

# City of Redmond



## Agenda

**Tuesday, March 7, 2023**

**4:30 PM**

**City Hall: 15670 NE 85th St; Remote: Comcast Ch. 21/321, Ziplify Ch. 34,  
Facebook (@CityofRedmond), Redmond.gov/rctvlive, or 510-335-7371**

## **Committee of the Whole - Planning and Public Works**

### **Committee Members**

*Melissa Stuart, Presiding Officer*

*Jeralene Anderson*

*David Carson*

*Steve Fields*

*Jessica Forsythe*

*Varisha Khan*

*Vanessa Kritzer*

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**AGENDA**

ROLL CALL

1. Bellevue, Kirkland, Redmond (BKR) - Interlocal Agreement [CM 23-108](#)  
Amendment

[Attachment A: BKR Transportation Forecast Model Interlocal Agreement  
Draft](#)

[Attachment B: BKR Transportation Forecast Model Interlocal Agreement](#)

*Department: Planning and Community Development, 5 minutes*

*Requested Action: Consent, March 21st*

2. 2023-24 Go Redmond King County Metro Contract Renewal [CM 23-110](#)

[Attachment A: Agreement](#)

*Department: Planning and Community Development, 5 minutes*

*Requested Action: Consent, March 21st*

3. Approve the Second Amendment to the Agreement for [CM 23-082](#)  
Construction of Redmond Technology Station  
Pedestrian/Bicycle Bridge with Microsoft

[Attachment A: Second Amendment to the Construction Agreement](#)

*Department: Public Works, 5 minutes*

*Requested Action: Consent, March 21st*

ADJOURNMENT



## Memorandum

**Date:** 3/7/2023

**Meeting of:** Committee of the Whole - Planning and Public Works

**File No.** CM 23-108

**Type:** Committee Memo

**TO:** Committee of the Whole - Planning and Public Works

**FROM:** Mayor Angela Birney

**DEPARTMENT DIRECTOR CONTACT(S):**

Planning and Community Development	Carol Helland	425-556-2107
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**DEPARTMENT STAFF:**

Planning and Community Development	Seraphie Allen	Deputy Director
Planning and Community Development	Vangie Garcia	Manager, Transportation Planning and Engineering
Planning and Community Development	Josh Mueller	Senior Transportation Strategist

**TITLE:**

Bellevue, Kirkland, Redmond (BKR) - Interlocal Agreement Amendment

**OVERVIEW STATEMENT**

Since 2004, the cities of Bellevue, Kirkland, and Redmond (BKR) have had an interlocal agreement to coordinate the management of the BKR transportation forecast model platform. The model has recently been upgraded from being focused on auto-trip generation to an activity-based model, which better represents a multi-modal network. The 2004 agreement contains language that is not consistent with current technology and security standards and needs to be amended to reflect standard operating procedures as well as the updated model.

☐ **Additional Background Information/Description of Proposal Attached**

**REQUESTED ACTION:**

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

**REQUEST RATIONALE:**

- **Relevant Plans/Policies:**
  - 1) Comprehensive Plan - establishes the vision and policy direction for how the City will grow and develop
  - 2) Transportation Master Plan (TMP) - an element of the Comprehensive Plan that guides the City's transportation investments and activities
- **Required:**

Council approval is required for interlocal agreements.
- **Council Request:**

Approval

- **Other Key Facts:**

The original BKR Model was developed for the purpose of sharing, developing, and managing a four-step transportation forecast model platform, to support transportation planning and development efforts at the local and sub-regional level. The older BKR Model is limited for non-auto trip generation and is recommended to be retired. The model has recently been upgraded to an activity-based model, known as BKRCast, which incorporates secured employment data from the Washington State Employment Security Department (ESD) and requires detailed land use and traffic count data from each of the participating jurisdictions.

As per the interlocal agreement, Bellevue is the lead agency that administers, develops and maintains both the current BKR Model and BKRCast. Due to the security requirements of ESD, the City of Kirkland and the City of Redmond are both restricted from accessing BKRCast and working with Bellevue.

Kirkland and Redmond are actively trying to reach data sharing agreements with ESD for access to restricted data and to work with Bellevue and the BKRCast. This amendment documents the data sharing permissions needed for the City of Redmond. Bellevue and Kirkland are also requesting a similar amendment for their jurisdictions.

**OUTCOMES:**

Continued partnership with Bellevue and Kirkland on a sub-regional transportation forecasting model results with more accurate transportation forecasting results. The forecasting model supports the Comprehensive Plans Growth Alternatives, Concurrency, Transportation Impact Fee's, and decision making on transportation projects.

**COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:**

- **Timeline (previous or planned):**  
N/A
- **Outreach Methods and Results:**  
N/A
- **Feedback Summary:**  
N/A

**BUDGET IMPACT:**

**Total Cost:**

No associated cost

**Approved in current biennial budget:**

☒ Yes

☐ No

☐ N/A

**Budget Offer Number:**

0000034 - Mobility of People and Goods

**Budget Priority:**

Vibrant and Connected

**Other budget impacts or additional costs:**

☐ Yes

☐ No

☒ N/A

***If yes, explain:***

N/A

**Funding source(s):**

General Funds

**Budget/Funding Constraints:**

N/A

☐ Additional budget details attached

**COUNCIL REVIEW:**

**Previous Contact(s)**

Date	Meeting	Requested Action
	Item has not been presented to Council	

**Proposed Upcoming Contact(s)**

Date	Meeting	Requested Action
3/21/2023	Business Meeting	Approve

**Time Constraints:**

All three cities are presenting this Interlocal Agreement to their respective approval authority. All three cities are updating their Comprehensive Plans and Redmond is also updating its Transportation Master Plan. Coordination for approval is recommended for this amendment.

**ANTICIPATED RESULT IF NOT APPROVED:**

Not approving would result in the City no longer participating in the BKR model, which would limit the City's transportation modeling capabilities and complicate joint planning efforts.

**ATTACHMENTS:**

Attachment A: BKR Transportation Forecast Model Interlocal Agreement Amendment - draft

Attachment B: BKR Transportation Forecast Model Interlocal Agreement 4568 1

INTERLOCAL AGREEMENT AMONG THE CITIES OF  
BELLEVUE, KIRKLAND AND REDMOND

TRANSPORTATION FORECAST MODEL PLATFORM  
DEVELOPMENT AND MAINTENANCE PROGRAM

This agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023 by and among the City of Bellevue (hereinafter called “Bellevue”) who shall serve as the lead agency for the purpose of administering this program, the City of Kirkland (hereinafter called “Kirkland”), and the City of Redmond (hereinafter called “Redmond”). The cities of Bellevue, Kirkland and Redmond are collectively referred to as “the Parties.”

WHEREAS, Bellevue developed an enhanced suite of computer software including BKRCast, an activity simulator, and EMME, a traffic assignment program, for the Bellevue, Kirkland and Redmond (BKR) area with the cooperation and support of the other two jurisdictions through an inter-local agreement; and

WHEREAS, this enhanced software suite (hereinafter referred to as the “BKR model”) enables the three jurisdictions to project travel demand within the vicinity called the “planning area” or “sub-region”; and

WHEREAS, the BKR model is directly tied to each jurisdiction’s land use and transportation networks within the planning area; and land use and transportation network information must be carefully managed and routinely updated to support transportation planning activities; and

WHEREAS, the BKR model integrates elements of the regional travel demand model developed by Puget Sound Regional Council (PSRC); and

WHEREAS, continuous maintenance and periodic upgrades of the BKR model are necessary to provide accurate travel demand forecasts for the planning area and to sustain its benefits to the parties of this agreement; and

WHEREAS, one BKR model covering the three jurisdictions has established a common database to support traffic impact reviews for local development as well as mid- and long-range transportation planning within the planning area; and

WHEREAS, sharing one BKR model enhances opportunities to inform transportation decision-making at the local, sub-regional, and regional planning levels; and

WHEREAS, for purposes of this Agreement, the lead department at the City of Bellevue shall be the Transportation Department; the lead department at the City of Kirkland shall be the Public Works Department, and the lead department at the City of Redmond shall be the Planning Department; and

WHEREAS, the Growth Management Act of 1990 mandates that the transportation element of a Comprehensive Plan include intergovernmental coordination efforts, requiring review of the transportation plans and land use assumptions by adjacent jurisdictions; and

WHEREAS, significant public funds have been invested in the development, maintenance, and upgrade of the BKR model, its continued use shall be managed in order to leverage the investment for maximum public benefit; and

WHEREAS, the parties entered into a similar Agreement dated January 21, 2004, called *Interlocal Agreement Among The Cities Of Bellevue, Kirkland And Redmond – Transportation Forecast Model Platform Development and Maintenance Program*, which is hereby terminated and replaced as of the effective date of this Agreement.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

## I. PURPOSE

This agreement defines the roles and responsibilities of Bellevue, Kirkland, and Redmond for carrying out the travel demand forecast model development and maintenance program. This agreement provides for development and upgrade of model platforms, identification of resources, and establishment of guidelines for the use and maintenance of the model.

## II. PROJECT MANAGEMENT

The day-to-day management of the BKR model development, maintenance and updating shall be the responsibility of the Modeling Manager in the Bellevue Transportation Department, under the supervision of the Assistant Director for Transportation Planning and the Director of Transportation. The Modeling Manager has supervisory responsibility for a program of travel demand forecasting and traffic operations simulation activities, that includes the BKR model and related activities benefiting the BKR jurisdictions. The Bellevue Transportation Department will be responsible for maintaining appropriate expertise, training and staffing levels in the Modeling work unit.

A Technical Advisory Committee (TAC) shall be formed consisting of two staff members from each jurisdiction, with knowledge of the BKR model and its applications, plus a staff representative of PSRC's travel forecasting section. Bellevue's Modeling Manager shall serve as one of Bellevue's TAC members. The purpose of the TAC is to establish a coordinated and continuing work program for BKR model maintenance and updates that benefit of all three jurisdictions. The TAC shall:

- a) Develop guidelines and schedules for the collection of updated land use and network data by the member jurisdictions, transmittal to Bellevue, and incorporation into the BKR model;
- b) Review the model's technical adequacy, and identify and resolve technical issues;
- c) Develop an annual work program for the shared benefit, and with the shared resources of the three jurisdictions. The work program shall identify ongoing tasks and new initiatives, for which it shall define priorities, methods, schedules, and deliverables; and
- d) Define the responsibilities of the TAC Chair, and annually rotate the Chair among the members.

## III. ANNUAL SCHEDULE

The parties agree that the joint annual work program will describe the specific scope of work for the purposes of this agreement. The joint annual work program will be confined to those tasks that benefit the three jurisdictions and are jointly funded. These are related to the development, validation, maintenance and update of the base year model, the six-year model, and a long-range model.

In order to simulate the existing traffic conditions and to forecast future traffic congestion using the BKR model in a timely fashion, the parties agree to the following annual schedule:

- TAC shall initiate work program development for the next year during the 3<sup>rd</sup> quarter. TAC shall approve the work program by the end of the 4<sup>th</sup> quarter.
- Base Year Model platform, based on the previous year land use and transportation networks shall be developed by the end of the following 3<sup>rd</sup> quarter.
- Six-Year Model platform based on each jurisdiction's Capital Improvement Program (CIP) shall be developed within six months following the adoptions of CIPs.
- A long-range future year model platform based on each jurisdiction's Comprehensive Plan shall be developed within six months following the adoptions of these Plans. The horizon year of the long-

range model platform shall be determined by all parties involved. The future year model platform shall be reviewed annually, and updated if warranted, on a schedule as agreed to by all parties involved.

- Redmond and Kirkland shall reimburse Bellevue for their proportional costs necessary to implement the TAC approved work program by the end of 1st quarter of the following year.

#### IV. DURATION OF AGREEMENT

This Agreement shall take effect immediately upon its approval by Bellevue, Kirkland and Redmond, and shall remain in force until terminated. This Agreement may be terminated at any time pursuant to the procedure set forth in Section VIII of this Agreement.

#### V. CONFIDENTIALITY

In order to provide cost-effective utility to all the participating jurisdictions, each party must preserve and protect information privacy rights. In order to be able to access base year land use data which is developed based on employment data obtained from Washington State Employment Security Department (ESD), each jurisdiction must enter into and maintain an interagency data sharing agreement with ESD,

Information that is created by participants to support published analysis or reports, including plans or forecasts, shall be considered public domain upon its publication, and shall be available for use by all participants, subjected to restrictions contained in the interagency data sharing agreement with ESD.

Information that is created for comparison purposes without a related public release, for example, scenario analysis, land use alternatives, or sensitivity testing, shall be utilized for modeling purposes only—and shall not be released without first giving five days written notice from the originating jurisdiction.

#### VI. DISPUTE RESOLUTION

Attempts will be made to resolve technical differences by all the parties in a professional manner. When agreement cannot be reached at the Technical Advisory Committee level, the dispute shall be transferred to the Department Directors (Transportation, Public Works, or Planning) of the three cities, and failing resolution at that level, to the City Managers of Bellevue and Kirkland and the Mayor of Redmond for resolution.

#### VII. RESPONSIBILITIES

The responsibilities of Bellevue, Kirkland and Redmond are described in Attachment A.

Bellevue will have lead responsibility to develop, validate, maintain and update the BKR model platforms. Bellevue will accommodate access to the model platforms by Kirkland and Redmond through agreed method, subject to the restrictions of the interagency data sharing agreement with ESD.

Kirkland and Redmond will use the model independently, when and how they choose, unless they require Bellevue support, in which case, scope, schedule, and cost reimbursement shall be arranged separately between Bellevue and the requesting jurisdiction.

Bellevue, Kirkland and Redmond will assemble existing land use data consistent with the requirements of the model. Each city is responsible for collecting, maintaining, and updating its land use and roadway network databases, per guidelines determined by the Technical Advisory Committee.



## VIII. TERMINATION

Any party who wishes to terminate this agreement shall notify the other parties in writing. Termination shall become effective sixty days after all parties receive such notice. In the event that this agreement is terminated, Kirkland and/or Redmond may request from Bellevue, a copy of all the databases needed to execute the model. Bellevue shall make a copy of the database and send it to Kirkland and/or Redmond within thirty days after the termination becomes effective.

A termination notice in writing shall be sent to all the TAC members.

## IX. USE OF CONSULTANT

A party to this Agreement may use consultants to fulfill the responsibilities described in Attachment A, subject to the restrictions contained in the interagency data sharing agreement with ESD. Any party who wishes to use a consultant shall use its own contracting procedure and shall be solely responsible for managing and paying for its own consultant activities. If Kirkland or Redmond needs staff training, training needs and resources will be negotiated with the City of Bellevue. Bellevue encourages Kirkland and Redmond to develop in-house capability to use the model independently. Kirkland and Redmond may retain consultant services for staff training.

## X. RESOURCE NEEDS

Kirkland and Redmond shall reimburse Bellevue for a share of the costs incurred by Bellevue for annual maintenance and upgrading of the software and hardware, based on the respective proportion of Traffic Analysis Zones within each jurisdiction's geographic share of the BKR modeling area. Eligible software maintenance and upgrading costs include annual software license fees, staff time, overhead, and outside consultant contracts. Reimbursement shall be provided to Bellevue before the end of the next quarter after TAC approval of a work program.

Kirkland and/or Redmond may utilize additional modeling products outside of the joint TAC work program. In the event of Bellevue's assistance is requested, the Bellevue Modeling Manager shall provide, within ten business days after the request, a list of tasks/deliverables, cost estimate (covering Bellevue's costs) and completion schedule for consideration by the requesting jurisdiction. Bellevue will honor the resulting estimate for up to 30 days.

This agreement does not obligate any individual party to the payment of any costs which may be incurred in the future if any individual party wishes to upgrade, expand or restructure the model. When such need is identified, the TAC shall address such resource needs. All the parties to this agreement must agree to any cost allocation between the parties before such costs are incurred and work is begun.

## XI. LEGAL RELATIONS

Each of the parties to this agreement shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgement, and/or awards of damages arising out of, or in any way resulting from, each of the party's negligent acts or omissions. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death or damages is caused by the sole negligence of the party. Where such claims, suits or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each of the parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to each of the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the parties or combination of the parties incur any

judgement, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the responsible party or combination of the parties to the extent of that party's/those parties' culpability. This indemnification shall survive the termination of this agreement.

## XII. MODIFICATION

This agreement may be modified only upon written agreement of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE CITY OF BELLEVUE

\_\_\_\_\_  
Brad Miyake, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathy Gerla, City Attorney

THE CITY OF REDMOND

\_\_\_\_\_  
Angela Birney, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Jim Haney, City Attorney

THE CITY OF KIRKLAND

\_\_\_\_\_  
Kurt Triplett, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Croll, Senior Assistant City Attorney

## ATTACHMENT A

### I. Responsibilities of Bellevue

1. Attend and participate in Technical Advisory Committee meetings. The TAC Chair will rotate among the members annually to plan agendas and facilitate discussions.
2. Provide support for developing the data base and other system components to be compatible with the current BKR model structure and platforms.
3. Review the model results and work with Kirkland, Redmond, and PSRC staff through TAC to identify potential improvements.
4. Validate the base year model using the screenlines and other guidelines established by TAC and identify potential problems. Bellevue will work with TAC to find ways to meet the calibration goals.
5. Develop, update and maintain the model platforms as described in this agreement.
6. Provide the post-processing template software and explain how it works.
7. Maintain the necessary software license and maintenance contract.
8. Notify Kirkland, Redmond, and of any changes in the model or operating procedure that may affect model operation.
9. Document the process and data systems for model development and upgrade.
10. Maintain the confidentiality of Kirkland and Redmond proprietary land use data and development plans.
11. Provide staff support to Kirkland and Redmond for project level model applications when available. Scope, schedule, and cost reimbursement shall be negotiated separately.

### II. Responsibilities of Kirkland

1. Attend and participate in Technical Advisory Committee meetings. The TAC Chair will rotate among the members annually to plan agendas and facilitate discussions.
2. Conduct existing land use inventory (usually to the end of previous year) as well as collect future land use planning data consistent with the required model format. Provide updated land use data to Bellevue by the end of the 2<sup>nd</sup> quarter.
3. Notify Bellevue of any TAZ update using general guidelines used for the BKR Model.
4. Notify Bellevue of any street network improvement and characteristics necessary to define the road network system.
5. Notify Bellevue of any transit line update and characteristics to define the transit line information.
6. Review the assumptions and data inputs and verify the results.
7. Determine independently how to use the BKR model.
8. Maintain the confidentiality of Bellevue proprietary land use data and development plans.
9. Maintain the confidentiality of Redmond proprietary land use data and development plans.
10. Reimburse the costs annually as agreed by the TAC to implement this agreement, including the additional cost associated with staff support for project level model applications.

### III. Responsibilities of Redmond

1. Attend and participate in Technical Advisory Committee meetings. The TAC Chair will rotate among the members annually to plan agendas and facilitate discussions.
2. Conduct existing land use inventory (usually to the end of previous year) as well as collect future land use planning data consistent with the required model format. Provide updated land use data to Bellevue by the end of the 2<sup>nd</sup> quarter.
3. Notify Bellevue of any TAZ update using general guidelines used for the BKR Model.
4. Notify Bellevue of any street network improvement and characteristics necessary to define the road network system.
5. Notify Bellevue of any transit line update and characteristics to define the transit line information.

6. Review the assumptions and data inputs and verify the results.
7. Determine independently how to use the BKR model.
8. Maintain the confidentiality of Bellevue proprietary land use data and development plans.
9. Maintain the confidentiality of Kirkland proprietary land use data and development plans.
10. Reimburse the costs annually as agreed by the TAC to implement this agreement, including the additional cost associated with staff support for project level model applications.

REC NO. 33820  
CITY OF BELLEVUE

INTERLOCAL AGREEMENT AMONG THE CITIES OF DATE 4/29/03  
BELLEVUE, KIRKLAND AND REDMOND M-TORNOU

TRANSPORTATION FORECAST MODEL PLATFORM  
DEVELOPMENT AND MAINTENANCE PROGRAM CO FILE# 03-320

CITY CLERK'S OFFICE

1256842

This agreement is made and entered into this 21 day of January, <sup>2004</sup>~~2003~~ by and among the City of Bellevue (hereinafter called "Bellevue") who shall serve as the lead agency for the purpose of administering this program, the City of Kirkland (hereinafter called "Kirkland"), and the City of Redmond (hereinafter called "Redmond").

WHEREAS, Bellevue enhanced a computer software called EMME/2 for the Bellevue, Kirkland and Redmond (BKR) area with the cooperation and support of the other two jurisdictions through an inter-local agreement that expired in 1996, and despite the expiration of that agreement, the three jurisdictions continued their joint use of the EMME/2 software; and

WHEREAS, this enhanced software, referred to as the "BKR model", enables the three jurisdictions to project travel demand within the vicinity called the "planning area" or "sub-region"; and

WHEREAS, the BKR model is directly tied to each jurisdiction's land use within the planning area; and land use information must be carefully managed and routinely updated to support transportation planning activities; and

WHEREAS, the BKR model integrates elements of the regional model developed by Puget Sound Regional Council (PSRC); and

WHEREAS, continuous maintenance and periodic upgrades of the BKR model are necessary to provide accurate travel demand forecasts for the planning area and to sustain its benefits to the parties of this agreement; and

WHEREAS, one BKR model covering the three jurisdictions has established a common data base to support traffic impact reviews for local development as well as mid- and long-range transportation planning within the planning area; and

WHEREAS, sharing one BKR traffic model enhances opportunities to influence transportation decision-making at the local, sub-regional, and regional planning levels; and

WHEREAS, the Growth Management Act of 1990 mandates that the transportation element of the Comprehensive Plan include intergovernmental coordination efforts, requiring review of the transportation plans and land use assumptions by adjacent jurisdictions; and

WHEREAS, significant public funds have been invested in the development, maintenance, and upgrade of the BKR traffic model, its continued use should be managed in order to leverage the investment for maximum public benefit;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

## I. PURPOSE

This agreement defines the roles and responsibilities of Bellevue, Kirkland and Redmond for carrying out the transportation forecast model development and maintenance program. This agreement provides for development and upgrade of model platforms, identification of resources, and establishment of guidelines for the use and maintenance of the model.

## II. PROJECT MANAGEMENT

The day-to-day management of the BKR model development, maintenance and updating shall be the responsibility of the Modeling Manager in the Bellevue Transportation Department, under the supervision of the Assistant Director for Transportation Planning and the Director of Transportation. The Modeling Manager has supervisory responsibility for a program of travel demand forecasting and traffic operations simulation activities, that includes the BKR model and related activities benefiting the BKR jurisdictions. The Bellevue Transportation Department will be responsible for maintaining appropriate expertise, training and staffing levels in the Modeling work unit.

A Technical Advisory Committee (TAC) shall be formed consisting of two staff members from each jurisdiction with knowledge of the BKR model and its applications, plus a staff representative of PSRC's travel forecasting section. Bellevue's Modeling Manager shall serve as one of Bellevue's TAC members. The purpose of the TAC is to establish a coordinated and continuing work program for that portion of the BKR model maintenance and upgrading that is for the benefit of all three jurisdictions. The TAC shall:

- a) Develop guidelines and schedules for the collection of updated land use and network data by the member jurisdictions, transmittal to Bellevue, and incorporation of the data into the BKR model;
- b) Review the model's technical adequacy, and identify and resolve technical issues; and
- c) Develop an annual work program for the shared benefit, and with the shared resources of the three jurisdictions. The work program shall identify ongoing tasks and new initiatives, for which it shall define priorities, methods, schedules, and deliverables.
- d) Define the responsibilities of the TAC Chair, and annually rotate the Chair among the members.

## III. ANNUAL SCHEDULE

The parties agree that the joint annual work program will describe the specific scope of work for the purposes of this agreement. The joint annual work program will be confined to those tasks that benefit the three jurisdictions and are jointly funded. These are related to the MP0-Joint Platform identified below, and involve the development, validation, maintenance and update of the Base Year Model (MP0). The City of Bellevue may divulge recurring schedule information for other portions of its modeling work program that are not part of the agreement for the purposes of: a) Establishing schedule parameters for agreement-related tasks, and b) Identifying additional modeling products that Kirkland and/or Redmond may find beneficial from time to time. These tasks are identified below as Bellevue Platforms.

In order to simulate the existing traffic conditions and to forecast future traffic congestion using the EMME/2 software in a timely fashion, the parties agree to the following annual schedule:

- Base Year Model (MP0-Joint Platform) should be completed by the end of 2<sup>nd</sup> quarter.
- TAC shall initiate work program development for the next year during the 3<sup>rd</sup> quarter.
- TAC shall approve a work program for the next year by the end of the 4<sup>th</sup> quarter.

- Redmond and Kirkland shall reimburse Bellevue for the costs necessary to implement the TAC approved work program by the end of 1st quarter.
- Concurrency Model (MP6-Bellevue Platform) should be completed by the end of 3<sup>rd</sup> quarter.
- Twelve-year traffic forecast model (MP12-Bellevue Platform) is for the mid-range Transportation Facility Plan (TFP) and will be built once every two years.
- Twenty-year traffic forecast model (MP20-Bellevue Platform) will be updated with the regional 20-year forecast update.

#### IV. DURATION OF AGREEMENT

This Agreement shall take effect immediately upon its approval by Bellevue, Kirkland and Redmond, and shall remain in force until terminated. This Agreement may be terminated at any time pursuant to the procedure set forth in Section VIII of this Agreement.

#### V. CONFIDENTIALITY

In order to provide cost-effective utility to all the participating jurisdictions, each party must preserve and protect information privacy rights.

Information that is created by participants to support published analysis or reports, including plans or forecasts, shall be considered public domain upon its publication, and shall be available for use by all participants (examples include the base model [MP0] and concurrency model [MP6] that Bellevue updates and publishes annually).

Information that is created for comparison purposes without a related public release, for example, scenario analysis, land use alternatives, or sensitivity testing, shall be utilized for modeling purposes only and shall not be released without first giving five days written notice to the originating jurisdiction.

#### VI. DISPUTE RESOLUTION

Attempts will be made to resolve technical differences by all the parties in a professional manner. When agreement cannot be reached at the Technical Advisory Committee level, the dispute shall be transferred to the Department Directors (Transportation, Public Works, or Planning) of the three cities, and failing resolution at that level, to the City Managers of Bellevue and Kirkland and the Mayor of Redmond for resolution.

#### VII. RESPONSIBILITIES

The responsibilities of Bellevue, Kirkland and Redmond are described in Attachment A.

Bellevue will have lead responsibility to develop, validate, maintain and update the BKR model platforms. Bellevue will accommodate access to the model platforms by Kirkland and Redmond through their terminal connections.

Kirkland and Redmond will use the model independently, when and how they choose, unless they require Bellevue support, which shall be arranged at a mutually agreeable time with prior notice.

Bellevue, Kirkland and Redmond will assemble existing land use data consistent with the requirements of the Bellevue model. Each city is responsible for maintaining and updating its land use and roadway network database, per guidelines determined by the Technical Advisory Committee.

## VIII. TERMINATION

Any party who wishes to terminate this agreement shall notify the other parties in writing. Termination shall become effective sixty days after all parties receive such notice. In the event that this agreement is terminated, Kirkland and/or Redmond may request from Bellevue, a copy of all the databases needed to execute the model. Bellevue shall make a copy of the database and send it to Kirkland and/or Redmond within thirty days after the termination becomes effective.

A termination notice in writing shall be sent to all the TAC members.

## IX. USE OF CONSULTANT

A party to this Agreement may use consultants to fulfill the responsibilities described in Attachment A. Any party who wishes to use a consultant shall use its own contracting procedure and shall be solely responsible for managing and paying for its own consultant activities. If Kirkland or Redmond needs staff training, training needs and resources will be negotiated with the City of Bellevue. Bellevue encourages Kirkland and Redmond to develop in-house capability to be able to use the model independently. Kirkland and Redmond may retain consultant services for staff training. Consultant staff who are under contract with and acting pursuant to the direction of either Redmond or Kirkland shall have the same rights of model access and use as those accorded Redmond and Kirkland staff for the purpose of carrying out activities described in the approved work program.

## X. RESOURCE NEEDS

Kirkland and Redmond shall establish a terminal station in each respective city, which shall include at least a graphics terminal and software capable of interfacing with the Bellevue system.

Kirkland and Redmond shall reimburse Bellevue for a share of the costs incurred by Bellevue for annual maintenance and upgrading of the EMME/2 software and hardware, based on the respective proportion of Traffic Analysis Zones within each jurisdiction's geographic share of the BKR modeling area. Reimbursement shall be provided to Bellevue before the end of the next quarter after TAC approval of a work program.

Kirkland and/or Redmond may utilize additional modeling products outside of the joint TAC work program. In the event of such a request, the Bellevue Modeling Manager shall provide, within ten business days after the request, a list of tasks/deliverables, cost estimate (covering Bellevue's costs) and completion schedule for consideration by the requesting jurisdiction. Bellevue will honor the resulting estimate for up to 30 days.

This agreement does not obligate any individual party to the payment of any costs which may be incurred in the future if any individual party wishes to upgrade, expand or restructure the model. When such need is identified, the TAC shall address such resource needs. All the parties to this agreement must agree to any cost allocation between the parties before such costs are incurred and work is begun.

## XI. LEGAL RELATIONS

Each of the parties to this agreement shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgement, and/or awards of damages arising out of, or in any way resulting from, each of the party's negligent acts or omissions. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death or damages is caused by the sole negligence of the party. Where such claims, suits or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each of the parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the parties, by mutual negotiation, hereby waives, with respect to



each of the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the parties or combination of the parties incurs any judgement, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the responsible party or combination of the parties to the extent of that party's/those parties' culpability. This indemnification shall survive the termination of this agreement.

## XII. MODIFICATION

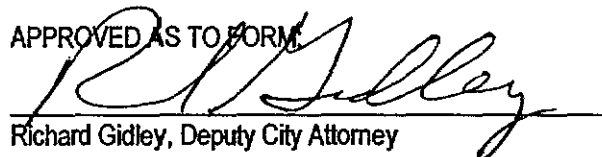
This agreement may be modified only upon written agreement of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

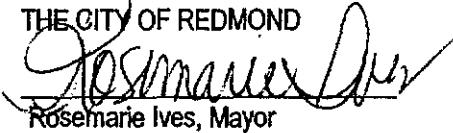
THE CITY OF BELLEVUE

  
Steve Sarkozy, City Manager

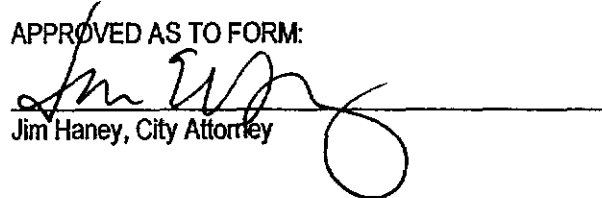
APPROVED AS TO FORM:

  
Richard Gidley, Deputy City Attorney

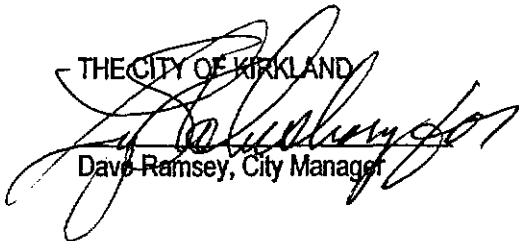
THE CITY OF REDMOND

  
Rosemarie Ives, Mayor

APPROVED AS TO FORM:

  
Jim Haney, City Attorney

THE CITY OF KIRKLAND

  
Dave Ramsey, City Manager

APPROVED AS TO FORM:

  
Bill Evans, Assistant City Attorney



## Memorandum

**Date:** 3/7/2023

**Meeting of:** Committee of the Whole - Planning and Public Works

**File No.** CM 23-110

**Type:** Committee Memo

**TO:** Committee of the Whole - Planning and Public Works

**FROM:** Mayor Angela Birney

**DEPARTMENT DIRECTOR CONTACT(S):**

Planning and Community Development	Carol Helland	4255562107
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**DEPARTMENT STAFF:**

Planning and Community Development	Seraphie Allen	Deputy Director
Planning and Community Development	Vangie Garcia	Transportation Planning & Engineering Manager
Planning and Community Development	LaNaya Taylor	TDM Program Administrator

**TITLE:**

2023-24 Go Redmond King County Metro Contract Renewal

**OVERVIEW STATEMENT:**

The City of Redmond and King County Metro has successfully partnered since 1999 in a robust Transportation Demand Management (TDM) program, implemented under the label "Go Redmond". Go Redmond program services are categorized into four categories: Employer TDM; Residential TDM; Equitable TDM; and TDM Pilot Programs. Go Redmond programming helps businesses meet required goals for the Commute Trip Reduction (CTR) law and Transportation Management Programs (TMP), reducing energy consumption, air pollution, and traffic congestion.

In anticipation of light-rail openings, some areas of focus for 2023-2024 include expanded education, and employer grants to Redmond employers; restarting our residential TDM focus with complete neighborhoods, and multifamily ORCA programs; getting Redmond light rail ready; and Hopelink continuing to implement Equitable TDM programming. Go Redmond will also explore new ways to collaborate on pilot interventions concerning shared parking opportunities and first/last mile solutions.

To continue the work, King County Metro has agreed to contribute \$247,500 of funding and the City provides a funding match of \$357,500. This contract allows Go Redmond to continue offering coordinated TDM products and services through December 31, 2024.

☐ **Additional Background Information/Description of Proposal Attached**

**REQUESTED ACTION:**

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

**REQUEST RATIONALE:**

- **Relevant Plans/Policies:**  
Commute Trip Reduction laws and Transportation Management Program Requirements
- **Required:**  
N/A
- **Council Request:**  
N/A
- **Other Key Facts:**  
N/A

**OUTCOMES:**

This contract continues to advance the shared objectives of the City and Metro to reduce drive-alone trips, thereby gaining users of transit, vanpool, carpool, biking, and walking. Go Redmond programming helps businesses meet required goals for the Commute Trip Reduction (CTR) law and Transportation Management Programs (tmp), reducing energy consumption, air pollution, and traffic congestion.

**COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:**

- **Timeline (previous or planned):**  
N/A
- **Outreach Methods and Results:**  
N/A
- **Feedback Summary:**  
N/A

**BUDGET IMPACT:**

**Total Cost:**

\$247,500 funded by King County Metro and \$357,500 of City contributions.

**Approved in current biennial budget:** ☒ Yes ☐ No ☐ N/A

**Budget Offer Number:**

0000034 - Mobility of People and Goods

**Budget Priority:**

Vibrant and Connected

**Other budget impacts or additional costs:** ☐ Yes ☐ No ☒ N/A

***If yes, explain:***

N/A

**Funding source(s):**

118 - Operating Grants. The Operating Grants Fund accounts for grants which are largely related to reducing congestion on the roadway.

**Budget/Funding Constraints:**

This agreement would fund products and services through December 31, 2024.

☐ **Additional budget details attached**

**COUNCIL REVIEW:**

**Previous Contact(s)**

Date	Meeting	Requested Action
	Item has not been presented to Council	N/A

**Proposed Upcoming Contact(s)**

Date	Meeting	Requested Action
3/21/2023	Business Meeting	Approve

**Time Constraints:**

The current King County Metro agreement expired 12/31/2022.

**ANTICIPATED RESULT IF NOT APPROVED:**

If the proposed Interlocal agreement is not approved, we would not receive \$247,500 in funding from King County Metro for Go Redmond programming. Staff would have to adjust community expectations at a lower level of program service. Go Redmond programming would have to limit residential and employer incentivizing initiatives and not expand partnerships, such as pilot first/last mile solutions for Redmond community members.

**ATTACHMENTS:**

Attachment A: City of Redmond Contract

# **TRANSPORTATION DEMAND MANAGEMENT AGREEMENT**

## **BETWEEN**

## **KING COUNTY**

## **AND**

## **THE CITY OF REDMOND**

THIS TRANSPORTATION DEMAND MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into by and between the City of Redmond, a Washington municipal corporation (the “City”) and King County, a political subdivision of the State of Washington (the “County”), through its Metro Transit Department (“Metro”), either of which entity may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

Whereas, on August 31, 2020 the County was awarded a Congestion Mitigation and Air Quality Improvement program (“CMAQ”) grant from the Federal Transit Administration (“FTA”) (Award WA-2020-087-00) in the amount of \$6,488,278 (the “CMAQ Grant”) to help improve air quality in urban areas by financing investments in various transportation demand management (“TDM”) activities and transit access improvements that improve traffic flow and support and encourage alternatives to driving alone; and

Whereas, the CMAQ Grant will support multi-modal transportation project planning and demonstration programs to reduce drive-alone vehicle travel and increase high occupancy vehicle use to help reduce energy consumption, air pollution and traffic congestion. Limited research and development activities are allowed under the CMAQ Grant but cannot be the primary purpose of the grant-funded work. The County intends to use up to \$247,500.00 of the CMAQ Grant funds as a sub-award to the City for work performed in accordance with the terms and conditions of this Agreement and not for research and development purposes as defined by 2 CFR 200.87 Research and Development (R&D):

R&D means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

“Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed

toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

There will be no indirect costs charged to this award; and

Whereas, the City, whose Unique Entity Identifier (UEI) number is XK1UCKFKU3N9, and the County provide TDM programs to commuters, students and residents directly or through employers, schools and/or property managers; and

Whereas, such TDM programs may include incentives, outreach, promotions, website development and maintenance, materials and services that facilitate travel by public transportation, shared rides, bicycling, walking and teleworking; and

Whereas, the City's TDM strategies, including activities conducted through the City's *Go Redmond Program*, have been effective in reducing drive-alone trips in Redmond; and

Whereas, the City and County have continued to adapt and improve on these TDM strategies by targeting new market segments and adding new travel options for Redmond area residents and workers;

NOW THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties agree as follows:

## **1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish a mutually beneficial arrangement between the City and the County that will help both Parties realize their respective TDM objectives. This Agreement also creates a mechanism to allow the County to reimburse the City for actual, direct costs incurred to perform the tasks identified in the Scope of Work ("SOW"), as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference. In consideration of the City's performance of the tasks and responsibilities set forth in the SOW, the County will reimburse the City with available CMAQ Grant funds up to the capped reimbursement amount specified at Section 4 of this Agreement.

## **2. AGREEMENT TERM AND MODIFICATIONS**

Upon signature by both Parties, this Agreement shall be effective as of January 1, 2023, and unless earlier terminated, shall remain in effect through December 31, 2024. The period of performance is from January 1, 2023 through December 31, 2024. If mutually agreed, the Agreement and period of performance may be extended by written amendment for up to an additional two (2) years. Exhibits and attachments may be modified at that time as may be mutually agreed by the Parties. Any extension shall be made in writing in accordance with

Section 14 of the Agreement. The County will extend this Agreement only on the condition that all City accounts with the County are current.

### **3. CITY'S RESPONSIBILITIES**

The City shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work identified with particularity in the SOW at Exhibit A to this Agreement. In addition to required tasks, applicable timelines and budget are also identified in Exhibit A.

### **4. COUNTY'S RESPONSIBILITIES**

The County will reimburse the City for actual, direct costs incurred to satisfactorily perform the tasks and implement the TDM tasks as provided for in the SOW at Exhibit A to this Agreement. In no event shall the total reimbursement made by the County to the City for work performed pursuant to this Agreement exceed \$247,500.00 (the "Reimbursement Cap").

### **5. INVOICE AND PAYMENT PROCEDURES**

The City shall submit completed invoice(s) to the County detailing direct costs, quarterly activities, outcomes and metrics within thirty (30) calendar days following each quarter's end. The County shall pay the City within thirty (30) calendar days after the County has received completed invoices. Indirect costs are not eligible for reimbursement under this Agreement.

In no event will the total County payments to the City exceed the Reimbursement Cap specified at Section 4 of this Agreement without the Parties mutually agreeing to amend this Agreement in accordance with Section 14 of the Agreement.

### **6. FEDERAL REQUIREMENTS**

A. This Agreement is subject to a financial assistance agreement between the County and the FTA. The City shall comply with all applicable federal laws, regulations, policies, procedures and directives, including but not limited to the following, which are attached hereto or incorporated herein by this reference:

1. 2 CFR Part 200.300 through 2 CFR Part 345, contained in Subpart D, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The text is available at: <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/xml/CFR-2015-title2-vol1.xml#seqnum200.300>
2. 2 CFR Part 200.400 through 2 CFR Part 200.475, contained in Subpart E, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal

Awards. The text is available at: <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/xml/CFR-2015-title2-vol1.xml#seqnum400.1>

3. The requirements and obligations imposed on a “Recipient” under the applicable provisions of the FTA Master Agreement. The Master Agreement text is available at: <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-master-agreement-fiscal-year-2020>
4. The requirements of FTA Circular 5010.1E Project Administration and Management. Circular 5010.1E text is available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e>
5. If the City contracts with a third party to provide all or a portion of the services described in this Agreement, then the City shall comply with FTA Circular 4220.1F. Circular 4220.1F text is available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>
6. Applicable FTA Third Party Contract Provisions – Standard Terms and Conditions. The text is attached as Exhibit B which, together with Attachments A through E, is incorporated herein by this reference.

B. New federal laws, regulations, policies, procedures and directives may be adopted after the date this Agreement is established and may apply to this Agreement. The City agrees to accept and comply with all applicable laws, regulations, policies, procedures and directives as may be amended or promulgated from time to time during the term of this Agreement.

C. The City shall not perform any act, fail to perform any act, or refuse to comply with any requests by the County which would cause the County to be in violation of any federal law or FTA requirement. The City’s failure to so comply with this Section shall constitute a material breach of this Agreement.

D. The County and City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, City, or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant thereto) pertaining to any matter resulting from this Agreement.

E. The City agrees to extend application of the federal requirements to its subrecipients or contractors, and their respective subcontractors, by including this Section and the related exhibits and attachments in each contract and subcontract the City awards under this Agreement financed



in whole or in part with Federal assistance provided by FTA. It is further agreed that this Section shall not be modified, except to change the names of the parties to reflect the subrecipient or contractor which will be subject to its provisions.

F. The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801, et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the work under this Agreement. Upon execution of this Agreement, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.

1. The City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5323(l)(1) on the City, to the extent the Federal Government deems appropriate.
2. The City agrees to include the language in Section F and Section F(1) above in each contract and subcontract it awards under this Agreement financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the contractor or subcontractor who will be subject to the provisions.

#### G. Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of 2 CFR part 1200. As such, the City is required to verify that none of the City, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The City is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into. By signing and submitting this Contract, the City certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the City knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The City agrees to comply with the requirements of 2 CFR 1200, Subpart C while this offer is valid and throughout the period of

any work or service that may arise from this Contract. The City further agrees to include a provision requiring such compliance in its lower tier covered transactions.

H. Because the County is sub-granting \$25,000 or more of pass-through FTA funds, the County must comply with the reporting requirements of The Federal Funding Accountability and Transparency Act (FFATA or Transparency Act – P.L.109-282., as amended by section 6202(a) of P.L. 110-252). The FFATA prescribes specific data to be reported and the County hereby agrees to report sub-award data into the website [www.USASpending.gov](http://www.USASpending.gov) via [www.ftrs.gov](http://www.ftrs.gov). The City agrees to provide the County with the information required in this paragraph within thirty (30) calendar days from the execution date of this Agreement:

- a. Location of the City (physical address(es), including congressional district(s)); and
- b. Place of performance (physical address(es), including congressional district(s)); and
- c. Unique identifier of the City and its parent (DUNS Number, a unique nine-digit number issued by Dun & Bradstreet (D&B) to a single business entity assigned to each business location in the D&B database having a unique, separate, and distinct operation for the purpose of identifying it); and
- d. Total compensation and names of top five (5) executives IF BOTH of the following apply:
  - i. More than eighty percent (80%) of the City's gross annual revenues are from the federal government, and those revenues are greater than \$25,000,000 annually, and
  - ii. Compensation information is not already available through reporting to the Securities and Exchange Commission.

I. The City agrees to provide the County with its Federal Central Contractor Registration number within thirty (30) calendar days of the execution of this Agreement. If it has not already registered, the City agrees to register with the Federal Central Contractor Registration at <https://sam.gov/content/home> and provide the County with the registration number within thirty (30) calendar days from the execution date of this Agreement. *Exceptions may be made on a case-by-case basis upon approval by the County.*

J. The City agrees to provide the County with a copy of its Title VI implementation plan in accordance with FTA Circular 4702.1B, Chapter III, Section 11. If the City does not have a Title VI plan, the County and the City agree to work together to sufficiently document the City's adoption of the County's Title VI plan, or in the alternative, the City's implementation of its own Title VI plan.

K. In accordance with FTA Circular 4702.1B, Chapter II, Section 2, and by signing this Agreement, the City certifies that it will comply with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, U.S. Department of Justice "Guidelines for enforcement of Title

VI, Civil Rights Act of 1964, 28 CFR §50.3, U.S DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.

## **7. DISPUTE RESOLUTION PROCESS**

- 7.1 Designated Dispute Resolution Representatives. The following individuals are the Designated Representatives for the purpose of resolving any disputes that may arise under this Agreement:

<b>For the County</b>	<b>For the City</b>
Carol Cooper Mobility Innovations Managing Director King County Metro 201 South Jackson Street, M/S KSC-TR-0411 Seattle, WA 98104 (206) 477-5871 carol.cooper @kingcounty.gov	Carol Helland Planning and Community Development Director 15070 NE 85 <sup>th</sup> St PO Box 97010 Redmond, WA 98073-9710 206-425-2426 chelland@redmond.gov

- 7.2 The County representative and the City 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 City Administrator or her/his designee and the General Manager of King County Metro or her/his designee shall confer and exercise good faith to resolve the dispute.
- 7.4 In the event the City Administrator and the General Manager of King County Metro 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 a 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. This Agreement is contingent upon federal grant funding and local legislative appropriations. As such, in addition to termination for default or convenience, the County may terminate this Agreement for non-appropriation or loss of grant funding by giving not less than thirty (30) calendar days' written notice thereof to the City.

## **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 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.
- 9.5 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.

9.6 Assignment. Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

9.7 Compliance with Applicable Laws. The Parties agree to comply with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to nondiscrimination, and agree to require the same of any subcontractors providing services or performing any work using funds provided under this Agreement.

## **10. 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.

## **11. INDEMNIFICATION**

Both Parties shall protect, defend, indemnify and save harmless each other, their officers, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from either Party's negligent acts or omissions in performing their obligations under this Agreement. The Parties agree that they are fully responsible for the acts and omissions of their own contractors, subcontractors, employees, and agents, acting within the scope of their employment as such, as they are for the acts and omissions of its own employees and agents. The Parties agree that their obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of their employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of both Parties immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the Parties only, and only to the extent necessary to provide the Parties, their officers, employees, and agents with a full and complete indemnity of claims made by the Parties employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement.

## **12. 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.

## **13. SEVERABILITY**

If any provision of this Agreement or any provision of any exhibit or attachment incorporated into the Agreement 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.

## **14. CHANGES AND MODIFICATIONS**

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

## **15. REPRESENTATION ON AUTHORITY OF SIGNATORIES**

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

## **16. 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.

## **17. CONTRACT MANAGEMENT**

The contact persons for the management of this Agreement (the “Contract Managers”) are identified and their contact information is provided herein and may be updated by either Party for their agency only and shall be submitted in writing or electronic mail to the other Party. Any update to the Contract Managers’ information shall state the effective date of said update.

<b>Contract Manager</b>	<b>King County</b>	<b>City of Redmond</b>
Contact Name	Kristine Edens	LaNaya Taylor

Title	Transportation Demand Management Lead (TDM Lead) King County Metro Market Innovation Section	Transportation Demand Management (TDM) Program Administrator City of Redmond
Address	201 S. Jackson St. M/S KSC-TR-0411 Seattle, WA 98104	15670 NE 85 <sup>th</sup> St. PO Box 97010 Redmond, WA 98073-9710
Telephone	(206) 263-9701	425-556-2482
E-Mail	<a href="mailto:Kredens@kingcounty.gov">Kredens@kingcounty.gov</a>	<a href="mailto:Ltaylor@redmond.gov">Ltaylor@redmond.gov</a>

The City shall conduct project administration and management to facilitate the effective and efficient progress and completion of the activities identified in Exhibit A (SOW) for the 2023-2024 period of performance. The City agrees to provide quarterly progress reports and invoices within thirty (30) days from the end of the quarter and any additional grant reporting requirements as requested by the County. The progress reports and invoices shall follow templates provided by the County within 30 days of agreement execution. Additionally, the City shall attend a quarterly TDM Regional Collaboration Meeting facilitated by the County with regional TDM partners.

## **18. RECORDS RETENTION AND AUDIT**

- 18.1 During the term of this Agreement and for a period of not less than six (6) years from the expiration or earlier termination of the Agreement, or the date of final payment by the County, whichever is later, the City shall keep available for inspection and audit by the County and the federal government the records pertaining to the Agreement and accounting therefore. Copies of all records, documents or other data pertaining to performance of the Agreement will be furnished by the City upon request. If any litigation, claim or audit is commenced related to performance of the Agreement, the records along with supporting documentation shall be retained until all litigation, claims and/or audit findings have been resolved even though such litigation, claim or audit continues past the six-year retention period.
- 18.2 All Agreement costs must be documented including copies of invoices and time sheets showing hours worked and rates, or financial system expense reports documenting these items.
- 18.3 The County, the U.S. Department of Transportation, the FTA, the State Auditor, and the Inspector General and any of their duly authorized representatives shall have full access to and right to examine, during normal business hours, all City records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and other matters covered by this Agreement.

- 18.4 Unless already published and available through the online, accessible audit reporting database at the federal audit clearinghouse, the City shall submit to the County a copy of the City's A-133 Single Audit report when requested by the County for subrecipient monitoring purposes.

## **19. EXECUTION OF AGREEMENT**

This Agreement may be executed in multiple counterparts, any one 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: \_\_\_\_\_  
Terry White  
General Manager  
King County Metro

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

### **CITY OF REDMOND**

By: \_\_\_\_\_  
Carol Helland  
Planning and Community Development  
Director  
City of Redmond

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



## **EXHIBIT A**

### **SCOPE OF WORK**

#### **Transportation Demand Management Agreement with King County Metro Period of Performance January 1, 2023 – December 31, 2024**

##### **Description**

Continuing the successful partnership between the City of Redmond and King County Metro that has been in place since 1999, the 2023-2024 budget and scope of work is laid out below. King County Metro would contribute \$247,500 of funding that will allow Go Redmond to continue offering coordinated Transportation Demand Management products and services through December 31, 2024. It is a matching grant with the City of Redmond, where the City provides a further \$357,500 to complete work in four categories: Employer TDM, Residential TDM, Equitable TDM, and TDM Pilot Programs.

##### **Background**

The partnership between the City of Redmond and King County began in 1999 to educate and engage Redmond residents, employees and employers in using alternatives to driving alone through the Go Redmond program. The services help businesses meet their goals for the Commute Trip Reduction (CTR) law and Transportation Management Programs (TMP) and thereby reduce energy consumption, air pollution, and traffic congestion. Go Redmond continues to advance the City's and Metro's shared objectives to reduce drive-alone trips, gaining users of transit, vanpool, carpool, biking and walking. Go Redmond has been very successful in forming partnerships with local businesses, schools and residents to provide effective alternatives to single-occupant vehicle use.

##### **Work Plan with Cost Breakdown**

Funds will be used in 2023 and 2024 under the City of Redmond TDM program to support a multimodal city where residents, visitors, and employers have equitable access to transportation options. Under this contract and budget cycle, work will be focused in four key areas:

1. **Employer TDM:** Continuing our successful partnership, the Go Redmond program will continue to support commuters by providing education and training to Employee Transportation Coordinators, transportation program grants, and transportation subsidies for their employees. We plan to emphasize telecommuting grants, subsidies, and education for employers and support their transition back to the workplace post COVID-19, with an emphasis on supporting the essential work force (healthcare, manufacturing, etc.). We plan to document employer grants, subsidy and incentive distribution and will submit as a part of our quarterly invoicing.
2. **Residential TDM:** 80% of all trips are non-commute related and with Redmond's projected growth and urbanization, TDM efforts are needed to reduce drive alone trips, reliance on a personal vehicle, reduce congestion, and improve the health and

vitality of our community. Residential TDM will include outreach and pilot programming to multifamily buildings, neighborhood-based outreach, and a school-based program.

3. Equitable TDM: Transportation related costs are the second highest household expense and low-income households are especially burdened by these costs. Certain modes of transportation seeing a pronounced gender gap or divergent experiences using the available options. Men are twice as likely to be bicycle commuters, and women have more pronounced safety concerns in using public transit. By TDM working to address equity issues, we are ensuring all people in Redmond have access to safe transportation options and we are building a more equitable and welcoming city. We will partner with Hopelink to continue to provide education and support to our under served populations.
4. Pilot Interventions: The TDM Landscape is changing quickly with new technologies and transportation options in micro mobility. By keeping a flexible program structure, the City of Redmond's TDM program can address opportunities as they arise and show proof of concept to new technologies and approaches.

Funding Category	Program Areas	2023-2024 Budget	COR %	KCM %
Employer TDM	Transportation Subsidies: Vanpool, Transit, Carpool, and Teleworking	\$ 80,000.00	100%	0%
	Commuter Incentives	\$ 10,000.00	100%	0%
	ETC Education, Employer Consulting, and Grants	\$ 100,000.00	50%	50%
	Program Administration and Marketing	\$ 55,000.00	50%	50%
	<b>Employer TDM Subtotal</b>	<b>\$ 245,000.00</b>	<b>\$167,500</b>	<b>\$77,500</b>
Residential TDM	SchoolPool	\$ 70,000.00	50%	50%
	TDM in Urban Centers & Transit Oriented Developments (light rail ready, 10 min neighborhoods, Multifamily ORCA program)	\$ 80,000.00	50%	50%
	<b>Residential TDM Subtotal</b>	<b>\$ 150,000.00</b>	<b>\$75,000</b>	<b>\$75,000</b>
Equitable TDM	TDM for the Redmond Workforce	\$ 40,000.00	50%	50%
	TDM for Diverse Communities (Hopelink)	\$ 70,000.00	50%	50%
	<b>Equitable TDM Subtotal</b>	<b>\$ 110,000.00</b>	<b>\$ 55,000</b>	<b>\$55,000</b>
Pilot Interventions	TDM Activities for a rapidly changing environment	\$ 60,000.00	50%	50%
	Coordination and outreach on new services	\$ 10,000.00	50%	50%
	Shared Parking: Private Park & Ride to access transit	\$ 40,000.00	75%	25%
	<b>Pilot Interventions Subtotal</b>	<b>\$ 110,000.00</b>	<b>\$60,000</b>	<b>\$40,000</b>
<b>2023-2024 Budget Total</b>	<b>GRAND TOTAL</b>	<b>\$615,000</b>	<b>\$357,500</b>	<b>\$247,500</b>

## EXHIBIT B

### FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT REQUIREMENTS

This Contract will be partially funded by the Federal Transit Administration (FTA). The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation. All contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F, as revised, dated March 18, 2013, as are the requirements of the Master Agreement between King County (“the County”) and the U.S. Department of Transportation, including all “flow down” provisions to third party Contractors and Subcontractors are hereby incorporated by reference. Unless stated otherwise, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

#### 1-1 Disadvantaged Business Enterprise (DBE) Participation

- A. Nondiscrimination 49 CFR part 26. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- B. DBE Program. The DBE requirements of 49 CFR Part 26 apply to this Contract. King County has determined that no DBE goal will be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.
- C. Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:
  - 1. Advertise opportunities for subcontractors and suppliers (“subcontractors”) in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting proposals directly from DBEs.
  - 2. Effectively use the services of available minority/women community organizations, Contractors’ groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a

case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small businesses.

5. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
6. Achieve DBE attainment through joint ventures.
7. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small businesses that have the capability to perform the Work of the Contract.
8. Select portions of the Work to be performed by Subcontractors to increase the likelihood that DBE and other small businesses' goals will be achieved.
9. Provide interested Subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
10. Negotiate in good faith with interested DBEs and other small businesses.
11. Avoid rejecting DBEs and other small businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to obtain DBE and other small business participation.
12. Make efforts to assist interested DBEs and other small businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
13. Make efforts to assist interested DBEs and other small businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693. For purposes of this Contract, a DBE firm must be certified by OMWBE as of the date of contract award.

E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Office of Business Development and Contract Compliance (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 263-9717. Notice referenced herein should be delivered to the following address:

King County Department of Finance

Office of Business Relations and Economic Development  
401 Fifth Avenue, Suite 350  
MS CNK-ES-0350  
Seattle, WA 98104  
Phone: (206) 263-9717  
Fax: (206) 205-0840

- F. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors, but may require the purchase of a retainage bond by the subcontractor.
- G. The Contractor must promptly notify the County whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

#### **1-2 Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **1-3 No Federal Government Obligations to Third Parties**

The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

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

#### **1-4 Civil Rights**

The following requirements shall apply to this Contract and all third-party contracts:

(A) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, U.S. Department of Justice "Guidelines for enforcement of Title VI, Civil Rights Act of 1964, 28 CFR §50.3, U.S DOT regulations, "Nondiscrimination in Federally-Assisted

Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any person on the basis of race, color, religion, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, section 503 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 793 and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Sex. In accordance with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, and FTA Circular 4220.1F Chapter IV, Section 2(a)(5)(b), the Contractor agrees to refrain from discrimination against present and prospective employees on the basis of their sex. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Age. In accordance with The "Age Discrimination Act of 1974, as amended, 42 U.S.C. Sections 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, and section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(4) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.'

(C) Information and Reports. The Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FTA to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor shall maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the FTA, as appropriate, and shall set forth efforts made to obtain the information.

(D) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
2. Cancellation, termination or suspension of the Contract, in whole or in part.

(E) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **1-5 Labor Provisions – Non-Construction Contracts (For Contracts in excess of \$100,000)**

The Contractor agrees to comply, and assures the compliance by each subcontractor or subconsultant at any tier with any applicable employee protection requirements for non-construction employees of Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. Sections 3701-3702 *et seq.*, 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)," 29 C.F.R. Part 5. These include but are not limited to the following:

**A. Overtime Requirements**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week. (29 CFR § 5.5(b)(1))

**B. Violation: Liability for Unpaid Wages: Liquidated Damages**

In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) 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 paragraph A of this section in the sum of ten (\$10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by paragraph A of this section. (29 CFR § 5.5(b)(2))

**C. Withholding for Unpaid Wages and Liquidated Damages**

The Department of Transportation or 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 monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph B of this section. (29 CFR § 5.5(b)(3))

**D. Payrolls and Basic Records**

The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (29 CFR § 5.5(c))



## **E. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through E of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through E of this section. (29 CFR § 5.5(b)(4)). The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than thirty (30) days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors, but may require the purchase of a retainage bond by the subcontractor.

### **1-6 Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **1-7 Audit and Inspection of Records**

**Access to Records.** The following access to records requirements apply to this Contract:

A. Where the FTA Recipient or a subgrantee of a FTA Recipient ("Purchaser") is the County, the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions in accordance with 2 C.F.R. 200.336. Contractor also agrees to provide the County and the FTA Administrator or his or her authorized representatives including any PMO Contractor, pursuant to 49 C.F.R. 633.17, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient, the Contractor agrees to provide the Purchaser, the FTA Administrator or his or her authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified

acquisition threshold currently set at \$100,000 (49 CFR Part 633.5).

C. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 C.F.R. 200.336, the Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

D. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

E. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

F. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

G. FTA does not require the inclusion of these requirements in subcontracts.

## **1-8 FTA Protest Procedures**

Bidders are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Transportation, the FTA may entertain a protest that alleges that the County failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) working days after the County renders a final decision or five (5) working days after the Bidder knows or has reason to know that the County has failed to render a final decision. The protesting party must notify the County if it has filed a protest with the FTA. After five (5) days, the County will confirm with FTA that FTA has not received a protest. Protests to the FTA must be filed in accordance with FTA Circular 4220.1F (as periodically updated).

The County will not award a contract for five (5) working days following its decision on a Bid protest or while a protest to the FTA is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to the County or the Federal Government.

## **1-9     Privacy**

Should the Contractor, or any of its subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any contractors, third party contractors, subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this contract will make this contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

## **1-10     Certification Regarding Debarment, Suspension and Other Responsibility Matters**

Pursuant to Executive Order 12549 and 12689, “Debarment and Suspension,” 31 USC § 6101 note and federal regulations in 2 CFR Part 180.300 and 2 CFR Part 1200, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000, each Bidder shall complete and submit, as part of its Bid, the certification contained in Attachment A for itself, its principals and its subcontractor(s) for any subcontract in excess of \$25,000. The inability of a Bidder to provide a certification in Attachment A will not necessarily result in denial of consideration for contract award. A Bidder that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation shall disqualify the Bidder from participation under this Bid. The County, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

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

#### **1-11 Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility**

By submitting a Bid for this Contract, the Bidder agrees that should it be awarded the Contract, it shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds; and shall require each subcontractor to complete the certification provided in Attachment B.

Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall not knowingly enter into any lower tier subcontract with a person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered subcontractor to provide the certification set forth in Attachment B.

The Contractor shall require each subcontractor, regardless of tier, to immediately provide written notice to the Contractor if at any time the subcontractor learns that its, or a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the subcontractors unless it knows that a certification is erroneous. The Contractor's knowledge and information regarding any subcontractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

#### **1-12 Disclosure of Lobbying Activities**

Bids in excess of \$100,000 require Attachment C, "Certification Regarding Lobbying," and Attachment D, "Disclosure of Lobbying Activities" (if appropriate), be completed and submitted to the County with the proposal, in accordance with the instructions contained in Attachment F to this Agreement, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 *et seq.*, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

#### **1-13 False or Fraudulent Statements or Claims**

(A) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any

statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(B) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(C) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **1-14 Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

#### **1-15 Environmental Requirements**

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

##### **A. Environmental Protection**

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 USC § 4321 note; FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500 *et seq.*; and joint FHWA/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622.

##### **B. Air Quality**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County will, in

turn, report each violation as required to assure notification to FTA and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**C. Clean Water**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h *et seq.* The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**D. Use of Public Lands**

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for work performed under this contract unless the FTA makes the specific findings required by 49 USC § 303.

**E. Historic Preservation**

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 *et seq.* involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

**F. Mitigation of Adverse Environmental Effects**

The Contractor agrees that if the Project should cause adverse environmental effects, the Contractor will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

**1-16 Termination Provisions Required**

All contracts and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it will be effected and the basis for settlement.

(Required by FTA Circular 4220.1F, Page IV-13).

**1-17 Breach Provisions Required**

All contracts in excess of \$100,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all subcontracts in excess of \$100,000 awarded under this Contract.

(Required by FTA Circular 4220.1F, Page IV-13).

**1-18 Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

**1-19 Sensitive Security Information**

The Contractor shall protect, and take measures to ensure that its subcontractors at each tier, protect “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. 40119 (b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. § 114 (r) and implementing Department of Homeland Security Regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

**1-20    Seatbelt Use**

Contractor shall adopt and promote on-the-job seatbelt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles in compliance with Federal Executive Order No. 13043, “Increasing Seatbelt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note. This provision shall be included in each third party subcontract involving the work performed under this contract.

**1-21    Texting While Driving and Distracted Driving**

Contractor shall promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009. This provision shall be included in each third party subcontract involving this project.

**1-22    Use of \$1 Coins**

The Contractor and the County agree to comply with Section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. Section 5312(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing \$1 coins.



**ATTACHMENT A**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**

Federal Transit Administration (FTA)

The prospective Primary Participant (potential contractor for a major third-party contract),  
\_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its  
principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three (3) year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this Bid had one or more public transactions (federal, state or local) terminated for cause or default.

[If the primary participant (applicant for an FTA grant, or cooperative agreement or potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.]

THE PRIMARY PARTICIPANT (POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3801, *ET SEQ.*, ARE APPLICABLE THERETO.

Name of Firm: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **ATTACHMENT B**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER-TIER COVERED TRANSACTIONS**

*(This Attachment may be completed and submitted to the Buyer after award of Contract.)*

The Lower-Tier Participant (potential sub-grantee or sub-recipient under a Federal Transit Administration (FTA) project, potential third-party contractor, or potential subcontractor under a major third-party contract), \_\_\_\_\_ certifies, by submission of this Bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

The Lower-Tier Participant will not knowingly enter into any lower-tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective Lower-Tier Participant agrees by submitting this proposal that it will include this requirement in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

If the Lower-Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third-party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Bid.

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-AGREEMENT UNDER AN FTA PROJECT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD-PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTAND THAT THE PROVISIONS OF 31 USC §§ 3801, *ET SEQ.*, ARE APPLICABLE THERETO.

Name of Firm: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ATTACHMENT C**

**CERTIFICATE OF LOBBYING ACTIVITIES**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee or a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to the contract administrator.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

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

Name of Firm: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ATTACHMENT D**

**DISCLOSURE FORM TO REPORT LOBBYING  
DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S. C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change  For material change only: year _____ quarter _____ Date of last report: _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:		<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:
<b>6. Federal Department/Agency:</b>		<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____
<b>8. Federal Action Number, if known:</b>		<b>9. Award Amount, if known:</b> \$ _____
<b>10. a. Name and Address of Lobbying Entity</b> (If individual, last name, first name, MI):		<b>b. Individuals Performing Services (including address if different from No. 10a)</b> (Last name, First name, MI):
<b>11. Amount of Payment (check all that apply):</b>		<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be Performed and date(s) of service, including officer(s), employee(s), or member(s) contacted, for payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)</b>		
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16. Information requested through this form is authorized by title 31 USC § 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 USC § 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not</b>		Signature: _____  Print Name: _____

less than \$10,000 and not more than \$100,000 for each such failure.	Title:
	_____
	_____
	Telephone No:
	_____
	Date:
	_____
	_____

## **ATTACHMENT E**

### **INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing to title 31 USC § 1352. The filing of a form is required for each payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subaward of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 - (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB)

number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10.
  - (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
  - (b) Enter the full name, of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the amount of box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not an SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.



## Memorandum

**Date:** 3/7/2023

**Meeting of:** Committee of the Whole - Planning and Public Works

**File No.** CM 23-082

**Type:** Committee Memo

**TO:** Committee of the Whole - Planning and Public Works

**FROM:** Mayor Angela Birney

**DEPARTMENT DIRECTOR CONTACT(S):**

Public Works	Aaron Bert	425-556-2786
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**DEPARTMENT STAFF:**

Public Works	Mike Paul	Senior Engineer (Consultant)
Public Works	Steve Gibbs	Construction Supervisor
Public Works	Jon Spangler	Engineering Manager

**TITLE:**

Approve the Second Amendment to the Agreement for Construction of Redmond Technology Station Pedestrian/Bicycle Bridge with Microsoft

**OVERVIEW STATEMENT:**

This amendment adds \$128,000 to the existing Construction Agreement between the City of Redmond and Microsoft. Under this reimbursement agreement Microsoft is funding City staff and consultant costs during the construction phase of the project. The additional funds from Microsoft are needed because the construction duration is longer than anticipated due to complexity of the project, construction challenges, large number of design changes, need to address non-conforming work, and nature of the design-build process.

☐ **Additional Background Information/Description of Proposal Attached**

**REQUESTED ACTION:**

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

**REQUEST RATIONALE:**

- **Relevant Plans/Policies:**  
N/A
- **Required:**  
Revised Code of Washington 39.80 and City Purchasing Policies and Procedures requires Council authorization for the Mayor to sign the contract.
- **Council Request:**  
N/A
- **Other Key Facts:**



The original Construction Agreement was approved by the City Council on 5/21/2019 for \$684,973. Amendment 1 was approved by City Council on 3/1/22 and increased the maximum amount payable by \$150,000, bringing the total to \$834,973. Amendment 2 increases the maximum amount payable by \$128,000, bringing the total to \$962,973.

**OUTCOMES:**

This pedestrian bridge will improve mobility, safety, and accessibility in the Overlake neighborhood by providing a new east-west trail connection across SR 520 for pedestrians and bicyclists to access the light rail stations, SR520 bike trail, and other destinations. This amendment funds the additional City and consultant resources needed to complete the project.

**COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:**

- **Timeline (previous or planned):**  
N/A
- **Outreach Methods and Results:**  
N/A
- **Feedback Summary:**  
N/A

**BUDGET IMPACT:**

**Total Cost:**  
N/A

**Approved in current biennial budget:** ☒ **Yes** ☐ **No** ☐ **N/A**

**Budget Offer Number:**  
CIP  
Other - Microsoft /City of Redmond Construction Agreement

**Budget Priority:**  
CIP

**Other budget impacts or additional costs:** ☐ **Yes** ☐ **No** ☒ **N/A**

***If yes, explain:***  
N/A

**Funding source(s):**  
N/A

**Budget/Funding Constraints:**  
N/A

☐ **Additional budget details attached**

**COUNCIL REVIEW:**

**Previous Contact(s)**

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

**Proposed Upcoming Contact(s)**

Date	Meeting	Requested Action
3/21/2023	Business Meeting	Approve

**Time Constraints:**

Timely approval of this Amendment is important to enable Microsoft to provide continued, uninterrupted reimbursement to the City for staff and consultant costs incurred during the construction phase of the project.

**ANTICIPATED RESULT IF NOT APPROVED:**

The City will not be reimbursed for all the staff and consultant work expected to be performed in 2023 to complete the project.

**ATTACHMENTS:**

Attachment A: Second Amendment to the Agreement for Construction of Redmond Technology Station Pedestrian/Bicycle Bridge

**SECOND AMENDMENT TO AGREEMENT FOR CONSTRUCTION OF REDMOND  
TECHNOLOGY  
STATION PEDESTRIAN/BICYCLE BRIDGE**

THIS SECOND AMENDMENT (the “Second Amendment”) amends the Agreement (the “Agreement”) for Construction of Redmond Technology Station Pedestrian/Bicycle Bridge (the “Bridge”) entered into between Microsoft Corporation (“Microsoft”) and the City of Redmond (the “City”) on June 3, 2019, as previously amended by the First Amendment (“First Amendment”) entered into by Microsoft and the City on \_\_\_\_\_, 202\_\_. Microsoft and the City are collectively referred to as “Parties” and individually as “Party” under the Agreement and this Amendment.

WHEREAS, the Agreement establishes the duties and responsibilities of Microsoft and the City with respect to the design, permitting, and construction of the Bridge and for obtaining easements and approvals necessary for the construction, operation, and maintenance of the Bridge; and

WHEREAS, Section 10 of the Agreement provided that Microsoft would reimburse the City for all costs incurred by the City for construction management, construction inspection, real property and real property legal services associated with the Bridge, up to a maximum of \$684,973.00 as shown on Exhibit B to the Agreement; and

WHEREAS, the maximum amount provided in Section 10 of the Agreement and the breakdown of costs on Exhibit B of the Agreement were based on anticipated completion of the Bridge in December 2020 and an estimated cost for structural engineering services; and

WHEREAS, the First Amendment increased the maximum amount provided in Section 10 of the Agreement to \$834,973.00, based upon the anticipated date of completion of the Bridge being extended to May 2022; and

WHEREAS, the current schedule for the Bridge shows construction completion in May 2023, with additional work extending through December 2023, resulting in additional costs for the City; and

WHEREAS, continued City services and support, including but not limited to, project management, construction management, structural engineering, construction inspection, real property and real property legal services, and coordination, will be needed until all work is completed; and

WHEREAS, Microsoft and the City desire to amend the Agreement a second time to recognize the additional costs that will be incurred and to provide for reimbursement of those costs.

NOW, THEREFORE, in consideration of the recitals, terms, covenants, and conditions contained herein, the Parties agree as follows:

**Section 1. Maximum Reimbursement Increased.** Subsection 10(A) of the Agreement, as amended by the First Amendment, is hereby further amended to read as follows:

A. Microsoft shall reimburse the City for all costs incurred by the City to provide project management, construction management, structural engineering, construction inspection, real property and real property legal services, and coordination associated with the Bridge. Costs to be reimbursed shall include time specific to these services expended by City staff and its consultants performing these services up to a maximum amount of \$962,973 (which includes \$50,000 in contingency) as shown on Exhibit B attached to the Second Amendment to this Agreement. The City may submit invoices to Microsoft no more frequently than once per month and Microsoft shall pay the same within 30 days of receipt.

**Section 2. Exhibit B Amended.** Exhibit B to the Agreement, as amended by the First Amendment, is hereby further amended to read as set forth on Exhibit B attached hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

MICROSOFT CORPORATION, a Washington  
corporation

CITY OF REDMOND, a Washington  
municipal corporation

\_\_\_\_\_  
(Signature)  
Print or Type Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Print or Type Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT B

	<b>EXHIBIT (Signed in 2019)</b>	<b>2020 (1.9%)</b>	<b>2021 (2.00%)</b>	<b>2022 Hourly Rates (5.00%)</b>	<b>2023 Hourly Rates (7.00%)</b>
<b>City Staff*</b>					
Engineer Supervisor	153.57	156.48	159.61	167.60	179.33
Engineer Sr.	95.56	97.38	99.32	104.29	111.59
Construction Inspector Lead	84.70	86.31	88.04	92.44	98.91
Transportation Engineer	108.8	110.86	113.08	118.74	127.05
Engineering Tech Sr.	81.87	83.43	85.10	89.35	95.61
Planner Sr.	73.96	75.37	76.87	80.72	86.37
<u>Lead Maintenance Worker</u>			78.22	82.13	87.88
<b>Consultants</b>					
Structural Engineer (ISE)	148.50	151.50	151.50	157.81	157.81
Sr. Real Property Agent (LeBonde Land)	135.00	135.00	135.00	135.00	135.00
Attorney at Law (OMW)	350.00	350.00	350.00	350.00	375.00
Project Manager (KPG Psomas)					138.00

\*City Staff Hourly Rates Include Salary, Benefits and Operating Costs.

Hourly rates will be adjusted annually to reflect salary adjustments, inflation, and any other adjustments so the rates reflect actual hourly rates.