

**AGREEMENT**  
**BETWEEN**  
**ORCA AND SOUND TRANSIT**  
**FOR REPLACEMENT ORCA CARDS AND MARKETING OUTREACH**  
**GA 0031-22**

This Agreement for Replacement ORCA Cards and Marketing Outreach (this “Agreement”) is made effective as of \_\_\_\_\_ (the “Effective Date”) by and between Snohomish County Public Transportation Benefit Area (“**Community Transit**”), the Kitsap County Public Transportation Benefit Area Authority (“**Kitsap Transit**”), the State of Washington, acting through the Washington State Department of Transportation, Ferries Division (“**Washington State Ferries**”), the Pierce County Public Transportation Benefit Area (“**Pierce Transit**”), the City of Everett (“**Everett**”), King County (“**King County**”) individually referred to as an “**ORCA Agency**” and collectively known as “**ORCA**”, and the Central Puget Sound Regional Transit Authority (“**Sound Transit**”).

**RECITALS**

WHEREAS, ORCA is a multi-transit agency cooperative, established by the Interlocal Cooperation Agreement for Implementation, Operation and Maintenance of the ORCA System dated June 13, 2019 (the 2019 ILA), and is comprised of seven partner transit agencies including: Community Transit, Everett Transit, King County Metro, Kitsap Transit, Pierce Transit, Sound Transit, and Washington State Ferries (the ORCA Agencies);

WHEREAS, the regional fare collection system underwent a full system replacement in the spring of 2022. As a result of the system replacement, transit customers are impacted by the need to replace their ORCA cards to work on the new system;

WHEREAS, Sound Transit was awarded federal CMAQ grant funds for the purpose of procuring replacement ORCA cards (physical and virtual) and related marketing outreach services for highly impacted customers;

WHEREAS, ORCA established the Regional ORCA Operations Team (ROOT) to provide centralized management of the ORCA system which includes a regional ORCA marketing and communications team;

WHEREAS, the ROOT plans to procure and distribute replacement ORCA cards and procure and manage related marketing outreach services on behalf of the ORCA Agencies, and Sound Transit desires to pay the cost for the same using CMAQ grant funds;

WHEREAS, the Parties desire to set forth in writing the terms by which Sound Transit will use grant funds to pay for replacement ORCA cards and related marketing outreach services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

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1. **Purpose & Scope.** The purpose of this Agreement is to establish the roles and responsibilities of the Parties as they relate to the purchase and management of replacement ORCA cards and marketing outreach services.
  2. **ORCA Responsibilities.** ORCA will perform the following tasks:
    - 2.1. Purchase and distribute ORCA cards. The ROOT will procure and distribute replacement ORCA cards on behalf of the ORCA Agencies using federalized contracts. Those contracts will contain the required federal clauses as outlined in the attached Exhibit A.
    - 2.2. Marketing and outreach. The ROOT marketing and communications team will procure, coordinate, and deliver related marketing outreach activities using federalized contracts.
    - 2.3. The ROOT will invoice Sound Transit for the actual costs of the ORCA cards and related marketing outreach services.
  3. **Sound Transit Responsibilities.** Sound Transit will perform the following tasks:
    - 3.1. Payment. Following receipt of invoices from the ROOT, Sound Transit will make payment as outlined in Section 5 of this Agreement in the amount not to exceed \$1,800,000.00 for the duration of the Agreement as outlined in Section 6.
  4. **Designated Representatives.** ORCA and Sound Transit will each designate a representative (“Designated Representative”) who will be responsible for coordination of communications between the Parties and will act as a central point of contact for the performance of the obligations of this Agreement. The Designated Representatives may be changed by written notice to the other Parties during the term of this Agreement. Each Party’s Designated Representative is named below with the individual’s contact information.

ORCA Agencies:

Ashley Bowman, Business Manager – Regional Fare Systems  
Regional ORCA Operations Team (ROOT)  
Phone: 206-903-7780  
Email: [ashley.bowman@soundtransit.org](mailto:ashley.bowman@soundtransit.org)

Sound Transit:

Chad Davis, Deputy Director-Fares  
Phone: 206-370-5566  
Email: [chad.davis@soundtransit.org](mailto:chad.davis@soundtransit.org)

## 5. **Payment and Billing.**

- 5.1. Invoices. The ROOT will invoice Sound Transit for actual costs related to the scope of this Agreement. Invoices shall be directed to Sound Transit at: [AccountsPayable@SoundTransit.org](mailto:AccountsPayable@SoundTransit.org).
- 5.2. Allocation. Unless otherwise agreed to in writing by the Parties, the not to exceed amount in paragraph 3.1 above, will be allocated as follows: 90% for replacement ORCA cards, and 10% for marketing outreach services.
- 5.3. Invoice documentation. ROOT invoices will be submitted with the following documentation: copies of original bills, invoices, expense accounts, and supporting data including, but not limited to labor costs (totals), material cost, equipment costs and administration costs including but not limited to the cost of documenting Buy America compliance, if applicable, and project expenses.
- 5.4. Payment. Sound Transit Payment to ROOT shall be due within thirty (30) days of receipt of a properly supported invoice. Sound Transit will notify the ROOT in writing within thirty (30) days of receipt of any invoices which, reasonably and in good faith, are disputed or which are not supported by adequate documentation.
- 5.5. Maximum Payment Amount. If the maximum "not to exceed" financial funding amount provided for at Subsection 3.1 is reached, Sound Transit shall have no further obligations under this Agreement, including without limitation the performance of any work, unless a written amendment to the Agreement is executed pursuant to which the maximum funding amount is increased.

6. **Term.** This Agreement shall be for a term beginning on the Effective Date and shall remain in effect for three (3) years unless the Parties mutually agree otherwise; provided, however, that either Party may terminate this Agreement in accordance with the provisions of Section 7.10 below.

## 7. **General Provisions.**

- 7.1. All activities will be conducted in accordance with Federal laws and regulations, and applicable State, and local laws and regulations identified in Exhibit A or as updated or amended.
- 7.2. **Maintenance of Books.** ORCA and Sound Transit will each maintain its own books, accounts and records in such a way as to disclose clearly and accurately the nature and detail of the transactions between them, including such accounting information as is necessary to support the reasonableness of charges under this Agreement, and such additional information as ORCA may reasonably request for purposes of its internal bookkeeping and accounting operations. Sound Transit will keep such books, records and accounts insofar as they pertain to the computation of charges hereunder available for audit, inspection, and copying by ORCA and persons authorized by it or any governmental agency having jurisdiction over ORCA during all reasonable business hours.

- 7.3. **Assignment.** This Agreement and any rights pursuant hereto shall not be assignable to an unaffiliated party by either Party hereto, except as set forth herein or by operation of law, subject to whatever regulatory filings or approvals may be applicable. Except as and to the extent specifically provided in this Agreement, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the Parties hereto, or their respective legal successors, any rights, remedies, obligations, or liabilities that would otherwise be applicable. The representations, warranties, covenants, and agreements contained in this Agreement shall be binding upon, extend to, and inure to the benefit of the Parties hereto, their, and each of their, successors, and assigns respectively.
- 7.4. **Dispute Resolution.** Any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement that may arise between Sound Transit and ORCA shall be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative. At all dispute resolution levels, the ORCA representative represents the interests of all ORCA Agencies. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute resolution process should any such disputes arise:
- 7.4.1. Level One - Sound Transit's functional area representative and ORCA's functional area representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- 7.4.2. Level Two - Sound Transit's Designated Representative, and ORCA's Designated Representative shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- 7.4.3. Level Three - Sound Transit's CEO and the ORCA Joint Board Chair (or Vice-Chair should the Chair be a Sound Transit employee).
- 7.5. Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within sixty (60) days after referral of that dispute to Level Three, the Parties may agree to alternative dispute resolution methods such as mediation, file suit or seek any available legal remedy. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither party has an obligation to agree to refer the dispute to mediation nor other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.

- 7.6. **Public Disclosure.** Pursuant to Chapter 42.56 RCW, documents related to this Agreement shall be considered public records and with limited exceptions will be available for inspection and copying by the public. The Parties will respond to public records requests according to their respective public disclosure policies.
- 7.7. **Notices.** All notices or requests required or permitted under this Agreement will be in writing, will be personally delivered by email, or sent by certified mail, return receipt requested, postage prepaid, and will be deemed received three business days following the date when mailed or on the date when delivered or emailed. All notices or requests will be sent to the ORCA Agencies or Sound Transit addressed to the attention of the named Designated Representative.
- 7.8. **Termination.** This Agreement shall remain in effect until (i) the Parties mutually agree to terminate the Agreement or (ii) either ORCA or Sound Transit gives the other Party one hundred and twenty (120) days or more advance written notice of the Party's intent to terminate this Agreement or that portion of this Agreement pertaining to any one or more of the services or items set forth in Attachment A attached hereto. Upon termination of this Agreement, Sound Transit shall pay to ORCA all payments, which are due in accordance with this Agreement up to the date of termination. Further, upon the termination of this Agreement, each Party shall promptly return to the other Party all documents and materials, belonging to the other Party with regard to services provided under this Agreement or shall at the option of the disclosing Party destroy all such documents or materials.
- 7.9. **Governing Law.** This Agreement is made pursuant to, and shall be governed by, interpreted under, the rights of the Parties determined in accordance with, the laws of the State of Washington.
- 7.10. **Entire Agreement.** This Agreement, together with such amendments as may from time to time be executed in writing by the Parties and SLAs that are governed by this Agreement, constitutes the entire agreement and understanding between the Parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. Except as expressly set forth in the main body of this Agreement, in the event of any conflict between (i) the terms and conditions in the main body of this Agreement and (ii) any Schedule, exhibit, attachment, appendix, SLA, or other underlying document hereto, the terms and conditions of this Agreement shall control, except to the extent that any Schedule, exhibit, attachment, appendix, SLA, or other underlying document expressly identifies terms and conditions in the body of this Agreement intended to be overridden and provided that it controls in the event of any such conflict and in such case, the conflicting provision shall be effective only with respect to that underlying document.
- 7.11. **Severability.** It is further agreed and understood by the Parties hereto that if any part, term, or provision of this Agreement should be held unenforceable in the jurisdiction in which either

Party seeks enforcement of this Agreement, it shall be construed as if not containing the invalid provision or provisions, and the remaining portions or provisions shall govern the rights and obligations of the Parties.

7.12. **Section Headings.** Section headings contained herein are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

7.13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and enforceable against the Party actually executing such counterpart, and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates indicated below.

**[Signatures on next page]**

## COMMUNITY TRANSIT

By: *De Tapia*  
De Tapia (Jan 17, 2023 10:36 PST)

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Name: De Tapia

Title: Deputy Director – IT

Date: 01/29/2023

## KING COUNTY METRO

By: *Christina O'Claire*  
Christina O'Claire (Jan 18, 2023 09:55 PST)

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Name: Christina O'Claire

Title: Director, Metro Mobility Division

Date: 01/18/2023

## PIERCE TRANSIT

By: *Mike Griffus*

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Name: Mike Griffus

Title: Chief Executive Officer

Date: 01/20/2023

## WASHINGTON STATE FERRIES

By: *Patty K Rubstello*  
Patty K Rubstello (Jan 23, 2023 07:55 PST)

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Name: Patty Rubstello

Title: Assistant Secretary

Date: 01/23/2023

## EVERETT TRANSIT

By: *Tom Hingson*  
Tom Hingson (Jan 17, 2023 17:02 PST)

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Name: Tom Hingson

Title: Transportation Services Director

Date: 01/17/2023

## KITSAP TRANSIT

By: *John W. Clauson*  
John W. Clauson (Jan 18, 2023 06:55 PST)

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Name: John Clauson

Title: Executive Director

Date: 01/18/2023

## SOUND TRANSIT

By: *Mary Cummings*  
Mary Cummings (Jan 18, 2023 10:44 PST)

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Name: Mary Cummings

Title: Deputy Chief Executive Officer

Date: 01/18/2023

## REGIONAL ORCA OPERATIONS TEAM

By: *Brittany Esdaile*  
Brittany Esdaile (Jan 26, 2023 15:32 PST)

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Name: Brittany Esdaile

Title: ORCA Director

Date: 01/26/2023

### Exhibit List:

Exhibit A: Federal Clauses

## Exhibit A: Federal Clauses

### SECTION 1 ADMINISTRATION AND SUPERVISION

The work and services under this Agreement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1, as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). This Agreement is subject to certain federal laws, regulations, and other requirements in effect on the date of execution of this Agreement. Sound Transit and the Consultant agree that such federal laws, regulations, and other requirements supersede any conflicting provisions of this Agreement.

### SECTION 2 FEDERAL CIVIL RIGHTS REQUIREMENTS

In addition to Sound Transit nondiscrimination requirements set forth in other Sections in this Agreement, the following Federal requirements apply to the Consultant's performance under this Agreement:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any person on the basis of race, color, creed, national origin, sex, age, or disability under any program or activity receiving Federal financial assistance. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. Specific requirements to implement Title VI and the Americans with Disabilities Act of 1990 are included in Sections 21 and 22, respectively, of this Agreement.
- B. Equal Employment Opportunity - In addition to the provisions set forth in Section 15 of this Agreement, the following equal employment opportunity requirements apply to this Agreement:
  1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
  2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the



Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

- C. Disadvantaged Business Enterprises -- This Agreement is subject to the requirements of Title 49, Code of Federal Regulations (CFR), Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Consultant and its subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Sound Transit deems appropriate. Each subcontract the Consultant signs with a subconsultant must include the assurance in this paragraph (see 49 CFR 26.13(b)). Specific requirements to implement 49 CFR Part 26 are included in Section 16 of this Agreement.
- D. The Consultant also agrees to include these requirements in each subconsultant agreement entered into under this Agreement, modified only if necessary to identify the affected parties.

### **SECTION 3 TITLE VI COMPLIANCE**

During the performance of this Agreement, the Consultant, for itself, its assignees, and its successors in interest (hereinafter referred to as "Consultant"), agrees as follows:

- A. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations (CFR), Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- B. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

- D. Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Sound Transit or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Sound Transit, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Sound Transit shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
  2. Cancellation, termination or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: Consultant shall include the provisions of subparagraphs A through E of this Paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Sound Transit or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request Sound Transit to enter into such litigation to protect the interests of Sound Transit, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

#### **SECTION 4 ADA, SECTION 504 AND OTHER FEDERAL REQUIREMENTS**

The Consultant is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35;
4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and

8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
9. Any implementing requirements that the FTA may issue.

#### **SECTION 5      DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

- A. As a recipient of financial assistance from the U.S. Department of Transportation (DOT), through the Federal Transit Administration (FTA), Sound Transit developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26. The Contractor shall comply with applicable provisions in 49 CFR Part 26.
- B. Sound Transit promotes and encourages participation by DBEs on its contracts. The Consultant shall afford DBEs an equal, non-discriminatory opportunity to compete for business as joint venture partners, subcontractors or suppliers and shall ensure its subcontractors also afford DBEs such opportunities. DBEs are firms that have been certified as eligible to participate as DBEs by the Washington State Office of Minority and Women's Business Enterprises. A listing of DBEs certified by OMWBE is available on the Internet at <http://www.omwbe.wa.gov/directory/directory.htm> or by contacting OMWBE at 360-753-9693.
- C. Although Sound Transit did not establish a DBE Goal for this Contract, the Consultant shall make affirmative efforts to include the participation by DBEs under this Contract.
- D. The Consultant shall include the following assurance in any contract, including subcontractor agreements, it enters into under this Contract:
- E. "The Consultant, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the State deems appropriate."
- F. During performance of this Contract, the Consultant shall maintain sufficient records necessary for State to monitor the Consultant's and its subcontractors' compliance with the provisions of the DBE Program.

#### **SECTION 6      AUDIT AND ACCESS TO RECORDS**

- A. Maintenance Of Records: The Consultant, including its sub-consultants, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Consultant shall maintain an index of such records to facilitate access and recovery of such records.
- B. Access For Audit Purposes: Sound Transit or any of its duly authorized representatives shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit, and copying for a period of six years after final payment is made under this Agreement. Sound Transit shall also have access to such books, records, and documents during the performance of the work if deemed necessary by Sound Transit to verify Consultant work and invoices, to assist in negotiations for additional work, and to resolve claims and disputes. Sound Transit will give five business days notice to the Consultant for access to original records. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

- C. The Consultant agrees to the disclosure of all information and reports resulting from access to records under Paragraphs A and B of this Section provided that the Consultant is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Consultant.
- D. Access for Purposes of Public Disclosure: The public, from time to time, may request access to records relating to the work. Sound Transit has a duty to disclose documents as requested unless such requests call for documents that are specifically exempted from disclosure pursuant to Washington Law. Such requests from the public will be made in writing in a stipulated form to Sound Transit. Sound Transit will administer the request by serving as the point of contact with the public member making the request, invoicing for the costs of copying and reviewing the records for potential exemptions. Sound Transit will refer the collection, compilation, indexing, and copying of the actual records to the Consultant. The Consultant shall maintain the records in a condition that will facilitate such responses and will provide necessary staff for this purpose. A task for these purposes shall be designated on the Project Control Report with a separately identified WBS number so that costs and hours can be budgeted and monitored. This task shall include all costs for labor, equipment and supplies for providing these services.
- E. The periods of access and examination described in Paragraphs A and B of this Section for records that relate to (1) disputes between Sound Transit and the Consultant, (2) litigation or settlement of claims arising out of the performance of this Agreement, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.
- F. The Consultant shall ensure that substantially all of the foregoing Paragraphs are included in each subcontract for work on this Agreement to the effect that the subconsultant agrees that Sound Transit, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of six years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subconsultant. The term "subcontract" as used in this paragraph excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

## **SECTION 7 REPORTING, RECORD RETENTION AND ACCESS**

- A. Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government.
- B. Consultant agrees to maintain intact and readily accessible all work, materials, payrolls, books, documents, papers, data, records and accounts pertaining to the Agreement. Consultant agrees to permit the Secretary of Transportation, the Comptroller General of the United States and Sound Transit, or their authorized representatives, access to any work, materials, payrolls, books, documents, papers, data, records and accounts involving the Agreement for the purpose of making audit, examination, excerpts, and transcriptions pertaining to the Agreement as it affects the Project. Consultant shall retain all required records for six (6) years after Sound Transit has made final payments. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized

representatives, shall continue until such litigation, claims, or exceptions have been disposed of. Consultant shall require its subconsultants to also comply with the provisions of this Paragraph B, and shall include the provisions of this Paragraph B in each of its subcontracts.

#### **SECTION 8 CHANGES IN GOVERNMENTAL REGULATIONS**

- A. In the event local, state or federal laws or regulations that were not announced or enacted at the time of Bid and/or submittal of Proposal, and such laws or regulations make standards more stringent or compliance more costly under this Agreement, the Consultant shall notify Sound Transit in writing of such laws or regulations and their effects on the pricing or delivery schedule promptly after the Consultant first became aware of the laws and regulations and prior to incurring any such expenses.
- B. Sound Transit will make a determination as to whether the Consultant should be reimbursed for any such expenses or any time extensions should be granted in accordance with the provisions of the Umbrella Agreement.
- C. The Consultant shall be deemed to have had notice of any Federal law or regulation announced or enacted at the time of contract award, even though such law or regulation did not take effect or become operative until some date after the contract award.
- D. The Consultant shall, immediately upon becoming aware of any such imposition or change of requirement, provide Sound Transit with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the date of contract award so as to make the Consultant's performance less expensive, or less difficult, then Sound Transit shall have the option either to require the Consultant to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. Sound Transit shall give the Consultant notice of Sound Transit's determination, and anticipated savings.

#### **SECTION 9 FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- A. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant, to the extent the Federal Government deems appropriate.
- B. The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.
- C. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be

modified, except to identify the subconsultant who will be subject to the provisions.

#### **SECTION 10 APPLICABILITY OF FEDERAL GRANT CONTRACT**

This procurement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1, as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

#### **SECTION 11 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

- A. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, ([http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_4063.html](http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html)), and the Master Grant Agreement (<http://www.fta.dot.gov/documents/13-Master.doc>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.
- B. The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.
- C. Copies of the FTA Master Agreement are available from Sound Transit.

#### **SECTION 12 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

Consultant agrees that absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

#### **SECTION 13 FEDERAL LOBBYING RESTRICTIONS**

- A. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or

cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

- B. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". Sound Transit must also receive all disclosure forms.
- C. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
  - i. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
  - ii. A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
  - iii. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

#### **SECTION 14 LOBBYING CERTIFICATION AND DISCLOSURE**

Pursuant to 40 CFR Part 34 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form set forth in Certificate 1.1 of this **Exhibit D** with the execution of this agreement.

#### **SECTION 15 DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

- A. Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 CFR 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract.
- B. Further, the Consultant shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall verify, prior to entering into any agreement with subconsultants seeking subcontracts greater than \$25,000, that said subconsultant has not been debarred or suspended. the Consultant shall require its subconsultants to execute and return the Certification Regarding

Debarment, Suspension, And Other Responsibility Matters form set forth in Certificate 1.2 of this Exhibit D

- C. Debarment and suspension information can be verified at <http://www.sam.gov>. The consultant is responsible for printing and retaining the verification in the project file.

#### **SECTION 16 EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS**

Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

#### **SECTION 17 CONSERVATION**

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

#### **SECTION 18 CLEAN WATER**

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **SECTION 19 CLEAN AIR**

1. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §.§ 7401 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **SECTION 20 FLY AMERICA**

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40018, in accordance with US GAO regulations, "Uniform Standards and Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

#### **SECTION 22 SEISMIC SAFETY**

The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation



Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **SECTION 23 NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS**

### **ARCHITECTURE AND STANDARDS**

The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

## **SECTION 24 ELECTRONIC AND INFORMATION TECHNOLOGY**

When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others, on behalf of Sound Transit, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

## **SECTION 25 NO TEXTING WHILE DRIVING**

- A. Consultant shall comply with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009. Contractor shall:
1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;
  2. Consultant-owned or Consultant -rented vehicles or Government-owned, leased or rented vehicles;
  3. Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
  4. Any vehicle, on or off duty, and using an employer supplied electronic device.
  5. Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. "Driving" is defined as operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

- C. "Text Messaging" is defined as reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.
- D. Consultant shall include this provision in all subcontracts at all tiers.

**Signature:** 

**Email:** ashley.bowman@soundtransit.org











# ILA2-00 REPLACEMENT ORCA CARDS AND MARKETING OUTREACH Agreement


Final Audit Report

2023-01-29

|                 |  |
|-----------------|--|
| Created:        | 2023-01-10                                     |
| By:             | Ashley Bowman (ashley.bowman@soundtransit.org) |
| Status:         | Signed   |
| Transaction ID: | CBJCHBCAABAAAoQKtKtmXL17EoMj5D3Cpk1B6ki1CeSB   |

## "ILA2-00 REPLACEMENT ORCA CARDS AND MARKETING OUTREACH Agreement" History

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-  Document emailed to christina.oclair@kingcounty.gov for signature  
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-  Document emailed to johnc@kitsaptransit.com for signature  
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2023-01-18 - 2:55:45 PM GMT

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