

## INTERLOCAL AGREEMENT

### Between Pierce Transit and the City of University Place For Coordination, Construction, Implementation and ongoing Operations

#### TRANSIT SIGNAL PRIORITY Within the City of University Place

THIS AGREEMENT, made and entered into this 18<sup>th</sup> day of February, 2003, by and between Pierce County Public Transportation Benefit Area, a municipal corporation, hereinafter referred to as "Pierce Transit", formed under authority of Chapter 36.57A of the Revised Code of Washington, and the City of University Place, a municipal corporation, hereinafter referred to as the "City", sets forth a common agreement concerning the Transit Signal Priority (TSP) Project, hereinafter referred to as "TSP", a cooperative effort as authorized by Chapter 39.34, the Interlocal Cooperation Act, of the Revised Code of Washington.

#### PURPOSE

This agreement identifies specific tasks, responsibilities, costs, and long term objectives for the TSP project that:

- 1) Permanently implement TSP for transit and signal preemption for emergency vehicles (using Opticom equipment) along the Bridgeport Way corridor and in the City of University Place, and;
- 2) Establish a long-term commitment for use and maintenance of TSP and signal preemption technology within the City of University Place, and;
- 3) Provide for replacements, improvements, modifications, maintenance, enhancements and related labor charges directly associated with improvements to City owned traffic signal equipment at specific locations to support public transportation services and emergency vehicle operations in the City of University Place.

This agreement is a component of the Transit Signal Priority Project being deployed by Pierce Transit in coordination with The City of Tacoma, City of University Place, City of Lakewood, Pierce County, and the Washington State Department of Transportation (WSDOT). A summary description of the TSP project is contained in "Attachment 1" of this agreement.

## PROJECT DEVELOPMENT PHASES

The following briefly describes the two major project phases identified for TSP project coordination with the City of University Place. All signal controller settings and equipment for the project are subject to approval by the City of University Place. In the event that services are contracted or sub-contracted, the City and Pierce Transit agree to develop detailed task orders that address the requirements and needs identified in this agreement. The total Funding for equipment and Labor provided under this agreement is \$132,055 as specified in Attachment 2 – “Cost Summary”.

### **Phase I - Intersection Development Construction.**

Beginning in March, 2003, this phase will involve the installation and updating of Opticom detection equipment, new signal control equipment and signal operations modifications at the signalized intersections located in the TSP project corridor and on the City’s traffic control system. The primary TSP corridor in University Place is Bridgeport Way. The specific intersections included in Phase I Construction activities are listed in Attachment 3 - “Project Intersection List”.

Phase I construction will include purchase and installation of Econolite ASC/2S controllers and add a closed loop system master and ARIES management software in accordance with City of University Place Requirements. During Phase 1 work Pierce Transit and the City of University Place agree to develop a communication plan to allow Pierce Transit to access phase selector data at project intersections. Access to data records for analysis is critical for initial system setup, monitoring, and tracking operational performance of transit vehicles.

Phase 1 traffic engineering work will included development of a new signal timing plan along the Bridgeport Way corridor to support the City’s general purpose traffic and serve as a baseline for developing and implementing signal control strategies for Transit Signal Priority.

### **Phase II - Signal Control Strategy Development:**

Additional signal control strategies will be developed concurrent with the completion of Phase I elements, including upgrades to any remaining intersection control equipment. This phase would include field implementation of a TSP operation plan along the Bridgeport Way TSP corridor and the accompanying traffic engineering work including before and after studies, intersection delay studies and range setting for TSP operations. Phase II work will include coordination with the City of Lakewood and the City of Tacoma to assure the optimal performance of the Bridgeport Way corridor overall. Phase II traffic engineering work will be a coordinated effort with the City of University Place’s Traffic Engineer and Pierce Transit’s traffic engineer.

The City of University Place and Pierce Transit will mutually develop criteria that address specific control strategies, concerns, and operational parameters to assure overall system performance. The criteria should identify strategies, exceptions, and potentially exclusions regarding low priority use as well as opportunities for acceptable low priority use that support the objectives of this agreement.

## RESPONSIBILITY OF PIERCE TRANSIT TO THE CITY

### **Equipment Provided**

Pierce Transit and the City of University Place shall coordinate on the final list of TSP equipment necessary to facilitate the completion of each intersection identified as a part of this project. The Project Managers for each agency shall coordinate the development of, and provide written confirmation of the final equipment list necessary to complete the construction of intersection work.

Pierce Transit will purchase and transfer ownership to the City the required and agreed materials and equipment to be installed as part of Phase I of the Project. Installation of all Phase I intersection equipment by the City is anticipated to be completed within 9 months following the effective date of this Agreement. It is anticipated that installation will occur in a timely manner once the agreement is executed. The City of University Place and Pierce Transit shall communicate regularly throughout this project regarding construction status, delays or constraints, and opportunities for coordinated work and project efficiencies.

### **Installation and Labor Charges**

Pierce Transit agrees to pay the City the direct costs associated with the installation of all Phase 1 TSP equipment summarized in Table 1, and detailed in the final equipment list to be approved by the project managers. Pierce Transit also agrees to pay for all Phase 2 work not already included in the work being completed by Pierce Transit's traffic engineer. The City will be compensated for the cost of all-actual labor, additional equipment and materials directly related to work performed under this agreement subject to the limits defined in Attachment 2 – "Cost Summary". Attachment 2 is attached hereto and made a part of this agreement. The maximum compensation for Attachment 2 under this agreement shall not exceed \$132,055. Should the \$132,055 limit be reached, the City will cease work under this agreement, unless the maximum compensation limit is increased by mutual agreement between the City and Pierce Transit, as a supplement to this agreement.

The City will invoice Pierce Transit, monthly, for allowable project charges. Submittals shall include a copy of the complete invoice and any applicable supporting documentation that would verify the request as reimbursable under this agreement. Payment to the City shall be made within 30 days of receipt of a correct invoice.

## RESPONSIBILITY OF THE CITY TO PIERCE TRANSIT

The City will be responsible for the initial installation of all Opticom intersection equipment for this project and as needed under this agreement subject to the conditions contained herein. The City will be responsible for all operation and maintenance of intersection control and detection equipment provided under this project.

The City agrees to work with Pierce Transit to support the objectives of TSP identified in this agreement on an ongoing basis. Notwithstanding this agreement, the City reserves the right to change traffic signal and priority settings, at any time, at any or all intersections. The City will prioritize the requirements and needs of high priority signal operations above the needs and requirements of TSP. Final approval of signal priority settings will be the responsibility and decision of the City.

If the City makes a determination that it must change the traffic signal settings at one or more of the project intersections, it agrees to coordinate with Pierce Transit to the extent possible, consistent with the objectives of this agreement.

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TABLE 1

**Phase I - Intersection Construction  
Typical TSP Equipment**

- Model 721 and/or 722 Opticom detectors  
(transit and Fire Department use)
- Model 754 and 752 Opticom phase selectors  
(transit and Fire Department use)
- Opticom wiring harnesses
- Model 138 Opticom cable as needed
- Opticom Hangers (span wire)
- New Controllers, or Master Controllers  
(As Identified for the project)

\* The final list of equipment is subject to change based on actual intersection work. The City and Pierce Transit shall coordinate and mutually agree on the exact equipment to be placed and/or any changes. All equipment listed shall be purchased by Pierce Transit and transferred to the City of University Place shall be in accordance with this Agreement.

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**ROUTINE MAINTENANCE AND OPERATION**

Routine maintenance may include cleaning of detectors, adjusting detection direction and performing equipment tests to confirm proper operation. Operations may include range setting, controller settings and modifications to the intersection operation. The City agrees to maintain all traffic signal and Opticom equipment provided under this agreement in accordance with manufacturer warranty and industry standards in order to allow continued TSP operation.

**NON-ROUTINE MAINTENANCE AND OPERATION**

Pierce Transit agrees to pay the City for non-routine maintenance and operational modifications necessary at each location being maintained for TSP operation. Non routine maintenance might include equipment adjustments specifically for transit, work inside the cabinet specifically to support

transit or any other non-standard work at the request of Pierce Transit not typically performed by the City or its agents.

The City will be compensated for the cost of all actual labor, additional equipment and materials directly related to non-routine TSP maintenance and operation including payroll and material overhead incurred as part of non-routine maintenance of the signal priority equipment. All costs for non-routine maintenance shall be approved to by both parties prior to work being performed. Pierce Transit agrees to make payment to the City of University Place, within 30 days of receipt of a correct invoice, for non-routine maintenance provided by the City and invoiced under the terms of this agreement.

The City shall notify Pierce Transit in advance, for prior approval, of any non-routine maintenance not requested by Pierce Transit that is deemed necessary by the City.

## COMMUNICATION/DATA COLLECTION

The City agrees to allow Pierce Transit to collect data at TSP project intersections by either a direct connection located in the police panel of each intersection controller or via communication device located in the controller cabinet. The City agrees to help define and implement a mutually acceptable plan to access data from TSP intersections as a component of this agreement. It will be Pierce Transit's responsibility to collect the necessary data from the signal priority equipment during the Project.

Pierce Transit and the City of University Place agree to evaluate opportunities to develop an efficient method for data monitoring and exchange. This may include strategies that allow existing communication lines to be used during off-peak or low usage times. Any additional communication or data collection opportunities, including costs and responsibilities, will be agreed to mutually, and may be added to this agreement by addendum.

## PROJECT ADMINISTRATION

The on-going management of the project shall be under the direction of Pierce Transit. Pierce Transit has designated Eric Phillips as Project Manager for the project. The City has appointed Don Nutter, of the City's Public Works Department to act as the liaison with the Project Manager.

## FUND DISTRIBUTION and INVENTORY

Pierce Transit shall be responsible for the fiscal record keeping for each task during the Project. The fiscal record keeping shall consist of procuring the necessary equipment and transferring ownership of the equipment summarized in Table 1, and specifically identified in the final equipment list, to the City following installation. The City shall coordinate efforts to track and inventory all TSP project equipment provided to the City for installation under this agreement until such time as the equipment is fully transferred to the City.

In addition, Pierce Transit will be responsible for payment of charges determined to be part of the Project within thirty (30) days of invoice from the City. Reimbursement shall be provided based on actual invoices provided for services and materials specifically identified under this agreement. In no

case will reimbursement be provided beyond the total dollar amounts specified for this project unless mutually agreed to by both parties and amended to this agreement.

Funding for this project is provided, in part, from federal and state sources. The terms and conditions of this Agreement are subject to the adherence to Federal and State funding requirements and continued availability of funding identified for this project. In the event there is a change in funding status, Pierce Transit will promptly provide notice to the City.

## SUBCONTRACTING

The City shall be responsible for the issuing work orders, authorizing installations and approving all work performed at City owned intersections. The City shall be responsible for assuring that all work orders issued, contracted or subcontracted out by the City to meet the requirements of this agreement are in accordance with this agreement including provision of required documentation for reimbursement and in accordance with FTA requirements as attached hereto as Attachment 4 – Federal Transit Administration Requirements.

## INDEMNIFICATION

The City shall indemnify, defend, and hold Pierce Transit, its officers, agents and employees harmless from and against any and all suits, claims, actions, losses, penalties, and damages arising from a negligent act by any officer, employee or agent of the City in connection with this contract. Pierce Transit shall hold the City, its officers, agents and employees harmless from and against any and all suits, claims, actions, losses, penalties, and damages arising from a negligent act by any officer, employee or agent of Pierce Transit in connection with this contract. In the event of concurrent negligence by the City and Pierce Transit, each shall indemnify the other only to the extent of its own negligence. These indemnification obligations shall include, but not be limited to, all claims against Pierce Transit by an employee or former employee of the City and all claims against the City by an employee or former employee of Pierce Transit.

The indemnification provided herein shall apply to and require each party to defend, indemnify and hold harmless the other party for claims brought by an employee of one party against the other party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, the City and Pierce Transit, with respect to each other only, waive and will not assert against each other, any immunity under the Industrial Act (RCW Title 51).

This waiver is limited to actions by and between the City and Pierce Transit only and does not extend to the employees of either party. The City and Pierce Transit expressly do not waive their immunity against claims brought by their own employees.

## NON-DISCRIMINATION

The parties hereto agree that they shall not participate in any discriminatory action against any employee who is paid by funds indicated in this Agreement or against any applicant for such employment because of race, religion, color, sex, marital status, creed, national origin, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. This provision shall include, but not be limited to the following: employment, upgrading, demotion,

transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

## AGREEMENT MODIFICATIONS

The TSP project description, including the responsibilities of each party, for Project Phases I and II will be incorporated herein. Any change to this agreement shall be agreed upon in the form of written amendment to this Agreement. It is mutually agreed and understood that no alteration or variation to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, shall not be binding.

## FUTURE INTERSECTION WORK

It is intended that the objectives of this project be ongoing. It is expected that future new intersections may be developed by the City, or major modifications may occur to existing intersections in the identified project corridor. In either case, the City agrees to coordinate with Pierce Transit to plan for TSP improvements for new intersection work. Pierce Transit acknowledges that the City may require a financial commitment by Pierce Transit for TSP related upgrades for new intersections. Both parties shall mutually agree upon any future work.

## NOTICES

Notices to Pierce Transit: Until such time as Pierce Transit notifies the City in writing otherwise, all notices to Pierce Transit required to be given under the terms of this Agreement, unless otherwise specified herein, or as may be amended, shall be given in writing, addressed as follows:

Don S. Monroe, Executive Director  
3701 96<sup>th</sup> Street SW  
P.O. Box 99070  
Lakewood, WA 98499-0070

Notices to the City: Until such time as the City notifies Pierce Transit in writing otherwise, all notices to the City required to be given under the terms of this Agreement, unless otherwise specified herein, or as may be amended, shall be given in writing, addressed as follows:

Steve Sugg, Public Works Director  
City of University Place  
3715 Bridgeport Way West  
University Place, WA 98466-1816

## DURATION

Phase I of the Transit Signal Priority Project as identified herein (project construction) will be completed by September 1, 2003. Continuation of all other components of this agreement will be automatically renewed on an annual basis beginning January 1, 2004. Coordination of Phase II components shall be ongoing subject to annual amendment to this agreement beginning January 1,

2005.

The actual project completion date shall be established in writing, subject to the following process, and consistent with this agreement.

- Written notice provided by the City of University Place to Pierce Transit that the project construction has been completed and final billing for new intersection equipment installations has been submitted.
- Within 30 days Pierce Transit shall provide written confirmation to the City of University Place confirming completion of intersection installation work under this agreement.
- The date of notice provided on the confirmation of project completion provided by Pierce Transit to the City of University Place shall serve as the beginning date of the three-year equipment lifecycle.
- If a disagreement regarding project completion arises, both parties agree to resolve the issue via the dispute resolution process herein.

The process of determining the date of the completion of construction does not change the definition of or the way in which routine and non-routine maintenance tasks will be administered as long as this agreement is in place.

## TERMINATION OF AGREEMENT

It is intended that the City of University Place and Pierce Transit will continue the TSP project for an extended period of time. In the event that the City of University Place wishes to terminate this agreement, prior to the end of the equipment life cycle (defined as three years from completion of construction), the City will reimburse Pierce Transit, prorated for the period of time elapsed, for the cost of intersection equipment provided to the City and the cost of installation paid to the City for the project under this agreement. Should a dispute arise concerning the amount of reimbursement, it shall be resolved through the process identified below for dispute resolution.

At such time as the life cycle of the equipment has been reached, notwithstanding any other provision of this Agreement, any party may terminate their interest in this Agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date. At the time of notification by either party, the time period for termination shall commence as long as the termination request is mutually agreed. If the request for termination is not mutually agreed, both parties hereby agree to follow the dispute resolution process stated below. This process is provided to assure the opportunity to continue with the original project objectives provided for in this agreement to the extent practical.

### **Dispute Resolution Process**

The project Managers shall communicate regularly to discuss the status of tasks and services related to the successful performance of this agreement. In the event of any dispute concerning this agreement, the project managers shall confer to resolve the dispute. These individuals shall use their best efforts and exercise good faith to resolve disputes and issues arising out of, or related to this agreement. In the event the project managers are unable to resolve the dispute, the City of University Place Public Works Director and Pierce Transit Operations Director shall confer and exercise good faith to resolve



the dispute.

In the event the City's Public Works Director, and the Operations Director of Pierce Transit are unable to resolve the dispute, the Executive Director of Pierce Transit and the City of University Place City Manager shall engage in good faith negotiations to resolve the dispute.

In the event the City Manager and Executive Director are unable to resolve the dispute, the parties may submit the matter to a mutually agreed upon non-binding mediator. The parties shall share equally in the cost of the mediator.

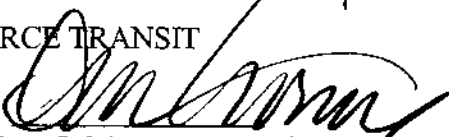
The parties agree that they shall have no right to seek relief in a court of law until each of these procedural steps is exhausted.

Both parties agree that all costs incurred up to the time of notification of termination of this Agreement, if any, less prior interim payments, shall be paid in full.


IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year set forth below their signatures.

DATED this 18<sup>th</sup> day of February, 2003.

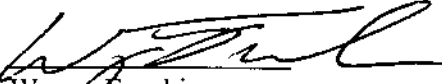
PIERCE TRANSIT

By:   
Don S. Monroe, Executive Director

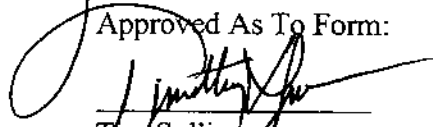
CITY OF UNIVERSITY PLACE

By:   
City Manager

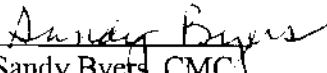
Recommended by:

  
Wayne Fanshier,  
Director of Finance & Administration

Approved As To Form:

  
Tim Sullivan  
City Attorney

ATTEST:

  
Sandy Byers, CMC  
Clerk of the Board

ATTEST:

  
Catrina Craig  
City Clerk

## “Attachment 1”

# THE PIERCE TRANSIT SIGNAL PRIORITY (TSP) PROJECT A SUMMARY

Pierce Transit has received funding from federal, state and local sources to install Transit Signal Priority (TSP) and signal preemption equipment along seven corridors in the Pierce Transit service area. The seven transit corridors (South 19<sup>th</sup> Street, 6<sup>th</sup> Avenue, South 56<sup>th</sup> Street, South Tacoma Way, Jackson Avenue/Bridgeport Way, Pacific Avenue, and Puyallup Avenue) were selected as ideal candidates for a low priority TSP project based on high volumes of transit service and ridership, existing equipment at each intersection and current levels of vehicle congestion. Pierce Transit buses will be outfitted with the necessary “low priority” hardware (emitters) as a part of the project. In addition, emergency service providers (Tacoma Fire Department) will be provided “high priority” hardware (emitters) for installation on vehicles to enhance public safety response times associated with emergency calls.

It is intended that Transit vehicles equipped with “low priority” optical emitters will receive an advantage as they travel through signalized intersections by sending an infrared signal to an upcoming intersection from a distance of as much as 1,000 feet. Once detected, the traffic signal timing is modified to give an advantage or “priority” to the approaching bus. The low priority signal does not guarantee the bus a green light. The low priority signal will cause the traffic signal controller to implement a priority strategy such as an “extended” or an “early” green interval. After the bus passes through the intersection the intersection signal timing will resume its normal cycle and timing without sacrificing coordination with any adjacent signals or signal systems.

Emergency service vehicles equipped with “high priority” emitters will use the same intersection optical detection equipment to “preempt” signalized intersections during emergency calls by sending an infrared signal to be detected by an upcoming signalized intersection. Once detected, the traffic signal immediately begins a series of signal timing and sequence changes that allow emergency vehicle(s) to receive and hold a green light until it clears the intersection

The TSP project will phase-in the use of Opticom equipment, allowing adequate time to test and evaluate the appropriate signal timing strategies between phases, ultimately leading to the installation of 110 intersections on seven corridors and on public transit busses operated by Pierce Transit. Additional Opticom equipment will be installed on some side street approaches along the project corridors that will only serve Fire Department vehicles as required.



Opticom intersection equipment will have the capability to log high and low priority activity. This data may be used in evaluating travel times, delay times and signal timing strategies at each intersection. Pierce Transit may enhance intersection communications with the use of an AVL (automated vehicle location) system in future years to facilitate the collection of this data.

## Attachment 2 - Cost Summary

Detail	Units	Unit Cost	Total
<b>New Traffic Signal Controllers</b>			
Controller Equipment	17	\$3,000	\$51,000
Aries System Software	1	\$10,000	\$10,000
Master Controller	1	\$3,600	\$3,600
<b>Opticom Equipment</b>			
Equipment			
Model 721 Detectors	4	\$402.44	\$1,609.76
Model 754 Phase Selector	4	\$2,541.40	\$10,165.60
Model 752 Phase Selector	2	\$1,624.75	\$3,249.50
Opticom Cable - Ft	1,500	\$0.38	\$570.00
Installation Labor (6 intersections)	6	\$1,000	\$6,000.00
<b>Labor (Pierce County or other)</b>			
Controller Installation Labor	17	\$480	\$8,160
Other Project Labor	40hrs	\$80	\$3,200
<b>UP Traffic Engineering</b>	345 hrs	100	\$34,500
<b>Total Funding Provided for Project Under this Agreement</b>			<b>\$132,055</b>
Total Funding Reimbursement for Work completed under this agreement			\$51,860
Total Funding For Equipment Purchased under this agreement			\$80,194.86

\* Note: Additional traffic engineering services will be provided by Pierce Transit using a separate contract for engineering services administered by Pierce Transit in consultation with the City of University Place.

## Attachment 3 - Project Intersection List

<b>UP TSP Corridor Intersections</b>	<b>New Controller</b>	<b>Opticom Wk</b>
Bridgeport/27th	ASC/2S-2100	Yes
Bridgeport/35th	ASC/2S-2100	
Bridgeport/ 36th PED crossing	ASC/2S-2100	Yes
Bridgeport/37th	ASC/2S-2100	
Bridgeport/38th PED Crossing	ASC/2S-2100	Yes
Bridgeport/40th	ASC/2S-2100	
Bridgeport/44th	ASC/2S-2100	
Bridgeport/48th	ASC/2S-2100	
Bridgeport/Cirque	ASC/2S-2100	
Bridgeport/54th	ASC/2S-2100	Yes
Bridgeport/Chambers	ASC/2S-2100	Yes
Bridgeport/67th	ASC/2S-2100	Yes
<b>UP Non-TSP Controller Upgrade Intersections</b>		
27th & Grandview	ASC/2S-2100	
Regents Blvd. & 24th St.	ASC/2S-2100	
67th Ave. W & 35th St. W	ASC/2S-2100	
67th Ave. W & 40th St. W	ASC/2S-2100	
67th Ave. W & 44th St. W	ASC/2S-2100	
67th Ave. W & 48th St. W/ Cirque Dr. W	ASC/2S-2100	
<b>Master Controller at City Hall</b>	ASC-2M Master	

## ATTACHMENT 4

### To the Interlocal Agreement between the City of University Place and Pierce Transit For Coordination, Construction, Implementation and ongoing Operations of Transit Signal Priority

#### REQUIREMENTS OF THE DEPARTMENT OF TRANSPORTATION FEDERAL TRANSPORTATION ADMINISTRATION

##### CONSERVATION

"Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.)."

##### **DISADVANTAGED BUSINESS PARTICIPATION**

Pierce Transit is committed to ensuring that all firms regardless of race, color, sex or national origin have equal opportunity to participate in Pierce Transits contracts. Therefore, Pierce Transit has established an annual goal for DBE participation in its contracting opportunities.

If a specific DBE goal has been set for this contract, it will be clearly stated in these specifications. If a goal is not stated it shall be understood that no specific goal has been assigned to this contract, however contractors and subcontractors are required to comply with the following:

##### **NON-DISCRIMINATION ASSURANCES**

The contract or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as Pierce Transit deems appropriate.

A copy of 49 CFR part 26 may be obtained by contacting Pierce Transit.

##### PROMPT PAYMENT

**The contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from Pierce Transit. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractor's work is satisfactorily completed and mechanics and materialmen's liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of Pierce Transit. This clause applies to both DBE and non-DBE subcontractors.**

##### DBE ENTERPRISE GOALS

In connection with the performance of the contract for this project, the contractor shall make a good faith effort to cooperate with Pierce Transit in meeting its commitments and goals with regard to the maximum utilization of disadvantaged businesses and will use such efforts to ensure that disadvantaged businesses shall have the maximum practicable opportunity to document its good faith efforts to achieve Pierce Transit's goals as stated in this RFP for this project.

Disadvantaged Business Enterprises are encouraged to submit proposals.

## TITLE VI COMPLIANCE

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

- (1) Compliance with Regulations: The contractor 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, 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 contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
- (4) Information and Reports: The Contractor 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 the Recipient or the Federal Transportation Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Recipient, or the Federal Transportation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Federal Transportation Administration may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - (b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor shall include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## LABOR PROVISIONS

- (1) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar pay or in excess of forty hours in such work week, whichever is greater.

- (2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5
- (3) Withholding for Unpaid Wages and Liquidated Damages. DOT or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.
- (4) Nonconstruction Grants. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, Social Security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and the representatives of DOT and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- (5) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (5) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (5) of this paragraph.

#### EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, or national origin. Such actions 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. Contractor further agrees to insert a minority provisions in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

#### PROHIBITED INTEREST

"No member, officer, or employee of PIERCE TRANSIT or of a local public body during his tenure or one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

#### INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

"No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom."

#### PROTEST AND/OR APPEAL

Any actual or prospective bidder, including subcontractors and suppliers showing a substantial economic interest in the bid, who is allegedly aggrieved in connection with the solicitation or award of this Contract may protest to PIERCE TRANSIT in accordance with the procedures set forth herein. Protests based on the specifications or other terms in this Call for Bids which are apparent prior to the date established for submission of proposals, shall be submitted to and received by PIERCE TRANSIT's Purchasing Manager no later than seven (7) calendar days prior to said date. Protests based on other circumstances shall be submitted to and received by PIERCE TRANSIT's Purchasing Manager within seven (7) calendar days after the protesting party knows or should have known of the facts and circumstances upon which the protest is based; provided, however, that in no event shall a protest be considered in the event all proposals are rejected. Full compliance with the procedures for filing and documenting protest shall be a condition precedent to filing any further protest with the Federal Transportation Administration (FTA) or to filing litigation.

In order to be considered, a protest shall be filed in a timely manner in writing and shall include:

1. The name and address of the protesting party;
2. The contract number and contract title under which the protest is submitted;
3. A detailed description of the specific grounds for protest and any supporting documentation; and
4. The specific ruling or relief requested.

The written protest shall be addressed to:

PIERCE TRANSIT  
Purchasing Manager  
3701 96th Street SW  
P.O. Box 99070  
Tacoma, WA 98499-0070

Upon receipt of a written protest, PIERCE TRANSIT will promptly consider the protest. If any of the required information is omitted or incomplete, PIERCE TRANSIT will immediately notify the protester in writing. The missing information must then be submitted to PIERCE TRANSIT within seven (7) calendar days if the protest is to be further considered. PIERCE TRANSIT may give notice of the protest and its basis to other persons, including other bidders involved in or affected by the protest and such other persons may be given an opportunity to submit their views and relevant information

If the protest is not resolved by mutual agreement with the protester, PIERCE TRANSIT will issue a decision in writing within seven (7) calendar days after receipt of the written protest or missing information, as applicable. The decision will state the reasons for the action taken and inform the aggrieved party of its right to appeal the decision to the Director of Finance and Administration. A copy of the decision shall be mailed (by certified mail, return receipt requested) or otherwise promptly furnished to the protester and any other interested parties. The decision will be considered final and conclusive unless appealed to the Director of Finance and Administration within seven (7) business days from receipt of the decision, then the subsequent determination of the Director of Finance and Administration or his designee to be issued within seven (7) business days shall be final and conclusive. The Director of Finance and Administration may base his or her decision on documents already submitted as part of the protest process and/or may request additional documentation.

A vendor shall have the right to appeal to the PIERCE TRANSIT Board of Commissioners in the event that the vendor believes he/she has not received adequate remedy through the above measures. In no event shall a vendor be allowed to appeal directly to the PIERCE TRANSIT Board of Commissioners without having gone through the above steps. The vendor shall notify the Clerk of the PIERCE TRANSIT Board of Commissioners seven (7) days in advance of the next scheduled meeting in order that the matter is placed on the agenda. The PIERCE TRANSIT Board of Commissioners may uphold the decision of the staff or ask the staff to take whatever action may be necessary to remedy the matter. The decision of the Board of Commissioners shall be final and binding.

When a protest has been timely filed with PIERCE TRANSIT before contract award, PIERCE TRANSIT shall not make an award prior to seven (7) calendar days after issuing a decision on the protest, or if a protest has been filed with the FTA, during the pendency of the protest, unless in either situation PIERCE TRANSIT determines that:

1. The items or equipment are urgently required; or
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to the interests of PIERCE TRANSIT or of the federal government.



Failure to comply with these protest procedures will render protest untimely and/or inadequate and result in rejection thereof by PIERCE TRANSIT. Compliance with these protest procedures shall be a condition precedent to commencement of litigation on the protest issues.

## TERMINATION OF CONTRACT

### A. Termination for Convenience:

Pierce Transit for its convenience may terminate this contract, in whole or in part, at any time by written notice to the contractor. After receipt of a Notice of Termination, and except as directed by the Pierce Transit, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the Notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to Pierce Transit, the Contractor will account for the same and dispose of it in the manner Pierce Transit directs. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations.

### B. Termination for Default:

In addition to termination for convenience, if the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services and the Contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other material provisions of the contract, Pierce Transit may terminate this contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination on the Contractor, setting forth the manner in which the Contractor is in default and the effective date of termination; provided that the contractor shall have ten (10) calendar days to cure the default. The Contractor will only be paid for goods delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract less any damages to Pierce Transit caused by such default. All termination payment requests are subject to cost/price analysis to determine reasonableness and compliance with the contract, the contract termination agreement, applicable laws and regulations.

If the contract is terminated, the rights, duties and obligations of the parties, including compensation to the Contractor, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract. The termination of this contract shall in no way relieve the Contractor from any of its obligations under this contract nor limit the rights and remedies of Pierce Transit hereunder in any manner.

### C. Termination for Non-Appropriation:

Pierce Transit's Board of Commissioners may cancel this contract at the end of the then current fiscal period for non-appropriation of funds. Such cancellation shall be upon thirty (30) days written notice to the Contractor. Pierce Transit's fiscal period ends December 31 of each year. If the contract is terminated as provided in this subsection Pierce Transit will be liable only for payment in accordance with the terms of this contract for costs incurred prior to the effective date of termination; and the Contractor shall be released from any obligation to provide further services pursuant to the contract as are affected by the termination.

Funding under this contract beyond the current appropriation year is conditional upon the appropriation by the Pierce Transit Board of Commissioners of sufficient funds to support the activities described in this contract. Should such an appropriation not be approved, the contract will terminate at the close of the current appropriation year and the termination will be processed as a termination for convenience.

## APPLICABILITY AND FEDERAL GRANT CONTRACT

This procurement is subject to a financial assistance contract between PIERCE TRANSIT and the U.S. Department of Transportation. The contractor will be required to comply with all terms and conditions that have been included in this procurement specifications.

New Federal laws, regulations, policies and administrative practices may be established after the date this contract is established and may apply to this contract. To achieve compliance with changing Federal requirements, the contractor agrees to accept all changed requirements that apply to this contract.

#### NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Absent the Government's express, written consent and notwithstanding any concurrence by the Government in or approval of the award of any contract or subcontract or the solicitation thereof, the Government shall not be subject to any obligations or liabilities by PIERCE TRANSIT's contractors or their subcontractors or any other person not a part to this contract in connection with the performance of this project.

#### CARGO PREFERENCE - USE OF U.S. FLAG VESSELS

In the event that ocean shipment is required for any equipment, material or commodities pursuant to this contract, the contractor shall:

- A. Utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. Furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described in paragraph A to PIERCE TRANSIT through the prime contractor in the case of subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th St. SW, Washington, D.C. 20590, marked with appropriate identification of the project.
- C. Insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

#### AUDIT AND INSPECTION OF RECORDS

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, contractor agrees that PIERCE TRANSIT, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, contractor agrees to maintain all required records for at least three (3) years after PIERCE TRANSIT makes final payment and all other pending matters are closed.

#### PRIVACY

Should the contractor, or any of its subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a (the Act), imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any third party contractors, subgrantees, subrecipients and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this contract will make this contract subject to termination.]

The Contractor agrees to include this clause in all subcontracts awarded under this contract which require the design, development, or operation of a system of records on individuals subject to the Act.

#### ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

PIERCE TRANSIT and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.* and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and the following regulations and any amendments thereto:

- (A) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (B) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (C) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (D) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (E) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (F) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-19;
- (G) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (H) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (I) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

#### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Pursuant to Executive Order 12549 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. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, each Bidder shall complete and submit, as part of its proposal, the certification contained in Attachment K for itself and its principals. The inability of a Bidder to provide a certification in Attachment K will not necessarily result in denial of consideration for contract award. A Bidder that is unable to provide a certification must submit a complete explanation, attached to the certification form. Failure to submit a certification or explanation may disqualify the Bidder from participation under this proposal. PIERCE TRANSIT, in conjunction with FTA, will consider the certification or explanation in determining contract award.

The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Bidder or contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to PIERCE TRANSIT. If it is later determined that the Bidder knowingly rendered an erroneous certification, or failed to notify PIERCE TRANSIT immediately of circumstances which made the original certification no longer valid, PIERCE TRANSIT may disqualify the Bidder. If it is later determined that the contractor knowingly rendered an erroneous certification, or failed to notify PIERCE TRANSIT immediately of circumstances which made the original certification no longer valid, PIERCE TRANSIT may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

#### SUBCONTRACTORS' CERTIFICATION REGARDING DEBARMENT SUSPENSION OR INELIGIBILITY

By submitting a proposal for this contract, the Bidder agrees that should it be awarded the contract, it shall not knowingly enter into any subcontract exceeding \$25,000 with an entity or person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds; and shall require each subcontractor to complete the certification provided in Attachment L.

Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall not knowingly enter into any lower tier subcontract with a person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered subcontractor to provide the certification set forth in Attachment L.

#### DISCLOSURE OF LOBBYING ACTIVITIES

Contractors and their subtier contractors and/or subgrantees are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires contractors (1) to certify that they have neither used nor will use any appropriated funds for payments to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom contractor will pay with profits or nonappropriated funds on or after December 23, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. (See Attachment I, Certification of Lobbying Activities, and, Attachment J, Disclosure Forms.)

#### ANTI-KICKBACK

PIERCE TRANSIT and contractors are required to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 USC § 276C) as supplemented in Department of Labor regulations (29 CFR Part 3). Under state and federal law, it is a violation for County employees, Bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

The Anti-Kickback Act of 1986(41 U.S.C. §§ 51-58) also applies to this contract, and prohibits payments by subcontractors to contractors to secure favorable treatment.

"Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

#### FTA PROTEST PROCEDURES

Bidders are hereby notified that, if this contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that PIERCE TRANSIT failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) days after PIERCE TRANSIT renders a final decision or five (5) days after the Bidder knows or has reason to know that PIERCE TRANSIT has failed to render a final decision. Protests to the FTA must be filed in accordance with FTA Circular 4220.1B (as periodically updated).

If a protest has been filed with the FTA, PIERCE TRANSIT will not make an award of contract unless PIERCE TRANSIT determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to PIERCE TRANSIT or the Federal Government.

#### FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to PIERCE TRANSIT in connection with this project, PIERCE TRANSIT reserves the right to pursue the procedures and impose on the Recipient the penalties of 18 USC § 1001, 31 USC § 231 and § 3801 et seq., and/or 49 USC app. § 1607a(h), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

## AIR POLLUTION

The contractor and suppliers may be required to submit evidence to the project manager that the governing air pollution criteria will be met. This evidence and related documents will be retained by the manager for on-site examination by FTA.

## ENVIRONMENTAL VIOLATIONS

For all contracts and subcontracts in excess of \$100,000 the contractor agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. The contractor shall report violations to FTA and to the US EPA Assistant Administrator for Enforcement.

## PATENT RIGHTS

If any invention, improvement, or discovery of the contractor or any of its subcontractors is conceived or first actually reduced to practice in the course of or under this contract, and that invention, improvement, or discovery is patentable under the laws of the United States or any foreign country, the contractor agrees to notify PIERCE TRANSIT immediately and provide a detailed report. The rights and responsibilities of the contractor and PIERCE TRANSIT with respect to such invention, improvement or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

## RIGHTS IN DATA AND COPYRIGHTS

- A. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. The following restrictions apply to all subject data first produced in the performance of this contract:
1. Except for its own internal use, the contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the contractor authorize others to do so, without the written consent of PIERCE TRANSIT, until such time as PIERCE TRANSIT may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to contracts with academic institutions.
  2. As authorized by 49 C.F.R. § 18.34, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use, and to authorize other to use, for government purposes:
    - a. Any subject data developed under a grant, cooperative agreement, subgrant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
    - b. Any rights of copyright to which a contractor purchases ownership with Federal assistance.
- C. When FTA provides assistance to PIERCE TRANSIT for a contract involving planing, research, development, or a demonstration, it is generally FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the contract to those parties that have participated therein. Therefore, unless FTA determines otherwise, the contractor understands and agrees that, in addition to the rights set forth in this subsection, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. In the event that this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in this subsection and shall be delivered as PIERCE TRANSIT may direct. This subsection, however, does not

apply to adaptations of automatic data processing equipment or programs for the contractor's use which costs are financed with capital funds (sections 3, 9, 16, 18 or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).

- D. Unless prohibited by State law, the contractor agrees to indemnify, save and hold harmless PIERCE TRANSIT and the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this contract. The contractor shall not be required to indemnify PIERCE TRANSIT or the Federal Government for any such liability arising out of the wrongful acts of employees or agents of PIERCE TRANSIT or the Federal Government.
- E. Nothing contained in this section on rights in data shall imply a license to PIERCE TRANSIT or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to PIERCE TRANSIT or the Federal Government under any patent.
- F. The requirements of paragraphs B, C, and D of this subsection do not apply to material furnished to the contractor by PIERCE TRANSIT and incorporated in the work carried out under the contract; provided that such incorporated material is identified by the contractor at the time of delivery of such work.

### **BUY AMERICA**

This procurement is subject to the Federal Transit Administration (FTA) Buy America Requirements in 49 CFR 661.

A "Buy America" Certificate, as per attached format, must be completed and submitted with the bid. A bid which does not include the certificate will be considered nonresponsive.

A waiver from the Buy America provision may be sought by PIERCE TRANSIT if the grounds for the waiver exist.

Section 165a of the Surface Transportation Assistance Act of 1982 permits FTA participation on this contract only if steel, manufactured products, and sub-components used in the contract are produced in the United States.