SECTION 4 - GENERAL PROVISIONS

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4.1 CONTRACTOR'S STATUS AND GENERAL RESPONSIBILITIES

A. Contractor is an independent Contractor for all purposes and is entitled to no compensation from The City other than that provided by this contract. Contractor shall inform The City of Contractor's Federal Internal Revenue Service Employer Identification Number, or, if Contractor is an individual with no employer identification number, Contractor's Social Security Number. The Contractor, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of The City for any purpose whatsoever, nor are they authorized to do so.

B. Contractor shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this contract specifically provides otherwise. Contractor shall supervise and direct contract performance using its best skill, and shall be responsible for selecting the means of contract performance. If, during or after the term of this contract, Contractor learns of any actual or potential defect in the goods provided under this contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this contract or of Federal, state, or local law, Contractor shall inform The City immediately in writing with a full description of the defect, problem, or nonconformance.

4.2 NOTICES AND COMMUNICATIONS

All notices and other communications concerning this contract shall be written in English and shall bear the contract number assigned by The City. Notices and other communications may be delivered personally, by telegram, facsimile, or by regular, certified or registered mail.

A notice to The City will be effective only if it is delivered to that person designated in writing in either a) the Notice of Award of this contract, b) the Notice to Proceed under this contract, or c) to another individual specifically designated by this contract. A notice to the Contractor shall be effective if it is delivered to the individual who signed this contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated in writing by the Contractor in the contract or in a written notice to The City.

4.3 ASSIGNMENT AND SUBCONTRACTING

Contractor shall not assign any of its rights or subcontract any of its responsibilities under this contract without the prior written consent of The City. Contractor shall include

in each subcontract any provisions necessary to make all of the provisions of this contract fully effective. Contractor shall provide all necessary plans, specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

4.4 INDEMNIFICATION

A. To the fullest extent permitted by law, Contractor agrees to fully indemnify, hold harmless and defend The City, its directors, officers, and employees from and against all claims, damages, losses, attorney fees and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, caused by the fault or negligence in whole or in part of contractor, its agents, contractors, sub-contractors, or employees from the performance of the work. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute.

B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which The City and the other parties to be indemnified may have under the law or under this Contract.

C. Notwithstanding anything herein to the contrary, Contractor's liability to The City arising out of, or in conjunction with, this Contract shall not exceed the then-current total contract price, provided that this limitation shall not apply to any obligation of Contractor to indemnify The City based on claims of third parties (including employees of The City and Contractor, or to Contractor's liability resulting from its gross negligence or willful misconduct.

D. Except for its failure to deliver LRVs and other material on or prior to the due dates specified in Section CP 5.2.2, which failure is remedied solely and exclusively by liquidated damages specified in Section CP 5.2.3, the Contractor shall not be liable to The City for any consequential or incidental damages.

4.5 LIENS PROHIBITED

Contractor shall not permit any lien or claim to be filed or prosecuted against The City, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Contractor's sole expense.

4.6 SAFETY

Notwithstanding any safety provisions elsewhere in this contract, and in addition to

Contractor's own safety procedures, Contractor shall implement and enforce all safety requirements that are standard in the industry and/or that are required by The City's Safety Department. Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

4.7 PROHIBITED INTERESTS (10/04)

A. No The City Board member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned) shall have any direct or indirect interest in this contract or its proceeds during, or within one year after, that person's tenure with The City**,** except to the extent such interest is permitted and disclosed as may be required under applicable law and The City policy.

B. No The City Board member, officer, employee, or agent (or any member of the immediate family or the partner of any of the aforementioned) shall solicit or accept, and Contractor shall not offer or give to any The City Board member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned), any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and The City policy.

C. No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

4.8 INTEGRATION, MODIFICATION, AND ADMINISTRATIVE CHANGES

This contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This contract may be modified in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. The City reserves the right to make administrative changes to the contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

4.9 SEVERABILITY/SURVIVABILITY

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this contract so that the purposes of this contract are effected. All provisions concerning indemnity survive the termination or expiration of this contract for any cause.

4.10 WAIVER AND NONWAIVER

A. A waiver by one party of a right to a remedy for breach of this contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. The City's acceptance of goods or services, or payment under this contract, shall not preclude The City from recovering against Contractor or Contractor's surety for damages due to Contractor's failure to comply with this contract.

B. Both parties having had the opportunity to consult an attorney regarding the provisions of this contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

4.11 TERMINATION FOR DEFAULT

A. The City may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract; or (iii) Perform any of the other material provisions of this contract.

B. The City's right to terminate this contract under subdivisions (A)(ii) and (iii) of this clause may only be exercised if the Contractor does not initiate a resolution to cure such failure within 10 days (or more if authorized in writing by the Contract Administrator) after receipt of the notice from the Contract Administrator specifying the failure.

C. If The City terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to The City for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

D. Contractor shall be paid the contract price only for completed supplies or services delivered and accepted. If it is later determined by The City that Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of, Contractor, The City may allow Contractor to continue work, or may treat the termination as a termination for convenience.

E. The rights and remedies of The City in this Article are in addition to any other rights and remedies provided by law or under this Contract.

4.12 TERMINATION FOR CONVENIENCE

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in The City's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The City will not be responsible for payment for any work performed after the time of termination. After termination, the Contractor shall promptly submit to The City its termination claim for payment. If the Contractor has any property in its possession belonging to The City, the Contractor will account for the same, and return it to The City in the manner that The City directs.

4.13 INTELLECTUAL PROPERTY

Contractor shall hold harmless, defend and indemnify The City, its directors, officers, employees and agents from any loss of any kind, based on a claim that the work performed, or products provided hereunder, including material(s) or any part thereof, constitutes infringement of any patent, trademark, trade-name, copyright, trade secret, or other intellectual property infringement, including but not limited to claims arising out of the manufacture, sale or use of such work, products or materials. Such indemnification shall include all damages and costs incurred by The City as the result of the claim, including attorney fees and expert witness fees.

In the event the services to be performed by the Contractor under this agreement include the development or delivery of any materials which may be protectable under intellectual property laws ("Work Product"), the following terms and conditions shall apply to The City's interests in intellectual property rights:

The City agrees that Work Product, even that which may be specially ordered, commissioned by, and created for The City, is based on the Contractor's body of knowledge and the Contractor's proprietary information. Accordingly, The City agrees to rescind any ownership rights that The City may have pursuant to the "work for hire" doctrine in said Work Product. The Contractor hereby grants to The City, its authorized successors and assigns a fully paid, royalty-free, non-exclusive and irrevocable license to use, and to authorize others to use, the Work Product for The City's or its successors' and assigns' purposes of operating, maintaining and repairing the Vehicles.

4.14 PARAGRAPH HEADINGS AND OTHER TITLES

The parties agree that paragraph headings and other titles used in this contract are for convenience only, and are not to be used to interpret this contract.

4.15 AUDIT AND INSPECTION OF RECORDS

Contractor shall maintain a complete set of records relating to this Contract in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of The City, the U.S. Department of Transportation, the Washington State Auditor to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of six (6) years after final payment under this contract.

Contractor further agrees to include in all of its subcontracts under this Contract a provision to the effect that the subcontractor agrees that The City, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of six (6) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor.

The periods of access and examination described above for records that relate to (1) disputes between The City and Contractor, (2) litigation or settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4.16 DISPUTES AND MEDIATION

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this contract concerning contractor's performance, if mutually agreed to be appropriate, through negotiations between the contractor's project manager and SDOT's project manager, or if mutually agreed, referred to the city's named representative and the contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes including termination as allowed for within the contract, or may by mutual agreement pursue other dispute alternatives such as mediation or alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

Notwithstanding all above, if Seattle believes in good faith that some portion of work has not been completed satisfactorily, Seattle may require contractor to correct such work prior to Seattle payment. In such event, Seattle will provide to contractor an explanation

of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

4.17 THE CITY FACILITY SECURITY

A. The City policy is that all persons inside the perimeter of The City buildings and yards must display The City-issued badges upon their person. Contractor employees who are required to access The City buildings or yards to perform the requirements of this contract shall comply with this requirement. If such access shall be occasional and during regular business hours, badges shall be "Visitor Pass" type, for which Contractor's employees shall sign-in, show picture ID, and sign-out for according to reception procedures in effect at the respective The City building/yard, each instance when access is required. If Contractor's employees shall need access frequently over an extended period, and/or consistently at times other than regular business hours, badges shall be "Contractor Badge" type, which The City's project manager shall obtain for Contractor's employees. Contractor shall coordinate The City-issued badge requirements with The City's project manager. Contractor is responsible for compliance by each of Contractor's employees with all The City facility security access control procedures. Contractor is responsible for the return of all "Contractor Badges" at the time of contract expiration or termination. Contractor Badges are initially provided at no charge; however, any badges not returned as required will result in a $100 per badge charge to Contractor. This charge will be deducted from the final payment invoice.

B. Contractor Badges are for identification and building/yard access only. If Contractor employees are required to ride transit as part of the contractual requirements, The City's project manager will obtain tickets or passes for this purpose.

C. Contractors that require vehicular access to The City operations facilities shall comply with vehicle access control procedures in effect at the site. Any vehicular access to a The City operations facility by a non- The City vehicle is by permission only, and via designated gates and roadways only. Contractor's vehicle drivers shall comply with site-specific vehicle access control procedures, including the Visitor Pass procedure (described in paragraph A of this section) or display of The City-issued Contractor Badges, for all vehicle occupants.

D. All Contractor employees not displaying a The City-issued Visitor Pass or Contractor Badge while inside a The City building or yard may be required to display photo identification while on The City premises, upon request by any The City employee, and/or required to immediately obtain a Visitor Pass. Non-compliance by Contractor employees with these requirements may result in forceable removal of Contractor employees from The City buildings/yards and/or arrest for trespass.

E. Before The City grants Contractor employees access to The City property under this Agreement or at any time thereafter, in accordance with applicable laws and The City requirements, The City reserves the right to: (1) conduct or obtain, or require Contractor to conduct or obtain background checks on Contractor's employees; (2) have Contractor require its subcontractors to conduct or obtain background checks on their respective employees; and (3) require Contractor to provide written certification and documentation as determined by The City evidencing compliance with these requirements.

F. Performance of this contract may require access to Sensitive Security Information (SSI) that is controlled under 49 CFR 1520. Only persons who have a "need to know" as defined in 49 CFR § 15.11 may access SSI. In addition, persons in possession of SSI have duties as described in 49 CFR § 15.9, including:

- take reasonable steps to safeguard SSI in that person's possession or control from unauthorized disclosure;
- secure SSI, such as in a locked desk or file cabinet or in a locked room;
- only disclose, or provide access to SSI, to persons who have a "need to know";
- report any unauthorized disclosure of SSI to a proper government agency, at the time of becoming aware of such improper disclosure;
- refer requests by other persons for SSI, to a proper government agency;
- mark SSI, as specified in 49 CFR § 15.13; this includes taking steps to properly mark SSI upon receipt of it, if it was not properly so marked when received, and informing the sender of SSI marking responsibilities;
- when disposing of SSI, do so as specified in 49 CFR § 15.19.

4.18 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying 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 City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying 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.

4.19 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS

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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this 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.

The Contractor 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.

The Contractor agrees to include the above two paragraphs 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.

4.20 NOT USED

4.21 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 Agreement *(Form FTA MA(9) dated October 1, 2005* between The City and the 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.

4.22 CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission,

"Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

4.23 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any The City requests which would cause The City to be in violation of the FTA terms and conditions.

4.24 OMITTED

4.25 DEBARMENT AND SUSPENSION (10/04)

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

In accordance with SMC Ch. 20.70, the Director of Finance and Administrative Services or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining cause. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

4.26 LOBBYING

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code

appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less that 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following age agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).

(ii) Professional and technical services by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of

a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and Technical Services by Other than Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation,

submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.

(4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding $100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

(1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

4.27 CLEAN AIR

If the total value of this contract exceeds $100,000:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. 7401 et seq. The Contractor agrees to report each violation to The City and understands and agrees that The City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

4.28 CLEAN WATER REQUIREMENTS

If the total value of this contract exceeds $100,000:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to The City and understands and agrees that The City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

4.29 ENVIRONMENTAL VIOLATIONS

For all contracts and subcontracts in excess of $100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

4.30 ENERGY CONSERVATION

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

4.31 PRIVACY ACT

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

4.32 CARGO PREFERENCE

Contractor agrees:

A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 days working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to The City (through the contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.

C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4.33 FLY AMERICA

If this contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in subcontracts at every tier. 49 U.S.C. 40118 and 4 CFR Part 52.

4.34 BUY AMERICA

If this contract is for Construction and/or the Acquisition of Goods or Rolling Stock (valued at more than $100,000), the Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by

Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

4.35 EQUAL BENEFITS

Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at http://cityofseattle.net/contract/equalbenefits/.)

Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which The City may:

A. Require Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
B. Terminate the Contract; or
C. Disqualify Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

4.36 TAXES

A. Fees and licenses: contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during

the entire term of this contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

B. Where required by state statute, ordinance or regulation, contractor shall pay for and maintain in current status all taxes that are necessary for contract performance.

C. Unless otherwise indicated, The City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the contractor shall be made for federal excise taxes and The City agrees to furnish contractor with an exemption certificate where appropriate.

D. Withholding payment for taxes/business license fees due the city of seattle: if specified by seattle municipal code the director of the department of finance and administrative services may withhold payment due a city contractor pending satisfactory resolution of unpaid taxes and fees due the city.

E. Contractor is to calculate and enter the appropriate Washington state and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

4.37 TRAVEL AND DIRECT CHARGES

If the specifications and scope of work indicated specific travel that is to be compensated by the City, the following limitations on such compensation shall apply. If no travel or direct charges are specifically identified and allowed for in the specifications and scope of work, then the City shall provide no such reimbursement.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.

- The billing for direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection

upon request. All charges must be necessary for the services provided under this Contract.

- The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.

- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.

- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day / night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 50.0 cents per mile.)

- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

- **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.

- **Subcontractor**: Subcontractor expenses will be reimbursed at the actual cost incurred. Copies of all subcontractor invoices that are rebilled to the City are required.

4.38 AFFIRMATIVE EFFORTS FOR UTILIZATION OF WOMEN AND MINORITY SUBCONTRACTING AND EMPLOYMENT, NON DISCRIMINATION IN PROVIDING SERVICES

- Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

- In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.

- In the event Subcontracting is considered appropriate and feasible to contract performance, the Contractor shall develop a Subcontracting Plan, which also may be referred to as an Outreach Plan. The Subcontracting (Outreach) Plan shall specify the Contractor's affirmative efforts and an agreement to the City for subcontracting to women and minority businesses, and/or diverse employment. The Subcontracting (Outreach) Plan, as submitted and/or as agreed upon with the City thereafter, shall be incorporated as a material part of the Contract. In preparing the Subcontracting (Outreach) Plan, Contractors shall actively solicit qualified, available and capable women and minority-owned businesses to perform the subcontracting work for the contract. The Contractor shall submit the Subcontracting (Outreach) Plan to the City with the solicitation and/or prior to contract execution. At the request of the City,

Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements, which may include a list of all subcontractors and/or WMBE subcontractors, and may include a request for copies of the executed agreements between the Contractor and subcontractors, invoices and/or performance reports.

- If upon investigation, the Director of Finance and Administrative Services finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall be notified in writing. The Director of Finance and Administrative Services shall give Contractor an opportunity to be heard with ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Finance and Administrative Services still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

- Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

4.39 AMERICAN WITH DISABILITIES ACT.

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs or activities to Seattle employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

4.40 WORKERS RIGHT TO KNOW.

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the

hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to “carcinogenic ingredients: and “routes of entry” of the product(s) in question.