

AGREEMENT GCA 4969
between the
Washington State Department of Transportation
and
King County Department of Transportation, Metro Transit Division
for
I-405 Construction Mitigation Assistance
Kirkland – Phase 1

THIS I-405 Construction Mitigation Assistance (Kirkland – Phase 1) agreement ("Agreement") by and between KING COUNTY, through its Department of Transportation, METRO TRANSIT DIVISION (hereinafter "Metro Transit") and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, acting by and through the Secretary of the Department of Transportation, (hereinafter the "State"), each of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, the 2003 Washington State Legislature enacted Substitute House Bill 1163 and the 2005 Washington State Legislature enacted Substitute Senate Bill 6091, which provide for funding specific transportation projects contained within the I-405 Corridor Master Plan, and

WHEREAS, the I-405 Corridor Program Final Environmental Impact Statement specifically calls for the implementation of Transportation Demand Management (TDM) strategies, and

WHEREAS, the State's Office of Transit Mobility is responsible for developing, coordinating and implementing integrated TDM strategies related to the I-405 Corridor Program, and

WHEREAS, the State has entered into a separate contract for the design and construction of the first transportation project associated with the I-405 Corridor Master Plan, known as the Kirkland – Phase 1 project (hereinafter the "Project"), and

WHEREAS, the Parties have developed a program of TDM strategies and actions designed to reduce the number of single occupancy vehicle ("SOV") trips on I-405 during construction of the Project, and

WHEREAS, the State desires to have Metro Transit implement said strategies and actions due to its experience and familiarity with delivering public transportation and TDM services and outreach within the areas of impact, and

WHEREAS, in order to preserve the Project's schedule, this Agreement also ratifies the advance authorization given by the State on February 27, 2006 for Metro Transit to begin the implementation of the TDM services and outreach work specified in Exhibit A,

NOW, THEREFORE, by virtue of Chapter 39.34 RCW and in consideration of the terms, conditions, and mutual covenants set forth herein and in the attached exhibits A and B which are incorporated herein and made a part hereof, the sufficiency of which consideration is acknowledged, the Parties **MUTUALLY AGREE AS FOLLOWS:**

1. GENERAL

The purpose of this Agreement is to implement the TDM services and outreach specified in Exhibit A, hereinafter the "Work," in an effort to reduce single occupancy vehicle trips on I-405 during construction of the Project and to establish a method for invoicing and payment of the costs associated with this Work.

2. DUTIES

Metro Transit will perform the Work and provide the services as described in Exhibit A.

3. PAYMENT

The State will reimburse Metro Transit for the actual direct and related indirect costs of the Work performed pursuant to this Agreement, not to exceed a maximum amount of One Million Ninety Thousand Four Hundred Fifty-Three Dollars (\$1,090,453.00).

A cost estimate for Work to be performed by Metro Transit pursuant to this Agreement is shown in Exhibit B.

Partial payments to Metro Transit shall be made by the State throughout the term of this Agreement, upon receipt of detailed billing invoices from Metro Transit. Billings shall not be more frequent than one (1) per month.

The State agrees to make payment for the Work performed by Metro Transit within thirty (30) days from receipt of a billing invoice from Metro Transit.

Metro Transit agrees to submit a final billing to the State within forty-five (45) days after the effective date of termination of this Agreement.

4. AMENDMENT

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.

5. DISPUTES

The Parties, through their designated representatives identified in Section 11 herein this Agreement, shall use their best efforts to resolve any disputes pertaining to this Agreement that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the responsible project directors of both Parties shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of both Parties or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

6. EFFECTIVENESS AND DURATION

This Agreement is effective upon execution by both Parties and will remain in effect through June 30, 2008, unless earlier terminated pursuant to the terms of this Agreement.

12. TERMINATION

This Agreement may be terminated by either Party upon 30 days advanced written notice. In the event of termination, payment shall be made by the State for Work performed by Metro Transit up to and including the effective date of termination.

13. RECORDS RETENTION AND AUDIT

During the progress of the Work and for a period not less than three (3) years from the date of final payment by the State, the records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by Washington State, King County and/or the Federal Highway Administration and copies of all records, accounts, documents, or other data pertaining to the Work 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 all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

14. NONDISCRIMINATION

Metro Transit agrees to comply with all applicable federal, state, and local laws, rules, and regulations pertaining to nondiscrimination and agree to require the same of all subcontractors providing services or performing any Work using funds provided under this Agreement.

15. INDEMNIFICATION AND HOLD HARMLESS

The Parties 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, each of the Party's own negligent acts or omissions. 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 other 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 a Party's own negligence. 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 provisions of Title 51 RCW. In any action to enforce the provisions of this Section, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs incurred from the other Party. The obligations of this section shall survive any termination of this Agreement.

16. VENUE

This Agreement shall be deemed to be made in the County of Thurston, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. Any legal action arising out of this Agreement shall be brought in the superior court situated in the County of Thurston, State of Washington.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date written below.

KING COUNTY, DEPARTMENT OF
TRANSPORTATION, METRO TRANSIT
DIVISION

STATE OF WASHINGTON
DEPARTMENT OF
TRANSPORTATION

Kevin Desmond
By

Kevin Desmond
General Manager
King County Metro Transit Division

9/6/06
Date

APPROVED AS TO FORM:

SCOTT JOHNSON
By (print)

Scott Johnson
Signature

SENIOR DEPUTY PROSECUTOR ATTORNEY
Title

9-1-06
Date

Judy Giniger
By

Judy Giniger
Director
Public Transportation and Rail

9/7/06
Date

APPROVED AS TO FORM:

By
Elizabeth Lagerberg
Assistant Attorney General

Elizabeth Lagerberg
Signature

8-24-06
Date

GCA 4969
Exhibit A
Scope of Work

**Washington State Department of Transportation,
I-405 Construction Mitigation Project - Kirkland, Phase 1**

I. Description of Metro Transit's Proposed Actions

1. Transit Service Additions

- A. Kenmore/Kingsgate/Overlake Transit Service, June 2006-May 2007. Deliver new transit service oriented to Overlake from Kenmore and serving the Kenmore and Kingsgate park-and-ride lots. Using four buses, eighteen trips will be delivered providing 387 seats.

- B. Juanita/Seattle Arterial transit service, June 2006-May 2007. Extend Route 255 trips that now begin or end at the Kirkland Transit Center to the Brickyard park-and-ride lot via the regular arterial path of Route 255. Without adding buses, eight Route 255 trips will be extended north.

Notes:

All of the proposed new service was added in conjunction with Metro Transit's June, 2006 service change.

2. I-405 Survey Research & Methodology

- A. Utilizing two questions in the 2005 Rider/Non-Rider Survey, provide an I-405 Corridor data subset in an agreed format to the State.

3. Park & Ride Efficiency

- A. Relocate five Metro Transit Vanpool groups at three park-and-ride lots serving the I-405 corridor: Brickyard, Kenmore, and Kingsgate using financial incentives valued up to \$300 for a maximum of 70 vanpool passengers.
Note: Supplemental park and ride lot capacity will be identified jointly with Metro Transit and State on an as needed basis.
- B. Recruit up to twelve new Metro Transit VanShare groups. Vanshare fares (\$125) will be funded for up to twelve months and a one time \$100 fuel incentive will be provided for each of the twelve new Vanshare groups.
- C. Outreach at targeted employer sites will be conducted to reach additional commuters using and/or potentially using the affected Park and Ride lots in an effort to reach Single Occupant Vehicle commuters that can be recruited to join Metro Transit VanShare groups.

- D. Obtain and Install one bike rack and four two-bicycle capacity lockers at key park and ride locations, to be identified jointly by Metro Transit and State.
- E. Produce specialized outreach materials including, but not limited to flyers, schedules maps, brochures and other unique print materials in support of park and ride efficiencies and multimodal commuting in construction affected corridors.
- F. Obtain (and install) equipment necessary to enhance the messaging and efficient use of park and ride facilities including, but not limited to, banners, parking signs, and a variable reader display.

Note: Whenever possible, outreach efforts will be coordinated with and build upon local, regional and statewide incentive programs.

4. HOV Promotion

- A. Produce and deliver a multi-modal, construction mitigation awareness direct mail piece including Metro Transit free-ride tickets and a postage paid return questionnaire. Household mailing list of 45,000 households is based on a 2.5 mile buffer analysis of Kenmore, Kingsgate, and Brickyard park and ride lots.
- B. Produce 150 bus-side advertisement pieces for strategic on bus advertisement.
- C. Produce and place up to eight print advertisements in targeted newspapers to increase the effectiveness of construction mitigation services.

Note: An evaluation of results will be provided based upon returned questionnaires, a count of redeemed free ride tickets, and ridership counts on affected routes.

GCA 4969, Exhibit B: Estimation of Costs By Deliverable

Service Category	Deliverable	Number of Units	Unit	Cost Per Unit	Cost
1 Transit Service Additions	A Kenmore/Kingsgate/Overlake (new route) - 18 Daily Monday-Friday Trips	9525	service hour	79.93	\$761,333
1 Transit Service Additions	B Juanita/Seattle Arterial - 8 Daily Monday-Friday Trips	1447.8	service hour	84.21	\$121,920
<i>Transit Service Additions Total¹</i>					<i>\$883,253</i>
2 I-405 Survey Research and Methodology	A I-405 data subset in agreed format	1	ea	1000	\$1,000
<i>I-405 Survey Research and Methodology Total</i>					<i>\$1,000</i>
3 Park and Ride Efficiency	A Vanpool Relocation Incentives	70	ea vanpooler	300	\$21,000
3 Park and Ride Efficiency	B.1 Vanshare Costs	12	ea vanshare	1500	\$18,000
3 Park and Ride Efficiency	B.2 Vanshare Incentive	12	ea vanshare	100	\$1,200
3 Park and Ride Efficiency	C Staff Outreach	420	hour	40,495	\$17,000
3 Park and Ride Efficiency	D.1 Bicycle Rack	1	ea	500	\$500
3 Park and Ride Efficiency	D.2 Bicycle Locker (capacity=2 bicycles)	4	ea	3000	\$12,000
3 Park and Ride Efficiency	E Produce Outreach Materials	1	not to exceed	7500	\$7,500
3 Park and Ride Efficiency	F Obtain Support Tools including banners, signage and variable reader display	1	not to exceed	8000	\$8,000
<i>Park and Ride Efficiency Total</i>					<i>\$85,200</i>
4 HOV Promotion	A Produce and Deliver Mailer	45000	ea	1.6	\$72,000
4 HOV Promotion	B Produce Exterior Bus Advertisements	150	ea	60	\$9,000
4 HOV Promotion	C Produce and Place Newspaper Advertisements	8	ea	5000	\$40,000
<i>HOV Promotion Total</i>					<i>\$121,000</i>
Grand Total					\$1,090,453

¹ Annual transit costs are likely to escalate at a historic rate of 4% to 5% per calendar year. Continuation of transit service for June 2007-May 2008 is planned and will be authorized via amendment to this agreement based on year of service costs.