

<b>AGREEMENT</b>	<b>ORGANIZATION:</b>  <b>City of Seattle</b> 700 5 <sup>th</sup> Avenue Suite 3800 Seattle, WA 98124-4996
ACTUAL COST  <b>Not to exceed \$19,130,752</b>	Description of Work  <b>King Street Station Seismic Retrofit</b>
AGREEMENT NUMBER <b>GCA 6772</b>	Completion Date <b>December 31, 2014</b>

**CONSTRUCTION AND MAINTENANCE AGREEMENT  
 KING STREET STATION SEISMIC RETROFIT  
 SEATTLE, WASHINGTON**

This AGREEMENT by and between THE CITY OF SEATTLE, a Washington municipality, hereinafter referred to as "CITY OF SEATTLE" and the STATE OF WASHINGTON, through its Department of Transportation, hereinafter referred to as the "STATE".

**RECITALS**

**WHEREAS**, on October 28, 2010, the Federal Railroad Administration (FRA) announced the selection of the King Street Station Seismic Retrofit Project for seismic upgrades and other improvements for the Phase 2B restoration of King Street Station in Seattle, Washington, hereafter referred to as the "PROJECT"; and

**WHEREAS**, funds for the PROJECT will be provided to the STATE through a separate agreement between the FRA and the STATE; and

**WHEREAS**, the CITY OF SEATTLE took ownership of King Street Station from the Burlington Northern Santa Fe Railway (BNSF Railway) in 2008 and is the legal owner of the facility; and

**WHEREAS**, the STATE provides capital and operating funds for regional intercity passenger rail service known as Amtrak *Cascades* under Revised Code of Washington (RCW) 47.79 and 47.82; and

**WHEREAS**, the STATE recognizes the importance of making improvements to King Street Station to support intermodal transportation connectivity; and

**WHEREAS**, one of the purposes of the PROJECT is to improve intercity passenger rail service for the traveling public; and

**WHEREAS**, the CITY OF SEATTLE has commenced making phased improvements to King Street Station using local, state, and federal funding sources; and

**WHEREAS**, the final project level FRA environmental decision document covering the work funded

under this AGREEMENT in the form of a Categorical Exclusion (CE) was issued on August 26, 2011; and

**WHEREAS**, the Categorical Exclusion issued on August 26, 2011 was amended on October 18, 2011; and

**WHEREAS**, STATE and CITY OF SEATTLE funds will be expended on the PROJECT to satisfy FRA matching fund requirements; and

**WHEREAS**, the PROJECT shall include seismic upgrades to the station foundations, walls, and clock tower, as well as other interior and exterior improvements to the station; and

**WHEREAS**, the Parties are authorized to enter into this Agreement in accordance with Chapter 47.79 and RCW 35.22.280; and

**NOW, THEREFORE**, the above recitals that are incorporated herein as if set forth below, and in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **SECTION I SCOPE AND PROJECT FUNDING**

The funding provided under this AGREEMENT will be used to construct the PROJECT. As used in this AGREEMENT, PROJECT means Phase 2B of the City of Seattle's King Street Station rehabilitation project, which includes seismic upgrades to King Street Station and other station improvements identified in EXHIBIT A, STATEMENT OF WORK, which is attached hereto and by this reference made a part of this AGREEMENT. Generally, the PROJECT involves the CITY OF SEATTLE adding structural steel and other reinforcements to station exterior walls and clock tower to make them safer during seismic events; relocating and upgrading restrooms; making interior improvements to support the efficient movement of travelers using the station; upgrading mechanical, electrical, and plumbing, and fire protection systems; and exterior restoration and improvement work to doors, windows, masonry, public entrances to the facility, and performing final design for the tenant improvements.

The CITY OF SEATTLE agrees to carry out the PROJECT in accordance with the Approved Project Budget for which the STATE has received written approval from the FRA. "Approved Project Budget" means the most recently dated written statement approved in writing by the FRA containing (a) the estimated total cost of the PROJECT, (b) the items to be deducted from such total in order to calculate the estimated net PROJECT cost, (c) the maximum amount of Federal assistance for which the STATE is currently eligible, (d) the specific items (including contingencies specified) for which the total may be spent, and (e) the estimated cost of each of such items.

The STATE agrees to reimburse the CITY OF SEATTLE, a maximum of NINETEEN MILLION, ONE HUNDRED THIRTY THOUSAND, SEVEN HUNDRED FIFTY TWO DOLLARS (\$19,130,752), using a maximum of SIXTEEN MILLION, SIX HUNDRED AND EIGHTY FIVE THOUSAND, SEVEN HUNDRED FIFTY TWO DOLLARS (\$16,685,752) of FRA funds, and TWO MILLION, FOUR HUNDRED FORTY FIVE THOUSAND DOLLARS (\$2,445,000) in STATE funding, for final design activities and construction of the PROJECT as identified in EXHIBIT A. The CITY OF SEATTLE, after receiving reimbursement from the limited FRA and STATE funding

contributions, agrees to provide the remaining funds necessary to complete the PROJECT as detailed in EXHIBIT A.

The CITY OF SEATTLE shall ensure that the minimum TWENTY and SIX TENTHS (20.6) percent matching fund requirement for the PROJECT will be achieved. This may require the CITY OF SEATTLE to expend unused CITY OF SEATTLE project contingency funds to meet the PROJECT's matching fund obligation.

The CITY OF SEATTLE agrees to carry out the PROJECT in a sound, economical, and efficient manner, and in accordance with the provisions of this AGREEMENT, and all applicable laws, regulations, and published policies.

The parties will conduct their actions under this AGREEMENT in a manner consistent with the terms of the grant agreement between the STATE and the FRA and the provisions included in that agreement attached hereto as EXHIBIT B, Cooperative Agreement Provisions Applicable to the City of Seattle/Subcontractors, and by this reference made a part of this AGREEMENT including any subsequent amendments made thereto.

During the term of this AGREEMENT, the CITY OF SEATTLE, at its own expense, shall remedy all defects in the performance of the PROJECT, and will correct all errors or faulty workmanship of the CITY OF SEATTLE and/or its contractors.

## **SECTION II PAYMENTS TO THE CITY OF SEATTLE**

Prior to initiating any work for reimbursement hereunder, the CITY OF SEATTLE shall provide the STATE with the proposed schedule for the PROJECT. The schedule must be approved by WSDOT before any work on the PROJECT may commence. The schedule shall be arranged in such a manner as to form a basis for comparison with monthly progress billings for work performed. In the event of a change in the method or time for performance of any work, the schedule shall be updated as necessary to reflect the changed circumstances. Expenditures to be reimbursed must be incurred after the date of execution of this AGREEMENT and before December 31, 2014.

If the PROJECT is not completed by December 31, 2014, the CITY OF SEATTLE and STATE agree that any expense for the completion of the PROJECT will be borne solely by the CITY OF SEATTLE with no reimbursement required from the STATE in either FRA or STATE funds.

It is estimated that the entire PROJECT will cost TWENTY TWO MILLION, SEVEN HUNDRED EIGHTY FOUR THOUSAND, THREE HUNDRED AND SEVENTY TWO (22,784,372). Subject to the stipulations set forth in SECTION I - SCOPE of this AGREEMENT, the STATE agrees to reimburse the CITY OF SEATTLE up to a maximum of NINETEEN MILLION, ONE HUNDRED THIRTY THOUSAND, SEVEN HUNDRED FIFTY TWO DOLLARS (\$19,130,752) for the actual eligible direct, and related eligible indirect costs, incurred by the CITY OF SEATTLE in the course of completing the PROJECT required under this AGREEMENT. As used in this section 'eligible' cost means PROJECT costs eligible for reimbursement under the FRA grant to the STATE and the terms of this Agreement. The CITY OF SEATTLE will provide the remaining THREE MILLION, SIX HUNDRED FIFTY THREE THOUSAND, SIX HUNDRED TWENTY (\$3,653,620) for the

**PROJECT using CITY OF SEATTLE funding sources as well as those identified in EXHIBIT A, STATEMENT OF WORK.**

The CITY OF SEATTLE shall submit monthly invoices detailing work completed. The STATE shall make payments to the CITY OF SEATTLE under this AGREEMENT within thirty (30) calendar days of receipt of appropriately detailed and documented invoices. Payment by the STATE shall not relieve the CITY OF SEATTLE of any obligation to make good any defective work or material upon PROJECT completion.

Labor, materials, or other PROJECT costs supplied by the CITY OF SEATTLE will only be reimbursed at actual cost without markup or profit.

The CITY OF SEATTLE shall conform to all provisions of 49 C.F.R. Part 18, or as subsequently amended, regarding accounting conventions. The standards of 2 CFR Part 225, Revised, "Cost Principles for State and Local Governments" shall apply. Reimbursement for travel, subsistence, and lodging expenses will not be eligible under this AGREEMENT unless specifically approved by the STATE.

The billing for non-salary cost, directly identifiable with the PROJECT, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data retained by the CITY OF SEATTLE. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be essential to the work conducted under this AGREEMENT. Crew travel time between normal workstation and jobsites will not be considered travel under this restriction.

### **SECTION III PROGRESS PAYMENT**

The CITY OF SEATTLE shall submit invoice/progress billings to the STATE, for PROJECT related work performed pursuant to EXHIBIT A, at any time, but not more frequently than once per month.

The STATE agrees to reimburse the CITY OF SEATTLE, for actual eligible direct and related eligible indirect PROJECT costs once per month. The STATE will reimburse the CITY OF SEATTLE for the billed amount within thirty (30) calendar days of receipt of a properly completed monthly invoice/progress billing.

If the STATE determines that the invoice/progress billings lack sufficient documentation to support reimbursement to the CITY OF SEATTLE, the STATE shall notify the CITY OF SEATTLE and request that additional documentation be provided. The STATE retains the right to withhold reimbursement to the CITY OF SEATTLE until all supporting documentation required for reimbursement has been approved by the STATE.

It is agreed that STATE payments, pursuant to any CITY OF SEATTLE payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of final STATE payment. In the event that a STATE audit indicates an overpayment to the CITY OF SEATTLE, the CITY OF SEATTLE agrees to refund the overpayment to the STATE within thirty (30) calendar days after being billed therefore. If the CITY OF SEATTLE disagrees with the auditor's findings, the CITY OF SEATTLE may retain the alleged overpayment until the issue is resolved by an informal or formal dispute resolution process.

## **SECTION IV PROGRESS REPORTS**

The CITY OF SEATTLE will work with the STATE as needed to fulfill any and all PROJECT reporting requirements as determined by the FRA and further described in Exhibit B. This shall include, at a minimum, Quarterly Progress Reports, Quarterly Federal Financial Reports, and Interim and or Final Report(s).

## **SECTION V MATERIALS AND MEASUREMENT**

The CITY OF SEATTLE agrees to use the metric system of measurement in its PROJECT activities to the extent practicable, in conformance with applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue. Should the CITY OF SEATTLE deem the use of the metric system impracticable, the CITY OF SEATTLE shall submit to WSDOT a document in written form stating as such and the reasoning behind its impracticability.

## **SECTION VI PROJECT EMPLOYMENT AND INSPECTION OF WORK**

The CITY OF SEATTLE shall employ all persons or contractors necessary to perform the PROJECT work and agrees to be responsible for the management of the PROJECT. The FRA and the STATE, through their authorized representatives, have the right, at all reasonable times, to review PROJECT accomplishments and management control systems, inspect work, and to provide such technical assistance as they may deem appropriate. This shall include review and approval of the quality control plan for the PROJECT.

## **SECTION VII TERM**

This AGREEMENT shall be effective from the date of execution by both parties, and shall remain in effect until December 31, 2014. No reimbursements for work performed before the date of execution or after December 31, 2014 will be paid. This TERM does not release the CITY OF SEATTLE from the maintenance obligations in Section XI and the obligations under SECTION IX of this AGREEMENT, both of which shall survive the TERM of this AGREEMENT for twenty (20) years from the date of PROJECT completion.

## **SECTION VIII OBLIGATIONS TO REPAY GRANT FUNDS**

1. The City of Seattle shall be obligated to repay the STATE the entire amount of FRA funds provided for the PROJECT, or any lesser amount as may be determined by the FRA, if the FRA requires repayment of such funds due to any action or omission of the CITY OF SEATTLE, its contractors or subcontractors, including but not limited to a determination by the FRA that the CITY OF SEATTLE has willfully misused Federal assistance funds by failing to make adequate progress to

complete the PROJECT according to schedule, or failing to adhere to the material terms of this AGREEMENT.

2. Any payment by the CITY OF SEATTLE to the STATE pursuant to this Section shall be payable in U.S. Funds and sent via certified mail to the STATE contact person identified in the NOTICES Section of this AGREEMENT not more than thirty (30) calendar days from demand by the STATE.

## **SECTION IX PROJECT USE FOR INTERCITY PASSENGER RAIL**

The CITY OF SEATTLE will provide the STATE's intercity passenger rail provider use, occupancy and access to the improvements funded under this AGREEMENT for a period of a minimum of twenty (20) years and the CITY OF SEATTLE will not modify the PROJECT in a manner that diminishes its use as an intercity passenger rail station for a period of a minimum of twenty (20) years. If the CITY OF SEATTLE fails to provide access to the STATE's intercity passenger rail operator or if the CITY OF SEATTLE makes modifications to the improvements funded by this AGREEMENT that materially and adversely affect intercity passenger rail operations, the STATE may seek any remedy permitted by law or equity including but not limited to the repayment of a pro rata share of funding provided by the STATE for the PROJECT, subject to the notice and opportunity to cure provisions in Section XIV. Nothing in this AGREEMENT shall be construed as affecting the CITY OF SEATTLE'S rights to negotiate an agreement with Amtrak or any successor regarding reasonable terms and compensation for use of the facility in accordance with 49 U.S.C. § 24308 and any other subsequent applicable law, and the CITY OF SEATTLE reserves all rights thereunder.

In the event that all intercity passenger rail service making use of the PROJECT is discontinued during the twenty (20) year period, THE CITY OF SEATTLE shall continue to ensure the maintenance of the PROJECT property as set forth in this section for a period of one year from the date of service discontinuance in order to allow for possible reintroduction of intercity passenger rail service.

## **SECTION X MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS**

During the progress of the work, and for a period of not less than six (6) years from the date of final payment to the CITY OF SEATTLE, records and accounts of the CITY OF SEATTLE are to be kept available for inspection and audit by representatives of the STATE and/or FEDERAL government. Minimum reporting and record keeping requirements are set forth in 49 C.F.R. Part 18 and minimum general audit requirements are set forth in 49 C.F.R. part 18.26 and OMB Circular A-133, and any revision or supplement thereto.

Copies of the records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 C.F.R. part 31, or as subsequently amended. All costs must be supported by actual invoices and proof of payment. The CITY OF SEATTLE agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

The CITY OF SEATTLE shall maintain the following for six (6) years after the date final payment is made by the STATE under this AGREEMENT:

- (a) Records that identify the sources and applications of funds for the PROJECT and contain information pertaining to outlays;
- (b) Supporting source documents;
- (c) Any records required for the CITY OF SEATTLE to show compliance with the Control of Material and Nondiscrimination Assurances provisions of this AGREEMENT;
- (d) All documentation underlying the preparation of the financial reports;
- (e) Following notification of an amendment to state or federal regulations which takes effect during the period in which costs are allowable, any other records which are required by the notice; and
- (f) Any other records necessary to disclose fully the amount and disposition of the funds provided to the CITY OF SEATTLE under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the CITY OF SEATTLE's responsibilities and all payments and charges under this AGREEMENT.

In the event that any litigation, claim or audit is initiated prior to the expiration of said six (6) year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

## **SECTION XI MAINTENANCE OBLIGATIONS**

The facilities constructed, rehabilitated, or modified as part of this AGREEMENT will be maintained by the City of Seattle for a period of twenty (20) years from the date of project completion in a condition that will permit the level of use for intercity passenger rail that existed upon completion of the construction, rehabilitation, or modification of such facilities, funded by this agreement and otherwise in continuous compliance with the most current version of the applicable building codes and safety standards unless otherwise required under this AGREEMENT. The level of maintenance the City will provide under this AGREEMENT shall be defined with more specificity in the FRA approved Maintenance Implementation Plan that is to be submitted to FRA within 60 days of execution of the Grant/Cooperative Agreement. Funding for PROJECT maintenance shall be the responsibility of the CITY OF SEATTLE pursuant to the KING STREET STATION MAINTENANCE OBLIGATIONS and shall be identified in the Maintenance Implementation Plan. Subject to the notice and opportunity to cure provisions in Section XIII and the provisions in Exhibit B, failure by the CITY OF SEATTLE to maintain the improvements funded by this AGREEMENT will result in the STATE seeking repayment of a pro rata share of the funding provided by the STATE for the PROJECT based upon the percentage remaining of the twenty (20) year period that commenced upon PROJECT completion and placement in service as certified by the STATE. This section shall not be interpreted to prevent THE CITY OF SEATTLE from fulfilling its maintenance obligations through lease agreements with Amtrak and other tenants of King Street Station. The STATE acknowledges that under its lease with THE CITY OF SEATTLE, Amtrak will also share in the maintenance of the PROJECT. The obligation in this section of the AGREEMENT shall remain in effect for a period of TWENTY (20) years from the date of PROJECT completion as certified by the STATE.

## **SECTION XII REPRESENTATIONS AND WARRANTIES**

The following representations and warranties by the parties hereto shall be considered conditions precedent to the effectiveness of this AGREEMENT.

The CITY OF SEATTLE represents and warrants the following:

- (a) That it is a City duly organized, validly existing and in good standing under the laws of the State of Washington;
- (b) That the moneys the CITY OF SEATTLE will derive through this AGREEMENT will be used solely for the reimbursement of PROJECT costs as defined and described in this AGREEMENT;
- (c) That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;
- (d) That all corporate and other proceedings required to be taken by or on the part of the CITY OF SEATTLE to authorize this AGREEMENT, have been or will be duly taken;
- (e) That execution of this AGREEMENT will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;
- (f) It is understood that the actual PROJECT costs under this AGREEMENT are based on preliminary estimates. It is the intent of the STATE to partially reimburse the CITY OF SEATTLE for its actual PROJECT costs. It is further understood that unforeseen circumstances due to no fault of the CITY OF SEATTLE may cause the PROJECT cost to exceed the PROJECT estimate. It is therefore understood that if the total actual PROJECT

cost is greater than the PROJECT estimate, the CITY OF SEATTLE shall complete the PROJECT and assume the entire cost overrun;

- (g) That the CITY OF SEATTLE has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;
- (h) That the CITY OF SEATTLE shall not engage on a full, part-time, or other basis, during the Term of the AGREEMENT, any professional or technical personnel who are, or have been, at any time during the Term of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and
- (i) That the CITY OF SEATTLE shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the CITY OF SEATTLE rent or purchase any equipment or materials from any employee or officer of the STATE. Before final payment on this AGREEMENT by the STATE, the CITY OF SEATTLE agrees to execute and furnish the STATE an affidavit certifying it has complied with this Section XII of this AGREEMENT.

### **SECTION XIII DISPUTE RESOLUTION**

The CITY OF SEATTLE and the STATE, through the Washington State Department of Transportation (WSDOT), shall attempt to resolve disputes that arise under this AGREEMENT as requested by either party. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement:

CITY OF SEATTLE  
Ethan Melone  
Rail Projects Manager  
700 Fifth Avenue, Suite 3800  
Seattle, WA 98124-4996

WSDOT State Rail and Marine  
David Smelser  
Program Manager  
PO Box 47407  
310 Maple Park Ave SE  
Olympia, WA 98504-7407

In the event the Designated Representatives are unable to resolve the dispute within ten (10) business days, the following individuals, or their designee, shall confer and attempt to resolve the dispute:

CITY OF SEATTLE  
Bob Chandler  
Major Projects Division Director  
700 Fifth Avenue, Suite 3800  
Seattle, WA 98124-4996

WSDOT State Rail and Marine  
John Sibold  
Acting Director  
PO Box 47407  
310 Maple Park Ave SE  
Olympia, WA 98504-7407

The CITY OF SEATTLE and the STATE agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been followed and the dispute has not been resolved within the timeline provide in this section.

**SECTION XIV  
TERMINATION FOR FAULT**

Should either the STATE or the CITY OF SEATTLE substantially fail to perform its respective obligations under this AGREEMENT, and continue in such default for a period of sixty (60) calendar days, the party not in default shall have the right at its option, after first giving thirty (30) calendar days written notice thereof by certified mail to the party(s) in default, to terminate this AGREEMENT. The exercise of such right shall not impair any other rights of the terminating party under this AGREEMENT or any rights of action against the defaulting party for the recovery of damages. Notwithstanding the foregoing, if the nature of the default is such that it cannot be cured within thirty (30) days, this AGREEMENT shall not be terminated under if the party in default commences a cure within thirty (30) days after written notice from the other party and thereafter diligently pursues the cure to completion.

If the CITY OF SEATTLE does not complete the PROJECT as described in EXHIBIT A by December 31, 2014 and there is no Force Majeure event that has caused the delay or there is no default by the STATE or action by any third party beyond the CITY OF SEATTLE's control, then the CITY OF SEATTLE is in default.

**SECTION XV  
ASSIGNMENT AND SUCCESSION**

Neither the STATE nor the CITY OF SEATTLE may assign or in any manner transfer, either in whole or in part, this AGREEMENT, or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies to share in any such rights or privileges without the prior written consent of the other party hereto, except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other railway company or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

**SECTION XVI  
FORCE MAJEURE**

It is further understood and agreed that neither the CITY OF SEATTLE nor the STATE, as the applicable case may be, shall be required to perform under this AGREEMENT if it is prevented from doing so by governmental action outside the reasonable control of the CITY OF SEATTLE, or war, strikes, riots, terrorism, or civil commotion, or if the rail facilities or any portion thereof is made unserviceable by Acts of God including, but not limited to, floods, high water, or other damage by the elements.

**SECTION XVII  
NOTICES**

Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this AGREEMENT shall be in writing and shall be delivered personally to the respective party set forth below, or if mailed, sent by certified United States mail, postage prepaid and return receipt required, to the respective parties at the addresses set forth below, or to such other addresses as the parties may from time to time advise by notice to the other party in writing. The date

of personal delivery or of execution of the return receipt in the case of delivery by certified U.S. mail, of any such notice, demand, request, or submission shall be presumed to be the date of delivery.

**NOTICES IN THE CASE OF the CITY OF SEATTLE:**

King Street Station Program Manager  
CITY OF SEATTLE  
Attention: Trevina Wang  
700 Fifth Avenue, Suite 3800  
Seattle, WA 98124-4996  
Phone: (206) 684-3072  
Email: Trevina.wang@seattle.gov

Should the above Registered Agent become unavailable, the CITY OF SEATTLE consents to allowing the legal notices to be sent to the CITY OF SEATTLE's General Counsel at the same address.

**NOTICES IN THE CASE OF THE STATE:**

Acting State Rail and Marine Director  
Freight Systems Division  
Washington State Department of Transportation  
Attention: John Sibold  
P.O. Box 47407  
Olympia, WA 98504-7407  
Phone 360.705.6903  
Email: siboldj@wsdot.wa.gov

**SECTION XVIII  
INTERPRETATION**

This AGREEMENT shall be construed liberally so as to secure to each party hereto all of the rights, privileges, and benefits herein provided or manifestly intended. This AGREEMENT, and each and every provision hereof, is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of a third party to recover by way of damages or otherwise against the parties hereto.

If any covenant or provision, or part thereof, of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other provisions except as herein allowed.

All remedies provided in the AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

The term "AGREEMENT" shall mean AGREEMENT Number GCA 6772 and all EXHIBITS attached hereto and duly executed supplements.

Any forbearance of the parties in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of that or any other right or remedy hereunder.

Each party hereby agrees to immediately notify the other of any change in conditions or any other event, which may significantly affect its ability to perform the PROJECT in accordance with the provisions of this AGREEMENT.

### **SECTION XIX SUBCONTRACTING**

No contract between the CITY OF SEATTLE and its contractors and/or their subcontractors, and/or material suppliers shall create any obligation or liability of the STATE with regard to this AGREEMENT without the STATE'S specific written consent to such obligation or liability notwithstanding any concurrence with, or approval of, the award, solicitation, execution, or performance of any contract or subcontract. The CITY OF SEATTLE hereby agrees to include the provisions of this AGREEMENT in all contracts entered into by the CITY OF SEATTLE for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

### **SECTION XX LAWS TO BE OBSERVED**

- **General Compliance.** the CITY OF SEATTLE shall comply with all applicable federal, state, and local laws, rules, regulations, and orders pertaining to the PROJECT, including but not limited to 2 CFR Part 225, 48 C.F.R. Part 31 and 49 C.F.R. Part 18. All provisions included the EXHIBIT B shall be incorporated herein.
- **Permits and Compliance with land use and environmental laws.** The CITY OF SEATTLE shall be responsible for obtaining all necessary permits from federal, state, and local agencies of government and compliance with land use and environmental regulations pertaining to the performance of work under this AGREEMENT. In particular, the CITY OF SEATTLE will comply with applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

- a. All facilities that will be used to perform work under this AGREEMENT shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.
- b. The CITY OF SEATTLE will conduct work under this AGREEMENT, and will require that work that is conducted as a result of this AGREEMENT be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued there under. The CITY OF SEATTLE certifies that no facilities that will be used to perform work under this AGREEMENT are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The CITY OF SEATTLE will notify the STATE as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this AGREEMENT is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the CITY OF SEATTLE's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. The CITY OF SEATTLE will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this AGREEMENT, the criteria and requirements of this Section 2 and an affirmative covenant requiring such contractor or subcontractor to immediately inform the CITY OF SEATTLE and the STATE upon the receipt of a communication from the EPA concerning the matters set forth herein.
- c. The CITY OF SEATTLE may not incur any costs to be reimbursed under this AGREEMENT on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FRA has provided the STATE with a written notice authorizing the STATE to proceed with the PROJECT. The STATE shall provide the CITY OF SEATTLE with the written notice from the FRA within one business day of the STATE's receipt thereof.
- d. The CITY OF SEATTLE shall assist the FRA and/or the STATE in compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this AGREEMENT, the CITY OF SEATTLE may be required to conduct certain environmental analyses and to prepare and submit to the FRA through the STATE draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).
- e. No publicly-owned land from a park, recreational 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 an historic site of national, state or local significance as so determined by such officials shall be used by the CITY OF SEATTLE without the prior written concurrence of FRA and the STATE. If applicable, The CITY OF SEATTLE shall assist the STATE and the FRA in complying with the requirements of 49 U.S.C. §303(c).

- f. The CITY OF SEATTLE agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. 4321 note, except to the extent that the FRA determines otherwise in writing.
- **Relocation and Land Acquisition.** the CITY OF SEATTLE agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.
  - **Compliance with Social Laws.** During the term of the AGREEMENT, the CITY OF SEATTLE and its contractors, subcontractors, and lessees shall comply with all applicable STATE and FEDERAL workmen's compensation, employer's liability and safety and other similar laws applicable to the CITY OF SEATTLE. In particular, insofar as required by federal laws and the FRA, the CITY OF SEATTLE:
    - a. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
    - b. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction sub-agreements.
    - c. Agrees to conform to the Buy America Act (49 U.S.C.24405(a)), for the PROJECT with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to conditions therein set forth.
    - d. Will comply with the provisions and requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).
  - **Cargo Preference -- Use of United States-Flag Vessels.** Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the CITY OF SEATTLE shall insert the following clauses in contracts let by the CITY OF SEATTLE in which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

As required by 46 C.F.R. Part 381, the contractor agrees –

    - (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
    - (2) To furnish within 20 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 paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590, marked with appropriate identification of the project.
    - (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
  - **Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the CITY OF SEATTLE or its Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex or national origin, or disability,

except for a bona fide occupational qualification. In particular, the CITY OF SEATTLE will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681, 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply.

- **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals**

- (1) The CITY OF SEATTLE agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disables veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this agreement.
- (2) An example of a best practice under (b) above would be to incorporate key elements of the U.S. DOT's Disadvantaged Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this AGREEMENT. This practice would involve setting a DBE contract goal on contracts funded under this AGREEMENT that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the CITY OF SEATTLE would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by the CITY OF SEATTLE the contract would be awarded only to a bidder /offer that has met or made (or in the case of a design build contract, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this AGREEMENT which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.
- (3) The CITY OF SEATTLE must provide the STATE a plan for incorporating the above best practice into its implementation of the PROJECT within 30 days following execution of this AGREEMENT. If the CITY OF SEATTLE is not able to substantially incorporate Part 26 elements in accordance with the above –described best practice, the CITY OF SEATTLE agrees to provide the STATE with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

- **Debarment and Suspension; and Drug-Free Work Place.** The CITY OF SEATTLE agrees to obtain certifications on debarment and suspension from its third party contractors and subgrantees

and otherwise comply with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, and 'Government wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32.

- **Ethics.** The CITY OF SEATTLE shall comply with all applicable sections of the Ethics laws, RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers.
- **Flood Insurance.** the CITY OF SEATTLE agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), with respect to any construction or acquisition connected to the PROJECT.
- **Federal Funding Accountability and Transparency Act (FFATA).** All new awards or modification of existing awards first authorized after October 1,2010 is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf> (a copy of which is attached hereto as Exhibit C). The CITY OF SEATTLE agrees to comply with the rules and regulations set forth in Exhibit C.
- **Reporting Requirements for Transparency Act.** The CITY OF SEATTLE agrees to comply with reporting requirements set forth in Exhibit C.
- In the event of a conflict between a provision in this Section XX and one or more of the flow down provisions set forth in Exhibit B, the provisions in Exhibit B shall take precedence.

## SECTION XXI FRA ACKNOWLEDGEMENT AND NOTIFICATION REQUIREMENTS

1. **Notification Requirement.** With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the CITY OF SEATTLE agrees to:
  - (1) Specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
  - (2) Express the said amount as a percentage of the total costs of the planned acquisition.
2. **Acknowledgment of Support and Disclaimer.**
  - a. An acknowledgment of FRA support and a disclaimer must appear in any publication of any material, whether copyrighted or not, based on or developed under the AGREEMENT, in the following terms:

"This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement between the STATE and the FRA for the King Street Station Seismic Retrofit Project." All materials must also contain the following:  
"Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT."
  - b. The CITY OF SEATTLE agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to the STATE and FRA identifying the Project and indicating that FRA is participating in the development of the Project.

## SECTION XXII INDEPENDENT CONTRACTOR

The CITY OF SEATTLE shall be deemed an independent contractor for all purposes and the employees of the CITY OF SEATTLE or any of its contractors, subcontractors, lessees and the employees thereof, shall not in any manner be deemed the employees or agents of the STATE.

### SECTION XXIII SAFETY AND LIABILITIES

1. **Safety.** The CITY OF SEATTLE shall do all things necessary and proper for the safe operation of the PROJECT and shall comply with all regulations prescribed by law or any public authority with respect thereto for the safety of the public or otherwise.
2. **Personal Liability of Public Officers.** No officer or employee of the STATE or the CITY OF SEATTLE shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of the STATE or the CITY OF SEATTLE.
3. **Responsibility for Damage.** The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; for any loss of material or damage to any of the materials or other things used or employed in the performance of the work; for any injury to or death of any persons, either workers or the public, or for damage to the public for any cause due to the intentional acts or negligence of the CITY OF SEATTLE or its workers, or anyone employed by it.
4. **Hold Harmless and Indemnification.** To the extent permitted by law, The CITY OF SEATTLE shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, fines, penalties, charges, or suits at law or equity arising out of this AGREEMENT to the extent caused by the negligent acts or omissions of the CITY OF SEATTLE, or any of its employees, officers, or agents, provided that nothing herein shall require the CITY OF SEATTLE to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers, agents, or employees; and provided further that if the claims, demands or suit is caused by or results from the concurrent negligence of (a) the CITY OF SEATTLE or any of its officers, agents or employees and (b) the STATE or any of its officers, agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the CITY OF SEATTLE's negligence or the negligence of the CITY OF SEATTLE's officers, agents or employees. This indemnification shall survive the termination of this AGREEMENT. To the extent permitted by law, the STATE shall indemnify and hold the CITY OF SEATTLE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, fines, penalties, charges, or suits at law or equity arising out of this AGREEMENT to the extent caused by the negligent acts or omissions of the STATE, or any of its employees, officers, or agents; provided that nothing herein shall require the STATE to indemnify or hold the CITY OF SEATTLE harmless against claims, demands, or suits based solely upon the negligent conduct of the CITY OF SEATTLE, its officers, agents, or employees; and provided further that if the claim, demand or suit is caused by or results from the concurrent negligence of (a) the CITY OF SEATTLE or any of its officers, agents or employees and (b) the STATE or any of its officers, agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the STATE's negligence or the negligence of the STATE's officers, agents or employees. This indemnification shall survive the termination of this AGREEMENT.

**SECTION XXIV  
NO WAIVER OF STATE'S RIGHTS**

The STATE shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore from showing the true amount and character of the work performed and materials furnished, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the AGREEMENT. Neither the grant of an extension of time nor acceptance of or payment for, the whole or any part of the work by the STATE shall bar the STATE from seeking recovery of damages or any money wrongfully or erroneously paid to the CITY OF SEATTLE. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.

**SECTION XXV  
VENUE**

In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in King County.

**SECTION XXVI  
COMPLETE AGREEMENT**

This document and referenced exhibits contain all covenants, stipulations and provisions agreed upon by the parties with respect to the matters addressed herein. No agents, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT. The following Exhibits are incorporated and made a part of this Agreement:

- Exhibit A      Statement of Work
- Exhibit B      Cooperative Agreement Provisions Applicable to the City of Seattle/Sub-contractors
- Exhibit C      Federal Funding Accountability and Transparency Act Award Terms

**SECTION XXVII  
EXECUTION OF ACCEPTANCE**

The parties adopt all statements, representations, warranties, covenants, and EXHIBITS to this AGREEMENT.

**SECTION XXVIII  
COUNTERPARTS**

This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the date last signed by the parties below.

STATE OF WASHINGTON Department of Transportation

By: John Sibold Date: 11/17/11  
John Sibold, State Rail and Marine Acting Director

CITY OF SEATTLE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bob Chandler, Major Projects Division Director Here  
CITY OF SEATTLE

Approved as to form - STATE:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SCOTT LOCKWOOD, Assistant Attorney General  
State of Washington

Any modification, change or revision to this AGREEMENT requires the further approval as to form of the Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the date last signed by the parties below.

STATE OF WASHINGTON Department of Transportation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John Sibold, State Rail and Marine Acting Director

CITY OF SEATTLE

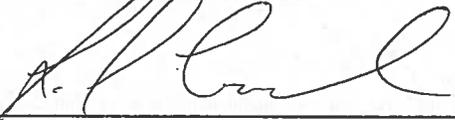
By:  \_\_\_\_\_ Date: 11/17/11  
Bob Chandler, Major Projects Division Director Here  
CITY OF SEATTLE

Approved as to form - STATE:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SCOTT LOCKWOOD, Assistant Attorney General  
State of Washington

Any modification, change or revision to this AGREEMENT requires the further approval as to form of the Office of the Attorney General.

Approved as to form ~~STATE~~ STATE:

By:  Date: 11/16/2011  
SCOTT LOCKWOOD, Assistant Attorney General  
State of Washington

Any modification, change or revision to this AGREEMENT requires the further approval as to form of the Office of the Attorney General.

## **EXHIBIT A STATEMENT OF WORK**

### **Seattle King Street Station Seismic Retrofit Project**

#### **BACKGROUND**

King Street Station in Seattle, Washington is the busiest train station in the Pacific Northwest and the centerpiece for Amtrak *Cascades* operations. The King Street Station Seismic Retrofit Project will make much-needed structural improvements to the train station that has been serving intercity rail passengers since 1906.

King Street Station (Station) was originally constructed on timber pilings bored into sand and silt and clay material that was brought in to fill the tide flats that once existed south of downtown Seattle. The station was also built in a manner where the masonry walls carried the loads of the upper floors and roof without the benefit of a steel support system. This combination of site conditions and building design makes the Station vulnerable to damage from earthquakes that are common in the region, like those that occurred in 1949, 1965, and 2001. Another seismic event could cause severe damage to the station, exposing the traveling public to a significant safety risk and negatively impacting Amtrak *Cascades* operations.

King Street Station has been undergoing a phased restoration under the leadership of the City of Seattle since 2008. A structural review of the building in 2006 determined that the foundation, walls, roof, and clock tower could not withstand another major earthquake. The King Street Station Seismic Retrofit Project was defined based on the needs identified in the structural review. Phase 1 was completed in July 2009 and was funded with local resources. Phase 2 was initiated in May 2010 and is funded with local, state and Federal Transit Administration (FTA) resources.

The work at King Street Station funded under this Cooperative Agreement (“Agreement”) will be a continuation of a program of improvements initiated by the City of Seattle in 2008 and shall include the Final Design (FD) for the tenant improvements that will support the installation of baggage handling equipment, as well as the Construction of Phase 2B, as described in Task 2 below, of the overall King Street Retrofit Project (collectively “the Project”). The work funded under this Agreement will add on to work previously performed on the station by the City of Seattle in Phases 1 and 2. As part of the preceding phases, a new roof was installed, the station clock was repaired, the Jackson Street Plaza was demolished and rebuilt, and the Grand Staircase was repaired and re-opened.

#### **GENERAL OBJECTIVES**

The improvements that will be funded by FRA under this Agreement and those improvements that are prerequisite for the completion of the Project performed under this Agreement will bring the facility up to modern building standards while retaining its historic character. Improvements at King Street Station are also intended to accommodate the anticipated growth in passenger volumes resulting from additional Amtrak *Cascades* intercity passenger rail service that will begin operating in 2017. A new seismic support system, a key element of the Project, will greatly enhance public safety and keep the station functional after earthquakes. Additional Project benefits include better access to the Main Hall ticketing and waiting area, and more efficient heating and cooling systems. The Project, when completed, will supplement the seismic retrofit of the building, enhance the customer experience with

restored facilities, improve passenger safety, and allow the Station to serve the region for many decades to come.

## **DESCRIPTION OF WORK**

The Project has two Tasks. Task 1 includes FD for the tenant improvements that will support the installation of baggage handling equipment. Task 2 includes the Construction of Phase 2B of the King Street Station Seismic Retrofit Project with installation of seismic steel to the Main Hall and clock tower, interior and exterior restoration work, improved public access to the Main Hall, and the installation of mechanical, electrical, plumbing systems.

The work under Tasks 1 and 2 will include:

- FD for the tenant improvements that will support the installation of baggage handling equipment,
- The installation of structural steel framing against the walls of the station and clock tower, and associated building foundation work,
- Removal and replacement of interior ornamental plaster in the Main Hall,
- New entrance, connection corridor, and code compliant staircases between the Jackson Street Plaza and the first, second, and third floors,
- Restoration of lighting and windows in the Main Hall,
- Demolition of the existing men's restroom and relocation of the men's restroom,
- Upgrading the existing women's restroom,
- Installation of new mechanical, electrical, and plumbing distribution systems,
- Repairs to the station clock tower, including rebuilding terra cotta decorations, steel pieces supporting the brick façade, and modifications to the steel supports of the clock tower staircase,
- Exterior rehabilitation including windows, masonry, doors, and new entrance surfaces, and
- King Street Plaza improvements including ADA compliant curbs, bike racks, benches, bollards, and striping.

### **Project Limits**

King Street Station is located in Seattle, Washington at 303 South Jackson Street. The Station marks the dividing line between BNSF Railway's Seattle and Scenic subdivisions. All work will occur inside King County Parcel #7666204875 on property owned by the City of Seattle.

### **Task 1 - Final Design (FD) for Tenant Improvements**

#### **Component 1.1 -Final Design**

WSDOT will complete, or cause to be completed, the FD for the installation of the baggage conveyor and baggage carousel. FD documentation will include plans, specifications, and estimates (PS&E) for the baggage conveyor and baggage carousel procurement and installation which shall be submitted to FRA for review and acceptance.

**Component 1.2 – Project Management**

WSDOT will perform, or cause to be performed, Project management activities associated with Component 1.1. above including the following: developing all procurement specifications and related documents including all construction/shop drawings and supporting quantities/data; establishing all pre-bid meetings and post-bid interviews; evaluating, and awarding processes as required; obtaining all required permits in advance of the start of construction; and procuring all the construction activities.

**Task 2 – Construction of Phase 2B**

***Component 2.1 – Construction***

WSDOT will construct, or cause to be constructed, the station improvements and related elements of the Project as described in this Task 2, Component 2.1. Construction activities for the Project will be in accordance with the FRA-approved categorical exclusion (CE) and FRA-accepted FD drawings.

*Subcomponent 2.1.1 – Station Building and Clock Tower Seismic Upgrades*

- Station foundations will be prepared for seismic upgrades.
- Pilings will be driven along the interior of the perimeter walls of the Station.
- Steel reinforcements will be attached to the pilings, exterior, and interior walls of the Station.
- Steel reinforcements will be installed and connected to the interior walls of the clock tower.
- New utilities including storm water lines and communication lines will be installed.

*Subcomponent 2.1.2 – Demolition and Restoration of Station Wall Plaster, Installation of Main Hall Windows and Lighting Fixtures*

- Demolition of south building addition and other select demolition.
- After seismic steel is installed, Main Hall windows and lighting fixtures will be installed.
- Historic ornamental plaster will be removed, cataloged, and stored. After structural steel work has been completed, these original pieces will be reinstalled along with new plaster walls.

*Subcomponent 2.1.3 – New Jackson Street Entrance and Elevator Entrance Finish Work,*

- A new doorway on the Jackson Street Plaza will be installed on the second floor.
- Finish work on the elevator vestibules and a new second floor Jackson Street Plaza connecting corridor will be completed.

*Subcomponent 2.1.4 – Restroom Relocation and Reconfiguration*

- A new staircase will be installed between the third and second floors connecting to the Jackson Street Plaza connecting corridor.
- The first floor men's room will be demolished and a new staircase will be constructed between the first, second, and third floors.
- A new first floor men's restroom will be built adjacent to the passenger waiting area.
- The existing women's room will be reconfigured and rebuilt.

*Subcomponent 2.1.5 – Mechanical, Electrical, and Plumbing Distribution Systems*

- A new HVAC system will be installed throughout the station.
- A new electrical system will be installed throughout the station.
- A new plumbing system will be installed throughout the station.
- New sprinklers will be installed in selected space to complete the system.

*Subcomponent 2.1.6 – Station Clock Tower Rehabilitation*

- New seismic structural steel for the clock tower will be installed.
- The exterior of the station clock tower will be repaired and restored, including masonry cleaning, repairs to damaged bricks, replacement of damaged bricks, repairing and replacing mortar, and other work to walls and surfaces to prevent water damage and to preserve the clock tower's historic character.
- Terra cotta decorations on the clock tower will be cleaned, repaired, and restored.
- Steel pieces supporting the brick façade will be repaired and replaced.
- Sections of the clock tower staircase will be repaired.

*Subcomponent 2.1.7 – Station Exterior Rehabilitation*

- The exterior of the Station will be repaired and restored, including masonry cleaning, repairs to damaged bricks, replacement of damaged bricks, repairing and replacing mortar, and other work to walls and surfaces to prevent water damage and to preserve the Station exterior's historic character.
- Exterior windows and sills will be repaired and replaced as needed.
- Station exterior doors on the first floor, including the King Street, south side and east side entrances, will be repaired and replaced as needed.

*Subcomponent 2.1.8– King Street Plaza Site Improvements*

- New entryway surfaces will be installed and new asphalt will be poured along the west, south, and east sides of the Station.

**Component 2.2 – Construction Management**

WSDOT will perform, or cause to be performed, construction management activities for the Project, based on the FD approved by FRA. This includes overall management and administration of the contracts for construction engineering, inspection, and construction. Safety will be a key consideration in the planning and construction of all station improvements. Activities included in this Component 2.2 will be consistent with the corresponding description in the FRA-approved Project Management Plan (PMP).

WSDOT will conduct, or cause to be conducted, construction engineering and inspection for the station improvements. Construction engineering and inspection will be ongoing during all contractor work and will include, but will not be limited to, the following: participating in construction meetings; responding to contractor requests for information; documenting daily work activities including staffing, equipment, and materials; providing quality assurance and quality control; and reviewing and approving contractor payments. In addition, a final Project report combining all items necessary for closeout including completed as-built drawings will be submitted to FRA.

**PROJECT SCHEDULE**

The period of performance for the Project will be approximately 21 months, from October 2011 to June 2013. Specific details for Project schedule are identified in FRA-accepted PMP which is on file with FRA.

**Task 1 - FD for Tenant Improvements**

- Proposed start date is October 2011
- Proposed end date is December 2011

**Task 2 – Construction of Phase 2B**

- Proposed start date is January 2012
- Proposed end date is June 2013

**DELIVERABLES**

WSDOT shall achieve these deliverables in order to be authorized for reimbursement for Project components, and for the Project to be considered to be complete.

**Task 1 - Completion of FD**

**Component 1.1 –FD**

Deliverable 1.1 FD PS&E package (100% design).....December 2011

**Task 2 - Construction Deliverables**

**Component 2.1 – Construction**

Deliverable 2.1 Project Construction.....January 2013

**Component 2.2 – Construction Management**

Deliverable 2.2 Annual Update to Project Management Plan.....September 2012

Deliverable 2.3 Final Project report combining all items necessary  
for closeout including completed as-built drawings ..... June 2013

At the completion of the Project, WSDOT will provide FRA with a Project summary report, which will include:

1. Photographs and descriptions of the original Project site; and
2. Photographs and descriptions of the improvements undertaken, as completed, per the terms of the SOW including a Project benefit summary.

WSDOT and FRA will then inspect the Project site before determining the Project complete.

**POST AWARD PREREQUISITES**

1. Unless FRA determines otherwise in writing, the WSDOT will not initiate any Task 2 Construction activities relating to this Project until WSDOT submits, and FRA accepts in writing, the FD for a specific component of the Project.

2. Unless FRA determines otherwise in writing, WSDOT will prepare and submit to FRA for review and approval a Maintenance Implementation Plan for the station facilities upgraded, including but not limited to, the station facilities, Amtrak facilities, and building systems, as part of this Project.

WSDOT shall ensure the Construction and Maintenance Agreement between WSDOT and the City of Seattle will be amended to include this Maintenance Plan and will be provided to FRA for review and acceptance within 60 days of execution of this Cooperative Agreement.

3. Unless FRA determines otherwise in writing, the Project will not be considered complete until WSDOT completes, or causes to complete, the Construction of the Tenant Improvements. WSDOT and FRA will then inspect the Project site before determining the Project complete. The Construction of the Tenant Improvements will be completed without FRA funds. Tenant improvements activities include the installation of the baggage conveyor and baggage carousel, and completion of work to fully operate the office space.

**PROJECT ADMINISTRATION**

WSDOT will provide and maintain Project receipts and documents as required by FRA under this Agreement. As a condition of payment, the WSDOT will obtain written proof of materials, payrolls, work, or documents as necessary during the Project period from contractors and consultants. These will be submitted or made available to FRA, as required.

WSDOT will comply with all Project reporting requirements and understands the FRA may withhold payment if the WSDOT is delinquent in meeting its reporting obligations.

**PROJECT ESTIMATE/BUDGET**

The total estimated cost of the Project is \$22,784,372. Federal funding under this Grant/Cooperative Agreement will be 73.2333% of the total Project cost, but no more than \$16,685,752. The Grantee will be responsible for providing at least 26.7667% of the Project costs. Any additional expense required beyond that provided in this Cooperative Agreement to complete the Project shall be the responsibility of the Grantee. FRA acknowledges that the Grantee has executed a Construction and Maintenance Agreement (C&M Agreement) with the City of Seattle. Under Section I & II of the Agreement, the City of Seattle has agreed to provide \$2,281,030, for the Project using City of Seattle funding sources and to bear the responsibility for the additional expenses including cost overruns. The following is a summary of Project costs and identified funding sources.

<b>Task Description</b>	<b>FRA</b>	<b>Grantee</b>	<b>Total Cost</b>
Task 1 FD	\$10,000	--	\$10,000
Task 2 Construction	\$16,675,752	\$6,098,620	\$22,774,372
<b>Totals</b>	<b>\$16,685,752</b>		<b>\$22,784,372</b>

**Project Sources of Funding:**

FRA Grant	\$16,685,752	73.233%
Grantee*	\$6,098,620	26.767%
<b>Total</b>	<b>\$22,784,372</b>	<b>100%</b>

\* Under its C&M Agreement with WSDOT, City of Seattle will provide \$2,281,030 and bear the responsibility for cost overruns.

**PROJECT COORDINATION**

Grantee shall coordinate, or caused to be coordinated, all tasks required for the Project with major Project stakeholders. Coordination will include regular formal and informal meetings to identify key tasks, correspondence and mutual identification of risks. The following entities are considered major Project stakeholders:

1. WSDOT
2. FRA
3. City of Seattle
4. FTA
5. Amtrak
6. 4Culture

### **PROJECT MANAGEMENT**

The FRA will provide the final approval for the design and implementation of the Project and will administer the Federal funding through the Project grantee, WSDOT. WSDOT, as the grantee, will coordinate with the FRA to ensure all documents and materials made available by the City of Seattle and required for the progression of the Project are submitted to the FRA in a timely manner. WSDOT will also maintain a working relationship with the City of Seattle implementation team to oversee management activities and ensure required reports and documentation of expenditures are readily available. WSDOT will maintain its fiduciary responsibility for overseeing the Federal grant funds during the construction process.

The City of Seattle is the lead agency for the design and implementation of the Project and has employed an engineering firm to prepare the FD plans, specifications, and estimates. The City of Seattle is responsible for coordinating all schedules with Amtrak or parties affected by the Project. During construction, the City of Seattle will assign a Construction Project Manager and will employ an engineering firm to provide construction management services. The City of Seattle will work closely with the WSDOT Project Manager to monitor and control the Project taking corrective actions as necessary to ensure on time and on budget Project delivery.

Attachment 4

Quarterly Progress Report for FRA

Grant No. WBS No. Description Grantee Manager: FRA Manager: Project Description:	<b>Performance Progress</b> Period Ending: Start Date: End Date:	<b>Financial Progress</b> Funding Level: \$0.00 Expended: \$0.00 Remaining: \$0.00 % Expended: 0%																																																								
Significant Accomplishments This Period:																																																										
<div style="text-align: center;"> <b>Project Progress</b> </div> <p style="text-align: center;">                 * Planned %                      ■ Actual % Complete             </p>	<div style="text-align: center;"> <b>Cumulative Financial Trends</b> </div> <p style="text-align: center;">                 -▲- Estimated    -■- Actual             </p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th>\$1000s</th> <th>Oct</th> <th>Nov</th> <th>Dec</th> <th>Jan</th> <th>Feb</th> <th>Mar</th> </tr> </thead> <tbody> <tr> <td>Estimated</td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> <td>6</td> </tr> <tr> <td>Actual</td> <td>0</td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> <tr> <td>Monthly</td> <td></td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> </tbody> </table>	\$1000s	Oct	Nov	Dec	Jan	Feb	Mar	Estimated	1	2	3	4	5	6	Actual	0	1	2	3	4	5	Monthly		1	1	1	1	1																													
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## Exhibit B

### Cooperative Agreement Provisions Applicable to the City of Seattle/ Subcontractors

As used in this Exhibit, "Cooperative Agreement" means the grant agreement between WSDOT and the Federal Railroad Administration for the funding of the Project, under which grant agreement the City of Seattle is a sub-recipient to WSDOT. As used in this Exhibit, "Agreement" means the Construction and Maintenance King Street Station Seismic Retrofit Agreement between WSDOT and the City of Seattle, which this Agreement is incorporated and made a part of.

**Documentation Standards.** When submitting documents to WSDOT, the City of Seattle will ensure such documents are of professional quality and suitable for their intended purpose.

**Progress Reports.** The Parties acknowledge that under the terms of the Cooperative Agreement, WSDOT is required to submit quarterly reports to FRA which shall include concise statements concerning the activities relevant to the Project including the following:

- a. Relate the state of completion of items in the Statement of Work to expenditures of the relevant budget elements.
- b. An account of significant progress (findings, events, trends, etc.) made during the reporting period.
- c. A description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the Agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered.
- d. An outline of work and activities planned for the next reporting period.

Upon request, the City of Seattle shall obtain and provide WSDOT with the information in the City of Seattle's possession and control necessary to meet the FRA's reporting requirements in Section 2- Progress Reports.

**Governing Regulations.** The City of Seattle acknowledges that its performance shall be governed by compliance with the following Administrative and Cost Principles:

For State, Local and/or Tribal Governmental Entities:

- a. 49 C.F.R. Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
- b. OMB Circular A-87, "Cost Principles for State and Local Governments," as amended.

**Buy America.** The City of Seattle shall comply with 49 U.S.C. 24405(a). The City of Seattle shall provide material's certifications with each invoice for which payment is requested that affirms said materials comply with 49 U.S.C. 24405(a).

**Davis-Bacon Act.** The City of Seattle, its contractors and sub-contractors shall comply with the requirements of the Davis-Bacon Act and all related acts and regulations.

**General Requirements.** The City of Seattle agrees to carry out the Project in a sound, economical, and efficient manner, in accordance with the provisions of this Agreement.

**Funds of the Grantee.** Unless approved otherwise by WSDOT, the City of Seattle agrees to complete all actions necessary to provide the matching contributory funds or cost share of the Project costs established for the City of Seattle's share of Project cost under the Agreement, if applicable, at or before the time that such funds are needed to meet Project expenses.

**Changed Conditions of Performance (Including Litigation).** The City of Seattle agrees to notify WSDOT immediately of any change in law, conditions, or any other event that may affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the City of Seattle agrees to notify WSDOT immediately of any decision pertaining to the City of Seattle's conduct of litigation that may affect WSDOT's interest in the project or WSDOT's administration or enforcement of applicable laws or regulations.

**No FRA Obligations to Third Parties.** The FRA shall not be subject to any obligations or liabilities to the City of Seattle, third party or, third party subcontractors, or any other person not a party to this Agreement in connection with the development and construction of the Projects.

**Approved Project Budget.** The City of Seattle agrees to carry out the Project in accordance with the Approved Project Budget, written approval of which the City of Seattle shall secure from WSDOT prior to being reimbursed under this Agreement. If the Approved Budget is included in this Agreement as an attachment, execution of the Agreement shall constitute such written approval. The City of Seattle agrees to obtain the prior written approval of WSDOT for any revisions to the Approved Project Budget that equal or exceed 10 percent of any line item or any revisions that pertain to a line item involving contingency or miscellaneous costs. The WSDOT and FRA review times for proposed revisions of the approved budget and/or use of the contingency/miscellaneous costs as previously noted shall be three (3) working days in total. For the purposes of this Agreement, line item is defined as the phases of project, e.g. Final Design and Construction. For revisions to the Approved Project Budget that are less than 10 percent of any line item, and do not involve contingency or miscellaneous costs, the City of Seattle agrees to notify WSDOT of the revisions to the Approved Project Budget.

**Accounting Records.** The Parties acknowledge that under the terms of the Cooperative Agreement, WSDOT must keep a separate set of account or accounts consistent with 49 C.F.R. 18.20 and that all costs charged to the Project including any approved services contributed by the WSDOT or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The City of Seattle shall ensure that all invoices are appropriately detailed to support WSDOT's obligations under the Cooperative Agreement and shall keep such documents, including all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents, readily available, clearly identified, and to the extent feasible, kept separate from documents not pertaining to projects not covered under this Agreement.

**Record Retention.** During the course of the Project and for six years after Project completion, the City of Seattle agrees to retain and to provide any data, documents, reports, records, contracts, modeling results and supporting materials related to the Project. As a public entity, the City of Seattle is subject to the Washington Public Records Act at RCW 40.14.070.

**Audit and Inspection.** The City of Seattle agrees to comply with the audit requirements of 49 C.F.R. § 18.26 and OMB Circular A-133, and any revision or supplement thereto.

**Inspection by Federal Officials.** The City of Seattle agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts. The City of Seattle further agrees to require each contractor whose contract is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving the contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

**Cost Principles.** When submitting invoices for reimbursement, the following cost principles apply:

a. **Allowable Costs.** The City of Seattle expenditures will be reimbursed only if they meet all requirements set forth below:

- i. Conform to all other terms of this Agreement;
- ii. Be necessary in order to accomplish the Project;
- iii. Be reasonable for the goods and services purchased;
- iv. Be actual net costs to the City of Seattle (i.e. the price paid minus refunds, rebates, or other items of value received by the City of Seattle that has the effect of reducing the cost actually incurred);
- v. Be incurred (and be for work performed) after the effective date of this Agreement, unless specific authorization from WSDOT to the contractor is received in writing;
- vi. Shall conform to Federal guidelines or regulations and Federal cost principles as set forth in OMB Circular A-87, Revised, "Cost Principles for State and Local Governments";
- vii. Be satisfactorily documented; and
- viii. Be treated uniformly and consistently under accounting principles and procedures.

b. **Disallowed Costs.** In determining the amount of Cost Reimbursement WSDOT will provide, WSDOT will exclude:

- i. Any Project costs incurred by the City of Seattle before the obligation date of the Agreement, unless specifically allowed in writing by an authorized representative of WSDOT.
- ii. Any costs incurred by the City of Seattle that are not included in the latest Approved Budget; and
- iii. Any costs attributable to goods or services received under a contract or other arrangement that under the Agreement is required to be, but has not been, concurred in or approved in writing by WSDOT.

**Property, Equipment and Supplies:** Unless otherwise approved by WSDOT, the following conditions apply to property, equipment, and supplies financed under this Agreement:

a. **Use of Property.** The City of Seattle agrees that Project property, equipment, and supplies purchased or improved under this Agreement shall be used for the provision of the Project activity as required by the Agreement. Should the City of Seattle unreasonably delay or fail to use Project property, equipment, or supplies for the term of

this Agreement in the manner required under the Agreement, the City of Seattle agrees that WSDOT may require the City of Seattle to return the a portion or the entire amount of FRA assistance expended on that property, equipment, or supplies, as further provided in the body of the Agreement. The City of Seattle further agrees to notify WSDOT immediately when any Project property or equipment is withdrawn from use in the Project activity, other than short term withdrawals for repair, maintenance, or safety reasons, or when such property or equipment is used in a manner substantially different from the representations made by the City of Seattle in the application or the text of the Project description. .

- b. **Records.** The City of Seattle agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to WSDOT, upon request, such information as may be required to assure compliance with this section of this Agreement.
- c. **Transfer of Project Property.** The City of Seattle agrees that WSDOT may:
  - a. require the City of Seattle to transfer title to any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as permitted by 49 C.F.R. §18.32(g) or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever may be applicable.
  - b. direct the disposition of property or equipment financed with FRA assistance made available under this Agreement, as set forth by 49 C.F.R. §§ 18.31 and 18.32 or 49 C.F.R. §§ 19.30 through 19.37 inclusive, whichever may be applicable.
- d. **Withdrawn Property.** If any property, equipment, or supplies are purchased with grant funds and are not used for the Project for the term of this Agreement, whether by planned withdrawal, misuse or casualty loss, the City of Seattle agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 18.31 for the City of Seattle that is a governmental entity.
- e. **Encumbrance of Project Property.** Unless expressly authorized in writing by FRA the City of Seattle agrees to refrain from:
  - a. Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would adversely affect FRA interest in any Project property or equipment; or
  - b. Obligating itself in any manner to any third party with respect to Project property or equipment that would eliminate the use of the Project property or equipment to support an intercity railroad passenger station.

The City of Seattle agrees to refrain from taking any action or acting in a manner that would adversely affect WSDOT's interest or impair WSDOT's continuing control over the Project property or equipment.

### **Relocation and Land Acquisition.**

As applicable, City of Seattle agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S.DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

## **Flood Hazards.**

The City of Seattle agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a(a), with respect to any construction or acquisition Project.

## **Procurement.**

- a. Federal Standards.** The City of Seattle agrees to comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48 inclusive, whichever may be applicable, and with applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, WSDOT reserves the right to review the City of Seattle's technical specifications and requirements.
- b. Cargo Preference.** As required by 46 C.F.R. Part 381, the City of Seattle agrees:
  - a.** To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag vessels.
  - b.** To furnish within 20 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, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, D.C. 20590, marked with appropriate identification of the Project.
  - c.** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
- c. Notification Requirement.** With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the City of Seattle agrees to:
  - a.** specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
  - b.** express the said amount as a percentage of the total costs of the planned acquisition.
- d. Notification of Third Party Contract Disputes or Breaches.** The City of Seattle agrees to notify WSDOT of any current or prospective major dispute, breach, or litigation pertaining to any third party contract. If the City of Seattle seeks to name WSDOT as a

party to litigation relating to this Project, the City of Seattle agrees to first inform WSDOT before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

- f. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.**
- a. The City of Seattle agrees to: (1) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (2) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from activities funded through this Agreement.
  - b. An example of a best practice under (2) above would be to incorporate key elements of the Department's Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the City of Seattle would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by the City of Seattle, the contract would be awarded only to a bidder/offer that has met or made (on in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirements.
  - c. The City of Seattle must provide WSDOT with a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of the WSDOT & City of Seattle Construction & Maintenance Agreement. If the City of Seattle is not able to substantially incorporate Part 26 elements in accordance with the above described best practice, the City of Seattle agrees to provide WSDOT with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

**Metric System.**

Should the FRA require it, the City of Seattle agrees to use the metric system of measurement in its Project activities to the extent practicable, in conformance with the applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue.

### **Patent Rights.**

- a. If any invention, improvement, or discovery of the City of Seattle or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City of Seattle agrees to notify FRA and WSDOT immediately and provide a detailed report. The rights and responsibilities of the City of Seattle, third party contractors, WSDOT and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.
- b. If the City of Seattle secures a patent with respect to any invention, improvement, or discovery of the City of Seattle conceived or first actually reduced to practice in the course of or under this Project, the City of Seattle agrees to grant to FRA a royalty-free, non-exclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.
- c. The City of Seattle agrees to include the requirements of the "Patent Rights" section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

### **Acknowledgement of Support and Disclaimer:**

- a. An acknowledgement of FRA support and a disclaimer must appear in any grantee publication whether copyrighted or not, based on or developed with funds provided under the Agreement, in the following terms:  

"This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement, dated." (Fill-in appropriate identification of grant/cooperative agreement)
- b. All City of Seattle Publications related to this project must also contain the following:  

"Any opinion, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of WSDOT nor the Federal Railroad Administration and/or U.S. DOT."
- c. The City of Seattle agrees to cause to be erected at the site of construction as it relates to this project, and maintain during construction, signs identifying the Project and indicating that FRA and WSDOT are participating in the development of this Project.

### **Site Visits.**

FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the City of Seattle.

### **Safety Oversight.**

To the extent applicable, the City of Seattle agrees to comply with any federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight of the Project in general, and in the performance of this Agreement, in particular.

### **Civil Rights.**

The City of Seattle agrees to comply with all civil rights and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits the discrimination on the basis of race, color, or national origin; (b) Title IX of the Educational Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (l) the requirements of any nondiscrimination statute(s) which may apply to BNSF.

### **Americans With Disabilities Act.**

The City of Seattle agrees to utilize funds provided under this Agreement in a manner consistent with the requirements for the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

### **Environmental Protection.**

- a. All facilities that will be used to perform work under this Agreement shall not be used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

Nothing herein shall be deemed to waive or modify the preemptive effect of any Federal law.

- b. Work that is conducted as a result of this Agreement shall be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. The City of Seattle certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The City of Seattle will notify WSDOT as

soon as it or any contractor or subcontractor receives any communication from the EPA indicating that an facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provide, however, that the City of Seattle's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been award. The City of Seattle will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform WSDOT upon the receipt of a communication from the EPA concern the matters set forth herein.

- c. The City of Seattle may not expend any funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the WSDOT has provided the City of Seattle with a written notice authorizing the City of Seattle to proceed.
- d. The City of Seattle shall assist the WSDOT in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et. Seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 165; 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, the City of Seattle may be required to conduct certain environmental analyses and to prepare and submit to the WSDOT draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).
- e. No publicly-owned land from a park, recreational 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 an historic site of national, state or local significance as so determined by such officials shall be used by the City of Seattle without the prior written concurrence of WSDOT and FRA. The City of Seattle shall assist the WSDOT in complying with the requirements of 49 U.S.C. §303(c).
- f. The City of Seattle agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 42 U.S.C. 4321 note, except to the extent that WSDOT and FRA determines otherwise in writing.

#### **Flow Down Provisions.**

The City of Seattle shall incorporate Exhibit B in all third party contracts for any part of the work under this Agreement.



**EXHIBIT C**

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT  
(FFATA) AWARD TERMS**

<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and  
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>