REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT

Between

KING COUNTY, DEPARTMENT OF TRANSPORTATION,
METRO TRANSIT DIVISION

And

CITY OF EVERETT,

THIS REGIONAL TRANSIT ORCA MARKETING AND TDM PROJECT AGREEMENT (the "Agreement") is made and entered into by and between the City of Everett (" the City, Everett Transit, or ET ") and King County, a home rule charter county of the State of Washington, through its Department of Transportation, Metro Transit Division ("County"), either of which entity may be referred to hereinafter as "Party" or collectively as the "Parties."

WHEREAS, the County has been awarded a Puget Sound transit coordination grant ("Grant") from the Washington State Department of Transportation ("WSDOT") that is expected, among other things, to help integrate marketing efforts and improve outreach and customer coordination among various Puget Sound transit systems in order to improve the user experience, increase ridership, and make the most effective use of tax dollars; and

WHEREAS, under Agreement GCA 6141, Task Order F1 ("Task Order Agreement"), administered by WSDOT's Public Transportation Division, WSDOT and the County entered into a transportation demand management ("TDM") agreement under which the County will use Grant funds to work with Sound Transit, Pierce Transit, Community Transit, Everett Transit and the Seattle Department of Transportation to create and implement a public information program to raise regional awareness of the One Regional Card for All ("ORCA") card and implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region; and

WHEREAS, pursuant to the Task Order Agreement, the County will utilize the Grant funds to implement the Regional Transit ORCA Marketing and TDM project ("Project") and, in coordination with the Regional TDM Steering Committee ("Committee"), will serve as the lead agency for the Project, including administering and billing the Grant and providing WSDOT required Project progress reports.

WHEREAS, ET will also work with the Committee, comprised of the partner transit agencies listed above, to implement the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. PURPOSE OF AGREEMENT

Under the Task Order Agreement, the County will work with Sound Transit, Pierce Transit, Community Transit, Everett Transit, and the Seattle Department of Transportation to implement the Project, which is a TDM program intended to increase the number of ORCA card holders in the central Puget Sound region. The purpose of this Agreement is to establish the scope of work ("SOW") covered by the Agreement and the respective responsibilities of the Parties for implementation of the grant-funded community outreach and marketing activities that are the subject of the Project.

2. EVERETT TRANSIT'S RESPONSIBILITIES

2.1 ET shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to ET's performance of the tasks and responsibilities set forth with particularity in the SOW, which is attached hereto as Exhibit A and incorporated herein by this reference.

2.2 The Project objectives, timelines and budget are also described in Exhibit A.

3. COUNTY'S RESPONSIBILITIES

3.1 The County will reimburse ET for actual Grant-eligible costs incurred in performance of Project work performed pursuant to this Agreement as identified in the SOW. The County will reimburse ET up to a maximum, not-to-exceed amount of $17,500.00 (the "Reimbursement Cap") over the duration of the Agreement. Funding for the Agreement will be via a combination of Grant funds and matching funds provided through the Regional ORCA fund, which will cover the card fee for cards purchased and distributed through this Project.

3.2 Pursuant to the Task Order Agreement, the County will serve as the lead agency for the Project and, in that capacity, will administer the Grant, including retaining responsibility for any reporting and/or invoicing for reimbursement from WSDOT that may be required under the terms of the Grant award.

4. INVOICE AND PAYMENT PROCEDURES

4.1 ET shall submit a completed invoice to the County detailing quarterly activities, outcomes, expenses and reimbursement amount due within thirty (30) days of each quarter's end. ET will provide documentation to support its reimbursement request including copies of vendor invoices, print-outs from its financial system showing staff salaries and benefits, as well as other relevant documents. The County shall pay ET within thirty (30) calendar days after the County has received a completed invoice.

4.2 In the event that it is determined that an overpayment has been made to ET by the County, the County will bill ET for the amount of overpayment. ET shall pay the County within thirty (30) days of receipt of an invoice for overpayment.

4.3 In no event shall the total reimbursement to ET for work performed pursuant to this Agreement exceed the Reimbursement Cap provided for at Subsection 3.1 of this Agreement.

5. ASSIGNMENTS AND SUBCONTRACTS

5.1 Sub-grantee Compliance with Grant Assurances. This Agreement is subject to all applicable funding restrictions and/or grant assurances provided for in the Task Order Agreement and the Master Agreement for Transportation Demand Management Work (GCA 6141) (the "Master Agreement") between the County and WSDOT, which together are attached hereto as Exhibit B and incorporated herein by this reference. Any such funding restrictions and/or grant assurances shall be included in each subcontract and in all contracts ET enters into for the employment of any individuals, procurement of any incidental goods or supplies, or the performance of any work to be accomplished with funds awarded under the Task Order Agreement. As the sub-grantee of these funds, ET agrees to comply, and ensure that any of its subcontractors comply, with the requirements of Exhibit B when performing work pursuant to this Agreement.

5.2 No Assignment without Consent. Neither this Agreement, not any interest herein, may be assigned by either Party without the prior written consent of the other Party.

6. EFFECTIVE DATE AND DURATION

This Agreement will take effect upon the date the Agreement is signed by both Parties and will remain in effect until June 1, 2017, unless extended by agreement of the Parties consistent with Section 16 of this Agreement or earlier terminated pursuant to Section 8 of this Agreement.

7. DISPUTE RESOLUTION PROCESS

7.1 Designated Dispute Resolution Representatives.

The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

For the County:

Carol Cooper, Supervisor
Metro Transit Service Development
201 South Jackson Street, MIS KSC-TR-0426
Seattle, WA 98104
(206) 477-5871
Carol.Cooper@kingcounty.gov

For Everett Transit:

Sabina Popa
Everett Transit
Program Manager
3201 Smith Ave, Suite 215
Everett, WA 98201
425-257-8805
spopa@everettwa.gov

7.2 The County representative and the ET representative shall confer to resolve disputes that arise under this Agreement as requested by either Party. The designated representatives shall use their best efforts and exercise good faith to resolve such disputes.

7.3 In the event the Designated Representatives are unable to resolve the dispute, the appropriate ET Chief Executive Officer or her/his designee and the General Manager of the County's Metro Transit Division or her/his designee shall confer and exercise good faith to resolve the dispute.

7.4 In the event the Mayor of the City of Everett or his/her designee and the General Manager of Metro Transit are unable to resolve the dispute, the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).

7.5 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful,

then either Party may institute legal action in the King County Superior Court situated in Seattle, Washington, unless another venue is mutually agreed to in writing.

7.6 The Parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

8. TERMINATION

8.1 Termination for Convenience. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. In the event of termination of this Agreement, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

8.2 Termination for Cause. If either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to initiate a correction of the violation or failure within fifteen (15) calendar days. If failure or violation is not corrected within the mutually agreed upon time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.

8.3 Termination for Non-Appropriation or Loss of Grant Funding. In addition to termination for default, the County may terminate this Agreement for non-appropriation or loss of state grant funding by giving not less than thirty (30) calendar days' written notice thereof to ET.

9. LEGAL RELATIONS

9.1 No Third Party Beneficiaries. It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity.

9.2 No Partnership or Joint Venture. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement.

9.3 Independent Capacity. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

9.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

9.5 Jurisdiction and Venue. The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

9.6 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by, both Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

10. RECORDS RETENTION AND AUDIT

10.1 Maintenance of Records. During the term of the Agreement and for a period of not less than six (6) years from the date of its expiration or earlier termination, the records and accounts pertaining to this Agreement are to be kept available by both Parties for inspection and audit by the other Party and the State Auditor, and copies of all records, accounts, documents, or other data pertaining to the Agreement will be furnished upon reasonable notice. If any litigation, claim or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until all litigation, claim, or audit has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

10.2 Disclosure of Public Records. The Parties acknowledge that all non-privileged, non-exempt records that may be maintained pursuant to Subsection 10.1 of this Agreement are subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW.

11. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of its responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: late delivery or nonperformance by vendors of materials or supplies; any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court or civil authority; commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this Agreement, and

provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing.

12. NONDISCRIMINATION

Everett Transit agrees to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of any and all subcontractors providing services or performing any work using funds provided under this Agreement. During the performance of this Agreement, neither Everett Transit nor any entity subcontracting under the authority of this Agreement, shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the administration or delivery of services or any other benefits under this Agreement.

13. INDEMNIFICATION

Everett Transit and its successors and assigns shall protect, save, defend, indemnify and hold harmless the County, its elected officials, officers, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, actions, judgments, and/or awards of damages or costs of any nature whatsoever, arising out of or in any way resulting from Everett Transit's acts or omissions in performing its obligations under this Agreement. Everett Transit agrees that it is fully responsible for the acts and omissions of its own contractors, subcontractors, employees, and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents.

Everett Transit agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Everett Transit's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County, its elected officials, officers, employees, and agents with a full and complete indemnity of claims made by Everett Transit's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

14. WAIVER

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

15. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

16. CHANGES AND MODIFICATIONS

This Agreement may be changed, modified, or amended only by written agreement executed by authorized representatives of both Parties.

17. REPRESENTATION ON AUTHORITY OF SIGNATORIES

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

18. ALL TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

19. CONTRACT MANAGEMENT

All contact information for the management of this Agreement shall be identified herein and may be updated by either Party for its agency only and shall be submitted in writing or electronic mail to the other Party. Any update to the Contract Managers shall state the effective date of said update.

Contract Manager	Everett Transit	King County
Contact Name	Melinda Adams	Penny Lara
Title	Program Manager	Transportation Planner III King County Metro
Address	Everett Transit 3201 Smith Ave, Suite 215 Everett, WA 98201	201 S Jackson Street MS KSC-TR-0411 Seattle, WA 98104
Telephone	(425) 257-8915	(206) 263-8372
E-mail	madams@everettwa.gov	Penny.Lara@kingcounty.gov

20. EXECUTION OF AGREEMENT

This Agreement may be executed in two (2) counterparts, either of which shall be regarded for all purposes as an original.

IN WITNESS THEREOF the Parties hereto have executed this Agreement by duly authorized representatives on the dates shown below their respective signatures.

KING COUNTY

By: _____

Carol Cooper, Supervisor,
Metro Transit Division
King County Department of
Transportation

Date: 1.9.17

CITY OF EVERETT

_____

Ray Stephanson, Mayor

Date: 12-27-2016

Attest:

_____

for Sharon Fuller, City Clerk

Date: 12-27-2016

Approved as to form only:

_____

James D. Isles, City Attorney

Date: 12/23/16

EXHIBIT A
Scope of Work

Scope of Work
The County will be working with Sound, Pierce, Community, Everett Transit and Seattle Department of Transportation to implement TDM programs to increase the number of ORCA card holders in the central Puget Sound region. This Project will be coordinated with the Regional ORCA Marketing project being implemented by ST, in coordination with the ORCA Regional Marketing Committee.

The Project will be implemented in two phases. Phase I, to be conducted in Fall/Winter 2016, will be agency specific with each agency focusing ORCA card distribution through their existing TDM programs and focused on markets specific to their service needs. Phase II, to be conducted in Spring 2017, will be a unified regional TDM campaign implemented in conjunction with the Project.

ET Responsibilities
1. ET will participate in development of the Project work plan and performance measurement plan for the Project.
2. ET will implement a locally relevant ORCA card distribution TDM project in Fall/Winter 2016.
3. ET will provide metrics for evaluation of both the Fall 2016 and Spring 2017 campaigns, as agreed upon by the Parties through development of a performance measurement plan.

Budget

The County will reimburse ET for expenses incurred, not to exceed $17,500, as follows:
1. Fall/Winter 2016 campaign - $17,500 for ORCA card value, materials and/or related expenses

Project Description, Deliverables, and Funding

Concept	Increase access to ORCA cards.
Strategy	Partner agencies will conduct outreach campaigns to distribute pre-loaded ORCA cards via existing TDM programs and outreach channels. ORCA card distribution will be achieved both through agency-specific and the regional campaign to be implemented under this Agreement. Agencies will identify target markets within their service areas, based on available data regarding low use of ORCA for fare payment.
Deliverables	2.1 Project Work Plan including specific outcomes, timeline, milestones, and budget details addressing participant and match funds. 2.2 Mutually agreeable Performance Measurement Plan. 2.3 Produce a Project Summary Report which at a minimum includes the following: Overview of the Project, how grant funds were spent (participant and match funds), and the extent to which Project outcomes were met, and a description of best management practices that can be transferred to other transit agencies.

GCA 6141 Task Order F1	
Transportation Demand Management Work by King County	
Regional ORCA TDM Project	
Washington State Department of Transportation Task Order Manager: Anthony Boscolo (206) 716-1114 Boscola@wsdot.wa.gov	**King County Department of Transportation** Task Order Manager: Eric Irelan (206) 477-3862 Eric.irelan@kingcounty.gov
Maximum Reimbursable Cost: $896,500	Federal ID#: 91-6001327
Task Order Term: February 29, 2016 to June 30, 2017, regardless of date of execution	
Funding Source: State of Washington in its Sessions Laws of 2015, Chapter 43, Section 207, subsection (6), provides funding for the Transit Coordination grants through the multimodal transportation account as identified in the budget through its 2015-2017 biennial appropriations to WSDOT.	

THIS **Task Order F1** is made and entered into between the Washington State Department of Transportation, hereinafter the "STATE," and King County, by and through its Department of Transportation, hereinafter the "COUNTY," together hereinafter the "PARTIES."

WHEREAS, Agreement GCA 6141, Master Agreement for Transportation Demand Management Work by King County (**Agreement**), sets forth the terms and conditions applicable to the PARTIES' obligations regarding the COUNTY'S performance of Transportation Demand Management work or services (Work) for the STATE.

WHEREAS, the State of Washington in its Sessions Laws of 2015, Chapter 43, Section 207, subsection (6), provides funding for the Transit Coordination grants through the multimodal transportation account as identified in the budget through its 2015-2017 biennial appropriations to WSDOT;

WHEREAS, the COUNTY is authorized to perform such tasks and has sufficient appropriations authority and/or spending authority within its appropriated budget to engage in such activities in advance of the STATE reimbursing the COUNTY for the tasks it undertakes pursuant to this Agreement;

WHEREAS, the COUNTY, as a recipient of funding, must report to the STATE as required by RCW 47.66.110 (6);

WHEREAS, the PARTIES wish to enter into a **Task Order** for the COUNTY to perform Work to provide Transportation Demand Management services;

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained in the **Agreement**, this **Task Order**, and the attached exhibits, the PARTIES mutually agree as follows:

Scope of Work and Deliverables

The COUNTY shall perform the Work described below:

Scope of Work
The COUNTY will create and implement a project to increase the number of One Regional Card for All (ORCA) transit fare card users and increase the use of ORCA cards in partnership with Sound Transit, Pierce Transit, Community Transit, Everett Transit and the Seattle Department of Transportation.

Roles and Responsibilities
The COUNTY will serve as the lead agency for this grant project. The COUNTY will administer and bill the grant.

Performance Reports and Invoicing
The COUNTY shall keep satisfactory written records with regard to the Project and submit a mutually agreeable Performance Measurement Plan to WSDOT. The COUNTY will submit annual reports to WSDOT for the Term of Project, regarding the progress of the Project, or as WSDOT may require, including, but not limited to, interim reports. The COUNTY shall submit quarterly billing invoices consistent with Section 3, *PAYMENT AND BILLING*, of GCA 6141.

Eligible Expenses

- Costs associated with establishing a regional ORCA outreach campaign to increase ORCA use and converting transit cash customers to transit smart card customers. The reimbursable amount for this activity is $536,500.
- Costs associated with use of TDM programs to get ORCA cards more broadly distributed. The reimbursable amount for this activity is 360,000.

Project Milestone

Milestone	Est. Date of Completion	Activity
Project Work Plan	July 31 2016	Submit a Project Work Plan comprised of specific outcomes, timeline, milestones, and budget details addressing participant and match funds.
Mutually Agreeable Performance Measurement Plan	August 31 2016	Coordinate with WSDOT Data and Evaluation Team to establish a Performance Measurement Plan.
ORCA Outreach Campaign	May 31 2017	Complete the Regional ORCA TDM Project.
Project Summary Report	Following completion of the project	Submit final summary analysis consistent with RCW 47.66.110 (6)

Project Description, Deliverables, and Funding

Concept	Increase ORCA card users and use through a regional outreach and awareness campaign.
Strategy	Utilize the Regional Marketing Team, consisting of members from the project partner agencies, to develop a new region-wide campaign with the goal of increasing ORCA use system wide and converting transit cash customers to transit smart card customers. The campaign will consist of creative concepts and a media campaign designed to highlight the benefits of ORCA. The creative concepts will be utilized in the TDM outreach task.
Deliverables	1.1 Project Work Plan including specific outcomes, timeline, milestones, and budget details addressing participant and match funds. 1.2 Mutually agreeable Performance Measurement Plan

Concept	Increase access to ORCA cards.
Strategy	Partner agencies will conduct outreach campaigns to distribute pre-loaded ORCA cards via existing TDM programs and outreach channels. ORCA card distribution will be achieved both through agency-specific and the regional campaign to be implemented under this agreement. Agencies will identify target markets within their service areas, based on available data regarding low use of ORCA for fare payment.
Deliverables	2.1 Project Work Plan including specific outcomes, timeline, milestones, and budget details addressing participant and match funds. 2.2 Mutually agreeable Performance Measurement Plan

Project Revenue Source

Revenue Source	Revenue
Local funding from project partners (10% matching funds)	$ 99,611.00
Transit Coordination Grant Funding	$ 896,500.00
Total Revenue	**$ 991,111.00**

The maximum reimbursable cost for all Work associated with this **Task Order** will be eight hundred and ninety six thousand five hundred thousand ($896,500).

Payment under this **Task Order** will be made in accordance with Section 3, *PAYMENT AND BILLING*, of GCA 6141.

All other terms and conditions of **Master Agreement** GCA 6141 shall be incorporated and by this reference made part of this **Task Order**, as if fully set forth herein.

NOW, THEREFORE, are the Parties hereto have executed this **Task Order F1** as of the Party's date signed last below.

KING COUNTY
DEPARTMENT OF TRANSPORTATION

By

BOB GANNON, INTERIM GENERAL MGR
Title

20 JULY 2016
Date

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By

Project Delivery Mgr
Title

7/26/16
Date

GCA 6141

Master Agreement for Transportation Demand Management Work by King County	
Washington State **Department of Transportation** **Public Transportation Division** **401 - 2nd Avenue South** **Suite 300** **Seattle, WA 98104** Contact Person: Robert Kutrich (206) 464-1231	Work Performed By: **King County Department of Transportation** **201 South Jackson Street** **KSC-TR-0815** **Seattle, WA 98104-3856** Federal ID #: 91-6001327 Contact Person: Carol Cooper (206) 684-1623
Agreement Number: GCA 6141	

THIS **Master Transportation Demand Management ("TDM") Agreement** (hereinafter "**Agreement**") is made and entered into between the STATE OF WASHINGTON, by and through the Washington State Department of Transportation, hereinafter the "STATE," and King County, a home rule charter county of the State of Washington, by and through the King County Department of Transportation (DOT), hereinafter the "COUNTY." Either entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, the Legislature recognizes the STATE's leadership role in establishing and implementing effective commute trip reduction programs (RCW 70.94.547); and

WHEREAS, the Legislature finds that implementing commute trip reduction is an effective way to reduce traffic congestion (RCW 70.94.521); and

WHEREAS, RCW 47.06.050 requires that when planning capacity and operational improvements the STATE's first priority is to assess strategies to enhance the operational efficiency of the existing system; and

WHEREAS, RCW 47.01.078 directs the STATE to develop strategies to reduce the per capita vehicle miles traveled, to consider efficiency tools including commute trip reduction and other demand management tools, and to promote the integration of multimodal planning in support of the transportation system policy goals described in RCW 47.04.280; and

WHEREAS, RCW 47.06.050 states that strategies to enhance the operational efficiencies include, but are not limited to, access management, transportation system management, and demand management (Strategies); and

WHEREAS, the Legislature has directed the STATE to increase the integration of public transportation and the highway system, to facilitate coordination of transit services and planning, and to maximize opportunities to use public transportation to improve the efficiency of transportation corridors (RCW 47.01.330); and

WHEREAS, RCW 47.80.010 encourages the State and local jurisdictions to identify opportunities for cooperation to achieve statewide and local transportation goals; and

WHEREAS, the STATE is planning, developing, and constructing a number of projects, including but not limited to projects to improve sections of State Route 99, State Route 520, State Route 405, and other state routes (Projects); and

WHEREAS, it is anticipated that at least some of the Projects will cause substantial traffic congestion during construction; and

WHEREAS, it is anticipated that some of the work under this **Agreement** will mitigate the effects of traffic congestion caused by the Projects; and

WHEREAS, the COUNTY has experience and expertise in developing and implementing Strategies that reduce the number of single occupancy vehicle trips and improve the efficiency of state and local transportation systems; and

WHEREAS, the STATE will work cooperatively with the COUNTY to develop and implement integrated Strategies as directed in the STATE's *Moving Washington* plan; and

WHEREAS, the STATE has determined that it is in the public interest for the COUNTY to perform certain elements of work to implement said Strategies; and

WHEREAS, this **Agreement** is intended to serve as a framework for a number of individual **Task Orders** that the STATE and COUNTY will subsequently enter into as part of this cooperative effort; and

WHEREAS, the actual work to be performed under this **Agreement** will be identified by executed **Task Orders**, which will specify the specific funding source for the work to be performed for each **Task Order**; and

WHEREAS, any state funding for work under this **Agreement** is authorized in the state biennial Transportation Budget(s) and any supplemental budget(s) thereto for the state program(s) specified in the **Task Order**; and

WHEREAS, some of the individual tasks may be funded by federal grants pursuant to the authority vested in the STATE through RCW 47.04.170; and

WHEREAS, any federal funding for work under this **Agreement** is authorized in the state biennial Transportation Budget(s) and any supplemental budget(s) thereto and pursuant to the federal authorities and program(s) specified in the **Task Order**; and

NOW THEREFORE, pursuant to RCW 47.28.140, RCW 47.52.090, and chapter 39.34 RCW, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits which are incorporated and made a part hereof, the Parties mutually agree as follows:

1. PURPOSE AND SCOPE

1.1 The provisions of this **Agreement** shall govern the individual **Task Orders** to be executed between the STATE and COUNTY for work to be performed by the COUNTY at the STATE's request, and for the STATE's reimbursement to the COUNTY for said work.

1.2 The general scope of work under this **Agreement** includes TDM work or services (Work) consistent with STATE transportation strategies to improve transportation system efficiency. Elements of Work consistent with this scope include:

(a) Performing or developing studies and reports;
(b) Performing planning activities;
(c) Developing, implementing, and enhancing TDM Strategies and programs; and
(d) Improving existing transportation facilities with appurtenances such as signs, bicycle lockers, wheelchair ramps, transit shelters, and transit signal priority system components (Project Equipment).

2. TASK ORDERS

2.1 Each **Task Order** shall be prepared by the STATE and approved by the COUNTY for Work requested under this **Agreement**. **Task Orders** shall be in the format shown and contain the provisions as set forth in the Task Order Format, **Exhibit 1**, attached hereto and by this reference made part of this **Agreement**. The **Task Orders** will be numbered sequentially and shall include the following:

(a) a start and end date for performing the Work;
(b) a detailed scope of work with deliverables and scheduled milestones, which shall define the roles and responsibilities of the COUNTY and the STATE;
(c) the funding source(s) for the Work;
(d) a maximum reimbursable cost to establish a maximum funding level for the Work, provided, however, that the County shall have no further obligation to perform work under any Task Order once the maximum reimbursable cost has been reached; and
(e) language stating that the provisions of this **Agreement** are incorporated by reference into the Task Order.

2.2 The **Task Order** may, if applicable, include Federal Transit Administration Provisions, attached hereto as **Exhibit A** to **Exhibit 1,** or Project Equipment Provisions, attached hereto as **Exhibit B** to **Exhibit 1**. **Exhibit A** to **Exhibit 1** and **Exhibit B** to **Exhibit 1** are by the aforementioned references incorporated herein and made part of the **Agreement;** provided, however, that any proposed Task Order that involves project equipment will identify and specify with particularity the nature of the project equipment involved.

2.3 Notwithstanding any other provision of this **Agreement** the COUNTY expressly reserves the right to decline to enter into any **Task Order** to perform the Work proposed by the STATE.

3. PAYMENT AND BILLING

3.1 **Payment.** The STATE will reimburse the COUNTY for the full actual direct salary and related direct non-salary costs associated with the COUNTY'S performance of specific **Task**

Order Work undertaken pursuant to this **Agreement**. Related direct non-salary costs include all other related Work items excluding overhead and direct salary costs.

3.2 Maximum Funding. This **Agreement** does not authorize funding for any Work and contains no guarantees for any minimum or maximum amount of Work or funding. The Parties shall agree to a maximum amount of funding under each **Task Order** for all eligible costs associated with the Work, which shall be specified in each **Task Order**. The STATE shall not be obligated for any expenditure in excess of the maximum funding amount for each **Task Order** unless prior written authorization is received from the STATE and an amendment to the **Task Order** is executed; provided, however, that the County shall have no further obligation to perform Work pursuant to a **Task Order** once the maximum funding amount is reached. The COUNTY must perform Work in advance of reimbursement.

3.3 Invoices and Billing. Partial payments to the COUNTY shall be made by the STATE throughout the term of each **Task Order**, subject to the STATE's receipt and subsequent approval of detailed billing invoices from the COUNTY for the Work outlined in the **Task Order** and any amendments thereto. The COUNTY shall submit invoices for actual direct salary and related direct non-salary costs incurred within the timeframe of the executed **Task Order**. The COUNTY may submit invoices no more than once a month and no less than once per quarter. An invoice must be submitted no later than ninety (90) calendar days after the Work is completed, except as denoted below.

3.3.1 For all Work performed up to and including June 30 of each year the COUNTY must submit an invoice to the STATE no later than July 15 of that same year to be eligible for payment. The COUNTY may notify the STATE in writing that the COUNTY requests additional time to provide invoices. Upon the STATE's receipt of such written notification the STATE may choose to accrue funds to allow the COUNTY additional time to provide invoices. The COUNTY must obtain written approval from the STATE by June 15 of each year for any requests for accruals or requests for additional time to submit invoices, which approval shall not be unreasonably withheld or delayed by the STATE. Otherwise, the STATE will not pay invoices received after that date for Work performed up to and including June 30 of each year.

3.3.2 The STATE agrees to make payment for the Work done by the COUNTY within thirty (30) calendar days from receipt of a STATE-approved invoice from the COUNTY.

3.3.3 The COUNTY shall submit a final invoice to the STATE within ninety (90) calendar days or no later than July 15 of the same year after completion of the Work, whichever date comes first, unless previously authorized by the State in accordance with Section 3.3.1, which approval shall not be unreasonably withheld or delayed. Any payment request for funds received after that date will not be eligible for reimbursement. Requests for additional time to submit an invoice shall be in accordance with Section 3.3.1, above

4. DESIGNATED REPRESENTATIVES

4.1 Notice. Any notice or communication required or permitted to be given pursuant to this **Agreement** shall be in writing, and shall be sent postage prepaid by United States Postal Service, to the designated representatives identified below unless otherwise indicated in writing by the Parties.

For the STATE: Robert Kutrich
WSDOT Public Transportation Division
401 – 2nd Avenue South
Suite 300
Seattle, WA 98104-3850
kutrirf@wsdot.wa.gov

For the COUNTY: Carol Cooper
Senior Transportation Planner
MS YES-TR-0600
King County Metro Transit Division
400 Yesler Way
Seattle, WA 98104
Carol.Cooper@kingcounty.gov

5. AMENDMENT

5.1 Amendment. Either Party may request changes to the provisions of this **Agreement**. Any such changes must be mutually agreed upon and incorporated by written amendment to this **Agreement**. No variation or alteration of the terms of this **Agreement** shall be valid unless made in writing and signed by authorized representatives of the Parties hereto prior to beginning any Work to be covered by any amendment.

6. DISPUTE RESOLUTION

6.1 Disputes and Remedies. The Parties, through their designated representatives identified in Section 4.1 of this **Agreement**, shall use their best efforts, through good faith discussion and negotiation, to resolve any disputes pertaining to this **Agreement** that may arise between the Parties. If these designated representatives are unable, after good faith efforts, to resolve a dispute, the STATE's Puget Sound Public Transportation Manager and the COUNTY'S Metro Transit General Manager shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the STATE's Public Transportation Assistant Director and the COUNTY'S DOT Deputy Director will meet and engage in good faith negotiations to resolve the dispute. In the event they cannot resolve the dispute, the STATE's Public Transportation Director and the COUNTY'S DOT Director will meet and engage in good faith negotiations to resolve the dispute. The Parties agree to exhaust each of these informal dispute resolution efforts before seeking to resolve disputes in a court of law or any other forum.

7. ACCOUNTING RECORDS

7.1 Project Accounts. The COUNTY agrees to establish and maintain for the **Task Order** Work either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Work. The COUNTY agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Work shall be clearly identified, readily accessible and available to the STATE upon its reasonable request, and, to the extent feasible, kept separate from documents not pertaining to the Work.

7.2 Documentation of Project Costs and Program Income. The COUNTY agrees to support all allowable costs charged to the Work, 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 Work.

8. RECORDS RETENTION, AUDIT, AND INSPECTION

8.1 Retention of Records. During the progress of an individual **Task Order** and for a period not less than six (6) years from the date of final payment by the STATE, the records and accounts pertaining to the **Task Order** and accounting therefore are to be kept available by the Parties for inspection and audit by Washington State, the STATE, King County, the COUNTY, the Federal Transit Administration, and/or the Federal Highway Administration and copies of all records, accounts, documents, or other data pertaining to the **Task Order** will be furnished by the COUNTY upon reasonable request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the COUNTY until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6)-year retention period.

8.2 General Audit Requirements. The COUNTY agrees to obtain any other audits as the STATE shall decide in its sole discretion are reasonably required. Project closeout will not alter the COUNTY'S audit responsibilities.

8.3 Inspection. The COUNTY agrees to permit the STATE, and the State Auditor, or their authorized representatives, to inspect all **Task Order** Work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the COUNTY and its subcontractors pertaining to the Work. The COUNTY agrees to require each third party to permit the STATE, and the State Auditor, or their duly authorized representatives, to inspect all work, materials, payrolls, maintenance records, 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 Work.

9. TASK ORDER FUNDING REQUIREMENTS

9.1 In order to preserve the option of utilizing a variety of funding sources to reimburse the Work covered by this **Agreement**, the Parties agree to comply with the applicable laws, regulations, and requirements of each funding source. Each **Task Order** shall identify the funding sources for the Work and shall include each fund's relevant provisions, as set forth in Section 2, TASK ORDERS, above.

10. EFFECTIVENESS AND DURATION

10.1 This **Agreement** is effective upon execution by both Parties and will remain in effect until December 31, 2018, unless otherwise amended or terminated.

11. DOCUMENTATION

11.1 The STATE may require the submission of periodic reports and documentation from the COUNTY to verify that the COUNTY or its subcontractors are meeting funding and accountability requirements, such as civil rights or disadvantaged business enterprises. Subject to the terms and conditions described in this **Agreement**, the Parties shall agree to documentation requirements for Work as specified in the scope of work for each **Task Order**.

12. TERMINATION OF AGREEMENT

12.1 Termination for Convenience. Except as otherwise provided in this **Agreement**, the STATE may terminate this **Agreement** or any **Task Order** by giving sixty (60) calendar days written notice to the COUNTY. The COUNTY may also terminate this **Agreement** or any **Task Order** by giving sixty (60) calendar days written notice to the STATE. Upon termination of this **Agreement**, all **Task Orders** shall automatically terminate. Individual **Task Orders** may be terminated in the same manner as provided for in this subsection 12.1, unless another manner is provided for in an individual task order, but that termination would not automatically terminate the Master Agreement.

12.2 Termination by the COUNTY for Non-Appropriation or Lack of Funds. The COUNTY may terminate this **Agreement** or any **Task Order** in the event that sufficient COUNTY funds are not appropriated, or otherwise become unavailable, to cover performance of any Work undertaken by the COUNTY under this **Agreement** prior to reimbursement by the STATE. Such termination shall be upon thirty (30) calendar days' written notice to the STATE or at the close of the COUNTY'S current appropriation year, whichever comes first. The COUNTY'S appropriation year ends on December 31st of each year.

12.3 Termination by the STATE for Non-appropriation or Unavailability of Funds. The STATE may terminate this **Agreement** or any **Task Order** at any time in the event that appropriated federal or state funds to cover the Work agreed to under this **Agreement** are withdrawn by federal or legislative action, or otherwise become unavailable.

12.4 Termination by either Party for Breach. Either Party may terminate the **Agreement** or any **Task Order** if either Party materially breaches, or fails to perform any of the requirements of the **Agreement** or any **Task Order** provided that the breaching Party has failed to cure the condition(s) causing that breach after fourteen (14) days written notice by the non-breaching Party.

12.5 Should a **Task Order** or the **Agreement** be terminated under Section 12.1, 12.2, or 12.3 of the **Agreement** prior to fulfillment of the terms stated therein (termination date), the COUNTY shall only be reimbursed for actual direct salary and related direct non-salary costs properly incurred by the COUNTY prior to the termination date. The cost of any Project Equipment which has been purchased by the COUNTY prior to the termination date shall be reimbursed if the following two conditions are met and approved in writing by STATE, which approval shall not be unreasonably withheld or delayed: i) the COUNTY endeavors to return the Project Equipment for a refund; and ii) the COUNTY is unable, with reasonable efforts not requiring litigation and with STATE's concurrence, which concurrence shall not be unreasonably withheld or delayed,, to obtain a refund for the Project Equipment from the vendor. The COUNTY agrees to follow STATE's instructions for disposal of any Project Equipment thus reimbursed.

12.6 If a Task Order or this **Agreement** is terminated by either Party to this **Agreement** under Section 12.4 of the **Agreement**, the non-breaching Party shall not be obligated to continue to perform pursuant to the **Agreement** and shall retain all rights and remedies arising from the nonperformance of the breaching Party.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

13.1 The COUNTY shall indemnify and hold harmless the STATE, its agents, employees, and officers harmless from and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against the STATE arising out of, in connection with or incident to the execution of this **Agreement** and/or the COUNTY'S performance or failure to perform any aspect of this **Agreement**. This indemnity provision applies to all claims against the STATE, its agents, employees and officers arising out of, in connection with or incident to the negligent acts omissions of the COUNTY, its agents, employees and officers. Provided, however, that nothing herein shall require the COUNTY to indemnify and hold harmless or defend the STATE, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the STATE, its agents, employees or officers. The indemnification and hold harmless provision shall survive termination of this **Agreement**.

13.2 The COUNTY specifically assumes potential liability for actions brought by COUNTY'S employees and/or subcontractors and solely for the purposes of this indemnification and defense, the COUNTY specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.

14. NONDISCRIMINATION

14.1 The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agree to require the same of all authorized agents and/or subcontractors providing services or performing any Work using funds provided under this **Agreement**.

15. GENERAL

15.1 No Agency, Partnership, or Third Party Beneficiaries. It is understood and agreed that this **Agreement** is solely for the benefit of the Parties hereto and gives no rights to any other person, party or entity. No joint venture, agent-principal relationship, or partnership is formed as a result of this **Agreement**. No officers, employees or agents of one Party, or any of its contractors or subcontractors, shall be deemed, or represent themselves to be, employees or agents of the other Party.

15.2 Waiver of Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this **Agreement** shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this **Agreement** unless stated to be such in writing, signed by authorized representatives of the Parties, and attached to the original **Agreement**.

15.3 Entire Agreement. This **Agreement** embodies the Parties' entire understanding and agreement on the issues covered by it, except as may be modified by written amendment to this **Agreement**, and supersedes any prior negotiations, representations or draft agreements on this matter, either written or oral.

15.4 Master Agreement. The provisions of this Master Agreement and individual **Task Orders** issued by the STATE are intended to be mutually complementary. In case of any discrepancy between the provisions, the Master Agreement shall prevail over the **Task Order**.

15.5 Governing Law and Venue. This **Agreement** shall be interpreted in accordance with the laws of the State of Washington. Any legal action arising out of this **Agreement** shall be brought in the Thurston County Superior Court situated in Olympia, Washington.

15.6 Force Majeure. Either Party to this **Agreement** shall be excused from performance of any responsibilities and obligations under this **Agreement**, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: late delivery or nonperformance by vendors of materials or supplies; any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory evidence of such cause is presented to the other Party to this **Agreement**, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing. In no event should this provision eliminate the STATE's obligation to make payment for invoices submitted for Work performed by the COUNTY pursuant to this **Agreement**.

15.7 Severability. If any provision of this **Agreement** is held invalid by a court of competent jurisdiction, the remainder of the **Agreement** shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

15.8 Attorneys' Fees. In the event of litigation or other action brought to enforce the terms contained in this **Agreement**, each Party agrees to bear its own attorneys' fees, witness fees, and other costs.

15.9 Survival. The provisions of this Section 15 (General) shall survive any termination or expiration of this **Agreement**.

15.10 Order of Precedence. In the event of any conflicts, resolution shall be resolved in the following order of precedence:

A. Applicable federal and state law and regulations;
B. Terms and conditions of the **Agreement** including its exhibits; and
C. The applicable **Task Order**.

16.0 Authority to Sign. The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective entities to the obligations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this **Agreement** as of the Party's date signed last below.

KING COUNTY
DEPARTMENT OF TRANSPORTATION

By: Harold S. Taniguchi
Director, King County DOT

Date

APPROVED AS TO FORM:

By
Deputy Prosecuting Attorney

10/5/11
Date

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: Brian Lagerberg
Director, Public Transportation Division

Date

APPROVED AS TO FORM:

By
Assistant Attorney General

July 1, 2011
Date

GCA 6141

Master Agreement for Transportation Demand Management Work
by King County

Exhibit 1

Task Order Format

GCA 6141 Task Order _____	
Transportation Demand Management Work by King County	
[*project title*]	
Washington State Department of Transportation Task Order Manager: [*name*] (206) [*phone*] [*email*]	**King County Department of Transportation** Task Order Manager: [*name*] (206) [*phone*] [*email*]
Maximum Reimbursable Cost: $ [*insert number*]	
Task Order Term: [*start date (Month day, year)*] through [*end date (Month day, year)*].	

Funding Sources: [select the specific funding sources for this Task Order]

Federal Funds

- ☐ Job Access and Reverse Commute (JARC) – pursuant to 49 United States Code (USC) §5316.
- ☐ Congestion Mitigation and Air Quality Improvement Program (CMAQ) – authorized under 49 USC chapter 53 of title 23, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, continued under the Transportation Equity Act for the 21st Century (TEA-21), and re-authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 114 (Aug. 10, 2005) for congestion mitigation and air quality improvement programs under 23 USC §149.
- ☐ Transportation Investment Generating Economic Recovery (TIGER Discretionary Grant) – authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), enacted as Pub. Law 111-5, February 17, 2009, for projects under 49 USC Chapter 53.
- ☐ [name of other federal program or funding source]

State Highway Funds

- ☐ Alaskan Way Viaduct and Seawall Replacement Program
- ☐ Interstate 405 Corridor Program
- ☐ SR 520 Bridge Replacement and HOV Program
- ☐ [name of other highway program or funding source]

Other State Funds

- ☐ Commute Trip Reduction (CTR) Program
- ☐ Vanpool Investment Program (VIP)
- ☐ [name of other state program or funding source]

Local Funds

- ☐ [name of local program or funding source]

Other

- ☐ [name of program or funding source]

THIS **Task Order** _____ is made and entered into between the Washington State Department of Transportation, hereinafter the "STATE," and King County, by and through its Department of Transportation, hereinafter the "COUNTY."

WHEREAS, Agreement GCA 6141, Master Agreement for Transportation Demand Management Work by King County (**Agreement**), sets forth the terms and conditions applicable to the Parties' obligations regarding the COUNTY'S performance of Transportation Demand Management work or services (Work) for the STATE.

WHEREAS, the Parties wish to enter into a **Task Order** for the COUNTY to perform Work for [*insert project title*].

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained in the **Agreement**, this **Task Order**, and the attached exhibits, the Parties mutually agree as follows:

Exhibits [*optional*] The following exhibits are attached hereto and incorporated into this **Task Order** (check all that apply):

☐ **Exhibit A**, Federal Transit Administration (FTA) Provisions

Where an inconsistency is identified between a provision of GCA 6141 and a provision included in **Exhibit A** referenced above or in a FTA special provision stated below under Additional Terms and Conditions, the language of the federal provision has precedence.

The COUNTY understands and agrees that Federal laws, regulations, and directives applicable to the **Task Order** on the date on which the FTA Authorized Official awarded Federal assistance may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date of execution of this **Task Order**, and may apply to this **Task Order**. The COUNTY agrees that the most recent of such Federal laws, regulations, and directives, as may be amended, will apply to the administration of this **Task Order** at any particular time, except to the extent that FTA determines otherwise in writing.

☐ **Exhibit B**, Project Equipment Provisions

Scope of Work The COUNTY shall perform the Work described below:

Task	Description
1	
2	
....	

Scope of Work Deliverables and Schedule The milestone dates listed below are meant to be used as a guideline, and may be changed as necessary once project work begins, as mutually agreed in writing by both Parties.

Task	Deliverable	Milestone Date
1		
2		

...

The maximum reimbursable cost for all Work associated with this **Task Order** will be [*insert total dollar amount spelled out*] ($ [*insert number*]).

Payment under this **Task Order** will be made in accordance with Section 3, *PAYMENT AND BILLING*, of GCA 6141.

Additional Terms and Conditions [*optional*]

The Parties agree to the following additional terms and conditions for the performance of the Work under this **Task Order**:

[*When applicable, additional items, clauses, conditions, or provisions specific to the Work that are consistent with GCA 6141 shall be inserted here. When applicable, FTA special provisions from the FTA Master Agreement for specific funding programs shall be inserted here. Delete this provision if not needed.*]

All other terms and conditions of **Master Agreement** GCA 6141 shall be incorporated and by this reference made part of this **Task Order**, as if fully set forth herein.

NOW, THEREFORE, are the Parties hereto have executed this **Task Order** _____ as of the Party's date signed last below.

KING COUNTY DEPARTMENT OF TRANSPORTATION	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
_____	_____
By	By
_____	_____
Title	Title
_____	_____
Date	Date

GCA 6141

Master Agreement for Transportation Demand Management Work by King County

EXHIBIT A

Federal Transit Administration Provisions

Section 1
General

The COUNTY agrees to include these provisions in each subcontract financed in whole or in part with Federal assistance provided by Federal Transit Administration (FTA) and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any Work under this **Task Order**. It is further agreed that these clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement by the COUNTY under this **Task Order:**

Statement of Financial Assistance -
This Agreement is subject to a financial assistance contract between the Washington State Department of Transportation and the Federal Transit Administration and the appropriations of the State of Washington.

Section 2
Procurement

The COUNTY shall make purchases of any incidental goods, essential supplies, or Project Equipment pursuant to this **Task Order** 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 U.S.C. chapter 53 and other applicable Federal Laws in effect now or as subsequently enacted; with U.S. Department of Transportation (DOT) third party procurement regulations of 49 C.F.R. § 18.36 and other applicable Federal Regulations pertaining to third party procurements and subsequent amendments thereto. The COUNTY shall also comply with the provisions of FTA Circular 4220.1.F, "Third Party Contracting Requirements," November 1, 2008, and any later revision 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 COUNTY. The COUNTY agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations.

B. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the COUNTY agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the COUNTY agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not expending or otherwise using any Federal assistance awarded to support a procurement using exclusionary or discriminatory specifications.

D. Preference for United States Products and Services. To the extent applicable, the COUNTY agrees to comply with the following U.S. preference requirements:

1. **Buy America.** The COUNTY agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any later amendments thereto.
2. **Cargo Preference—Use of United States-Flag Vessels.** The COUNTY agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Work.
3. **Fly America.** The COUNTY understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Work unless that air transportation is provided by U.S.-flag air careers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

E. Geographic Restrictions. The COUNTY agrees to not use any State or Local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

F. Preference for Recycled Products. To the extent applicable, The COUNTY agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 C.F.R. Part 247, which implements section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the COUNTY agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

G. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the COUNTY agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C.§ 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," *66 Fed. Reg. 1455 et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

H. Government Orders. In case any lawful government authority shall make any order with respect to the Work 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.

Section 3
Incorporation of Federal Terms

A. Purchasing. This **Task Order**'s provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth herein. All contractual provisions as set forth in FTA Circular 4220.1E are hereby incorporated by reference. All FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this **Task Order**. 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 **Task Order** and agrees to comply with any amendments promulgated by the FTA, during the term of this **Task Order**. The COUNTY'S failure to so comply shall constitute a material breach of this **Task Order**.

Section 4
No Obligation by the Federal Government

A. The STATE and the COUNTY acknowledge and agree that, regardless of any concurrence by the Federal Government or approval of the solicitation or award of this **Task Order**, the Federal Government is not a party to this **Task Order** and shall not be subject to any obligations or liabilities to the COUNTY, subcontractor, lessee or any other participant at any tier of the Work (whether or not a PARTY to this **Task Order**) pertaining to any matter resulting from this **Task Order**.

B. No contract between the COUNTY and its subcontractors, lessees, or any other participant at any tier of the Work shall create any obligation or liability of the STATE with regard to this **Task Order** 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 **Task Order**.

Section 5
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, subagreements, leases, third party contracts, or other arrangements 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 subcontractor, lessee, sub-recipient, or participant at any tier of the Work, or agent thereof. The COUNTY may set *de-minimis* 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 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 subcontractors, lessees or sub-recipients, other participants or their agents. The COUNTY must fully comply with all the requirements and obligations of chapter 42.52 RCW that govern ethics in 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, subagreement, lease, or other arrangement at any tier may, without some restrictions on future activities, result in

an unfair competitive advantage to the third party contractor or impair its objectivity in performing the Work under this **Task Order**.

B. Debarment and Suspension. The COUNTY agrees to comply and assures the compliance of each sub-recipient, lessee, third party contractor, or other participant at any tier of the Work with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations "Non-procurement Suspension and Debarment" 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S.OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)", 2 C.F.R. Part 180. The COUNTY agrees to and assures that its sub-recipients, lessees, third party contractors, and other participants at any tier of the Work will review the "Excluded Parties Listing System" at http://epls.arnet.gov/ before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the **Task Order**.

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 **Task Order**.

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 **Task Order**, any professional or technical personnel who are, or have been, at any time during the period of this **Task Order**, in the employ of the STATE without written consent of the STATE.

F. Restrictions on Lobbying. The COUNTY agrees to:

1. Comply with 31 U.S.C. § 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 this **Task Order**; and
2. Comply, and assure compliance by each subcontractor at any tier, each lessee at any tier and each sub-recipient at any tier, with applicable requirements of U.S. DOT regulations, "New Restriction on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. §1352; and
3. 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.

G. Employee Political Activity. To the extent applicable, the COUNTY agrees to comply with the provisions of the "Hatch Act," 5 U.S.C. §§ 1501 through 1508, and §§ 7324 through 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The "Hatch Act" limits the political activities of 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 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the "Hatch Act" does not apply to a non-supervisory employee of a transit 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. 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 activities in connection with the **Task Order**. Accordingly, by executing this **Task Order**, 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 Work covered by this **Task Order**. 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 **Task Order** authorized under 49 U.S.C. chapter 53 or any other Federal Law, the Federal Government reserves the right to impose on the COUNTY the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal Law to the extent the Federal Government deems appropriate.

I. Trafficking in Persons. To the extent applicable, the COUNTY agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of Subsection 3.g of FTA Master Agreement (17) dated October 1, 2010, which by this reference is incorporated herein as if fully set out in this **Task Order**, and any amendments thereto, and accessible at http://www.fta.dot.gov/documents/17-master.pdf, consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.

Section 6
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, lessee or other participant at any tier, with the provisions of 49 U.S.C. §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 U.S.C. §§ 2000d *et seq.*; and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the COUNTY also agrees to follow all applicable provisions of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients," May 13, 2007, and any other 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 , lessee or other participant at any tier of this Work, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and 49 U.S.C. § 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 equal employment opportunity (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 **Task Order**. Failure by the COUNTY to carry out the terms of that EEO program shall be treated as a violation of this **Task Order**. 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 U.S.C. §§ 1681 *et seq.*, and with any implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that 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 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services, "Nondiscrimination on the basis of Age in Programs and Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
2. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 through 634, and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

F. Disabilities-Employment. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 C.F.R. 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 U.S.C. § 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 U.S.C. § 794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 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 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the COUNTY agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following:

U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; 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; U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. 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 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

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 U.S.C. § 2000d-1 note, and with provisions of U.S. DOT Notice "DOT Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons," 70 Fed. Reg. 74087 December 14, 2005.

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 U.S.C. § 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 Work including chapter 49.60 RCW.

Section 7
Participation of Disadvantaged Business Enterprises

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

A. The COUNTY agrees to comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. 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 U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The COUNTY agrees to take all necessary and reasonable steps under 49 C.F.R. 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 U.S. DOT. The COUNTY'S DBE program, as required by 49 C.F.R. Part 26

and approved by the U.S. DOT, if any, is incorporated by reference and made part of this **Task Order**. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this **Task Order**. Upon notification to the COUNTY of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

Section 8
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 U.S.C. §§ 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, (NEPA) 42 U.S.C. §§ 4321 through 4335; Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. The COUNTY agrees to comply with 23 U.S.C. §§ 139 and 326 as applicable and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any applicable Federal Directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

Section 9
Accounting Records

A. Project Accounts. The COUNTY agrees to establish and maintain for the **Task Order** either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Work, in compliance with applicable Federal laws and regulations. The COUNTY agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Work 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 Work.

B. Funds Received or Made Available for the Work. The COUNTY agrees to deposit in a financial institution, all advance Work payments it receives from the Federal Government and record in the Work Account all amounts provided by the Federal Government in support of this **Task Order** and all other funds provided for, accruing to, or otherwise received on account of the Work (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 costs charged to the Work, 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 Work, except certain income determined by FTA to be exempt from Federal program income requirements.

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 Work Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 10
Audits, Inspection, and Retention of Records

A. Submission of Proceedings, Agreements, and Other Documents. During the course of the Work and for six (6) years thereafter, the COUNTY agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Work as the STATE may require. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 18. 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 agrees to perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.* As provided by 49 C.F.R. § 18.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The COUNTY also agrees to obtain any other audits required by the Federal Government. The COUNTY agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing Standards." The COUNTY agrees to obtain any other audits required by the STATE. Project closeout will not alter the COUNTY'S audit responsibilities.

C. 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 Work materials, payrolls, maintenance records, and other data, and to audit the books, records, and accounts of the COUNTY and its contractors pertaining to the Work, as required by 49 U.S.C. § 5325(g).

Section 11
Labor Provisions

A. Contract Work Hours and Safety Standards Act. The COUNTY shall comply with, and shall require the compliance by each subcontractor 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 U.S.C. § 3701 *et seq.,* and specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702 and U.S. DOL 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 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926.

B. Fair Labor Standards Act. The COUNTY agrees that the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Work involving commerce. The COUNTY shall comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing Work in connection with the **Task Order**.

C. Overtime Requirements. No contractor or subcontractor contracting for any part of the **Task Order** 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 forty (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 Work). 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, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 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, 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. 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 (C) of this Section the COUNTY and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such COUNTY and subcontractor 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 (C) 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 (C) 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 subcontractor 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 subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (E) of this Section.

G. Public Transportation Employee Protective Agreement. To the extent required by Federal Law, the COUNTY agrees to implement the Work in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Work and that comply with the requirements of 49 U.S.C. § 5333 (b), in accordance with the U. S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA. The COUNTY agrees to implement the Work in accordance with the conditions stated in that U.S. DOL certification, which certification and any documents cited therein are incorporated by reference and made part of this **Task Order**. The COUNTY also agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of this **Task Order** and any alternative

comparable arrangements specified by U.S. DOL for application to the Work in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto.

Section 12
Planning and Private Enterprise

The COUNTY agrees to implement the **Task Order** in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1); joint Federal Highway Administration (FHWA)/FTA regulations, "Statewide Transportation Planning: Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613; and any amendments thereto and with FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that these regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations. To the extent feasible, the COUNTY agrees to comply with the provisions of 49 U.S.C. § 5323(k), which affords governmental agencies and non-profit organizations that receive Federal assistance for non-emergency transportation from Federal Governmental sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services. During the implementation of the **Task Order**, the COUNTY agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 13
Substance Abuse

A. Drug and Alcohol Abuse. The COUNTY agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with Part 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 C.F.R. Part 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 for the useful life of the Project Equipment.

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, as amended, 21 U.S.C. §§1101 *et seq.*, the Comprehensive Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, Pub. L. 91-616, December 31, 1970, as amended 42 U.S.C. §§4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, including amendments to these acts. The COUNTY understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this **Task Order**.

Section 14
Federal "$1 Coin" Requirements

To the extent required by the Federal Government, the COUNTY agree to comply with the provisions of section 104 of the Presidential $1 Coin Act of 2005, 31 U.S.C. § 5112(p), so that the COUNTY'S equipment and facilities requiring the use of coins or currency will be fully

capable of accepting and dispensing $1 coins in the connection with that use. The COUNTY also agrees to display signs and notices denoting the capability of its equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine.

Section 15
Insurance

In addition to other insurance requirements that may apply, the COUNTY agrees as follows:

Minimum Requirements. At a minimum, the COUNTY agrees to comply with the insurance requirements normally imposed on the COUNTY by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

Section 16
Termination

In addition to the Parties' agreement with regard to termination for convenience as set forth in the Agreement, the Parties shall comply with 49 C.F.R. 18.43 and, if either Party terminates for convenience the Master Agreement or a Task Order, the Parties shall comply with 49 C.F.R. 18.44.

A. **STATE's Termination for Convenience.** If the STATE decides, as set forth in the Agreement, to terminate for convenience the Agreement or any Task Order the Parties shall agree upon the termination conditions including the effective date and, in the case of a partial termination of a Task Order, the portion to be terminated.

B. **COUNTY's Termination for Convenience.** If the COUNTY decides to terminate for convenience the Agreement or any Task Order the COUNTY shall set forth the reasons for the termination, the effective date, and, in the case of partial termination of a Task Order, the portion to be terminated. If, in the case of partial termination, the STATE determines that the remaining portion of the Task Order will not accomplish the purposes of the Task Order, the STATE may terminate the Task Order in its entirety under either 49 C.F.R. 18.43 or 49 C.F.R. 18.44(a).

C. **STATE's Termination for COUNTY's Noncompliance.** If the COUNTY materially fails to comply with a term of the Agreement or a Task Order as set forth in 49 C.F.R. 18.43 (a) the STATE, in addition to the other remedies set forth in 49 C.F.R. 18.43, may terminate the Agreement and/or such Task Order.

GCA 6141

Master Agreement for Transportation Demand Management Work by King County

EXHIBIT B

Project Equipment Provisions

Section 1
General

The COUNTY agrees to include these provisions in each subcontract and in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any Work under this **Task Order**. It is further agreed that these clauses shall not be modified, except to identify the subcontractor or other person or entity that will be subject to its provisions. In addition, the following provision shall be included in advertisement or invitation to bid for any procurement by the COUNTY under this **Task Order**:

Statement of Financial Assistance:
"This Agreement is subject to the appropriations of the State of Washington."

Section 2
Inspection Upon Delivery

The COUNTY shall inspect Project Equipment purchased pursuant to this **Task Order** at the time of delivery to the COUNTY. Upon receipt and written acceptance of Project Equipment, the COUNTY agrees that it has fully inspected the Project Equipment and accepts it as being in good condition and repair, and is satisfied with the Project Equipment and that the Project Equipment complies with all regulations, rules, and laws.

Section 3
Reports and Use of Project Equipment

A. The COUNTY agrees that the Project Equipment shall be used as set forth in the **Task Order**. The COUNTY further agrees that it will not use or permit the use of the Project Equipment in a negligent manner or in violation of any law, or so as to avoid any insurance covering the same, or permit the Project Equipment to become subject to any lien, charge, or encumbrance. Should the COUNTY unreasonably delay or fail to use the Project Equipment the COUNTY agrees that it may be required to refund the entire amount of the Federal and/or state-funded share expended on the **Task Order**. The COUNTY shall immediately notify the STATE when any Project Equipment is withdrawn from use or when Project Equipment is used in a manner substantially different from that identified in the **Task Order**. If the Project Equipment is permanently removed from service the COUNTY agrees to immediately contact the STATE for instructions regarding the disposal of the Project Equipment.

B. Reports. The COUNTY shall advise the STATE regarding the progress of the Work at such times and in such manner as the STATE and/or FTA may require, including, but not limited to, interim reports. The COUNTY shall keep satisfactory written records with regard to the use of Project Equipment and shall submit the following reports to, and in a form and at such times prescribed by, the STATE:

1. Reports describing the current usage of Project Equipment and other data which the STATE and/or FTA may request.
2. In the event any portion of the Project Equipment sustains disabling damage the COUNTY shall notify the STATE immediately after the occasion of the damage, including the circumstances thereof.
3. The COUNTY shall collect and submit to the STATE, at such time as the STATE may require, such financial statements, data, records, contracts, and other documents related to the Work as may be deemed necessary by the STATE and/or the FTA.

C. Remedies for Misuse or Noncompliance. The COUNTY shall not use any Project Equipment in a manner different from that set forth in the **Task Order** unless permission to do so is granted in writing by the STATE. If the STATE determines that Project Equipment has been used in a manner different from that set forth in the **Task Order**, the STATE may direct the COUNTY to dispose of the Project Equipment acquired by the COUNTY. The STATE may also withhold payments should it determine that the COUNTY has failed to comply with any provision of this **Task Order**. If Federal participation and funding is either reduced or canceled as a result of a breach by the COUNTY, the COUNTY is then liable for all damages from the breach, even though those damages exceed the price payable under this **Task Order**.

Section 4
Maintenance of Project Equipment

The COUNTY shall make all necessary repairs and reasonably maintain the Project Equipment to assure it remains in good and operational condition. All service, materials, and repairs in connection with the use and operation of the Project Equipment shall be at the COUNTY'S expense. The COUNTY agrees to, at a minimum, service the Project Equipment and replace parts at intervals recommended in the manuals provided by the component manufacturers, or sooner if needed. The COUNTY shall take the Project Equipment to an appropriate service and repair facility for any service and repair under the manufacturer's warranty. The STATE and/or the FTA shall not be liable for repairs. When federal assistance grants are involved, the COUNTY shall comply with the equipment management requirements identified in 49 C.F.R. Part 18.32(d); and any reference therein to "grantee" shall mean the COUNTY. The COUNTY shall retain records of all maintenance and parts replacement performed on the Project Equipment. The COUNTY shall provide copies of such records to the STATE, upon request.

Section 5
Liens on Equipment

The STATE shall have legal ownership of all Project Equipment the COUNTY acquires or modifies using the Federal and/or state funds identified in the **Task Order**. The COUNTY accepts the STATE's legal ownership of Project Equipment and agrees that it shall not use the Project Equipment as collateral, nor shall the COUNTY encumber the Project Equipment in any way. The COUNTY shall follow the terms stated in Section 3, *Reports and Use of Project Equipment*, regarding the disposition of all Project Equipment.

Section 6
Loss or Damage to Project Equipment

A. The COUNTY, at its own expense, shall cover any loss, theft, damage, or destruction of the Project Equipment using either of the following methods:

1. The COUNTY shall maintain property insurance for non-vehicle equipment adequate to cover the value of the Project Equipment; or

2. The COUNTY shall provide a written certificate of self-insurance to the STATE. The COUNTY will cover from its own resources the costs of repairing or replacing any Project Equipment, if it is stolen, damaged, or destroyed in any manner.

B. If the damage to the Project Equipment does not result in a total loss, payments for damage shall be paid directly to the COUNTY. The COUNTY shall, within thirty (30) days, either:

1. Devote all of the insurance proceeds received to repair the Project Equipment and place it back in service, and the COUNTY shall, at its own expense, pay any portion of the cost of repair which is not covered by insurance; or

2. In the event the COUNTY certified to self-insurance, devote all funds necessary to repair the Project Equipment and place it back into service.

C. If the Project Equipment is a total loss, either by theft or damage, the insurance proceeds or equivalent shall be paid directly to the COUNTY. The COUNTY shall within sixty (60) days of loss, theft, or damage, notify the STATE that it either:

1. Intends to replace the lost Project Equipment; or

2. Does not intend to replace the lost Project Equipment and shall return to the STATE its portion of the insurance proceeds.

D. If the STATE determines that the total loss occurred under circumstances in which the COUNTY fulfilled its obligations under this **Task Order** then the STATE will either pay or rebate to the COUNTY its proportionate share of such proceeds received.

E. Coverage, if obtained or provided by the COUNTY in compliance with this Section, shall not be deemed as having relieved the COUNTY of any liability in excess of such coverage as required by Section 13, *Indemnification and Limitation of Liability*, of GCA 6141, or otherwise.

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#22

PROJECT TITLE:
Regional Transit ORCA Marketing and TDM Project Agreement Between King County, Department of Transportation, Metro Transit Division and City of Everett

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	
Originating Department	Trans. Services
Contact Person	Tom Hingson
Phone Number	425-257-8939
FOR AGENDA OF	December 21, 2016

Initialed by:
Department Head _____
CAA dh
Council President _____

Location	Preceding Action	Attachments	Department(s) Approval
		Agreement	Legal, Transportation Services

Amount Budgeted	-0-	Reimbursed up to $17,500
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
This grant sub-agreement will reimburse Everett Transit up to $17,500 to increase the number of ORCA card holders. Everett Transit will focus ORCA card distribution through its existing Transportation Demand Management (TDM) program. Funding will be used for ORCA cards, materials and related expenses. Everett Transit will target youth in the Everett School District for the expansion and distribution of ORCA cards.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign the Regional Transit ORCA Marketing and TDM Project Agreement between King County, Department of Transportation, Metro Transit Division and City of Everett.

Council approved 12/21/16