

**FUNDING AGREEMENT  
BETWEEN THE CITY OF REDMOND AND SOUND TRANSIT  
FOR INTERSECTION IMPROVEMENTS AT 152<sup>ND</sup> AVENUE NE AND NE 24<sup>TH</sup> STREET  
FOR THE EAST LINK LIGHT RAIL EXTENSION PROJECT**

THIS AGREEMENT ("Agreement") is entered into between the City of Redmond (the "City"), a Washington municipal corporation, and the Central Puget Sound Regional Transit Authority ("Sound Transit"), a regional transit authority, for the purposes set forth below. The City and Sound Transit are collectively referred to hereafter as "the Parties" or individually as a "Party."

**RECITALS**

**WHEREAS**, the City is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes;

**WHEREAS**, Sound Transit is a regional transit authority created pursuant to chapters 81.104 and 81.112 RCW, with all powers necessary to implement a high-capacity transit system within its boundaries in King, Pierce, and Snohomish Counties;

**WHEREAS**, Sound Transit completed environmental review for the East Link Light Rail Extension Project ("East Link") in accordance with the National and State Environmental Policy Acts ("NEPA" and "SEPA"). In July 2011, the Sound Transit Board adopted Resolution R2011-10 selecting the route, profile, and station locations. In November 2011, the Federal Transit Administration issued an environmental Record of Decision ("ROD") for the East Link project, which includes required mitigation commitments that are incorporated as part of the project definition;

**WHEREAS**, in March 2013, the Sound Transit Board adopted Resolution R2013-09 updating the selected route, profile, and station locations superseding R2011-10;

**WHEREAS**, the ROD identified an environmental commitment to add a southbound right turn pocket at 152<sup>nd</sup> Avenue NE and NE 24<sup>th</sup> Street, or a similar intersection improvement, ("Intersection Improvements Project") to be coordinated with the City to mitigate intersection impacts associated with East Link;

**WHEREAS**, the City has developed plans and a cost estimate for the construction of the Intersection Improvements Project, which will implement the ROD environmental commitment above; and

**WHEREAS**, the Parties have determined that the most efficient means of constructing the Intersection Improvements is for the City to construct these improvements and for Sound Transit to reimburse the City for a portion of the costs as described below.

**NOW THEREFORE**, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed that:

1. Purpose. This Agreement provides that Sound Transit funds one-half of the cost of the Intersection Improvements Project ("Project"), as described in **Exhibit A**, a fixed price of one million three hundred thirty-eight thousand eight hundred and twenty-two dollars (\$1,338,822). The Parties agree that this funding amount is fair and reasonable, and that the completion of the Project satisfies Sound Transit's environmental mitigation requirements for this item. The City is responsible for the balance of funding for the Project.
2. Project Administration. The Parties acknowledge that the City will have sole responsibility for the design, construction, project and construction management including, but not limited to, procurement and construction administration, as well as ownership and maintenance of the facilities after construction. The City shall notify and consult with Sound Transit's Designated Representative (identified in **Exhibit C**) before making any substantive changes to the Project.
3. Schedule. The City shall complete construction of the Project before December 31, 2023, unless otherwise mutually agreed by the Parties. The intersection Improvements will be located in the vicinity of the East Link project being constructed by Sound Transit's selected contractor under its E360 contract and the City shall coordinate with Sound Transit and its contractor regarding potential lane closures or other traffic impacts in the vicinity of that contract to avoid impacts to that project's scope, schedule and budget.
4. Signage. Any identification signage that is used during the construction of the Project shall identify Sound Transit as a funding partner.
5. Invoicing.
  - 5.1. The City shall submit invoices and supporting documentation for Sound Transit's reimbursement contribution payments for work completed. The invoices must include the appropriate purchase order number, which Sound Transit will provide after execution of this Agreement, a cover memo including a description of services provided by the City as described in **Exhibit B**, and documentation of the expenses such as (1) verification of in-house labor costs and other relevant work records, (2) invoices for support services and materials, and (3) copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the City including, but not limited to, work records, rates, material and equipment costs.
  - 5.2. The City shall submit its invoices with the required documentation via email, [AccountsPayable@SoundTransit.org](mailto:AccountsPayable@SoundTransit.org), or by mail addressed to Sound Transit, Accounts Payable, 401 S. Jackson St., Seattle, WA 98104-2826. Invoices are payable

- thirty (30) days upon Sound Transit's receipt of the invoice and acceptable documentation.
- 5.3. If Sound Transit determines that an invoice lacks sufficient documentation to support payment, Sound Transit will notify the City of its determination and request that the City provide additional documentation. Sound Transit may withhold payment of the invoice until supporting documentation is provided; however, such approval shall not be unreasonably withheld.
6. Audit. The Parties shall each maintain accounts and records, including contract and financial records that sufficiently and properly reflect all direct and indirect costs of any nature expended for work performed under this Agreement so as to ensure proper accounting for all monies paid to the City by Sound Transit. These records shall be maintained for a period of six (6) years after termination or expiration of this Agreement unless permission to destroy the records is granted by the Office of the Archivist pursuant to RCW Chapter 40.14 and agreed to by the City and Sound Transit.
7. Designated Representatives. To ensure effective intergovernmental cooperation and efficient Project review, the Parties shall each designate a single representative responsible for communications between the Parties ("Designated Representative"). Each Party's Designated Representative is identified in **Exhibit C**.
8. Dispute Resolution.
- 8.1. The Parties agree to work cooperatively and in good faith to resolve issues. The Parties agree that neither party shall take or join any action in any judicial or administrative forum to challenge the action of the other party associated with this Agreement or the Project, except as set forth herein.
- 8.2. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level possible.
- 8.3. Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between Sound Transit and the City shall be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently.
- 8.4. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement or the Project using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:

- 8.4.1. Level One: Sound Transit's and the City's Designated Representatives identified in **Exhibit C** shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, either Party may refer the dispute to Level Two.
- 8.4.2. Level Two: Sound Transit's Senior Executive Project Director for East Link and the City's Public Works Director or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, either Party may refer the dispute to Level Three.
- 8.4.3. Level Three: Sound Transit's Chief Executive Officer or Designee and the City's Mayor or Designee shall meet to discuss and attempt to resolve the dispute in a timely manner.
- 8.5. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) days after referral of that dispute to Level Three, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. At all times prior to resolving the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither party has an obligation to agree to refer the dispute to mediation nor other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.

- 9. Insurance. During the Project's construction phase, the City shall provide evidence of primary insurance coverage in the amounts that it deems necessary for construction work of similar size and cost. Such liability insurance shall name Sound Transit and the City, its officers, directors, agents, and employees as additional insured with respect to the work, including completed operations, under this Agreement. If the City is self-insured, it shall provide to Sound Transit's risk manager a certificate of self-insurance. The City shall require their contractor(s) to obtain and maintain insurance in amounts and types suitable to protect Sound Transit and the City from exposures presented by the work performed under this Agreement.

The minimum insurance requirements during the entire term of this Agreement are set forth below:

- (a) Commercial General Liability in the amount of one million dollars (\$1,000,000) each occurrence limit, two million dollars (\$2,000,000) general aggregate limit, covering bodily injury including death, personal injury, property damage, Employers' Liability

and contractual coverage endorsements, and utilize insurers and coverage forms acceptable to Sound Transit.

- (b) Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least one million dollars (\$1,000,000) per accident/occurrence.
- (c) Worker's Compensation insurance coverage, where applicable, shall comply with State of Washington Labor and Industries requirements.
- (d) Builders Risk coverage in an amount acceptable to Sound Transit.
- (e) Pollution Liability (if there is any potential environmental liability exposure) in the amount of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

Certificates of insurance shall name Sound Transit and the City as "Additional Insureds," and shall reference the number and title of this Agreement. Certificates of Insurance will be provided to Sound Transit and the City prior to the start of any work performed under this Agreement.

All insurance coverage obtained by the City or their contractors and subcontractors shall name Sound Transit, its officers and employees as "additional insured's" and contain "severability of interest" (cross liability) provisions. The City's and the contractor's insurance policies shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit.

10. Indemnity.

10.1. To the greatest extent allowed by law, the City agrees to hold harmless, indemnify, and defend Sound Transit, its elected officials, officers, agents, and employees, from and against any and all claims, losses or liability, for injuries, sickness or death of persons, including claims by the City's employees, or damages, arising out of any willful misconduct or negligent act, error, or omission on the part of or on behalf of the City, its officers, agents, or employees, in connection with the services required by this Agreement, provided, however, that:

10.1.1. The City's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death, or damage caused by or resulting from the sole willful misconduct or sole negligence of Sound Transit, its elected officials, officers, agents or employees; and

10.1.2. The City's obligations to indemnify, defend and hold harmless for injuries, sickness, death, or damage caused by or resulting from the concurrent negligence or willful misconduct of the City and Sound Transit, or of the City and a third party other than an elected official, officer, agent, or employee of the

City, shall apply only to the extent of the negligence or willful misconduct of the City, its elected officials, officers, agents, or employees.

- 10.2. Each Party agrees to bear full responsibility for any and all tax liabilities owed that may arise in relation to this Agreement, and each Party shall fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by other Party arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest that are assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and costs incurred in response to any claims or assessments by any tax authority against indemnifying Party, its officers, agents and employees.
- 10.3. The obligations in this Section shall survive termination or completion of this Agreement as to any claim, loss or liability arising from events occurring prior to such termination or completion.

11. Warranties.

11.1. By execution of this Agreement, the City warrants:

11.1.1. That the City has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement the City is not in violation of any law, regulation, or agreement; and

11.1.2. That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite corporate action, that the signatories for the City hereto are authorized to sign this Agreement.

11.2. By execution of this Agreement, Sound Transit warrants:

11.2.1. That Sound Transit has the full right and authority to enter into and perform this Agreement, and that by entering into or performing this Agreement Sound Transit is not in violation of any law, regulation or agreement; and

11.2.2. That the execution, delivery and performance of this Agreement by Sound Transit has been duly authorized by all requisite corporate action, that the signatories for Sound Transit hereto are authorized to sign this Agreement.

- 12. Default. Sound Transit may terminate this Agreement if construction of the Project is not completed within timeline established in this Agreement, unless otherwise mutually agreed by the Parties. If this Agreement is terminated under this Subsection, the City shall reimburse Sound Transit the full amount of all payments associated with the incomplete improvements made to the City pursuant to this Agreement within ninety (90) days of the date of termination.

13. Duration. This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the Project is completed and open to the public, unless this Agreement is extended by mutual agreement of the Parties pursuant to Section 19, superseded by a future agreement, or suspended or terminated pursuant to Section 12.
14. Administration of Agreement.
  - 14.1. This Agreement will be jointly administered by Sound Transit's Designated Representative and the City's Designated Representative.
  - 14.2. Each party shall be responsible for its own public records and public records requests.
  - 14.3. Pursuant to RCW 39.34.040, each Party shall list this Agreement on its website by subject matter and shall post a copy in an electronically retrievable source for public viewing.
15. Assignment of Beneficiaries. Neither Party may assign all or any portion of this Agreement without the express written consent of the other Party. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
16. Notices.
  - 16.1. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representative.
  - 16.2. Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited with the U.S. Postal Service with postage prepaid and certified/return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's Designated Representative as listed herein. However, notice under Section 12, Suspension and Termination, must be delivered in person or by certified mail, return receipt requested.
17. Federal Requirements.
  - 17.1 The Parties acknowledge that East Link funding is subject to a financial assistance contract between Sound Transit and the United States Department of Transportation ("USDOT") and the Federal Transit Administration ("FTA").
  - 17.2 The City agrees to comply with the federal funding requirements described in the FTA's Master Agreement and Circular C4220.1F by including the applicable requirements described in **Exhibit D**, incorporated by reference herein, into its

contracts with third-party contractors and their subcontractors for services or work funded by this Agreement.

17.3 The Parties will work cooperatively to determine which federal requirements are applicable to which contracts before the City initiates its procurement process for each contract.

17.4 In addition, both Parties recognize that the FTA may request further changes to this Agreement to comply with its funding requirements and agree to consider any such requests in good faith.

18. General Provisions.

18.1. The Parties shall not unreasonably withhold requests for information, approvals, or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Sound Transit Board or Redmond City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that such actions or documents must be first approved by vote of the Sound Transit Board or Redmond City Council, such actions are recognized to be legislative actions. The Parties agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement.

18.2. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

18.3. Time is of the essence in every provision in this Agreement. Unless otherwise set forth in this Agreement, the reference to "days" shall mean calendar days unless otherwise noted. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

18.4. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.

18.5. Neither Party shall be relieved of its obligations to comply promptly with any provision of this Agreement by reason of any failure by the other Party to enforce prompt compliance. Such failure to enforce shall not constitute a waiver of rights or acquiescence in the other Party's conduct.

18.6. This Agreement has been reviewed and revised by legal counsel for each party and no presumption or rule that ambiguity shall be construed against the party drafting

the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

- 18.7. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties. If either Party brings any claim or lawsuit arising from this Agreement, each Party shall pay all its legal costs and attorney's fees and expenses incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; however, nothing in this paragraph shall be construed to limit the Parties' rights to indemnification.
- 18.8. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- 18.9. This Agreement may be amended only by a written instrument executed by both Parties. The Designated Representatives may, by mutual agreement, revise or replace the Exhibits as necessary.
- 18.10. In case any term of this Agreement shall be held invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

Each of the Parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below and the effective date shall be the last date written below:

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**IN WITNESS WHEREOF**, each of the Parties has executed this Agreement by having its authorized representative affix her/his name in the appropriate space below:

SOUND TRANSIT

CITY OF REDMOND

By: \_\_\_\_\_  
Peter M. Rogoff, Chief Executive  
Officer

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

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

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

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Stephen G. Sheehy, Senior Legal  
Counsel

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

**Exhibit List:**

Exhibit A: Intersection Improvements Plans and Estimate

Exhibit B: Invoice Form

Exhibit C: Designated Representatives

Exhibit D: Federal Requirements

**Exhibit A**  
**Intersection Improvements Plans and Estimate**

## EXHIBIT A

City of Redmond Overlake Village

Conceptual Cost Estimate of Constructing a SB Right Turn Lane from 152nd Ave NE to 24th St NE

Prepared by Parsons Brinckerhoff Inc., updated per 2017 152nd Project Information

ITEMS	QTY	UNIT	UNIT COST	AMOUNT	SUBTOTAL
<b>SECTION 1 - PREPARATION</b>					
MOBILIZATION (10%)	1	LS	\$51,732.70	\$51,733	
Temporary Traffic Control	1	LS	\$60,000.00	\$60,000	
TREE REMOVAL	15	EA	\$500.00	\$7,500	
SIDEWALK REMOVAL	186	SY	\$36.00	\$6,696	
CURB REMOVAL	681	LF	\$7.00	\$4,767	
ASPHALT CONCRETE PAVEMENT REMOVAL	1112	SF	\$10.00	\$11,120	
CLEARING AND GRUBBING	0.2	ACRE	\$16,000.00	\$3,200	
SAWCUT	408	LF	\$5.00	\$2,040	
REMOVE FIRE HYDRANT	1	EA	\$700.00	\$700	
Remove existng storm	1	LS	\$20,000.00	\$20,000	
<b>SUBTOTAL SECTION 1</b>					<b>\$167,756</b>
<b>SECTION 3 - DRAINAGE/STORMWATER</b>					
CATCHBASIN TYPE 2 48 IN DIAMETER	2	EA	\$3,000.00	\$6,000	
12' CONCRETE PIPE	30	LF	\$50.00	\$1,500	
Replace PS Business Detention 36" Storm pipe	530	LF	\$150.00	\$79,500	
Typee 2 control structure	2	EA	\$5,000.00	\$10,000	
<b>SUBTOTAL SECTION 3</b>					<b>\$97,000</b>
<b>SECTION 4 - UTILITIES</b>					
FIRE HYDRANT ASSEMBLY	1	EA	\$5,000.00	\$5,000	
6" DUCTILE IRON PIPE	20	LF	\$100.00	\$2,000	
<b>SUBTOTAL SECTION 4</b>					<b>\$7,000</b>
<b>SECTION 6 - SURFACING</b>					
CRUSHED SURFACING BASE COURSE	93	TON	\$35.00	\$3,255	
CRUSHED SURFACING TOP COURSE	28	TON	\$38.00	\$1,064	
<b>SUBTOTAL SECTION 6</b>					<b>\$4,319</b>
<b>SECTION 7 - PAVEMENT</b>					
HMA CL. 1/2" PG 64-22	242	TON	\$100.00	\$24,200	
CEMENT CONCRETE SIDEWALK	246	SY	\$70.00	\$17,220	
CONCRETE CURB RAMP	2	EA	\$3,000.00	\$6,000	

## EXHIBIT A

<b>SUBTOTAL SECTION 7</b>	<b>\$47,420</b>
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### SECTION 8 - EROSION CONTROL AND PLANTING

LANDSCAPING - ACCENT TREE	25	EA	\$450.00	\$11,250
LANDSCAPING - SHRUB/GROUND COVER	1180	SF	\$15.00	\$17,700
TESC	1	LS	\$5,000.00	\$5,000

<b>SUBTOTAL SECTION 8</b>	<b>\$33,950</b>
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Modular Block Wall	700	SF	\$20.00	\$14,000	<b>\$14,000</b>
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### SECTION 9 - TRAFFIC ITEMS

CEMENT CONC. TRAFFIC CURB AND GUTTER	363	LF	\$25.00	\$9,075
PLASTIC TRAFFIC ARROW	2	EA	\$120.00	\$240
PLASTIC CROSSWALK LINE	130	LF	\$10.00	\$1,300
ROADWAY ILLUMINATION	1	EA	\$25,000.00	\$25,000
SIGNAL POLE	1	EA	\$25,000.00	\$25,000
CONTROLLER CABINET + WIRING	1	EA	\$40,000.00	\$40,000
ELECTRICAL SERVICE	1	EA	\$5,000.00	\$5,000
RELOCATE TERMINAL CABINET	1	EA	\$2,000.00	\$2,000

<b>SUBTOTAL SECTION 9</b>	<b>\$107,615</b>
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### SECTION 10 - PSE

Relocate PSE facilities	250	LF	\$600.00	\$150,000
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<b>SUBTOTAL SECTION 10</b>	<b>\$150,000</b>
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<b>TOTAL</b>	<b>\$629,060</b>
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Design ALLOWANCE (30%)	\$188,718
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Allocated CONTINGENCY (20%)	\$125,812
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PSE RISK CONTINGENCY	\$75,000
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Construction Subtotal	\$1,018,590
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Escalation at 3.5% to 2020 Construction	\$110,739
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<b>CONSTRUCTION TOTAL</b>	<b>\$1,129,328</b>
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ROW ACQUISITION	5530	SF	\$76.00	\$420,280	\$420,280
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PSE Easement	2000	SF	\$38.00	\$76,000	\$76,000
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Parking stalls	22	ea	\$10,000.00	\$220,000	\$220,000
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<b>ROW Subtotal</b>				<b>\$716,280</b>	<b>\$716,280</b>
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## EXHIBIT A

ROW CONTINGENCY (40%)						\$286,512
ROW TOTAL						\$1,002,792
Design Engineering (25%)						\$282,332
Construction Engineering (20%)						\$225,866
Storm fee	3.2	IU	\$8,539.00	\$27,325		\$27,325
PROJECT TOTAL						\$2,667,643

Assumption:

12' Lane x 150' of Storage x 160' of Deceleration Lane (includes taper length)

Price per SF from Overlake Village Final Implementation Summary Costs spreadsheet, and confirmed with other ROW acquisition in the area

## EXHIBIT A

Diagram illustrating the impact areas used to calculate this estimate. The diagram shows a road intersection with a 'NO TURN ON RED' sign. Impact areas are marked with circles and numbers 1 through 6.



**Exhibit B**  
**Invoice Form**

Invoice No. \_\_\_\_\_ Dated: \_\_\_\_\_

TO: Sound Transit  
Accounts Payable  
401 S Jackson Street  
Seattle, WA 98104

accountspayable@soundtransit.org

Attention: Accounts Payable and [Sound Transit's Designated Representative]

Re: Redmond NE 152<sup>nd</sup> Intersection Improvements: East Link, PO# \_\_\_\_\_

The City's authorized representative certifies that the amount of \$\_\_\_\_\_ is due and payable to the City in accordance with the provisions of the Agreement, as supported by the attached invoice and supporting documentation.

*[Identify the phase(s), and the amounts by phase, for which the amount due applies]*

The City makes the following representations and warranties to Sound Transit in connection with the Invoice:

- All work performed to date has been, unless otherwise specifically stated by the City, performed in accordance with the terms and conditions of this Agreement.
- The amount specified above has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous invoice (unless disputed or rejected for payment) and is not the subject of any pending invoice from the City.

Any liability of Sound Transit arising from these representations and warranties are governed by the terms and conditions of the Agreement.

**City of Redmond**

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

*[Name, Position]*

**Exhibit C**  
**Designated Representatives**

Sound Transit:

Leonard McGhee  
Redmond Project Manager  
401 S. Jackson Street  
Seattle, WA 98104-2826  
Email: [leonard.mcghee@soundtransit.org](mailto:leonard.mcghee@soundtransit.org)  
Phone: 425-221-3049

City of Redmond:

Name Peter C. Dane  
Title Planner, City of Redmond  
15670 NE 85<sup>th</sup> Street  
Redmond, WA 98052  
[pbdane@redmond.gov](mailto:pbdane@redmond.gov)  
425-556-2816

**Exhibit D**  
**Federal Provisions**

**INCORPORATION OF FTA PROVISIONS**

**1.1 APPLICABILITY OF FEDERAL GRANT CONTRACT**

- A. This agreement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation (DOT), which incorporate the current FTA Master Agreement and Circular 4220.1 as amended.
- B. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, and the Master Grant Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.
- C. The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Contract and any lower tier subcontracts at any level and to take appropriate measures to ensure that Contractor and its lower tier Subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The following provisions of the FTA Master Agreement are hereby incorporated by reference into this Contract, and the Contractor shall comply with all such requirements.
- D. 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 Sound Transit 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.
- E. Copies of the FTA Circular 4220.1, as amended, and the Master Grant Agreement are available from Sound Transit.

**1.2 FEDERAL FUNDING LIMITATION**

The Contractor understands that a portion of the funds to pay for the Contractor's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All such funds must be approved and administered by FTA. Sound Transit's obligation hereunder is, in part, payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If such funds are not allocated, or ultimately are disapproved by FTA, Sound Transit may be required to terminate or suspend the Contractor's services. In such event, the Contract may at Sound Transit's option be terminated for convenience in accordance with these General Conditions.

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

- A. Notwithstanding that the Federal Government may have concurred in or approved the solicitation for this Contract, the Federal Government is not a party to this Contract and has no obligations or liabilities to any entity other than Sound Transit, including the Contractor and its Subcontractors and Suppliers at any tier.
- B. The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provision.

### **1.4 ACCESS TO RECORDS**

- A. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- D. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **1.5 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 Purchaser 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.

### **1.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

- A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49

CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

- B. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- C. By signing and submitting its Bid, the Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by Sound Transit. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to Sound Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **1.7 FEDERAL LOBBYING RESTRICTIONS**

- A. This Contract is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Contractors and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
- C. The Contractor shall submit the "Certification Regarding Lobbying," included in the Bid documents. The Contractor's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed one hundred thousand dollars (\$100,000), and that all such Subcontractors shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Contractor, who is in turn responsible for keeping the certification forms of

Subcontractors. Further, by executing the Contract, the Contractor agrees to comply with these laws and regulations.

- D. If the Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Contract, the Contractor must disclose these activities. In such a case, the Contractor shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." Sound Transit must also receive all disclosure forms.
- E. The Contractor and any Subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
  - 1. A cumulative increase of twenty-five thousand dollars (\$25,000) or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or
  - 2. A change in the person(s) influencing or attempting to influence this federally funded Contract; or
  - 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

**1.8 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that

the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

#### **1.9 ANTI-KICKBACK**

- A. Sound Transit and contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. Under state and federal law, it is a violation for Sound Transit employees, proposers, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.
- B. "Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

#### **1.10 CIVIL RIGHTS**

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
  - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

#### **1.11 BUY AMERICA REQUIREMENTS**

- A. The Contractor agrees to comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General Waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out in section 165(b)(3), of the Surface Transportation Assistance Act of 1982 and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
- B. A bidder or offeror must submit to Sound Transit the appropriate Buy America certification, attached herein, with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors
- C. Whether or not a Bidder certifies that it will comply with the applicable requirement, Bidder will be bound by its original certification and is not permitted to change its certification after the time that the Bid is submitted, except for clerical error. A Bidder that certifies that it will comply with the applicable Buy America requirements

may not change its certification at any point, and is not eligible for waiver of those requirements. (Buy America Regulations, 49 CFR Part 661.13(c))

- D. If the Bidder is unable to certify compliance, but believes that it may qualify for an exception to the requirement consistent with section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, Sound Transit, on behalf of the Bidder, will tender the request for exception(s) to FTA for review and approval. Sound Transit does not warrant that any such request will be acted upon in accordance with the Bidder's time frame. Failure to achieve an exception will not relieve the Bidder of its responsibilities under this Section.

#### **1.12 BONDING REQUIREMENTS**

- A. Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:
- B. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- C. A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- D. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold

#### **1.13 CARGO PREFERENCE**

Pursuant to 46 CFR Part 381, the Contractor agrees:

- A. To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- B. To furnish within twenty (20) Days following the date of loading for shipments originating within the United States, or within thirty (30) Business Days following the date of loading for shipment originating outside the United States, a legible copy of a

rated, commercial ocean bill of lading in English for each shipment of cargo described in paragraph A above to Sound Transit (through the prime Contractor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, SW, Washington, D.C., 20590, marked with appropriate identification of the Project.

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

#### **1.14 FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 40018 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

#### **1.15 RECOVERED MATERIALS**

- A. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247.
- B. These requirements flow down to all Contractor and Subcontractor tiers.

#### **1.16 ENERGY CONSERVATION**

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

#### **1.17 CLEAN WATER**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as

required to assure notification to FTA and the appropriate EPA Regional Office.

- B. The Contractor also agrees to include these requirements in each Subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with Federal assistance provided by FTA.

#### **1.18 CLEAN AIR**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **1.19 MIGRATORY BIRD TREATY ACT**

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

#### **1.20 SEISMIC SAFETY**

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### **1.21 ELECTRONIC AND INFORMATION TECHNOLOGY**

When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others, on behalf of Sound Transit, the Contractor agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

#### **1.22 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

The Contractor shall comply with the following requirements:

- A. As a recipient of financial assistance from the federal Department of Transportation

(DOT), through the Federal Transit Administration (FTA), Sound Transit developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall review and comply with applicable provisions in 49 CFR Part 26 and Section 00 73 39 of this Contract.

B. The Contractor shall comply with the following assurance:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Sound Transit deems appropriate.

C. The Contractor shall include in each Subcontract it awards pursuant to this Contract the following assurance:

"The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this subcontract. The subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the subcontractor to carry out these requirements is a material breach of this subcontract, which may result in the termination of this subcontract or such other remedy as the Contractor or Sound Transit deems appropriate."

#### **1.23 NO TEXTING WHILE DRIVING**

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

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;
2. Contractor-owned or Contractor-rented vehicles or Government-owned, leased or rented vehicles;
3. Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
4. Any vehicle, on or off duty, and using an employer supplied electronic device.
5. Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
  - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

B. "Driving" is defined as operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

"Driving" does not include being in your vehicle (with or without the motor running)

in a location off the roadway where it is safe and legal to remain stationary.

- C. "Text Messaging" is defined as reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.
- D. Contractor shall include this provision in all subcontracts at all tiers.