material representation of fact relied upon by SOUND TRANSIT. If it is later determined that the CITY 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 CITY 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 CITY further agrees to include a provision requiring such compliance in its lower tier covered transactions.

VIII. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), and the Master Grant Agreement (<http://www.fta.dot.gov/documents/13-Master.doc>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CITY shall not perform any act, fail to perform any act, or refuse to comply with any SOUND TRANSIT request that would cause SOUND TRANSIT to be in violation of the FTA terms and conditions.

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

Copies of the FTA Master Agreement are available from SOUND TRANSIT.

IX. LOBBYING CERTIFICATION AND DISCLOSURE

This AGREEMENT is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an 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. The CITY and its subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds

with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The CITY shall submit the "Certification Regarding Lobbying," to SOUND TRANSIT. Use Certification 1.1 in XIII below. The CITY'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 CITY, who is in turn responsible for keeping the certification forms of subcontractors. Further, by executing the AGREEMENT, the CITY agrees to comply with these laws and regulations.

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

The CITY 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:

- a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded AGREEMENT; or
- b. A change in the person(s) influencing or attempting to influence this federally funded AGREEMENT; or
- c. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded AGREEMENT.

X. CLEAN AIR

The CITY 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 CITY 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.

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

XI. CLEAN WATER

The CITY 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 CITY 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.

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

XII. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40018, in accordance with US GAO regulations, "Uniform Standards and Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

XIII. CERTIFICATIONS

The CITY will sign and submit the following certifications with this AGREEMENT:

- 1.1 LOBBYING CERTIFICATION AND DISCLOSURE
- 1.2 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS
- 1.3 CERTIFICATION REGARDING CONFLICT OF INTEREST

CER 1.1 LOBBYING CERTIFICATE

The undersigned (CITY) certifies to the best of his or her knowledge or belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
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 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 Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all 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 is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. Section 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CITY _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CITY understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

CITY:

(Type or Print Company Name)

By:

(Signature)

(Title)

Print Name:

END OF FORM

CER 1.2 CERTIFICATION OF BIDDER REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Instructions for Certification:

1. **By signing and submitting this form, the prospective lower tier participant¹ is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the CITY knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, SOUND TRANSIT may pursue available remedies, including suspension and/or debarment.
3. The CITY shall provide immediate written notice to SOUND TRANSIT if at any time the CITY learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "bid/proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact SOUND TRANSIT for assistance in obtaining a copy of those regulations.
5. The CITY agrees by submitting this bid or proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by SOUND TRANSIT.
6. The CITY further agrees by submitting this bid or proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a

¹ "Lower tier participant" includes all contractors, consultants, subcontractors and subconsultants participating on any of the CITY's contracts.

person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, SOUND TRANSIT may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion"

10. The CITY certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
11. When the CITY is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

CITY:

(Type or Print Company Name)

By:

(Signature)

(Title)

Print Name:

END OF FORM

CER 1.3 CERTIFICATION REGARDING CONFLICT OF INTEREST

The CITY is required to certify performance of the work will not create any conflicts of interest or disclose any actual or potential conflicts of interest by completing and signing **one** of the following statements:

The CITY hereby certifies that to the best of its knowledge and belief, its performance of the Work described in the AGREEMENT will not create any conflicts of interest for the state, any affiliates, any proposed subcontractors or key personnel of any of these organizations.

DATE: _____

AUTHORIZED _____

SIGNATURE: _____

TITLE: _____

CITY: _____

OR

The CITY hereby discloses the following circumstances that could give rise to a conflict of interest for the City, any affiliates, any proposed subcontractors or key personnel of any of these organizations. (Attach additional sheets as needed.)

Name of Individual/Company to which potential conflict of interest might apply:

Nature of potential conflict of interest _____

Proposed Remedy _____

DATE: _____

AUTHORIZED

SIGNATURE:

TITLE:

CITY:
