



City of Tukwila Transportation and Infrastructure Services Committee

- ❖ Verna Seal, Chair
- ❖ De'Sean Quinn
- ❖ Thomas McLeod

Distribution: V. Seal D. Quinn T. McLeod K. Kruller L. Humphrey H. Ponnekanti G. Labanara B. Still (email)	City Attorney (email) A. Youn Clerk File Copy Place pkt pdf on SharePoint Z Trans & Infra Agendas email cover to: F. Ayala, A. Le, C. O'Flaherty, A. Youn, B. Saxton, S. Norris, L. Humphrey
---	--

AGENDA

MONDAY, JANUARY 25, 2021 – 5:30 PM

Virtual Meeting - Members of the public may listen by dialing 1-253-292-9750 and entering conference ID 299274146#

[Click here to join the meeting](#)

6300 BUILDING, SUITE 100)

Item	Recommended Action	Page
1. PRESENTATIONS		
2. BUSINESS AGENDA		
a) Water Fund - Macadam Rd S Water Upgrade Design Selection and Agreement (Adib Altallal)	a) Forward to 02/01/21 Regular Consent Agenda	Pg. 1
b) Water Fund – Water Reservoir & Pump Station Land Purchase Update (Adib Altallal)	b) Information only	Pg. 9
c) 42 nd Ave South Bridge Replacement Draft Communication Plan Update (Adam Cox)	c) Discussion only	Pg. 27
d) Surface Water - S 131st PI Drainage Improvements Acceptance of KCFCF Grant (Ryan Larson)	d) Forward to 02/01/21 Regular Consent Agenda	Pg. 35
e) King County Metro TDM Agreement (Alison Turner)	e) Forward to 02/01/21 Regular Consent Agenda	Pg. 43
f) Extenet Systems, Inc. Asset Sharing Agreement (Eric Compton)	f) Forward to 02/01/21 Regular Consent Agenda	Pg. 83
3. MISCELLANEOUS		
	Future Agendas: <ul style="list-style-type: none"> • Vactor Unit Replacement • 2021-22 KC Waste Reduction Recycling Grant 	

Next Scheduled Meeting: Monday, February 8, 2021

The City of Tukwila strives to accommodate individuals with disabilities.
 Please contact the Public Works Department at **206-433-0179** for assistance.



INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Committee**
 FROM: **Hari Ponnekanti, Interim Public Works Director**
 BY: **Adib Altallal, Utilities Engineer**
 CC: **Mayor Allan Ekberg**
 DATE: **January 22, 2021**
 SUBJECT: **Water Fund - Macadam Rd S Water Upgrade**
Project No. 90440105
Design Consultant Selection and Agreement

ISSUE

Approve design contract with PACE Engineers Inc. (PACE) for the Macadam Rd S Water Upgrade.

BACKGROUND

In 2015, the City contracted with PACE as the design consultant for the Macadam Rd S Water Upgrade Project along with the Andover Park E Water & Sewer Improvements under Contract No. 15-116. In 2017, the design was put on hold due to construction cost estimates being higher than proposed in the 2019-2024 Capital Improvement Program.

DISCUSSION

The Macadam Road South Water Upgrade project has been repeatedly prioritized as a critical capital project by the Water Department. Funding was increased in the 2021-2026 Capital Improvement Program to complete the design. Due to their local knowledge and sufficient effort on the first iteration of the Macadam Rd S Water Upgrade, PACE Engineers were selected once again to bring their existing design to completion.

FINANCIAL IMPACT

PACE has provided a cost not to exceed \$77,339.16 to complete the design for the Macadam Rd S Water Upgrade. The project costs are within budget.

	<u>Contract</u>	<u>2021 Design Budget</u>
PACE Design Contract	\$77,339.16	\$200,000.00

RECOMMENDATION

Council is being asked to authorize the Mayor to execute a consultant agreement for design services with PACE Engineers in the amount of \$77,339.16 for the Macadam Rd S Water Upgrade Project and consider this item on the Consent Agenda at the February 1, 2021 Regular Meeting.

Attachments: 2021 CIP, page 61
PACE Consultant Agreement and Scope of Work

CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

PROJECT: Macadam Rd S Water Upgrade

Project No. 90440105

DESCRIPTION: Design and construct 4,300 LF of 10" waterline in Macadam Rd S from S 144th St to Southcenter Blvd.

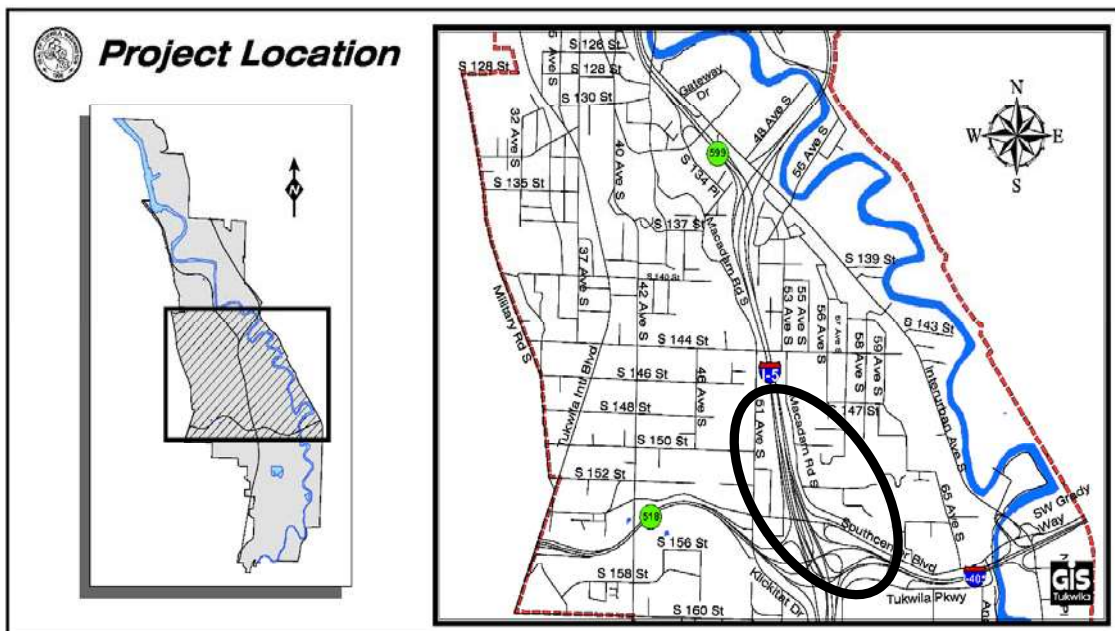
JUSTIFICATION: Improve fire flow water quality to the north side of Tukwila Hill.

STATUS: Project now scheduled for 2021/2022.

MAINT. IMPACT: The new waterline will eliminate maintenance time for flushing the dead end line while increasing service reliability.

COMMENT: Pedestrian/Bicycle Program grant for sidewalks unsuccessful in 2018, with water funds used as a match.

FINANCIAL (in \$000's)	Through Estimated									
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	TOTAL
EXPENSES										
Design	68		100	50	50					268
Land (R/W)										0
Const. Mgmt.			250	50	300					600
Construction			300	300	950					1,550
TOTAL EXPENSES	68	0	650	400	1,300	0	0	0	0	2,418
FUND SOURCES										
Awarded Grant										0
Proposed Grant										0
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	68	0	650	400	1,300	0	0	0	0	2,418
TOTAL SOURCES	68	0	650	400	1,300	0	0	0	0	2,418





PROFESSIONAL SERVICES AGREEMENT

(Includes consultants, architects, engineers, accountants, and other professional services)

THIS AGREEMENT is entered into between the City of Tukwila, Washington, hereinafter referred to as "the City", and PACE Engineers, hereinafter referred to as "the Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the City to perform construction management services in connection with the project titled Macadam Rd S Water Upgrade.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Duration of Agreement; Time for Performance.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2021, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2021 unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:
 - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$77,339.16 without express written modification of the Agreement signed by the City.
 - B. The Consultant may submit vouchers to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the City and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
 - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.
 - D. Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
 - E. The Consultant's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and the state of Washington for a period of three (3) years after final payments. Copies shall be made available upon request.

5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the City on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services rendered under this Agreement.
7. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. **Minimum Amounts and Scope of Insurance.** Consultant shall obtain insurance of the types and with the limits described below:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. **Commercial General Liability** insurance with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. **Professional Liability** with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
- B. **Public Entity Full Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.
- C. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
- D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- F. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- G. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
9. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.
10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the City shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **Discrimination Prohibited.** Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the City.
13. **Non-Waiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
14. **Termination.**
 - A. The City reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
 - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
15. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be subject to, and the Consultant shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Tukwila Municipal Code and ordinances of the City of Tukwila. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit. Venue for any action arising from or related to this Agreement shall be exclusively in King County Superior Court.
16. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
17. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

Ken Nilsen, P.E.
11255 Kirkland Way #300
Kirkland, WA 98033
18. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.

DATED this _____ day of _____, 20_____.

CITY OF TUKWILA

CONSULTANT *PACE ENGINEERS, INC.*

Allan Ekberg, Mayor

By: *Kenneth H. Nilsen*

Printed Name: KENNETH H. NILSEN

Title: VICE PRESIDENT

Attest/Authenticated:

Approved as to Form:

City Clerk, Christy O'Flaherty

Office of the City Attorney

PACE Engineers

Project Budget Worksheet - 2020 Municipal Rates

Project Name: **Macadam Road Design w/Sidwalk or Path** Location: **Tukwila** Prepared By: **KN**
 Project #: _____ Billing Group #: _____ Task #: _____ Date: **11/4/2020**

Staff Type # (See Labor Rates Table) Staff Type Hourly Rate	Labor Code	Labor Hours by Classification											Hour Total	Dollar Total	
		1	14	75	118	43	48	58	33	68	20	31			67
Drawing/Task Title	Job Title	Senior Principal Engineer	Project Engineer	CAD Tech II	Sr. Project Administrator	Survey Project Manager	Survey Tech II	Two-Person Crew	Sr. Planner	Engineer III	Sr. Project Designer	Sr. Project Planner	Sr. GIS Analyst		
BASE DESIGN															
Task 1 - Project Management		8												8.0	\$1,888
Task 2 - Finalize Watermain Design		12	24	16	9									61.0	\$9,790
submit 75% plans and specs to City for review and comment		2			1										
prepare 100% plans and specs for City review		6	16	8	4										
finalize bid docs		4	8	8	4										\$3,696
Task 3 - Design of Sidewalk and storm drain system and Submit To City		19	80	80	8	4	4	8						203.0	\$30,896
survey pick-ups (assume 1-day)		1				4	4	8							
Prepare Preliminary 30% plans for sidewalk and storm drainage		4	8	16											
Corridor modeling with sections every 25-feet		2	40	16											
Preapre 100% sidewalk plans and specs for City Review		4	16	24	4										
Preapre 100% stormdrain plans and specs for City Review		4	8	20	4										
Finalize Bid Docs		4	8	4											\$46,270
OPTIONAL DESIGN SERVICES															
Task 4 - Environmental									86	12	14	12	12	136	\$21,484
Task 1 - Delineation Desktop Review									6					6.0	\$930
Task 2 - Field Delineation									8	8				16.0	\$2,368
Task 3 - Delineation Report									36	4		8	12	60.0	\$9,420
Task 4 - Mitigation planning & Monitoring & Reporting									24		14	4		42.0	\$4,428
Task 5 - Hydraulic Project Approval									12					12.0	\$1,860
Hours Total		39.0	104.0	96.0	17.0	4.0	4.0	8.0	86.0	12.0	14.0	12.0	12.0	408.0	
Labor Total		\$9,204	\$17,368	\$11,328	\$2,006	\$708	\$360	\$1,600	\$13,330	\$1,692	\$2,478	\$2,124	\$1,860	\$64,058.00	\$21,914

Expenses	rate/unit	Reimbursable	
		Quantity	Cost
Postage/Courier			
Plotter			
Photo/Video			
Mileage/Travel/Per Diem			
Miscellaneous			\$500.00
Technology Fee (2% of labor)			\$1,281.16
Total			\$1,781.16

Subconsultants	
Utility Locate	
Mechanical Engineer	
Electrical Engineer	
Geotechnical Engineer	\$10,000
I & C Engineer	
Subconsultant Subtotal	10,000.00
Markup	15%
Total	\$11,500.00

PACE Billed Labor Total \$64,058.00
 Reimbursable Expenses \$1,781.16
 Subconsultants \$11,500.00
Total Project Budget \$77,339.16



INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**
 FROM: **Hari Ponnekanti, Interim Public Works Director**
 BY: **Adib Altallal, Utilities Engineer**
 CC: **Mayor Allan Ekberg**
 DATE: **January 22, 2021**
 SUBJECT: **Water Fund – Water Reservoir and Pump Station**
Project No. 91240102
Land Purchase Update

ISSUE

Authorize Public Works to begin negotiations with owners to purchase property for a future water reservoir.

BACKGROUND

During the City of Tukwila’s 2015 Water Comprehensive Plan, the consultant identified that the continued growth within the City no longer meets the Department of Health’s water storage requirements. As a result, the Water Reservoir and Pump Station was included in the Capital Improvement Program. During this year’s Water Comprehensive Plan update, the City’s water storage deficiencies were highlighted again. A water reservoir is needed to meet the Department of Health’s water storage requirements. Further development throughout the City and especially in the Ryan Hill area are likely to be hindered or completely halted due to these water storage deficiencies.

ANALYSIS

By constructing a reservoir in the Ryan Hill area, the City would meet the Department of Health’s water storage requirements. By placing the reservoir in the Ryan Hill area, the City would be using the natural topography to increase the use of gravity and reduce pumping costs. Furthermore, placing a tank in the northern half of the City will complement the existing reservoir in the southern half. Connecting the Ryan Hill water zone to the rest of the water system will also expand fire protection for residential and commercial properties as well as create a redundant water supply that can be utilized in the event of a natural disaster. To construct a water reservoir and a pump house, a property consisting of one to two flat acres is needed. For design and subsequent construction of the reservoir to commence, land must be purchased first. The City will work diligently to acquire property through negotiating a purchase with property owners with the goal to avoid the use of eminent domain. Time is of the essence to begin negotiations. Once land is acquired, the project will be completed in phases over multiple years.

FISCAL IMPACT

The adopted 2021 Capital Improvement Program identified an estimated project budget of \$10 million for the Water Reservoir and Pump Station, a portion of which was dedicated to land acquisition. As land costs escalate in the region, we have the potential to find a larger property and sell a portion of the property after the reservoir has been built, for a net match of the budgeted amount dedicated to the land purchase.

	<u>Land Purchase</u>	<u>2021 CIP Budget</u>
Water Reservoir Site	\$2,000,000.00	
Future Sale of portion of site	<u>(\$1,500,000.00)</u>	
Total	<u>\$ 500,000.00</u>	<u>\$500,000.00</u>

RECOMMENDATION

Information only. Public Works to begin land purchase negotiations as part of the Water Reservoir and Pump Station Project in an amount up to \$2,000,000.00.



Tukwila Water System Storage Needs

A brief history and a future outlook of Tukwila's water system storage facilities

Overview

Tukwila Water Dept. Distribution System

- Service area boundaries
- North Hill Reservoir/Pumpstation

Tukwila Water Dept. Historical Data

- Cascade Water Alliance/SPU
- Previous comprehensive plans storage requirements

Current Comprehensive Plan

- Current storage deficit

Planning For The Future

- Resiliency
- Future development
- Changing demographics

Pressure Zones

- 320 pressure zone~ Northern portion of East Marginal Way (Mainly serves Boeing properties)
- 340 pressure zone~ Lower Ryan Hill/MLK Jr. Way (Fed by 465 pressure zone)
- 360 pressure zone~ CBD, Valley floor (Largest zone by area and connections)
- 380 pressure zone~ Crystal Springs (Smallest zone, **isolated** from main distribution system)
- 400 pressure zone~ North Hill (Most residential connections, fed by North Hill Reservoir, can be fed by 360 zone)
- 465 pressure zone~ Upper Ryan Hill (**Isolated** from main distribution system)



Cascade Water Alliance/SPU



Tukwila Water Department is a member of Cascade Water Alliance.



Cascade is a group of eight water municipalities formed to provide water supply for the current and future demands of the members.



Tukwila receives 100% of their water through supply stations connected to Seattle Public Utilities.



Tukwila has no means of water production.

North Hill Reservoir & Pump Station

- Built in 1991 to provide storage, increase pressure, and improve fire flow
- Built in phases
 - I. Property was identified and purchased
 - II. Construction of transmission main from Southcenter Blvd up the trail(Old Denny's, Macau casino) to 57th Ave S.
 - III. Construction of Transmission main along Tukwila Parkway from Andover Park East to Bahama Breeze curve(old movie theatre) and then bored under neath I-405 to Southcenter Blvd.
 - IV. Tank/pump station was under construction concurrent to the construction of the transmission mains.

North Hill Reservoir/Pump Station Specs

Description	Value
Capacity	2 MG
Type	Concrete
Year Constructed	1991
Diameter	115 feet
Height	23 feet
Base Elevation	226 feet
Overflow Elevation	249 feet
Ground Elevation	225 feet
Influent/Effluent Control Valves	Influent 6-inch ClaVal valve

North Hill Pump Station	Number	HP	Rated Capacity each, gpm	Total Capacity, gpm	Supply To
High Pumps	2	30	480	960	400 Zone
Low Pumps	2	50	1,050	2,150	360 Zone
Fire Flow Pumps	1	250	4,000	4,000	Fire flows to 400/360 zones

2015 Water Plan Storage Requirements

Year	Equalizing Storage, MG	Standby Storage, MG	Fire Suppression Storage, MG	Total Required Storage, MG	Total Existing Storage, MG	Storage Surplus / (Deficit)
360 Service Level						
2010	0.20	1.30	0.96	1.50	2.00	0.50
2016	0.30	1.78	0.96	2.04	2.00	(0.04)
2030	0.40	2.90	0.96	3.30	2.00	(1.30)

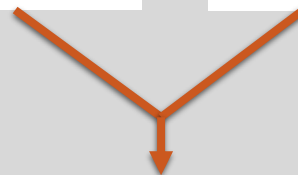
2021 Water Plan Storage Deficits

360 Service Level Storage Requirements

Storage Component (MG)	2020	2030	2040
Operational ⁽¹⁾	0.20	0.20	0.20
Equalizing	0.21	0.25	0.30
SS/FSS (nested)	2.63	3.12	3.84
Total Required Storage	3.04	3.57	4.34
Total Existing Storage	2.00	2.00	2.00
Storage Surplus / (Deficit)	(1.04)	(1.57)	(2.34)

465 Service Level Storage Requirements

Storage Component (MG)	2020	2030	2040
Operational ⁽¹⁾	0.02	0.02	0.02
Equalizing	0.01	0.01	0.01
SS/FSS (nested)	0.18	0.18	0.18
Total Required Storage	0.21	0.22	0.22
Total Existing Storage	0.00	0.00	0.00
Storage Surplus / (Deficit)	(0.22)	(0.22)	(0.22)





360/465 Combined Service Level Storage Requirements

Storage Component (MG)	2020	2030	2040
Operational ⁽¹⁾	0.20	0.20	0.20
Equalizing	0.22	0.26	0.31
SS/FSS (nested)	2.70	3.21	3.94
Total Required Storage	3.12	3.67	4.45
Total Existing Storage	2.00	2.00	2.00
Storage Surplus / (Deficit)	(1.12)	(1.67)	(2.45)

Properties Assessed

Criteria:

- Cost
- Minimum Area
- Access/Feasibility
- Proximity to existing distribution system

Planning for the Future

➤ **Resiliency**

- ❖ Emergency water storage
- ❖ Located in Northern portion of the water system.

➤ **Development**

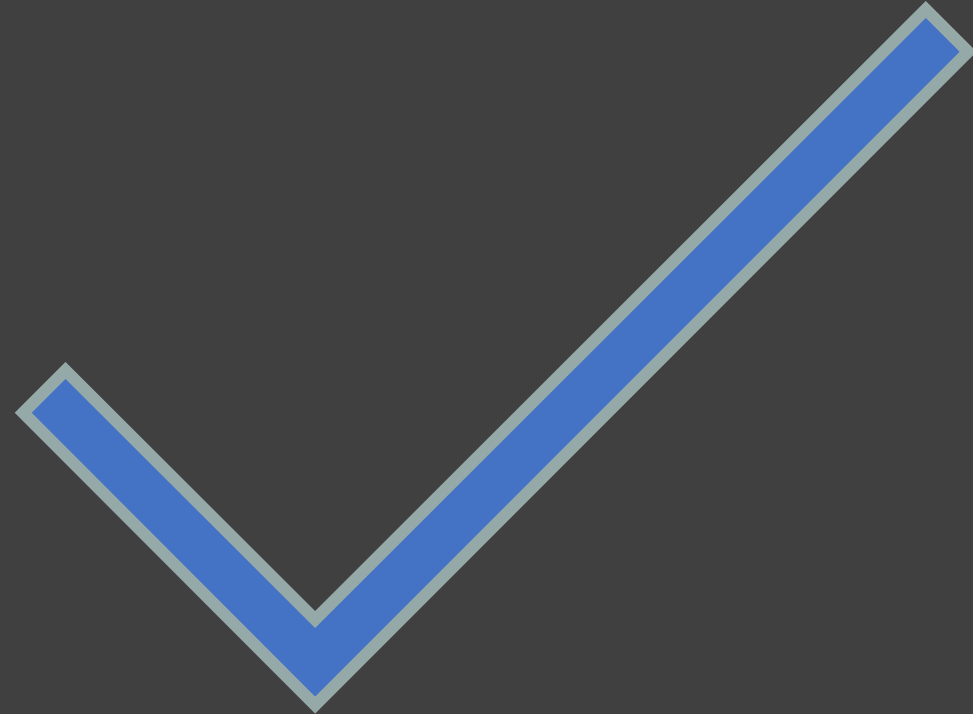
- ❖ Allows safe residential and commercial development

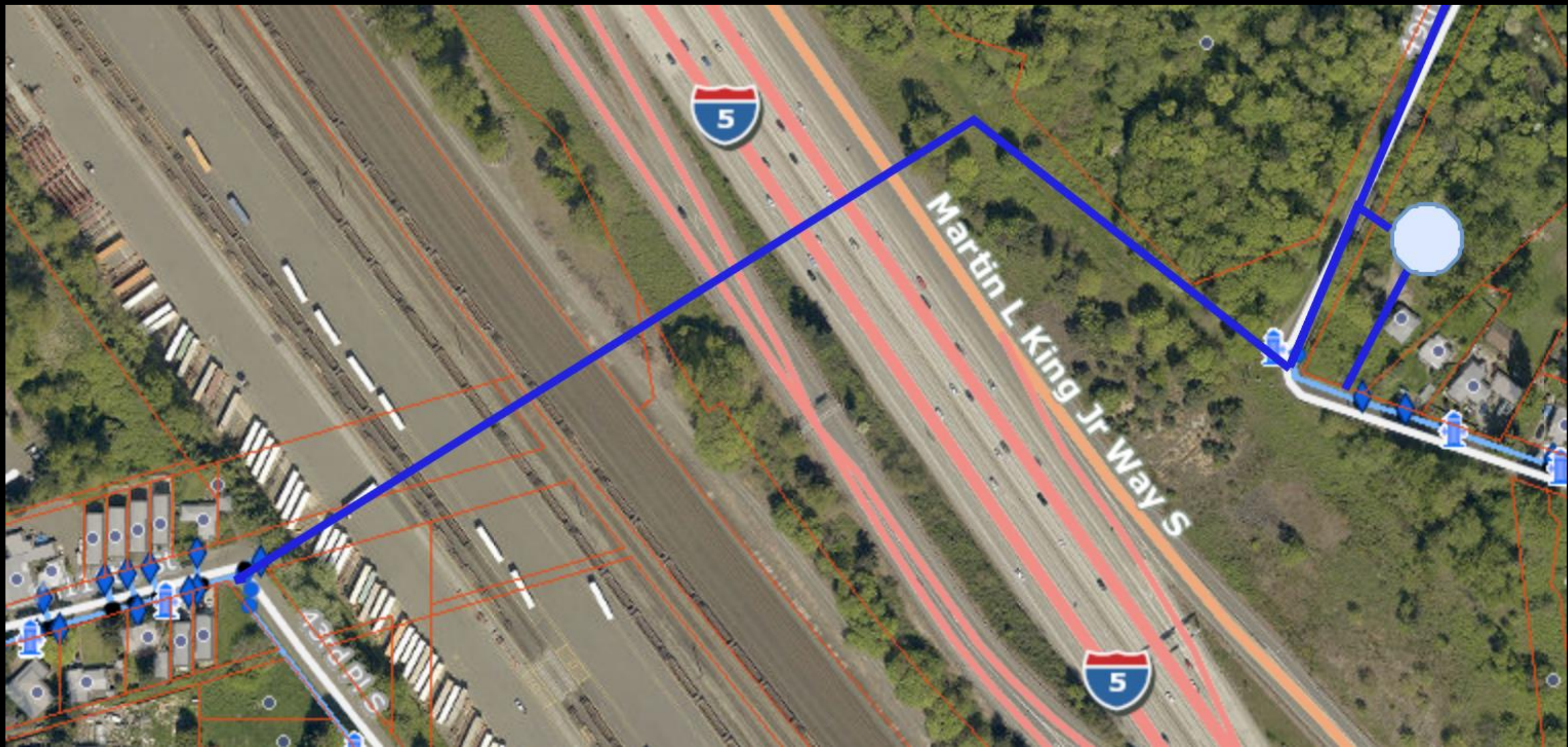
➤ **Changing demographics**

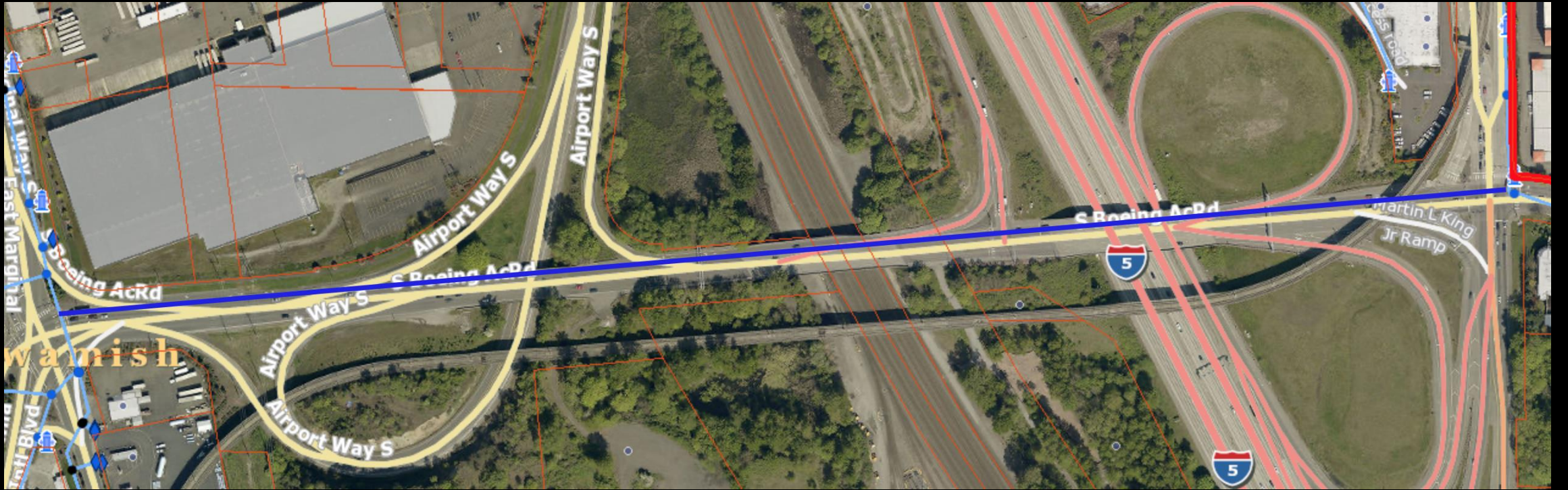
- ❖ Increase in multifamily residences
- ❖ Increase in commercial/retail space

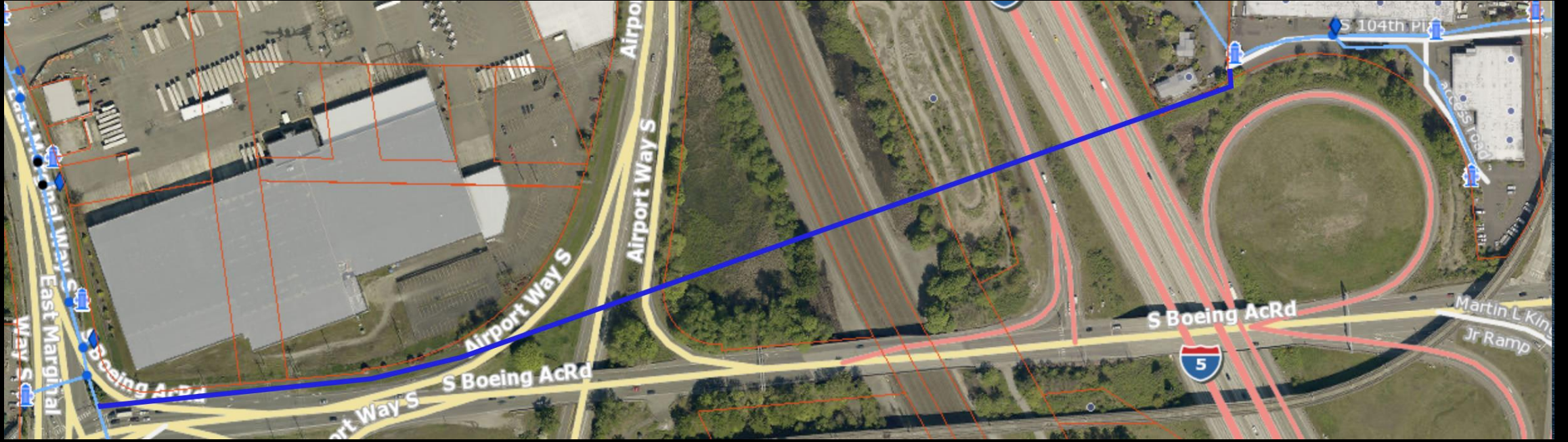


**THANK
YOU!**









CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

PROJECT: Water Reservoir and Pump Station

Project No. 91240102

DESCRIPTION: Design and construct a new 2.0 million gallon water storage reservoir with a 3,300 gpm pump station.

JUSTIFICATION: The Department of Health is requiring that the City provide additional water storage in the 360 pressure zone, which includes the Commercial Business District. A pump station is needed for fire flow.

STATUS: Design funds will be used to update and expand the site study Carollo completed in 2014.

MAINT. IMPACT: Additional staff will be needed to provide maintenance for the new reservoir and pumps.

COMMENT:

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
EXPENSES										
Design		50	400	250	50					750
Land (R/W)			500							500
Const. Mgmt.			100	150	550					800
Construction				1,500	1,000	2,500	2,000	1,000		8,000
TOTAL EXPENSES	0	50	1,000	1,900	1,600	2,500	2,000	1,000	0	10,050
FUND SOURCES										
Awarded Grant										0
Proposed Grant										0
Bond			1,000	1,900	1,600	2,500	2,000	1,000		10,000
Mitigation Expected										0
Utility Revenue	0	50	0	0	0	0	0	0	0	50
TOTAL SOURCES	0	50	1,000	1,900	1,600	2,500	2,000	1,000	0	10,050

Location to be determined.



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Services Committee
FROM: Hari Ponnekanti, Interim Public Works Director
BY: Adam Cox, Transportation Project Manager
CC: Mayor Allan Ekberg
DATE: January 22, 2021
SUBJECT: 42nd Ave South Bridge Replacement
Project No. 91810404
Project Update

ISSUE

Provide an update on the status of the 42nd Ave South Bridge Replacement Project.

BACKGROUND

At the September 21, 2020 TIC meeting, the cost and scope of work were presented for 30% and 100% design of the 42nd Ave S Bridge Replacement Project. At the November 2, 2020 Regular Council meeting, Council approved proceeding with the 30% design.

ANALYSIS

The design process continues to move forward in an expressed timeline:

1. Notice to Proceed was issued to TranTech Engineering (TranTech) on November 17, 2020.
2. The project kick-off meeting was held on December 2, 2020 with City Staff, TranTech, and all the subconsultants.
3. Surveying crews have collected location information
4. Soil samples were obtained and TranTech is using that information to further progress the design and the Type, Size, and Location (TS&L) report.
5. City staff has attended community engagement strategy meetings with TranTech and their subconsultant Enviroissues, Inc (Enviroissues) to discuss the public outreach plans for the Allentown neighborhood and the major stakeholders that would be affected by the project.
6. Please see the attached draft Community Engagement Plan for your reference. The intention is to conduct multiple virtual workshops and surveys to engage the community and allow them to provide input for the project. Staff anticipates that outreach to Tukwila residents will begin in February, 2020.
7. City staff is working with the design consultant, TranTech, to complete the application for the 2021 Federal Local Bridge program through the Washington State Department of Transportation (WSDOT) Local Bridge Program (formally known as BRAC). Electronic application submittals are due on Friday, February 19, 2021.
8. The Local Program Bridge Engineer is tentatively scheduled to visit the project site in June 2021 and the final results of the grant will be announced in October 2021.

NEXT STEPS

1. City staff will continue to work with TranTech and Enviroissues on the community engagement, 30% design, and the TS&L.
2. The City continues to research funding opportunities beyond the Local Bridge Program grant and is exploring other possible funding partners and other funding sources to accelerate the replacement of the 42nd Ave South Bridge.
3. The City will continue to meet with representatives from the Washington State Freight Mobility Strategic Investment Board (FMSIB) and have maintained contacts at BNSF, both of whom have expressed eagerness to assist the City with transportation and freight movement grants.
4. In addition, the Mayor and City Administrator, with assistance from David Foster, the City's state government lobbyist, will continue to meet with each of the members of the 11th District delegation, as well as other members in transportation leadership in both the State's House and Senate.
5. City staff will engage in conversations with State and Federal grant funders.

DISCUSSION ONLY.

Attachment: Community Engagement Plan Draft

Community Engagement Plan Draft: 01/15/21

Not for distribution

Overview

This plan outlines the City of Tukwila and project team's commitment to engage and communicate with the community about the 42nd Avenue S Bridge Replacement Project from project initiation through selection of the preferred solution. This plan includes a background on the project, our community engagement goals, engagement tools to reach key stakeholders, equitable engagement strategies, key messages, and evaluation metrics.

This plan is a living document and will be updated as needed based on strategy development, technical needs, and information and feedback from stakeholders. Stakeholder interviews during Phase 1 may influence outreach methods and additional key stakeholders. Outreach from final design through pre-construction and construction will be included in a separate community engagement plan and contract.

Background

The 42nd Avenue South Bridge is coming to the end of its serviceable life and will need to be replaced in the near future. The existing steel truss requires constant and costly maintenance. The cost to repair the bridge would exceed the cost of replacing the bridge and would not provide an improved level of service. Improving the level of service is important for this route that serves more than 10,000 vehicles per day with 30% of vehicle traffic related to trucking. The bridge is the only viable route for container trucks entering and leaving the Tukwila BNSF Intermodal Facility and Baker Commodities. It is currently load posted restricting the free movement of freight. The bridge serves pedestrians and cyclists as its southern end connects to the Green River Trail. It also provides a critical connection to the Tukwila Community Center and the Allentown neighborhood. The 42nd Avenue South Bridge is a major east-west corridor for the region as it one of the few routes to cross the Duwamish River.

Potential challenges to the public to consider:

- There are diverse stakeholders potentially impacted by this project, including bridge users taking a variety of modes of travel, neighbors, businesses, BNSF, and other agencies.
- The nearly 1,000 neighbors that live in the Allentown neighborhood will be impacted.
- People walking, using a wheelchair, pushing a stroller and biking will be impacted by detours during construction. We will need to understand their needs and how they use the bridge and potentially look for alternative options.
- Those living and working along the future detour route will experience increased traffic and delays and need to be made aware of the impacts and detour options. Identify ways to minimize truck traffic through the residential neighborhood.
- Establishing appropriate routes for emergency responders will be key for general public safety and maintaining peace of mind for those living nearby.
- Those attending events at the Tukwila Community Center will be best served by understanding detour routes ahead of events. Coordinating with groups and communicating the detour routes through the Community Center will be important.
- Detour access to important businesses like BNSF and Baker Commodities has to be communicated well in advance.

Community engagement goals

The overall project goal is to design safe transportation infrastructure for the City and the community it serves. To support that overall goal, we've identified goals for community engagement:

- Deliver an engagement process that is inclusive and contributes to an improved corridor design reflective of the community's needs.
- Engage vulnerable and marginalized populations in the project area to advance equitable engagement and reduce barriers to providing feedback.
- Acknowledge the inconvenience and difficulty of project impacts, listen to community concerns and needs, provide information about potential mitigation measures, and provide feedback to the project team about what we are hearing from the community to inform better decisions.
- Commit to share accurate and realistic information about project needs and limitations.
- Generate community understanding of the need for the bridge replacement.
- Build community support for detour and construction approach and buy-in on design elements, communicating how community input was or wasn't used.
- Gather input from the public and stakeholders to support bridge aesthetic design and construction options within budget, technical and timeline constraints.
- Engage with BNSF, Baker Commodities, and other businesses that rely on the bridge and associated infrastructure to ensure concerns are addressed.

Key stakeholders

The Outreach Consultant team, EnviroIssues, will use a variety of strategies and tools to engage and inform the community. Community engagement will focus on building relationships with key stakeholders and the community, allowing them to share their needs and interests, learn about the project's value and impacts, and provide feedback on technical options, tradeoffs, the preferred solution, and potential construction impacts.

Below is a list of stakeholder groups that we will focus on building relationships with. A more detailed list of project area stakeholders is in **Appendix A** of this document.

- Allentown residents, other neighbors
- BNSF
- Baker Commodities
- Tukwila Community Center
- Major employers
- Community-based organizations that serve historically underrepresented communities and/or communities that speak a language other than English
- Commuting/traveling public, including people walking and biking
- Utility providers, schools and other area agencies
- King County Sherriff's office

The Outreach Consultant team will lead coordination with the following key stakeholders, with support from technical consultants as needed:

- City leadership, departments, and staff/subject-matter experts
- Area Tribes, including the Duwamish People, Muckleshoot Indian Tribe, others
- Partner/area agencies, including King County, WSDOT
- Emergency service providers, including Tukwila Fire and Police Departments
- Local utility providers (PSE, King County)
- Impacted parcels as it relates to right-of-way discussions

Community characteristics

Demographic analysis

EnviroIssues examined demographic data for the project area which included a one-mile radius from the Tukwila Community Center. See map below. In this examined area:

- There are just over 20,000 people living in Tukwila, 8,285 live in the project area and nearly 1,000 living in the Allentown neighborhood.
- The project area is home to a population that breaks down to 32% White, 27% Asian, 20% Black, 8% Other races, 8% Two or more races, 1% Native American, 12% Latino
- Languages most spoken (over 5%) include, Spanish and Vietnamese
- The City has identified Spanish, Somali and Vietnamese as standard languages requiring translation.



Strategies

- The demographic analysis suggests translating project materials to help engage more people in a more equitable way. Spanish and Vietnamese-speaking audiences exist in higher relative numbers within our project area and are also key priority languages for the City of Tukwila. Based on demographic data and City guidelines, Spanish, Somali, and Vietnamese are key priority languages for translation. Therefore, project fact sheets and other key pieces of outreach content will be translated into these three languages.
- The City of Tukwila also translates some materials into Amharic, Burmese, and Nepali. These languages and other languages should be considered when translating content.
- The community engagement team will coordinate translation and interpretation services.
- Social media will be coordinated with the City's communications team.

Community engagement approaches and tools

Phase 1: Early engagement and coordination (at project initiation) *January – February 2021*

Build relationships with key stakeholders, share initial information about the project need and timeline, and gather feedback on local avenues for project communications, community needs and concerns, and how they would like to stay informed throughout the project. During this period, the following activities utilizing associated tools will take place:

Activity	Audience	Tool(s)
Stakeholder interviews with key community organizations and groups to provide an early overview of the project and further understand stakeholder interests, concerns and priorities.	<ul style="list-style-type: none"> • Allentown residents • Tukwila Community Center • BNSF • Baker Commodities • Major employers • Community-based organizations 	<ul style="list-style-type: none"> • Preliminary fact sheet • Webpage
Outreach summary of the conversations with stakeholders and their feedback.	<ul style="list-style-type: none"> • City staff • Tukwila City Council 	<ul style="list-style-type: none"> • Outreach summary report

Phase 2: Technical options and tradeoffs (with draft TS&L/pre 30% design) May – June 2021

Conduct broad public engagement to gather feedback on a construction concept(s) for design aesthetics and construction approach within project constraints (i.e., budget, timeline, etc.). Initial surveying and analyses will determine feasible options; we will only ask for public input on options that are feasible within project constraints and the City will consider public feedback to the extent possible within the project constraints. We will also focus on driving interested members of the public to sign up for an email list to stay informed as the project progresses.

During this period, the following activities utilizing associated tools will take place:

Activity	Audience	Tool(s)
Stakeholder briefing presentations with community organizations and groups we built relationships in Phase 1 to share technical options and tradeoffs and gather feedback.	<ul style="list-style-type: none"> • Allentown residents • Tukwila Community Center • BNSF • Baker Commodities • Major employers • Community-based organizations 	<ul style="list-style-type: none"> • Full fact sheet/FAQ • Presentation • Webpage
Broad public notification to invite the public to participate in virtual community engagement events* and build general awareness about the project.	<ul style="list-style-type: none"> • Commuters, including people walking and biking • Green River Trail users • Nearby neighbors 	<ul style="list-style-type: none"> • Postcard • Display ads • Email updates • Yard/roadway sign to notify for online engagement • Social media
Virtual public event and online engagement to present information about project need and technical options and gather feedback from the public to influence the preferred solution.	<ul style="list-style-type: none"> • Commuters, including people walking and biking • Nearby neighbors • Green River Trail users 	<ul style="list-style-type: none"> • Participate.online site • Presentation
Outreach summary of the conversations with stakeholders and the general public, outlining their feedback	<ul style="list-style-type: none"> • City staff • Tukwila City Councils 	<ul style="list-style-type: none"> • Outreach summary report

*public events will be planned over virtual mediums due to COVID-19. In-person community engagement will be dependent on COVID-19 safety measures.

Evaluation metrics

The following metrics will be a starting point to evaluate effectiveness of the community engagement process over time:

Quantitative

- Participation by the numbers (in-person and online)
- Number of key stakeholders engaged and their reach (e.g., email list serves, daily visitors)
- Time spent on online engagement opportunities (i.e., Google analytics)
- Representative engagement assessed through:
 - Number of translated materials distributed and/or requested
- Notification efficacy assessed through participants sharing how they heard about public events and online opportunities

Qualitative

- Satisfaction of engagement assessed through discussions with stakeholders at stakeholder interviews, briefings, and public events

Appendix A: Key stakeholders

Audiences to Consider	Examples
Adjacent property owners and tenants, including businesses and residents	<ul style="list-style-type: none"> BNSF, Baker Commodities, Gateway Corporate Center, King County Metro South Base, Sabey Data Centers Allentown Residents
Typical users of project area	Pedestrians, cyclists, freight, drivers, commuters
Community groups and neighborhood organizations	Duwamish Valley Youth Corps, Duwamish Alive, Duwamish River Cleanup Coalition, Green Tukwila Partnership, Bhutanese Community Resource Center
Cultural and religious organizations	Abubakr Islamic Center of WA, Mien Evangelical, St. Thomas, United Church of Christ, Bhutanese Nepali Christian Community Church, India Pentecostal Church of Seattle, Riverton Park United Methodist, Hmong Seattle Alliance Church, Djibouti Community of America, Tukwila Fellowship
Chambers of commerce and local business organizations	Seattle Southside Chamber of Commerce
City of Tukwila Departments	Parks and Recreation
Other agencies	King County Executive Office, King County Council, King County Metro Transit, Duwamish Tribe, Muckleshoot Tribe, King County Water District 125
Public facilities	Tukwila Community Center
Schools and childcare facilities	Foster High, Cascade View Elementary, Tukwila School District 406, Teri's Daycare, AbuBakr Academy
Hospitals	HealthPoint Tukwila, Cascade Behavioral Health Hospital
Social service organizations and facilities (including those serving people with disabilities)	Tukwila Pantry, Tukwila Children's Foundation, They Journey Project, American Legion Post 235
Bicycle and pedestrian advocacy groups	Wabi Burien, West Seattle Bike Connections, Cascade
City of Tukwila Advisory Boards	Bicycle, Pedestrian, Freight, Transit
Railroads	BNSF
Freight	Baker Commodities, YRC Freight, Western Cascade Truck
Media Outlets	Tukwila Blog, SeaTac Blog, B-town Blog, Tukwila Reporter, Kent Reporter, Seattle Times, The Urbanist
Populations that may need targeted outreach to due to cultural barriers, language differences, etc.	Immigrant communities (ex. Hmong, Bhutanese, Indian, Mien)



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Services Committee
FROM: Hari Ponnekanti, Interim Public Works Director
BY: Ryan Larson, Senior Program Manager
CC: Mayor Ekberg
DATE: January 22, 2021
SUBJECT: Surface Water Fund - S 131st PI Drainage Improvements
Project No. 91641204
Acceptance of King County Flood Control District Grant

ISSUE

City acceptance of a King County Flood Control District (District) grant for Surface Water's South 131st Place Drainage Improvements Project.

BACKGROUND

In May 2020, Council authorized staff to submit a grant application to the District for the S 131st Place Drainage Improvement Project. A grant application for project funding was submitted in the amount of \$300,000. The District received more grant requests than available funding and the City was awarded a grant of \$60,000.

According to City policy, staff must obtain approval from the full Council before accepting grants.

DISCUSSION

Staff worked with the District to revise the grant scope of work so that the grant funding is now entirely for the design phase of the project. This will allow the City to apply for future District grant opportunities for the construction phase.

FISCAL IMPACT

The S 131st PI Drainage Improvement Project has \$250,000 available in surface water funding for design. The District grant funds will provide additional design funding for the project. Matching funds are encouraged, but not required.

RECOMMENDATION

Council is being asked to formally accept the King County Flood Control District grant in the amount of \$60,000 for the S 131st Drainage Improvement Project and consider this item on the Consent Agenda at the February 1, 2021 Regular Meeting.

Attachments: 2021 CIP Page 89
Grant Agreement

CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

PROJECT: **S 131st Place Drainage Improvements** Project No. 91641204

DESCRIPTION: Design and replace an existing 36" culvert under S. 131st Pl. Raise the roadway approximately 18" and/or provide a concrete wall or other means to keep Southgate Creek within its banks during storm events.

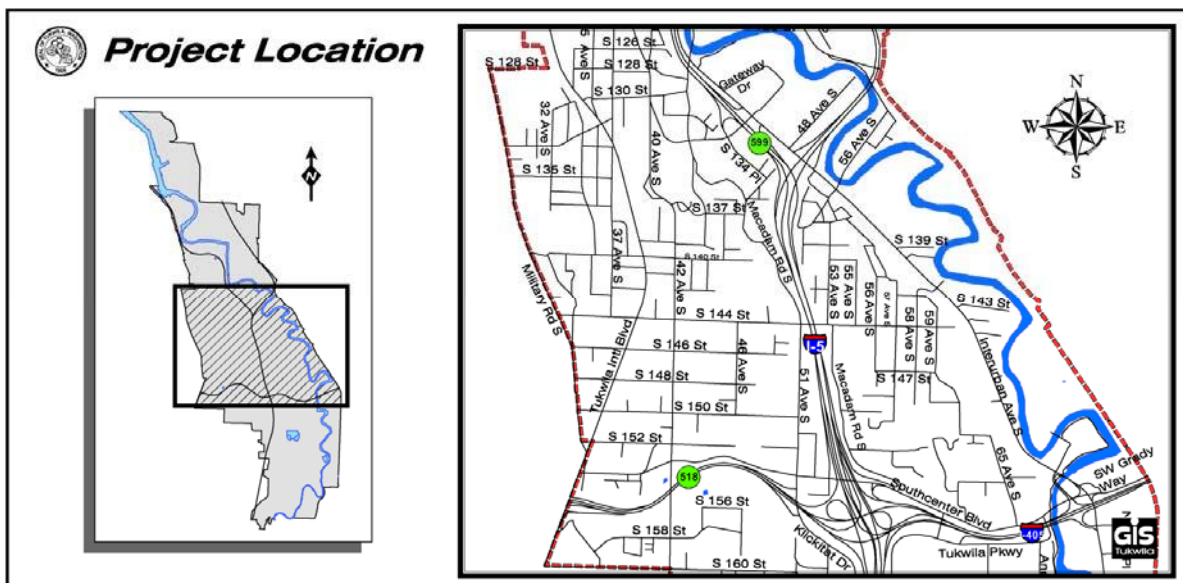
JUSTIFICATION: Southgate Creek overtops its bank several times per year during storm events and runs through private property. Debris is deposited within a private driveway and storm system.

STATUS: Maintenance is performed annually on the creek to remove excess sedimentation to reduce the likelihood of flooding.

MAINT. IMPACT: Reduce the frequency of stream sediment removal and storm cleanup.

COMMENT: Project will require an HPA. Will consider combining with a future overlay project to reduce overall costs. A grant request for \$200K was submitted to the KCFCD in 2020.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
EXPENSES										
Design		100	150							250
Land (R/W)										0
Const. Mgmt.				150						150
Construction				850						850
TOTAL EXPENSES	0	100	150	1,000	0	0	0	0	0	1,250
FUND SOURCES										
Awarded Grant										0
Proposed Grant			100	150						250
Mitigation Actual										0
Mitigation Expected										0
City Oper. Revenue	0	100	50	850	0	0	0	0	0	1,000
TOTAL SOURCES	0	100	150	1,000	0	0	0	0	0	1,250



**AGREEMENT FOR AWARD OF
FLOOD REDUCTION GRANT FUNDS
BETWEEN THE CITY OF TUKWILA AND KING COUNTY**

This Agreement (“Agreement”) is made between King County, a municipal corporation, and the **City of Tukwila** (“Recipient”) (collectively referred to as the “parties” and in the singular “party”), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **December 31, 2022**.

Project Contacts:

Contact for King County – Kim Harper, Grant Administrator, 206-477-6079,
Kim.harper@kingcounty.gov.

Contact for Recipient – Ryan Larson, 206-431-2456, Ryan.larson@tukwilawa.gov.

SECTION 1. RECITALS

- 1.1 Whereas, the King County Flood Control District (“District”) is a quasi-municipal corporation of the State of Washington, authorized to provide funding for flood control and stormwater protection projects and activities; and
- 1.2 Whereas King County is the service provider to the District under the terms of an interlocal agreement ("ILA") by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District's annual work program and budget; and
- 1.3 Whereas, on November 12, 2013, the District’s Board of Supervisors passed Resolution FCD2013-14 which established a Flood Reduction Grant Program and criteria for awarding grant funding for projects, and on November 6, 2019, the Board passed Resolution FCD2019-13, which authorized an allocation of \$3,280,201 from the District’s 2020 budget to fund flood reduction projects; and
- 1.4 Whereas, on September 9, 2020 the District’s Board of Supervisors passed Resolution FCD2020-19, which approved the flood reduction projects described in Attachment A to that Resolution; and
- 1.5 Whereas, in accordance with the terms of these Resolutions, and in its capacity as service provider to the District, King County has established policies and procedures for administering the flood reduction grant program, a copy of which has been furnished to Recipient and which is incorporated herein by this reference (hereinafter “Grant Policies and Procedures”); and
- 1.6 Whereas, the Recipient submitted an application to receive funds for a project to be funded by the Flood Reduction Grant Program; and

- 1.7 Whereas, the District’s Board of Supervisors approved funding of Recipient’s application for the project (“Project”), as described in Attachment A to Resolution FCD2020-19 in the amount of **\$60,000** (“Award”); and
- 1.8 Whereas, King County has received a Scope of Work and a Budget for the Project from the Recipient and has determined that the Scope of Work, attached hereto and incorporated herein as Exhibit B (“Scope of Work”), and the Budget, attached hereto and incorporated herein as Exhibit C (“Budget”), are consistent with the Grant Policies and Procedures, the Recipient’s application for the Project, and Resolution FCD2020-19; and
- 1.9 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with Resolution FCD2020-19 and the Grant Policies and Procedures, under which the Recipient will implement the Project.

SECTION 2. AGREEMENT

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to pay the Award amount to Recipient in the total amount of **\$60,000** from District funds. The Award shall be used by the Recipient solely for the performance of the Project, as described in Exhibit A to this Agreement. Exhibit A, attached hereto and incorporated herein by this reference, contains a description of the Project as described in Attachment A to Resolution FCD2020-19. King County shall pay the Recipient in accordance with the terms of the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scope of Work of this Agreement and in accordance with the Project Budget. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scope of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scope of Work and issuance of the Final Report, as further described in Section 2.6 below.
- 2.4. Activities carried out for this Project and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) the activities are specified in the Scope of Work of this Agreement; 3) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award as identified in the Budget of this Agreement; 4) the activities occur after the District passes a resolution approving an award for the Project; 5) such activities and expenses otherwise comply with all

other terms of this Agreement; and 6) reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.

- 2.5. The Recipient shall invoice King County for incurred expenses using the Request for Payment form and Progress Report form for those documented and allowable expenses identified in the Budget and according to the rules set forth in the Grant Policies and Procedures. Blank forms shall be provided to the Recipient by King County upon execution of this Agreement. A progress report (with or without a request for payment) shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A Progress Report form shall be submitted with all payment requests. A one-time advance of no more than 25% of the Award amount may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scope of Work of this Agreement and identified as such in the advance Request for Payment. Documentation of payments made from the advance payment shall be submitted to King County prior to any further requests for payment.
- 2.6. The Recipient shall be required to submit to King County a Final Report which documents the Recipient's completion of the work described in Scope of Work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The Final Report may be submitted on the Closeout Report form unless a more detailed Final Report is specified in the Scope of Work. A blank form shall be provided to the Recipient by King County upon execution of this Agreement. The Final Report shall include a summary of the Project's successes and shall address the flood reduction benefits accomplished by the work.
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track Project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.
- 2.9. King County or its representative, and the District or its representative, shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.

- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.
- 2.11. The Recipient shall ensure that all work performed by its employees, agents, contractors or subcontractors is performed in a manner which protects and safeguards the environment and natural resources and which is in compliance with local, state and federal laws and regulations. The Recipient shall implement an appropriate monitoring system or program to ensure compliance with this provision.
- 2.12. The Recipient agrees to indemnify, defend and hold harmless King County, and the District, their elected or appointed officials, employees and agents, from all claims, alleged liability, damages, losses to or death of person or damage to property arising out of any acts or omissions of the Recipient, its employees, agents, contractors or subcontractors in performing its obligations under the terms of this Agreement.
- 2.13. The Recipient agrees to acknowledge the District as a source of funding for the Project on all literature, signage or press releases related to the Project. The Recipient may obtain from King County a District logo that may be used in the acknowledgement.

SECTION 3. GENERAL PROVISIONS

- 1.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- 1.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 1.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 1.4. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.
- 1.5. The Project shall be completed by no later than **December 31, 2022**. In the event that the Project is not completed by this date, King County has the discretion, but not the obligation, to terminate this Agreement and retain any unexpended Award funds.
- 1.6. This Agreement may be signed in multiple counterparts.

- 1.7. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.

- 1.8. The amount of the Award has been fully funded by the District. To the extent that funding of the Award requires future appropriations by the District, King County’s obligations are contingent upon the appropriation of sufficient funds by the Board of Supervisors of the District to complete the Scope of Work. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that provides funds under this Agreement was made.

KING COUNTY:

RECIPIENT:

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT A: PROJECT DESCRIPTION

PROJECT NAME	RECIPIENT	DESCRIPTION	LEVERAGE	AWARD
South 131 st Place Drainage Improvements	City of Tukwila	Southgate Creek overtops its banks approximately twice annually and flows down a private driveway resulting in nuisance flooding, debris cleanup, and minor property damage. This project will replace an undersized 48" culvert under S. 131 st Place, raise the roadway along the creek or construct a concrete wall to provide additional freeboard to keep the creek in its bank, provide added water quality for the City roadway, and work with a downstream property owner on private stream maintenance.	\$1,190,000	\$60,000

EXHIBIT B: SCOPE OF WORK

TASKS	ACTIVITIES AND DELIVERABLES	APPROX. PERCENT OF AWARD REQUEST	MONTH/YEAR TASK WILL BE COMPLETED
Task 1: Project Administration (Required task)	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	0%	December 2021
Task 2: Project Design and Permitting	Advertise, interview, and select a design consultant to design the improvements and assist City staff members in project permits. Deliverable will be complete, bid ready, Plans, Specifications and Estimate.	100%	Sept 2021
Task 3: Construction	Hire a contractor to replace the existing 48" concrete cross culvert with a box culvert, arch culvert, or other design approved by the WDFW for fish passage. Deliverable will be as built drawings.	0%	December 2022
Task 4: Construction	Hire a contractor to raise roadway grade or install a concrete wall to increase freeboard of Southgate Creek. Deliverable will be as built drawings.	0%	December 2022

EXHIBIT C: BUDGET

BUDGET ITEM	GRANT AWARD REQUEST	FINANCIAL LEVERAGE (not required)			LEVERAGE TOTAL	TOTAL (Grant + Leverage)
		SOURCE NAME				
		City of Tukwila				
		AMOUNT				
STAFFING	0	50,000			50,000	50,000
COMMERCIAL SERVICES AND CREW TIME	60,000	1,140,000			1,140,000	1,200,000
TOTAL	\$60,000	\$1,190,000			\$1,190,000	\$1,250,000



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Services Committee

FROM: Jack Pace, Department of Community Development Director

**BY: Alison Turner, Sustainable Transportation Program Manager
Chris Andree, Sustainable Transportation Outreach Coordinator**

CC: Mayor Ekberg

DATE: January 22, 2021

SUBJECT: King County Metro TDM Agreement 2021–2022

ISSUE

The Transportation Demand Management (TDM) Program is asking for approval to accept passthrough funding from King County Metro. The funding source is a federal Congestion Mitigation and Air Quality grant. Funding will be used to continue implementation of Transportation Demand Management (TDM) activities in south King County.

BACKGROUND

The City of Tukwila TDM Program was previously awarded King County passthrough funding in 2016/17, 2017/19, and 2020 to enhance TDM services in south King County. TDM Program staff implemented outreach on behalf of King County Metro to reduce congestion and increase use of sustainable travel alternatives to driving alone.

DISCUSSION

A new funding opportunity has been offered to the City's TDM Program to continue TDM outreach services in south King County through November 30, 2022. The TDM Program will work to increase the use of and access to transit and other sustainable modes of transportation in south King County by targeting residents, commuters and employers for whom sustainable transportation alternatives are a viable option. TDM services and outreach will be provided at activity centers such as Tukwila Village or Sea-Tac Airport, schools and colleges, and multifamily housing sites. A key strategy is to develop partnerships with community organizations to reach target populations and improve long-term program outcomes.

FINANCIAL IMPACT

There will be no impact to the general fund.

RECOMMENDATION

Council is being asked to accept passthrough funding from King County Metro for the Transportation Demand Management Program in the amount of \$225,000 and consider this item on the Consent Agenda at the February 1, 2021, Regular Meeting.

ATTACHMENTS

Attachment A: 2021–2022 Tukwila TDM Agreement.pdf

TRANSPORTATION DEMAND MANAGEMENT AGREEMENT

BETWEEN

THE CITY OF TUKWILA

AND

KING COUNTY

This Transportation Demand Management Agreement is made and entered into by and between the City of Tukwila, a Washington municipal corporation (the “City”) and King County, a home rule charter county of the State of Washington, through the Metro Transit Department (the “County”), either of which entity may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

Whereas, the County has obligated a grant from the Federal Transit Administration (FTA) (Award WA-2020-087-00) FY19 Congestion Mitigation Air Quality (“CMAQ”) to 5307 – TDM Corridor Strategies Supporting Centers and Regional Park and Ride TDM Activities and Access Improvements, awarded to the County on August 31, 2020 for a total award amount of \$6,488,278; and

Whereas, the CMAQ grant is for multi-modal transportation project planning and demonstration programs, in order 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 are allowed under this grant but cannot be the primary element of the scope. The Catalogue of Federal Domestic Assistance number for this grant is 20.507, Federal Transit Formula Grants, and the County intends to use up to \$242,500 of these grant funds as a sub-award to the City for work performed in accordance with the terms and conditions of this Agreement; and

Whereas, such projects and programs include strategies known as transportation demand management (“TDM”) which may encompass 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, whose DUNS number is 010207504 and the County provide such TDM programs to commuters, students and residents directly or through employers, schools and/or property managers; and

Whereas, the City’s Transportation Demand Management program (the “Program”), including activities conducted through the City’s TDM program, has been effective in reducing drive-alone trips in Tukwila; and

Whereas, the City and County have continued to adapt and demonstrate these strategies through the Program by adding new market segments and new approaches to Tukwila 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 costs incurred to perform the tasks and implement the programs described in the Scope of Work (“SOW”), as set forth in Exhibit A, which is attached and incorporated herein. In consideration of the City’s performance of the tasks and responsibilities set forth in the SOW, the County will provide the City up to \$225,000 in grant funds.

2. AGREEMENT TERM AND MODIFICATIONS

This Agreement shall be effective as of January 1st, 2021, upon signature by both Parties, and shall remain in effect unless otherwise terminated through December 31, 2022. If mutually agreed, the Agreement may be extended by written amendment for up to an additional two (2) years. Exhibits and attachments may be modified at that time as mutually agreed by the Parties. Any extension shall be made in writing in accordance with Section 14 of the Agreement. The County will enter into or 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 required as related to program performance associated with the SOW in Exhibit A. The program tasks, timelines and budget are stated in Exhibit A.

4. COUNTY’S RESPONSIBILITIES

The County will reimburse the City for actual costs incurred to satisfactorily perform the tasks and implement the Program as provided for in the SOW. In no event shall the total reimbursement made by the County to the City for work performed pursuant to this Agreement exceed \$300,000 (the “Reimbursement Cap”).

5. INVOICE AND PAYMENT PROCEDURES

The City shall submit completed invoice(s) to the County detailing expenses, 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.

In no event will the total amount of the initial investment and quarterly payments 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.

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 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 Federal Transit Administration 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 via www.ftrs.gov. The City agrees to provide the County with the information required in this paragraph within 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 executives IF BOTH of the following apply:
 - i. More than 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 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://www.sam.gov/portal/public/SAM/> (formerly www.CCR.gov) and provide the County with the registration number within 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 disputes that arise under this Agreement:

<p>For the County Carol Cooper Mobility Innovations Managing Director Metro Transit Department 201 South Jackson Street, M/S KSC- TR-0411 Seattle, WA 98104 (206) 477-5871 carol.cooper @kingcounty.gov</p>	<p>For the City Vicky Carlsen Finance Director City of Tukwila 6200 Southcenter Blvd. Tukwila, WA 98188 (206) 433-1839 Vicky.Carlsen@tukwilawa.gov</p>
---	--

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 the County’s Metro Transit Division or her/his designee shall confer and exercise good faith to resolve the dispute.

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

7.5 If the Parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either Party may institute 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 related to the Program 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 document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

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.

Contract Manager	King County	City of Tukwila
Contact Name	Mitchell Lloyd	Alison Turner
Title	Transportation Demand Management Lead (TDM Lead) King County Metro Market Innovation Section	Sustainable Transportation Program Manager City of Tukwila
Address	201 S. Jackson St. M/S KSC-TR-0411 Seattle, WA 98104	6300 Southcenter Blvd #100 Tukwila, WA 98188
Telephone	206-263-3788	206-433-7142
E-Mail	mlloyd@kingcounty.gov	Alison.turner@tukwilawa.gov

18. RECORDS RETENTION AND AUDIT

- 18.1 During the progress of the work and for a period of not less than six (6) years from the date of final payment by the County, 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 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 at the federally appointed online, accessible audit reporting database the City agrees to submit to the County, a copy of the City's A-133 Single Audit report when requested by the County for sub recipient 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

CITY OF TUKWILA

By: _____
Terry White
General Manager
Metro Transit Department

By: _____
Allan Ekberg
Mayor
City of Tukwila

Date: _____

Date: _____

Exhibit A
City of Tukwila
Transportation Demand Management Agreement with King County Metro
Scope of Work
January 1, 2021

The City will provide TDM services for travelers with an origin or destination in the cities of Tukwila, Burien, Des Moines, Kent, Renton, and SeaTac through an extension of their Regional Mobility Grant (RMG) program and the City's TDM program.

The City and the County will mutually agree on messaging that will be included on program materials for marketing and outreach purposes.

These services will be provided for the time period beginning with the execution of the agreement and ending November 30, 2022.

Scope of Services

The City of Tukwila TDM Program will target residents, employees and employers for whom sustainable transportation alternatives are a viable option. As described below, the program will:

- Educate residents, employees and students on sustainable transportation alternatives to driving alone;
- Provide rewards and incentives related to sustainable transportation options;
- Work to improve people's perceptions of these options;
- Inform residents, employees and students of Renton-Kent-Auburn Area Mobility Plan news and engagement opportunities, such as RapidRide I line outreach, and work to increase ORCA card usage;
- Explore options for amenities such as bike lockers, bike racks, bike repair stations, wayfinding signage, etc.;
- Communicate the goals of keeping traffic moving and other topics related to road construction and transit service changes; and
- Educate employers on available commute benefit strategies and programs.

An evaluation of the program will be provided to the County by November 30, 2022, outlining what has been accomplished in the program and including trip reduction data during the period following the execution of the agreement through the end of October 2022. The final invoice for this scope of work shall be submitted to the County no later than January 5, 2023.

Program Description

Issue/Problem

Employees and residents not affected by the CTR law may receive limited or no transportation benefits/support. Smaller employers often have difficulty allocating funding for employee transportation assistance and are unaware of commute benefits they could provide such as ORCA passes or pre-tax transportation benefits.

Goals:

- Increase the use of and access to transit and other sustainable modes of transportation in south King County (increase NDAT and decrease VMT);
- Reduce congestion along major regional corridors, including I-405, I-5, SR-99 and SR-167; and
- Efficiently deliver TDM services by targeting employees, residents and students at large activity centers (for example, presenting at employer meetings or providing transportation trainings to school staff).

Potential Trip Markets

- Employment sites with clusters of non-CTR affected employers
- Multi-family residences (affordable and market rate housing)
- Technical colleges and high schools
- Industry-specific employers such as hotels

Potential activity centers and networks include:

- Sea-Tac Airport (partner with Port of Seattle, Airport Jobs, City of SeaTac)
- Westfield Southcenter Mall (partner with mall management and employers)
- Tukwila Village (partner with Independent Living, King County Library System and employers)
- Foster High School and Showalter Middle School (partner with Tukwila School District and SchoolPool)
- Colleges such as Renton Technical College and Highline College
- Seattle Southside Chamber and Discover Burien
- Renton Landing and Black River Business Park
- Multifamily housing sites (partner with property managers, cities, King County Housing Authority, Hopelink, and other non-profits)

Equity and Social Justice

The City of Tukwila's equity policy, adopted by council in 2017, guides city staff to serve the community equitably. TDM Program staff participate in the Equity Policy Implementation Committee with a focus on developing outreach best practices and tools. The equity policy has six major goals:

- Our City workforce reflects our community

- Community outreach and engagement is relevant, intentional, inclusive, consistent and ongoing
- All residents and visitors receive equitable delivery of City services
- City government is committed to equity in the decision-making process
- Equity serves as a core value for all long-term plans moving forward
- The City will build capacity around equity within City government and the broader community

Strategies

This program will market sustainable transportation through a direct, individualized approach supporting and encouraging residents and employees to change their travel behavior.

Methodology will include individualized marketing; social marketing; and engaging community and residential groups, individuals, businesses and other targeted groups of corridor users. Marketing will promote sustainable transportation options that reduce single-occupant vehicle travel such as transit, carpool, vanpool, active transportation, telecommuting, and new mobility services.

Strategies may include, but are not limited to:

- Outreach and education on sustainable transportation options
- Distribution of ORCA incentives to encourage transit use; Facilitate access to reduced fares for low-income, RRFP, seniors, and youth by partnering with ORCA Neighborhood Pop-up, ORCA LIFT (Public Health – Seattle & King County), and ORCA Youth
- Administration of a sustainable transportation rewards program
- Distribution of safety/visibility gear for active transportation
- Attendance at community or employer resource fairs and meetings
- Install amenities such as bike racks, wayfinding signage, and parking designated for carpool
- Translation, interpretation, transcreation of materials, and partnership development to reach target populations
- Trip planning assistance

If COVID remains active, the program will continue to pivot by trying new remote outreach methods such as developing webinars and connecting with users via partners. The program will focus on providing TDM services and public health messages via trusted channels, developing partnerships, and conducting outreach safely according to public health directives.

Performance Metrics

Transportation mode choice data will be collected via surveys. A pre-intervention survey will be administered to capture baseline data when participants enroll in the transportation rewards program. Follow-up surveys will be administered 1 month, 3 months, and 6 months later, as capacity allows. Actual timing of follow-up surveys will vary depending on scheduling around

holidays, current events, and synergy with partner agencies. Data captured at 2 or more points in time will be used to report the final VT and VMT reduced by the program.

Additional strategies to measure success include:

- ORCA card usage rates
- Number of outreach events/attendees/contacts
- Number of sustainable transportation incentives distributed
- Estimating the reach of marketing efforts
- Qualitative customer feedback from participants and partner organizations

Anticipated Schedule and Deliverables

Deliverable	Target Dates
Develop outreach materials (webpage, surveys, flyers, reward slips)	January 1, 2021
Outreach to community groups, individuals, employers, property managers, and other targeted groups of corridor users to promote use of non-drive alone travel	through November 30, 2022
Administration of rewards program	through November 30, 2022
Personalized trip planning assistance and employer/property manager consultations	through November 30, 2022
Hold transportation trainings at interested employment centers, housing sites and worksites	through November 30, 2022
Analysis of rewards program survey data to calculate VT and VMT reduced	November 30, 2022
Submit progress reports, metrics, and invoices that include labor hours and receipts for reimbursable expenses, at least quarterly	through January 5, 2023

Anticipated Budget through November 30, 2022

Project Element	Budget
Administration	\$43,000
Incentives	\$22,000
Marketing	\$27,000
Outreach	\$83,000
Bicycle and Pedestrian Amenities	\$50,000
Total Project Cost	\$225,000

Exhibit B

FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY CONTRACT REQUIREMENTS

This Contract shall 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 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 Federal Transit Administration (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 Federal Transit Administration, 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 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 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 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 Federal Transit Administration (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 5 working days after the County renders a final decision or 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 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 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 Project. 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 the Project 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 this project.

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

CONTRACT NO: _____

**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

CONTRACT NO. _____

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.)

<p>1. Type of Federal Action:</p> <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	<p>2. Status of Federal Action:</p> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<p>3. Report Type:</p> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
<p>4. Name and Address of Reporting Entity:</p> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> Congressional District, if known:
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> CFDA Number, if applicable: _____	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$</p>	
<p>10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (Last name, First name, MI):</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>12. Form of Payment (check all that apply):</p> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in kind; specify: nature _____ value _____	<p>13. Type of Payment (check all that apply):</p> <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: _____	
<p>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)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached): <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>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 less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p>	

	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.



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Committee

FROM: Joel Bush, Technology and Innovation Services Director

BY: Eric Compton, Franchise and Technology Specialist

CC: Mayor Ekberg

DATE: January 22, 2021

SUBJECT: Extenet Systems, Inc. Asset Sharing Agreement

ISSUE

Approve an Agreement between the City and Extenet Systems, Inc. granting the sharing of telecommunications assets in a mutually beneficial manner.

BACKGROUND

Extenet is a partner in developing small cell 5G wireless facilities across the country. In order to facilitate the building of their infrastructure, Extenet wishes to utilize certain City assets (conduit) and in exchange provide access to their infrastructure (fiber) or other assets in a mutually beneficial manner. These agreements can help both Extenet and Tukwila save money and expedite telecommunications growth in the community.

DISCUSSION

FINANCIAL IMPACT

No direct negative cost to the budget will be brought. This agreement is intended to save money on projects while partnering with Extenet to share costs.

RECOMMENDATION

Council is being asked to approve the Agreement allowing Extenet Systems, Inc. and consider this item on the Consent Agenda at the February 1, 2020 Regular Meeting.

ATTACHMENTS

Extenet Asset Exchange Agreement

THIS ASSET EXCHANGE LICENSE AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into as of the date of the last signature below (the “Effective Date”), between ExteNet Systems, Inc., a Delaware corporation with primary offices at 3030 Warrenton Road, Suite 340, Lisle, Illinois 60532 (“ExteNet”), and City of Tukwila, a municipality in the State of Washington (“City”) ExteNet and City may be hereinafter referred to individually as “Party”, and collectively as “Parties.”

WHEREAS, each Party owns or has rights in Conduit or Fiber within the City and each Party wishes to exchange certain Conduit or Fiber from their respective Conduit or Fiber systems within the City boundaries, and enter into an agreement to facilitate future exchanges.

NOW, THEREFORE, for and in consideration of the mutual covenants and consideration set forth in this Agreement, the Parties do hereby agree as follows:

- 1. Definitions.** The following terms, whether in the singular or in the plural, when used in this Agreement shall have the meaning specified in this Section 1. Use of the word “or” when describing “Fiber or Conduit” is not intended to mean or convey that it is exclusively one or the other unless the context specifically requires.
 - 1.1 Authorizations: All governmental or municipal approvals and authorizations; all rights-of-way and pole attachment agreements; and all leases, licenses, consents or other agreements necessary for the Licensor to construct, install, maintain and repair its Conduit System and to license portions of the Conduit System to a third party.
 - 1.2 Asset: Conduit or Fiber within a Party’s Conduit System or otherwise agreed between the Parties.
 - 1.3 Asset Exchange Form (or “AEF”): The form exchanged between the Parties via email or hardcopy, to communicate and agree to information related to an Asset Request, Asset Use Authorization, and Notice of Asset Availability, as shown on Exhibit A.
 - 1.4 Asset Request: A formal request for a license to use Conduit or Fiber, within a specific portion of the other Party’s Conduit System (either the City Conduit System or the ExteNet Conduit System as defined), made by completion of the Asset Request section of an AEF.
 - 1.5 Asset Use Authorization: Unless rejected upon request, Licensor’s acceptance and grant to an Asset Request providing authorization to license specific Conduit or Fiber. The Asset Use Authorization is executed by completing the Asset Use Authorization section of the Asset Exchange Form.
 - 1.6 City Conduit System: Existing Conduit or Fiber, owned by City, as more particularly described on an AEF or exhibits attached thereto; provided that, subject to the terms of this Agreement, such Conduit or Fiber may be modified from time-to-time in City’s sole discretion provided such modifications do not impact Licensee use of the Licensed Conduit or Fiber unless otherwise permitted herein.
 - 1.7 Conduit: Conduit which (a) was installed for the purpose of, or capable of being used for, communication fiber installation in accordance with Bellcore Standards, (b) is located in the City, and (c) is owned by either ExteNet or City, as the context requires.
 - 1.8 Conduit System: Either the City Conduit System or the ExteNet Conduit System, as context requires.
 - 1.9 Fiber: dark (unlit) fiber optic cable of one or more fibers owned by either the City or ExteNet, as the case may be, and as specified in an AEF or exhibits attached thereto.

- 1.10 License or Licensed Asset: Asset Use Authorization by City or ExteNet, as the case may be, to use the Licensed Conduit or Fiber for the License Term.
- 1.11 License Term: The term of each license for use of Licensed Conduit or Fiber, as further defined in Article 6 of this Agreement.
- 1.12 Licensee: The Party authorized under this Agreement and an AEF to use Licensed Conduit or Fiber within the other Party's Conduit System.
- 1.13 Licensor: The Party granting a License pursuant to an Asset Use Authorization.
- 1.14 Notice of Asset Availability: Notice from Licensor to Licensee that the Licensed Conduit or Fiber meets the Specifications and is available for Licensee's use, provided by completion of the Notice of Asset Availability section of the Asset Exchange Form.
- 1.15 Specifications: The minimum specifications identified on an AEF that Licensed Conduit or Fiber must meet as a precondition to the Notice of Asset Availability.
- 1.16 ExteNet Conduit System: Existing Conduit or Fiber owned by ExteNet, as described on an AEF or exhibits attached thereto, on Exhibit A; provided that, subject to the terms of this Agreement, such Conduit or Fiber may be modified from time-to-time in ExteNet's sole discretion provided such modifications do not impact Licensee use of the Licensed Conduit or Fiber unless otherwise permitted herein.

2. Exchanging Assets.

- 2.1 As set forth in an executed AEF, City agrees, subject to the terms and conditions of this Agreement, to grant a License to ExteNet to use available Conduit or Fiber within City's Conduit System, including the right and permission to access and use any City easement(s) that the City's Conduit System routes through. This only applies to those easements that the City is authorized to grant access to ExteNet and ExteNet receives permission to access from the City. As set forth in an executed AEF, ExteNet agrees, subject to the terms and conditions of this Agreement, to grant a License to City to use commercially available Conduit or Fiber within ExteNet's Conduit System. Nothing in this agreement shall purport to give the City the right to resell any Fiber it may acquire in this Agreement. Each segment of conduit or fiber strands licensed will entitle the Licensor to the same amount of conduit or fiber strands on the Licensee's Conduit System.
- 2.2 City and ExteNet agree that the assets to be exchanged must be available at the time of the AEF exchange.
- 2.3 City and ExteNet agree that the intent of the Parties is that the Licensed Assets exchanged between the Parties will remain balanced and approximately equal. The Parties agree that the initial AEF's executed by the Parties on the same date as the Effective Date are an equal exchange of Licensed Assets. Further AEF equity analysis will consider Licensed Asset type, length (on a linear foot or a mile-for-mile basis, whichever is most applicable to the request), capacity and location as agreed between the Parties. Licensed Assets within the central business area, will be calculated at twice its length for purposes of exchanges of Assets outside the central business area.
- 2.4 If the amount of a Licensed Asset that one Party has Licensed, as to Conduit to Conduit or Fiber to Fiber amounts, exceeds the amount of Licensed Asset that the other Party has Licensed, and the difference is greater than 15% ("Disparate Licensed Asset Amount"),

then the Party with excessive Licensed Asset will not request additional AEF until the Disparate Licensed Asset Amount is corrected (meaning less than 15%). Notwithstanding the foregoing, the Parties may agree to alternate consideration to correct a Disparate Licensed Asset Amount.

- 2.5 Either Party may relinquish its right to use any segment of Licensed Asset prior to the end of the License Term. If one Party relinquishes Licensed Asset which results in Disparate Licensed Asset Amount, then the Party with excessive Licensed Asset will not request additional AEF until the Disparate Licensed Asset Amount is corrected or the Parties otherwise agree.
- 2.6 Each Party will maintain a record of the Licensed Assets exchanged pursuant to this Agreement. Upon reasonable request by a Party, not greater than once per year, the Parties will meet to review and validate these records.
- 2.7 This agreement does not remove the requirement that ExteNet must obtain all permits or other approval as required by law to perform any work under this agreement. Prior to a completed exchange, if either Party is unable to obtain, through no fault of its own, permits or other approvals required to perform any work under a particular AEF, that request, and its corresponding exchange shall cease to exist and each Party shall return back into the position they were in before the agreement was made.
- 2.8 Following a completed exchange, if one Party loses the ability to maintain required rights for an exchanged Licensed Asset, then that Party shall pay the other party the fair market value for the corresponding Licensed Asset which was exchanged.

3. Asset Requests and Use Authorization.

- 3.1 Submission of AEF. All requests for Licensed Assets shall be made utilizing a AEF, with each Party completing information as Licensor or Licensee, as applicable, and forwarding the AEF via email to both address of a Party as indicated below (two (2) required for back-up purposes):

If to ExteNet: noc@extenetsystems.com

If to City: eric.compton@tukwilawa.gov
joel.bush@tukwilawa.gov

- 3.2 When one Party wishes to use Assets of the other Party, such Party will complete the Asset Request section of the AEF, and submit the form to the other Party's email addresses. Submission of an AEF to one email address but not both email addresses shall not, by itself, constitute a failure to properly submit an AEF.
- 3.3 Acceptance or Denial of AEF. Within fifteen (15) business days of receipt of a completed Asset Request, Licensor will complete the Asset Use Authorization section of the AEF and return the form to Licensee. Licensor's response will either authorize Licensee's use of the Asset upon Notice of Asset Availability or indicate denial of the Asset Request.
- 3.4 Notice of Asset Availability. Notice of Asset Availability can take place on the same date as the Asset Use Authorization if the Asset meets the Specifications on the same date. If the Notice of Asset Availability cannot take place on the same date as the Asset Use Authorization, Licensor shall send back the AEF without completion of the Notice of Asset Availability section. Licensor shall then promptly provide email notice to Licensee when the Asset is available, and Licensee shall send back the AEF for Licensor's completion of

the Notice of Asset Availability. In all cases, upon completion of the Notice of Asset Availability from Licensor, the License Term shall begin.

- 3.5 Licensor will use commercially reasonable efforts to ensure that the requested Asset complies with all applicable Specifications and ready for Licensee's use within thirty (30) days of date of an Asset Use Authorization.

4. Access and Escort.

- 4.1 Handholes and Manholes. Unless otherwise specifically agreed in an AEF, Licensee will install handholes and/or manholes as a means of accessing the Licensed Conduit or Fiber. Licensee shall be responsible for all "one-call" responses and cable locate services for the Licensed Conduit or Fiber. All costs associated with Licensee's access to the Licensed Conduit or Fiber will be borne by the Licensee. The City shall not be required to install handholes or manholes for Conduit that has been installed prior to the entry of this Agreement. If necessary, ExteNet may install handholes or manholes at its own cost.
- 4.2 Activities Around or In Licensed Assets. If Licensee's activities will be performed within four (4) feet of Licensor's Conduit System, Licensee must contact Licensor to schedule the activity at a mutually agreed time allowing for Licensor to provide an escort, at Licensor's discretion and at Licensee's cost. Escort services will be requested using the Request for Field Activity ("RFA") form attached as Exhibit B or such other form as mutually agreed in writing. For Fiber placement within a Licensed Conduit, a RFA shall be made. Licensor shall grant such access as agreed to in an RFA, provided however, that Licensor shall not delay such an access request by more than ten (10) business days of receipt of such request. Licensee shall be responsible for all costs, including Licensor's costs for an RFA for Fiber placement. Licensor's costs for RFA may include a fifteen percent (15%) markup over costs.
- 4.3 The Licensee shall have the right, but not the obligation, to supervise and oversee any work performed by the Licensor in or to the Licensee's facilities, at Licensee's cost.

5. Repair and Maintenance

- 5.1 If either Party wishes to perform any repairs or maintenance they must follow all state and local laws for any and all work within in the right of way or other locations that require approval by state and local governing bodies, this includes permits and other requirements. ExteNet shall use commercially reasonable efforts to cause the Licensed Assets to continue to meet the Specifications during the License Term. ExteNet shall perform all routine maintenance and operations for the shared conduit and fiber system at its own cost, provided that City shall reimburse ExteNet for its proportionate share of all emergency maintenance and repair costs including but not limited to all costs associated with "one-call" responses, cable locate services and placement of a locate wire for the Licensed Conduit or Fiber and any other repair costs incurred due to damage caused by the City, plus fifteen percent (15%). Proportionate share means the number of licensed fibers divided by the total amount of fibers for the particular segment.
- 5.2 Routine Maintenance. From time to time, at the ExteNet's reasonable discretion, and after adequate advance notice to the City (which shall be at least 72 hours), the ExteNet will schedule and perform specific periodic maintenance and repair checks and services on both the Licensed Assets. This maintenance shall be provided at no cost to the City.
- 5.3 Emergency Maintenance.

- (a) Within two (2) hours after a ExteNet receives a trouble report of imminent or actual failure or impairment of the Licensed Conduit or Fiber, the ExteNet shall commence all commercially reasonable efforts to repair such failure or impairment to cause the Licensed Conduit or Fiber to meet the Specifications. At a minimum, such commercially reasonable efforts shall include dispatching at least one service technician (or more if commercially reasonably prudent to do so) to the source of the reported problem.
- (b) Within four (4) hours after ExteNet receives a trouble report of the type described in section (a), upon the City's request, ExteNet shall provide adequate assurance that ExteNet is diligently pursuing remedial action. If the ExteNet fails to initiate and diligently pursue repair within six (6) hours after the trouble report, then the City may, but shall not be obligated to, effect reasonable repair or replacement to restore the Licensed Conduit or Fiber to the Specifications ("Self Help"). ExteNet shall reimburse the City for all reasonable costs and expenses for Self Help incurred within forty-five (45) days after receipt of an invoice which shall include backup documentation for all charges. If the City performs Self Help, the City shall be responsible to perform such Self Help in a professional and workmanlike manner in accordance with industry standards and if necessary shall indemnify ExteNet in accordance with 12.2.
- (c) If the City does not elect to repair the Licensed Conduit or Fiber pursuant to subsection (b), and ExteNet fails to restore the Licensed Conduit or Fiber to the Specifications within twelve (12) hours after the trouble report, then upon the City's request, ExteNet shall review its Conduit System and propose alternate Licensed Assets with the same end points and capacity at least equal to the capacity or fiber count of the failed Licensed Conduit or Fiber, if available. If such alternative Licensed Asset is not available, the City may terminate the Licensed Asset pursuant to the terms of this Agreement.
- (d) Notice of interruption arising from relocation, condemnations and Force Majeure (as defined in Section 14) events shall be treated as a trouble report for purposes of this Section 5 and shall require prompt notice via email to both address of a Party as indicated below (two (2) required for back-up purposes):

If to ExteNet: noc@extenetsystems.com

If to City: eric.compton@tukwilawa.gov
joel.bush@tukwilawa.gov

6. Term. The term of this Agreement, shall begin on the Effective Date, and shall end on the expiration of the last AEF License Term. Each License Term shall begin upon receipt of Notice of Asset Availability, and shall end on the last day of the AEF License Term.

7. Representations Regarding Authorizations.

7.1 Licensor represents, warrants and covenants that:

- (a) it has obtained, and will use commercially reasonable efforts to maintain all Authorizations throughout any License Term; and
- (b) it has the full right and authority under the Authorizations to enter into this Agreement and perform its obligations hereunder, and the same will not violate the

Authorizations (with or without the giving of notice or the lapse of time or both) or require any consent, approval, filing or notice under the Authorizations or under

any provision of any law, rule or regulation, court order, judgment or decree applicable to the Licensor; and

- (c) it has no knowledge of any defect in the normal operating condition of the Conduit System that would have an adverse effect on the ability of the other Party to utilize Licensed Conduit or Fiber to provide telecommunications services to its customers; and
- (d) it will exercise its rights and perform its obligations hereunder only in accordance with all applicable laws, rules and regulations; and
- (e) it will perform all maintenance services in a professional and workmanlike manner in accordance with industry standards.

7.2 Licensee represents, warrants and covenants that:

- (a) Licensee's use of the Licensed Conduit or Fiber will be limited to the provision of communication services in accordance with all Federal, State and local laws, rules, regulations, codes, statutes and subject to all Authorizations; and
- (b) Licensee has obtained all rights of way, authorizations and consents necessary to use the Licensed Conduit or Fiber. Licensee will indemnify, defend and hold harmless Licensor from any claims related to its use of the Licensed Conduit or Fiber; and
- (c) it has the full right and authority under the Authorizations to enter into this Agreement and perform its obligations hereunder, and the same will not violate the Authorizations (with or without the giving of notice or the lapse of time or both) or require any consent, approval, filing or notice under the Authorizations or under any provision of any law, rule or regulation, court order, judgment or decree applicable to the Licensor; and
- (f) it will perform all work related to access and use of the Licensed Conduit or Fiber in a professional and workmanlike manner in accordance with industry standards.

8. Default and Termination.

8.1 Neither Party shall be in default under this Agreement herein unless and until such Party has received written notice of such default from the other Party, and has failed to cure the default within thirty (30) days after receipt of such notice, except for a payment default which must be cured within ten (10) days after receipt of such notice. Notwithstanding, when a default (unrelated to payment) cannot reasonably be cured within such thirty (30) day period, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice if the Party proceeds promptly to cure the default with due diligence.

8.2 Unless otherwise provided herein, a Party shall be in default if (i) such Party breaches any term or provision of this Agreement or fails to comply with the provisions of this License; (ii) such Party becomes insolvent; (iii) a petition under any of the bankruptcy laws is filed by or against such Party; (iv) such Party makes a general assignment for the benefit of creditors; or (v) a receiver, whether temporary or permanent, is appointed for the property of such Party or any part thereof.

- 8.3 Upon the failure by the defaulting Party to timely cure any default, the non-defaulting Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, and/or (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the above, if the defaulting Party certifies to the non-defaulting Party in writing that a default has been cured, such default shall be deemed to be cured unless the non-defaulting Party notifies the defaulting Party in writing within fifteen (15) days of receipt of the defaulting Party's notice of cure.
- 8.4 In the event of a payment default which has not been cured, Licensor may suspend Licensee's use of the Licensed Conduit or Fiber, without further notice and by whatever means Licensor deems appropriate, until the payment default is cured and for as long as thirty (30) days from the date of notice. If the payment default has not been cured within such thirty (30) day period, then Licensor may immediately terminate this Agreement and pursue any legal remedies it may have under applicable law or principles of equity relating to Licensee's breach.
- 8.5 Notwithstanding the foregoing, no termination of this Agreement shall affect the rights or obligations of any Party hereto with respect to any payment hereunder for services rendered prior to the date of termination and the non-defaulting Licensee shall not be required to relinquish its rights in the Licensed Conduit or Fiber as a result of a Licensor's default and failure to cure.
- 8.6 City shall use the Licensed Assets for City's own use. Under no circumstances shall City resell, lease, license, provide an IRU, or otherwise provide use of Licensed Assets, to any third party. A violation of this Section 8.6 shall be grounds for immediate termination of the Licensed Asset.

9. Taxes.

- 9.1 Each Party shall pay the taxes that apply to their use of facilities under this agreement. ExteNet shall have the ability to transfer, sell, assign, swap, exchange, lease, sublease, license, sublicense, resell or grant indefeasible or other rights of use in or to all or any part of the optical fiber strands it pulls within the Licensed Asset(s) it acquires under this Agreement as "dark fiber" as such term is commonly understood in the telecommunications industry. ExteNet's resell rights do not include the right to transfer bear legal title. ExteNet is responsible for any actions that may violate this Agreement by those entities that have been granted access or use of optical fiber strands by ExteNet.

10. Relocation of the Facilities.

If the need arises either through law, permit, or other circumstances to relocate the Conduit System and/or Licensed Conduits or Fiber, or a portion thereof. Each Party shall be responsible for its proportionate share (as defined in Section 5.1) of relocation costs. Licensor shall give the Licensee at least three (3) months' prior notice, or as soon as practicable, of any relocation or of any governmental proceedings that might result in a relocation, or such lesser amount of notice as the Licensor receives from such governmental authority. Relocation costs means the net relocation costs adjusted for amounts Licensor may receive from any third-party.

11. Condemnation.

- 11.1 If at any time during the Agreement Term, all or any significant portion of the Conduit System or the Licensed Conduit or Fiber shall be taken for any public or quasi public purpose by any authority by the exercise of the right of condemnation or eminent domain,

such a taking shall be an interruption of use that shall be handled in accordance with Section 5, Repair, Maintenance and Continuity.

- 11.2 Each Party shall notify the other Party immediately upon learning of any condemnation proceeding filed against its Conduit System which may impact the other Party's Licensed Conduit or Fiber.

12. Indemnification and Exclusion of Certain Damages.

- 12.1 ExteNet shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with its performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The City shall defend, indemnify and hold ExteNet, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with its performance of this Agreement, except for injuries and damages caused by the sole negligence of ExteNet.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of ExteNet, its officers, officials, employees and volunteers and the City, its officers, officials, employees, and volunteers, ExteNet's liability hereunder shall be only to the extent of ExteNet's negligence and the City's liability hereunder shall be only to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes ExteNet's and the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- 12.2 Waiver of Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CIRCUMSTANCES TO THE OTHER PARTY FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR OTHER SIMILAR DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT

13. Insurance.

- 13.1 The parties agree that they shall procure and maintain for so long as that party is in use of the IRU Conduit or IRU Fiber, as the case may be, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to that party, its agents representatives or employees. The parties shall require that every contractor and subcontractor maintain substantially the same insurance coverage with substantially the same limits as required of that party. The parties shall procure insurance from insurers with a current A.M. Best rating of not less than A-VII. ExteNet shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Agreement. The parties shall maintain insurance that includes:

- (a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form that provides equivalent liability coverage.

- (b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an additional insured under Grantee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage;
 - (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and
 - (d) Umbrella liability policy with limits not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- 13.2 Maintenance of insurance shall not be construed to limit the liability of either party to the coverage provided by such insurance, or otherwise limit a party's recourse to any remedy available at law or equity. Further, a party's maintenance of insurance policies required by this agreement shall not be construed to excuse unfaithful performance by that party.
- 13.3 If the ExteNet maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the ExteNet, irrespective of whether such limits maintained by ExteNet are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by ExteNet.
- 13.4 ExteNet shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
- 13.5 Failure on the part of the ExteNet to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to ExteNet to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due ExteNet from the Public Entity.

14. Force Majeure.

Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than fourteen (14) working days after the event, of the impediment and its effect

on the ability to perform; failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

15. Assignment.

City shall use the Licensed Conduit or Fiber for City's own use. Under no circumstances shall City resell, lease, license, provide an IRU, or otherwise provide use of Licensed Conduit or Fiber Stands, to any third party. Notwithstanding, ExteNet may assign this Agreement in its entirety without the City's consent, to an entity in which such ExteNet or its parent company directly or indirectly owns a majority of the voting interests, or to any person, firm or corporation into or with which it may be merged or consolidated or that purchases all or substantially all of ExteNet's assets by providing notice of such assignment to the City.

16. Notice.

16.1 Other than notice for AEF and maintenance, all other notices, to be effective, must be in writing and delivered by pre-paid commercial overnight delivery service, or by first class mail, return receipt requested, addressed as follows:

If to ExteNet: ExteNet Systems. Inc.
 ATTN: CFO
 3030 Warrenville Rd, Suite 340
 Lisle, IL 60532

With copy to General Counsel at same address
Notice@extenetsystems.com

If to City: CITY of Tukwila
 ATTN: IT Manager
 6300 Southcenter Blvd
 Tukwila, WA 98168

Either Party may change its notice address(es) by written notice to the other Party.

16.2 Notice shall be effective on the date of the addressee's receipt or refusal, as the case may be.

17. Dispute Resolution and Governing Law.

In the event of any claim or dispute under or in connection with this Agreement, the Parties shall negotiate in good faith to resolve the claim or dispute or, upon the failure to resolve such claim or dispute through good faith negotiations, this Agreement shall be governed by and construed in accordance with the laws of the State of Washington without giving effect to the principles of conflicts of laws. Venue for any dispute arising under this Agreement shall be in Pierce County Superior Court.

19. Miscellaneous.

This Agreement, including all Exhibits, sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior understandings and agreements on such subject

matter. No amendment or modification to this Agreement shall be valid unless in writing and signed by both Parties. The only relationship between the Parties is that of licensor and licensee with respect to the Licensed Conduit, and otherwise as independent contracting Parties, and specifically, but without limitation, the Parties are not partners in any undertaking. THIS AGREEMENT SHALL BE INTERPRETED AND ENFORCED UNDER THE LAWS OF WASHINGTON WITHOUT REGARD TO CONFLICTS OF LAWS. If any provision of this Agreement is unenforceable, it shall be deemed stricken from this Agreement and shall have no effect on any other provision. This Agreement shall be binding upon and inure to the benefit of Parties and their respective representatives, successors and assigns. Headings are for convenience only and shall not affect the interpretation of this Agreement. This Agreement shall become effective only upon execution by both Parties. Both Parties have been represented by counsel and neither Party shall be deemed to be the drafter of this document for purposes of interpreting an ambiguity against the drafter. There are no third party beneficiaries of this Agreement. "Days" shall mean calendar days, unless otherwise specified. Business days shall mean all days other than Saturdays, Sundays and Federal holidays. No waiver shall be valid unless in writing and signed by the Party against whom enforcement is sought.

- 20. Waiver. No delay or omission by either party to exercise any right or power occurring upon non-compliance or failure of performance by the other party shall impair that right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other party shall not be construed to be a general waiver of any such covenants, conditions or agreements, but the same shall be and remain at all times in full force and effect.
- 21. Severability. In the event any term, covenant or condition of this Agreement, or the application of such term covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms covenants and conditions of Agreement.

IN WITNESS WHEREOF, the Parties have caused this Asset Exchange Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

ETEXTENET SYSTEMS, INC.

CITY OF TUKWILA

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT A
ASSET EXCHANGE FORM**

This Asset Exchange Form shall be processed in accordance with the Asset Exchange Agreement by and between ExteNet and City of Tukwila dated _____. If a License is granted hereunder, the license shall be for the term listed below.

ASSET REQUEST (completed by the Licensee):	
Requesting Party:	
Date:	
Contact Person:	
Phone:	EMAIL:
AEF Term:	
AEF Renewal Term:	
Conduit Request	
Specifications:	
A Location:	
Z Location:	
Number of Conduit:	
Size of Conduit:	
Access Points:	
Fiber Request	
Specifications (fiber type, requirements, etc.):	
A Location:	
Z Location:	
Fiber Count:	
Is Fiber within above Conduit?:	
Splice Points:	
ASSET REQUEST CONFIRMATION (completed by the Licensee):	
Date:	
Signature:	

ASSET USE AUTHORIZATION (LICENSE) (completed by the Licensor):	
Party:	
Date:	
Contact Person:	
Phone:	EMAIL:
<input type="checkbox"/> License Granted <input type="checkbox"/> License Denied (check one)	
If Granted, Approximate Availability Date:	

(Licensor to attach a drawing to this AEF of the License, including access and splice points.)	
Licensor Signature:	
Printed Name:	
Title:	
Date:	
NOTICE OF ASSET AVAILABILITY (completed by the Licensor):	
Date of Asset Availability:	
Licensor Signature:	
Printed Name:	
Title:	
Date:	

EXHIBIT B

TO BE AGREED UPON BY THE PARTIES. FORM MAY INCLUDE:

City shall coordinate all activity on a Licensed Asset with ExteNet's Network Control and Management at_____.

ExteNet shall coordinate all activity on a Licensed Asset with City's Network Operations Center at 1-800-____-_____.

Originator:	Phone #:	Date Originated:	
Responsible Party:	Phone #:	Cell/Pager#:	
Additional Vendor Contact Info:		Phone:	
Maintenance Spans affected:			
Job Locations:		City:	State:
Brief Job Description:			

*****ACTIVITY CLASSIFICATION*****

Date requested:	Time:	Expected Duration of Activity:
------------------------	--------------	---------------------------------------

*****APPROVALS*****

--