

GCA 6531

Washington State Department of Transportation (WSDOT)
and King CountyCOOPERATIVE AGREEMENT
For DESIGN and CONSTRUCTION of the
SR 520 MEDINA TO SR 202: EASTSIDE TRANSIT AND HOV PROJECT

THIS AGREEMENT for Design and Construction of the SR 520 Medina to SR 202: Eastside Transit and HOV Project (the "AGREEMENT") is made and entered into by King County (the "COUNTY") and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION (the "STATE"), collectively referred to as the "PARTIES" and individually referred to as "PARTY."

WHEREAS, the STATE, in the interest of providing transit capacity and mobility improvements in the SR 520 Corridor, proposes improvements along SR 520 within the COUNTY in a project known as the SR 520 Medina to SR 202: Eastside Transit and HOV Project (the "PROJECT") as further described in Exhibit A hereto; and

WHEREAS, the PARTIES entered into a Memorandum of Understanding (MOU), on May 21, 1974, last amended on January 17, 1985, which provides for the design, construction and maintenance of certain COUNTY park and ride and flyer stops facilities in the region including one at SR 520 and 92nd Avenue NE; and

WHEREAS, the PARTIES entered into a cooperative agreement, GC 4688, on April 23, 1977, amended on May 30, 1978, which provides for the construction of certain transit facilities associated with SR 520 at 92nd Avenue NE; and

WHEREAS, the PARTIES entered into a operations and maintenance agreement, GC 4687, on August 23, 1977, which provides for the COUNTY to maintain and operate certain transit facilities associated with SR 520 at 92nd Avenue NE; and

WHEREAS, the PARTIES entered into a maintenance agreement, GM 989, on March 15, 1979, amended on May 1, 1979 and October 8, 1998, which provides for the construction, maintenance and operation of certain transit facilities associated with SR 520 at Evergreen Point Road NE; and

WHEREAS, the PROJECT will require the STATE to reconstruct existing flyer stops within the PROJECT; and

WHEREAS, the STATE, having secured funding for the PROJECT, is willing to undertake the design and construction of said PROJECT; and

WHEREAS, the STATE will construct the PROJECT using the design-build method of project delivery; and

WHEREAS, the design-build method of project delivery is flexible and allows for the development and finalization of the design after the contract is awarded, unlike the typical design-bid-build method of project delivery; and

WHEREAS, the COUNTY provided information to the STATE for the STATE's preparation of the technical requirements in the Eastside Transit and HOV Request for Proposal (RFP) for the design-build contract issued on May 28, 2010; and

WHEREAS, the design of project elements in the design-build method of project delivery moves faster than in the typical design-bid-build method of project delivery; therefore, expedited COUNTY review of the design elements will be required; and

WHEREAS, the PARTIES understand that the PROJECT design will be finalized after the contract is awarded; and

WHEREAS, the PARTIES desire this AGREEMENT to define their roles and responsibilities related to design and construction of the PROJECT; and

WHEREAS, the PARTIES recognize that future supplements or amendments to this AGREEMENT, or other new agreements, may be necessary to record final design decisions and define cost estimates related to the design, construction, and maintenance of the PROJECT.

NOW, THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

1.0 GENERAL

- 1.1 The STATE will construct the PROJECT improvements, including transit flyer stops, along the SR 520 Corridor, the general limits of which are described in Exhibit A and shown in Exhibit B, attached hereto and by this reference made part of this AGREEMENT.
- 1.2 The PARTIES have had ongoing discussions that have resulted in many design decisions by the STATE for elements within the PROJECT. Those decisions and elements are incorporated into this AGREEMENT and specifically identified in Exhibit C, attached hereto and by this reference made part of this AGREEMENT. It is anticipated by the PARTIES that these decisions and elements, will be incorporated into designs, contracts or other related agreements, supplements, and/or amendments, for this PROJECT.

2.0 ROLES

- 2.1 The PARTIES acknowledge that the STATE will enter into future contractual agreement(s) with a design-build contractor (the "DESIGN-BUILDER") for final design and construction of the PROJECT.
- 2.2 The STATE agrees to encourage a partnering session including STATE staff, COUNTY staff, and the STATE's DESIGN-BUILDER staff to review coordination processes and to determine the need for, or frequency of, continuing coordination meetings.
- 2.3 The PARTIES agree to fund, and be fully responsible for, their own respective costs associated with staff time necessary to fulfill their roles and responsibilities as identified in this AGREEMENT, except as identified in Sections 2.4 and 2.5.
- 2.4 The STATE agrees to fund COUNTY project coordination activities for the length of this AGREEMENT through a COUNTY Project Coordinator by separate agreement (GCA 6532).
 - 2.4.1 The COUNTY Project Coordinator will serve as the COUNTY's PROJECT liaison, and will be responsible for facilitating all PROJECT-related communication between the STATE and COUNTY staff as well as expediting and coordinating COUNTY review of all PROJECT-related submittals. The COUNTY Project Coordinator's responsibilities will begin when the PROJECT's Notice to Proceed is issued to the STATE's DESIGN-BUILDER.
 - 2.4.2 The COUNTY Project Coordinator will work with the STATE's SR 520 Project Engineer in executing his or her responsibilities.
- 2.5 The STATE agrees to fund COUNTY project technical review services for the length of this AGREEMENT through COUNTY Technical Reviewers by separate agreement (GCA 6532).
 - 2.5.1 The COUNTY Technical Reviewers will serve as the COUNTY's PROJECT submittal reviewers, responsible for expediting COUNTY review of PROJECT submittals, beginning on the date the PROJECT's Notice to Proceed is issued to the STATE's DESIGN-BUILDER.
- 2.6 The STATE shall track all COUNTY communication requests related to the PROJECT.
- 2.7 The STATE's SR 520 Project Engineer, or his/her designee, will be responsible for facilitating all PROJECT-related communication between the COUNTY Project Coordinator and STATE staff as well as providing PROJECT-related submittals to the COUNTY Project Coordinator. This coordination of efforts with the COUNTY will take place via the COUNTY Project Coordinator.

- 2.8 The STATE agrees to make presentations to the COUNTY when requested to do so by the COUNTY.
- 2.9 The STATE will establish a project schedule and provide such schedule to the COUNTY as soon as the schedule is established by the STATE's DESIGN-BUILDER.
- 2.10 Maintenance responsibilities for the new transit facilities, described in Exhibit C of this AGREEMENT, will be subject to successful future negotiation of an agreement between the PARTIES for the new transit facilities.

3.0 COUNTY REVIEW AND COMMENT ON TRANSIT FACILITY PROJECT ELEMENTS

- 3.1 The STATE will provide the COUNTY with one (1) electronic copy of documents for review and comment by the COUNTY on PROJECT elements.
 - 3.1.1 PROJECT elements include design and construction of transit facilities within the SR 520 right of way that will replace existing flyer stops, located in the vicinity of Evergreen Point Road NE and 92nd Avenue NE. The COUNTY's review of these elements will be limited to conformance with applicable COUNTY and Sound Transit design standards, standard plans, codes, transit operational and maintenance requirements, and policies as of the PROJECT's RFP issue date.
- 3.2 The STATE will review all submittals from its DESIGN-BUILDER for completeness and compliance with contract requirements prior to forwarding them to the COUNTY's Project Coordinator for COUNTY review.
- 3.3 The STATE will work with its DESIGN-BUILDER to give the COUNTY a schedule of submittals and other items for review, and provide the COUNTY as much advance notice of schedule changes for upcoming submittals as possible.
- 3.4 The PARTIES recognize the importance of timeliness in reviews, avoidance of delays, and minimizing costs for the PROJECT, as well as the mutual benefit provided in shortening plan and proposal review times. To that end, the COUNTY and STATE commit to concurrent review of submittals. The COUNTY commits to reviewing and returning submittals within a maximum of twelve (12) calendar days. To comply with the RFP review requirement of fourteen (14) calendar days for all agencies, the COUNTY commits to providing the STATE a minimum of two (2) business days review of COUNTY comments within the fourteen (14) calendar day period.
 - 3.4.1 If necessary, the COUNTY will be responsible for requesting additional review time from the STATE and articulating the cause for delay and specific additional calendar days needed for the review.
 - 3.4.1.1 If the COUNTY anticipates the need for additional review time and submits their request prior to receiving the submittal, the PARTIES agree that the time

for the STATE receiving the request and providing a response shall not count against the twelve (12) calendar day review period.

- 3.4.1.2 The STATE's response to the request for additional review days shall not be unreasonably withheld or conditioned.
- 3.4.1.3 The STATE will review the extended review period requests for consequences to the design-build contract requirement, schedule and cost.
- 3.4.1.4 If the STATE determines the extended review period request will cause a delay to the design-build contract, the PARTIES agree to meet to reach resolution.
- 3.4.1.5 If the COUNTY does not review submittals within the designated review time designated in Section 3.0, the STATE assumes the COUNTY has no comments and will continue on as if the COUNTY had commented.

4.0 DESIGN OF TRANSIT FACILITY PROJECT ELEMENTS

- 4.1 All plans for the PROJECT will follow the STATE's Plans Preparation Manual. All transit facilities will use STATE design standards and standards referenced in the PROJECT's RFP.
- 4.2 Project transit facility commitments are outlined in Exhibit C of this AGREEMENT.
- 4.3 If the STATE's DESIGN-BUILDER proposes a design change to the proposed transit facilities, the STATE agrees to present the change to the COUNTY for review and comment pursuant to Section 4.4 herein.
- 4.4 If the COUNTY proposes a change to the transit facility design concept and/or design criteria in order to accommodate a County-installed transit betterment identified in Exhibit C hereto, the COUNTY shall request a meeting through the STATE's SR 520 Project Engineer.
 - 4.4.1 The PARTIES agree to meet in a cooperative spirit to review and discuss the proposed change.
 - 4.4.2 If the STATE determines the proposed change to be feasible and appropriate, the PARTIES shall negotiate the responsibilities for payment of costs associated with the requested change based on the benefits of the proposed change to each PARTY.
 - 4.4.3 If the PARTIES can mutually agree on payment responsibilities, the STATE will implement the change.

4.4.4 The consideration of potential schedule delays, which may result in additional cost, shall be of paramount importance to both PARTIES, with reducing cost as the primary goal and acknowledged mutual benefit.

4.5 The STATE will provide the COUNTY with plans for review of any proposed changes to the COUNTY transit facilities identified in Section 4.0 for review. These reviews will be conducted in accordance with Section 3.0 of this AGREEMENT.

5.0 REMOVAL OF EXISTING TRANSIT FACILITY

5.1 The COUNTY shall remove and take possession of amenity items at flyer stops on SR 520 referenced in GM 989 and GC 4687, including signs, litter receptacles, passenger shelters, benches and other items owned by the COUNTY at no cost to the STATE.

5.2 The STATE's DESIGN-BUILDER through the STATE's SR 520 Project Engineer will coordinate with the COUNTY to allow COUNTY access to the flyer stop amenity items for removal and agree on the date by which all items are to be completely removed from the PROJECT site.

5.3 The STATE's DESIGN-BUILDER through the STATE's SR 520 Project Engineer will notify the COUNTY (Paul Sorensen at 206-684-2254) thirty (30) calendar days prior to closure of the facility. This notification will include the agreed-upon date by which all flyer stop amenity items will need to be removed. If the COUNTY does not remove these items by the agreed upon date, the COUNTY agrees to pay for the cost of removal by the STATE.

5.4 The COUNTY will follow the STATE DESIGN-BUILDER's protocols when visiting the PROJECT site.

5.5 The PARTIES mutually agree that agreements GM 989 and GC 4687 shall terminate upon removal of the applicable flyer stop amenity items. Temporary transit stops will be provided and maintained by the STATE, through the STATE's DESIGN-BUILDER.

6.0 TRAFFIC CONTROL AND DETOUR PLAN APPROVAL PROCESS FOR TRANSIT

6.1 The STATE, working with its DESIGN-BUILDER, shall submit proposed road closures, detours, and traffic control plans involving existing transit facilities to the COUNTY for review and for approval sufficiently in advance of the notice to the COUNTY required in 6.2. The COUNTY shall review each submittal and return it to the STATE within twelve (12) calendar days after receipt of plans, in accordance with Section 3.0 herein.

6.2 The STATE shall provide a minimum of thirty (30) calendar days notice to the COUNTY prior to implementing any approved closure or relocation of transit facilities, road closures, detours, or traffic control plans, in order to allow the COUNTY time to prepare transit reroutes, and notify transit patrons and transit staff.

7.0 INSPECTION OF TRANSIT FACILITIES

- 7.1 The COUNTY may inspect the transit facilities, at the COUNTY's expense, to assess if the PROJECT as constructed is consistent with COUNTY's standards as noted in Section 3.1.1. The STATE will remain solely responsible for determining the PROJECT is constructed to meet all design requirements, building codes and any other legal duties and requirements to which the construction of the PROJECT is subject.
- 7.1.1 The COUNTY inspectors will follow the STATE DESIGN-BUILDER's protocols when visiting the PROJECT site.
- 7.1.2 The COUNTY shall notify the STATE of any work that the COUNTY believes does not conform to the COUNTY's standards as noted in Section 3.1.1, for transit facilities as soon as the non-conforming issue is known.
- 7.1.3 The COUNTY inspector shall communicate, through the COUNTY Project Coordinator to the STATE's SR 520 Project Engineer. The STATE's SR 520 Project Engineer will communicate with the STATE's DESIGN-BUILDER.

8.0 DISPUTES

- 8.1 The COUNTY and the STATE shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Article applies to disputes arising under or in connection with the terms of this AGREEMENT.
- 8.2 Informal Resolution. The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary. The levels of resolution are described below:
- 8.2.1 The COUNTY's Project Coordinator and the STATE's Project Engineer, shall jointly cooperate to informally resolve any disputes as quickly and efficiently as possible.
- 8.2.2 If unresolved, the COUNTY's Metro Transit Design and Construction Section Manager and the STATE's Engineering Manager shall jointly cooperate to informally resolve any dispute as quickly and efficiently as possible.
- 8.2.3 If the dispute cannot be resolved at any of the levels described above, the COUNTY's Metro Transit General Manager and the STATE's Program Director shall notify each other in writing of any dispute needing resolution. At which time the PARTIES, shall identify and define a process and timeline to reach reasonable and prudent resolution as quickly and efficiently as possible to the dispute.
- 8.3 In the event that the STATE and the COUNTY still are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The PARTIES shall share equally in the cost of the mediator.

- 8.4 Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the PROJECT.
- 8.5 The STATE and the COUNTY agree that they shall have no right to seek relief in a court of law until and unless the dispute resolution process, as described in this section has been exhausted.

9.0 INDEMNIFICATION AND HOLD HARMLESS

- 9.1 Each PARTY shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the PARTIES' own negligent acts or omissions. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provided herein shall be valid and enforceable only to the extent of a PARTY'S own negligence.
- 9.2 The STATE and the COUNTY agree that their obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the PARTIES, by mutual negotiation, hereby waive, with respect to the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- 9.3 In the event either PARTY incurs any judgment, award, and/or cost arising herefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the other PARTY.
- 9.4 This indemnification and waiver shall survive the termination of this AGREEMENT.

10.0 AMENDMENT

- 10.1 Either PARTY may request modifications to this AGREEMENT.
- 10.1.1 Such modifications shall be mutually agreed upon by written amendments and/or supplements to this AGREEMENT.
- 10.1.2 No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representative of each PARTY.

11.0 ALL WRITINGS CONTAINED HEREIN

- 11.1 This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES to this AGREEMENT.
- 11.2 No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto.

12.0 GOVERNANCE

- 12.1 This AGREEMENT is entered into pursuant to, and under the authority granted by, the laws of the State of Washington and applicable federal laws.
- 12.2 The provisions of this AGREEMENT shall be construed to conform to those laws.

13.0 EFFECTIVENESS AND DURATION

- 13.1 This AGREEMENT is effective upon execution by both PARTIES and shall remain in effect through the design and construction of the PROJECT.

14.0 SEVERABILITY

- 14.1 If any provision of this AGREEMENT, or any provision of any document incorporated by reference, shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

15.0 TERMINATION

- 15.1 This AGREEMENT may be terminated by either PARTY with sixty (60) calendar days' written notice or by the written mutual consent of both PARTIES.

16.0 VENUE

- 16.1 In the event that either 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 or proceeding shall be brought in the superior court situated in King County, Washington, and only upon exhaustion of the dispute resolution process outlined in Section 8.0 of this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the latest date written below:

KING COUNTY

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By (signature):
Kevin Desmond
Metro Transit General Manager

By (signature):
Julie Meredith, P.E.
SR 520 Project Director

Date:

Date:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By (print):

Elizabeth Lagerberg

By (print):

By (signature):
Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office

[Signature]

By (signature):
Assistant Attorney General
Office of the Attorney General

Date:

3-14-2011

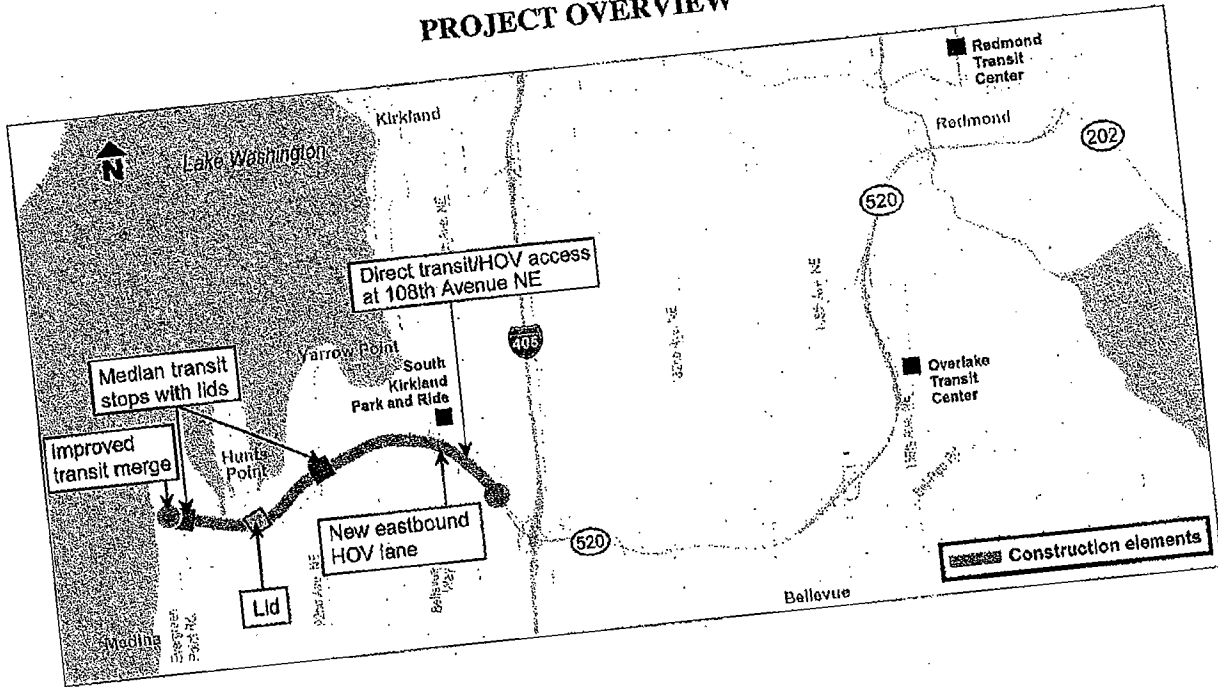
Date:

EXHIBIT A
GENERAL PROJECT DESCRIPTION

The PROJECT includes design and construction improvements to approximately 2.5 miles of SR 520. The primary elements of the PROJECT include the following:

- Reconstruction and reconfiguration of SR 520 from the east shore of Lake Washington at milepost 3.98 to 108th Avenue NE at milepost 6.43.
- Median transit stops near Evergreen Point Road (vicinity milepost 4.25) and at 92nd Avenue NE (vicinity milepost 5.17).
- Direct access ramps for transit and HOV lanes to/from the mainline HOV lanes at 108th Avenue NE.
- Reconstruction of interchanges at 84th Avenue NE, 92nd Avenue NE, Bellevue Way NE, and 108th Avenue NE to accommodate transit and HOV.
- Shared-use bicycle/pedestrian trails.
- Landscaped structural lids at Evergreen Point Road, 84th Avenue NE, and 92nd Avenue NE interchanges.
- Storm water treatment and detention facilities to meet current standards.
- Fish passage improvements, including several culvert replacements and stream restoration.

EXHIBIT B PROJECT OVERVIEW



**EXHIBIT C
PROJECT TRANSIT FACILITY COMMITMENTS**

The PARTIES agree to the following with respect to the transit facilities within the PROJECT.

As part of the PROJECT the STATE will:

- Relocate and rebuild existing transit facilities to meet current STATE, COUNTY and American Disabilities Act (ADA) standards. Transit facilities will consist of eastbound and westbound transit passenger loading platforms near Evergreen Point Road NE and 92nd Avenue NE and will generally include illumination, stairways, elevators, canopy structures, and ancillary transit facilities (Elevator Mechanical Rooms, Electrical Rooms), at each new transit facility for deployment of future systems by the COUNTY.
- Construct and maintain the pavement and storm drains within the roadway area of the transit facilities.
- Construct and maintain crash barrier wall(s).
- Include the following for the Evergreen Point Road NE transit facility:
 - capacity for a minimum of three (3) 60-foot long buses parked head-to-tail with a minimum five (5) feet and, where feasible, up to ten (10) feet clearance between each bus adjacent to the transit passenger loading platforms in each direction, eastbound and westbound;
 - capability for buses to pass other parked, disabled buses as shown in the Autoturn plots provided to the COUNTY on January 5, 2010.
- Include the following for the 92nd Avenue NE transit facility:
 - capacity for two (2) 60-foot long buses parked head-to-tail with a minimum five (5) feet and, where feasible, up to ten (10) feet clearance between each bus adjacent to the transit passenger loading platforms in each direction, eastbound and westbound;
 - capability for buses to pass a parked, disabled bus adjacent to the transit passenger loading platform located in the bus space adjacent to the head of the bus zone.
- Provide one (1) transit facility maintenance and operations vehicle pull-out at each transit platform.
- Construct facilities that support County Transit infrastructure, such as equipment rooms, electrical and communication conduits, and provide access to fiber communications, power supplies and hose bibs.
- Eliminate access to Toll Plaza restroom as of March 1, 2011.

As related to the PROJECT the COUNTY will:

- Negotiate and obtain an agreement to address use and maintenance of the transit facility and ancillary elements at the following locations: Evergreen Point Road NE and 92nd Avenue NE.
- Conditioned on the successful negotiation of the agreement described above, provide transit facility elements which include, but are not limited to, Intelligent Transportation Systems (ITS) related to transit, transit security equipment, transit way finding, transit signage, transit ticket vending, and transit communications equipment.
- Remove and take possession of existing flyer stop zone amenity items near Evergreen Point Road NE and 92nd Avenue NE, as referenced in Section 5.0 of this AGREEMENT.

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Exhibit C – Project Transit Facility Commitments

GCA 6531 Cooperative Agreement for the Design and Construction of the
SR 520 Medina to SR 202: Eastside Transit and HOV Project