

GCA 6439

PROJECT SERVICES AGREEMENT
FOR
SR 520, MEDINA TO SR 202,
TRANSIT AND HOV PROJECT

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THIS AGREEMENT is entered into by the KING COUNTY , hereinafter the "COUNTY," and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, acting by and through the Secretary of the Department of Transportation, hereinafter the "STATE," collectively the "PARTIES" and individually the "PARTY."

WHEREAS, the STATE, in the interest of improving safety, reliability and mobility, proposes to design and construct improvements along SR 520 from I-5 to SR 202 as part of the SR 520 Bridge Replacement and HOV Program, hereinafter the "PROGRAM;" and

WHEREAS, the PROGRAM consists of four independent but coordinated projects the STATE will perform (Projects); and

WHEREAS, the PARTIES recognize the PROGRAM will impact existing COUNTY facilities; and

WHEREAS, one of the four independent Projects entitled "SR 520, Medina to SR 202, Transit and HOV Project", hereinafter the "PROJECT", involves reconstruction of the existing transit facilities located within limited access at Evergreen Point Way and 92nd Avenue Northeast; and

WHEREAS, the STATE and the COUNTY recognize that meaningful consideration of public transportation needs and perspective in planning, design, community outreach, operations and maintenance, and construction of the transit facilities are essential to the success of the PROJECT; and

WHEREAS, the State agrees that reimbursing the COUNTY for staff time spent reviewing and providing input in the planning, design, and construction of the transit facilities will expedite COUNTY processes, thereby minimizing delay and costs to the PROJECT; and

WHEREAS, the STATE is currently advancing the PROJECT in anticipation of a design-build delivery method; and,

WHEREAS, the PARTIES recognize that, dependent on funding, the PROJECT delivery method may change to design-bid-build; and

WHEREAS, the PARTIES acknowledge amendments to the AGREEMENT may be necessary to reflect this change; and,

WHEREAS, due to the compressed scheduling requirements of the PROJECT, the STATE has authorized the COUNTY to begin planning and technical coordination activities for the PROJECT design on February 1, 2010, the cost for which the STATE will reimburse the

COUNTY. This AGREEMENT ratifies that advance authorization given by the STATE to the COUNTY; and,

NOW, THEREFORE, pursuant to 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. GENERAL

1.1 The overall purpose of this Agreement is to define the scope of COUNTY support services, hereinafter "Services", for the PROJECT that shall be eligible for cost reimbursement by the STATE. These Services are further defined in Exhibit A, attached hereto and by this reference made a part of this Agreement.

1.2 Insofar as allowable under laws and regulations applicable to the PROJECT, the COUNTY agrees to expedite COUNTY processes by providing resources that provide the Services, thereby serving the greatest benefit to the public.

1.3 All COUNTY Services governed by this Agreement shall be performed in accordance with the professional standards of performance customarily utilized by the COUNTY.

1.4 The STATE will provide the COUNTY a detailed schedule for Services to be provided by the COUNTY, and a list of meetings which the STATE will request the COUNTY to attend. The STATE will endeavor to provide the COUNTY with the schedule and agenda for each meeting one week prior to the meeting date. The agenda for each meeting will identify the issues and items to be discussed at each meeting. The STATE will provide a written summary of said meetings, including decisions and action items identified at the meeting, to the COUNTY within five business days following each meeting. The COUNTY will have five business days after receipt of each written meeting summary to review said summaries and provide comments to the STATE.

1.5 The STATE will monitor the time and expenditures required to complete the Services to ensure the Services are provided as established in this Agreement. The COUNTY will submit monthly progress updates to the STATE, and the STATE will use these monthly updates to evaluate COUNTY's performance of the Services. The STATE reserves the right to dispute COUNTY's faithful execution of Services in accordance with Section 4 of this Agreement or request changes in the Services in accordance with Section 3 if the intended benefit of Section 1.2 is not being realized by the STATE.

2. PAYMENT

2.1 The STATE agrees to reimburse the COUNTY for the actual direct and related indirect costs of the Services performed by the COUNTY, not to exceed a maximum payable amount of \$125,000.

2.2 An estimate of costs for the Services, marked Exhibit B, is attached hereto and by this reference made a part of this Agreement.

2.3 The PARTIES agree that the invoiced costs shall not include costs for overhead pursuant to reciprocal agreement OH-0019.

2.4 Partial payments shall be made by the STATE upon request from the COUNTY, to cover COUNTY costs incurred associated with performance of the Services. These payments are not to be more frequent than one (1) per month. It is agreed that any payment will not constitute agreement as to the appropriateness of any item or invoice and that, at the time of final audit, all required adjustments will be made and reflected in a final payment.

2.5 The COUNTY shall submit itemized invoices for partial payment. The invoices shall substantially conform to the invoice template shown in Exhibit C, attached hereto and by this reference made a part of this Agreement.

2.6 The STATE agrees to make payment for Services completed by the COUNTY within thirty (30) calendar days from the date the invoice is received by the STATE.

2.7 COUNTY invoices must be signed by an authorized representative of the COUNTY who shall verify that the invoice is accurate, the Services have been performed, and that the costs shown have been reasonably incurred in accordance with this Agreement.

2.8 The COUNTY agrees to submit a final invoice to the STATE within forty five (45) calendar days after COUNTY has completed the Services or this agreement is terminated, whichever comes first.

3. AMENDMENT

3.1 Either PARTY may request changes to the provisions contained in this Agreement. Such changes shall be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

4. DISPUTES

4.1 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.

4.2 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:

- 4.2.1 The COUNTY's Project Manager and the STATE's Project Engineer, as identified in Section 6.1 herein, shall jointly cooperate to informally resolve any disputes as quickly and efficiently as possible.
- 4.2.2 If unresolved, the COUNTY's 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.
- 4.2.3 If the dispute cannot be resolved at any of the levels described above, the COUNTY's 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.

4.3 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.

4.4 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.

4.5 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 has been exhausted.

5. EFFECTIVENESS AND DURATION

5.1 The work under this AGREEMENT was authorized to begin on February 1, 2010, per verbal authorization from Julie Meredith, SR 520 Project Director, and will remain in effect until December 31, 2010, unless otherwise amended or terminated. Prior to its expiration, this Agreement can be extended through a written amendment in accordance with Section 3 of this Agreement.

6. NOTIFICATION

6.1 Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless another method of notification is agreed upon by the PARTIES in writing:

To the STATE: Daniel Babuca, SR 520 Engineering Manager
Washington State Department of Transportation
SR 520 Program
Plaza 600 Building
600 Stewart Street, Suite 520
Seattle, WA 98101-1217

Phone: (206) 770-3545

Email: babucad@wsdot.wa.gov

To the COUNTY: Sally Turner, Project Manager
King County, Department of Transportation
Metro Transit Division, Mailstop KSC-TR-0435
201 South Jackson Street
Seattle, WA 98104-3856

All notifications or contact shall include reference to agreement number GCA 6439.

6.2 From time to time, PARTY contacts change. Any change to a PARTY's representative identified in Section 6.1 shall be provided to the other PARTY by electronic mail notification. The PARTY in receipt of the change will confirm receipt of the change by electronic mail notification to the initiating PARTY.

7. TERMINATION

7.1 This Agreement may be terminated by either PARTY upon 30 days advanced written notice. In the event of termination, payment will be made to the COUNTY for work completed and billed as of the effective date of termination.

8. NONDISCRIMINATION

8.1 The PARTIES agree to comply with all applicable Washington State and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all contractors, consultants, and subcontractors providing Services or performing any work using funds provided under this Agreement.

9. RECORDS RETENTION AND AUDIT

9.1 During the term of this Agreement and for a period not less than six (6) years from the date of final payment by the STATE, the records and accounts pertaining to the Services provided by the COUNTY and accounting therefore are to be kept available for inspection and audit by Washington State and/or the federal government and copies of all records, accounts, documents, or other data pertaining to the Services provided by the COUNTY will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six- (6-) year retention period.

10. INDEMNIFICATION AND HOLD HARMLESS

10.1 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, judgment, and/or awards of damages, arising out of, or in any way resulting from any acts or omissions, or intentional misconduct of the indemnifying PARTY. Neither PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the indemnified PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying PARTY's own negligence.

10.2 Each of the PARTIES agrees that its obligations under this subparagraph 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, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of this Article, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Article shall survive termination of this Agreement.

11. VENUE

11.1 This Agreement shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the STATE and COUNTY shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the superior court situated in the County of King, State of Washington.

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


Kevin Desmond
General Manager
King County Metro

Julie Meredith, P.E.
Director
SR 520 Program

Date

Date

APPROVED AS TO FORM:



Elizabeth Lagerberg
Assistant Attorney General

4-7-2010
Date

Exhibits

- Exhibit A Scope of Services
- Exhibit B Estimated Cost of Services
- Exhibit C Invoice Template

Exhibit A
Scope of Services

The following COUNTY Services are eligible for STATE reimbursement.

A. Project Management

Services in this category shall include:

1. Assist in the development of a Memorandum of Understanding (MOU) or formal agreement that defines and establishes clear roles and responsibilities for maintenance and operations of the transit facilities within the SR 520 right-of-way and passenger oriented portions of said facilities.
2. Attendance and participation at the STATE's transit coordination and technical design meetings. COUNTY shall endeavor to consolidate and limit staff attendance at policy and technical design meetings to critical personnel with relevant knowledge and expertise who can act and provide timely input on behalf of COUNTY.
3. Working with the STATE and the state's design architect consultants to develop Design-Build and/or Design-Bid-Build design criteria, performance standards, and special provisions for inclusion in the STATE's design and construction procurement documents.
4. Development and timely facilitation of formal agreement as identified in the MOU.
5. Participation in the PROJECT's public information, local jurisdiction, and stakeholder outreach activities, as requested by the STATE.
6. Coordination with the STATE for responses to media, agency, or public information request related to transit facilities, service, and operations.
7. Prepare monthly invoices and monthly progress updates including budget status and description of services completed during the billing period.

B. Design Review and Consultation

Services in this category may include:

1. Provide timely technical expertise and consultation services to the STATE in the design of PROJECT's transit stations (or flyer stops) including:
 - a. Geometric design and facility layout
 - b. Design details, standard plans and specifications
 - c. Contractor RFQ/RFP documentation or PS&E, depending on build method
2. Provide project coordination services with related groups within the COUNTY to ensure timely response and resolution of design and operation issues. These groups may include but are not limited to:
 - a. Service Development
 - b. Design & Construction
 - c. Finance and Administrative Services
 - d. Research & Management Information
 - e. Transit Police
 - f. Transit Safety
 - g. Operations

- h. Vehicle Maintenance
 - i. Power and Facilities
 - j. Information Technology
 - k. Sales and Customer Service
 - l. Paratransit/Rideshare
3. Coordination of COUNTY's review of the PROJECT's transit station design and associated technical documents, including consolidation and reconciliation of all COUNTY comments.

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EXHIBIT B
ESTIMATED COST OF SERVICES**

SERVICE	ESTIMATED HOURLY RATE	ESTIMATED # OF HOURS	ESTIMATED COST
A. PROJECT MANAGEMENT			
Transit Engineer V	67	120	\$ 8,040
Estimated Indirect Costs			<u>\$ 3,055</u>
<i>Sub-total, Project Management</i>			\$ 11,095
B. DESIGN REVIEW AND CONSULTATION			
Transit Engineer V	67	750	\$ 50,250
Transit Engineer VI	70	320	\$ 22,400
Special Project Manager II	61	25	\$ 1,525
Transit Environmental Planner	56	25	\$ 1,400
Construction Management IV	58	80	\$ 4,640
Project Control Engineer III	56	40	\$ 2,240
Estimated Indirect Costs			<u>\$ 31,333</u>
<i>Sub-total, Design Review and Consultation</i>			\$ 113,788
TOTAL, SERVICE A AND SERVICE B			\$ 124,883

Cost shall not include overhead pursuant to Reciprocal Agreement OH-0019

The labor classifications listed are for estimating purposes; services may be performed by other classifications not shown here.



King County Billing Request

BILL TO	Washington State Dept of Transportation	ORDER NUMBER						
Contact Name	Daniel Babuca	Requestor	Sally Turner/Rita Ritter					
Title	Accounts Payable	Dept	Metro Transit					
Company	Washington State Dept of Transportation	Division	Transportation					
Mailing Address	401 South Jackson	Section	Design and Construction					
City, State, Zip	Seattle, WA 98104-2826	Phone No.	263-4581/263-6056					
REASON	Payment for actual expenditures per GCA _____.	Mailstop	KSC-TR-0435					
DATE	ITEM	QUANTITY	RATE	AMOUNT				
	RE: Item A. Project Management							
	Subproject 010			\$0.00				
	RE: Item B. Design Review & Consultation							
	Subproject 000			\$0.00				
Comments:		SubTotal		\$0.00				
Questions should be directed to Sally Turner or Rita Ritter		Tax						
		TOTAL		\$0.00				
IBIS FLEXFIELD								
Name	Fund	Cost Center	Account	Project	Phase	SubProject	Grant	Amount
	3641	5531	_____	_____	2	varies	0	\$0.00
Total								\$0.00